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TABLE OF CONTENTS

VOLUME TWO

- Chapter 216—**Mattresses**, p. 1697.
mattress act of 1915, Act 2788, p. 1697.
- Chapter 217—**Mechanics' Institute**, p. 1699.
Mechanics' Institute of San Francisco,
power to sell, etc., real estate, Act
2800, p. 1699.
- Chapter 218—**Medicine**, p. 1700.
prevention of infant blindness, Act 2805,
p. 1700.
practice of medicine act of 1913, Act 2809,
p. 1702.
refund of taxes, etc., collected by mis-
take, Act 2810, p. 1725.
- Chapter 219—**Mendocino County**, p. 1725.
free bridges in Big River township, Act
2815, p. 1725.
issue of road and bridge bonds, Act 2816,
p. 1726.
- Chapter 220—**Merced County**, p. 1726.
sale of court house block at Snelling,
Act 2839, p. 1726.
- Chapter 221—**Mexican War Veterans**, p.
1726.
authorizing exchange of certain lands,
Act 2844, p. 1726.
- Chapter 222—**Military Academy**, p. 1726.
arms for military academies, Act 2849,
p. 1726.
- Chapter 223—**Military Companies**, p. 1727.
organization and control of military com-
panies, Act 2854, p. 1727.
- Chapter 224—**Mines and Mining**, p. 1728.
works for restraining and impounding
debris, Act 2865, p. 1728.
title to debris impounding works, Act
2866, p. 1729.
protection from mining operations, Act
2869, p. 1729.
pure quicksilver for miners, Act 2870,
p. 1729.
mining partnerships, Act 2871, p. 1729.
conveyance of mining claims, Act 2872,
p. 1729.
covering or fencing abandoned mining
claims, Act 2873, p. 1730.
protection of miners, Act 2874, p. 1730.
protection of coal mines and miners, Act
2875, p. 1731.
state hospital for miners, Act 2876, p.
1732.
mine telephone system, Act 2878, p. 1733.
rights of way to mines, Act 2880, p. 1734.
working, rights of way, etc., of mines,
Act 2881, p. 1734.
- Chapter 224—**Mines and Mining**—(Cont'd).
hours of employment, act of 1913, Act
2883, p. 1735.
extracting minerals from waters, Act
2884, p. 1736.
waters containing minerals withdrawn
from sale, Act 2885, p. 1737.
- Chapter 225—**Mining Bureau**, p. 1740.
state mining bureau, Act 2893, p. 1740.
state mining bureau, department of pe-
troleum and gas, Act 2894, p. 1743.
- Chapter 226—**Mining Companies**, p. 1761.
removal of mining companies, Act 2902,
p. 1761.
- Chapter 227—**Missions**, p. 1762.
Mission San Francisco de Solano, Act
2915, p. 1762.
- Chapter 228—**Modesto**, p. 1762.
freeholders' charter, Act 2925, p. 1762.
grant of franchise to supply water to
Modesto, Act 2926, p. 1762.
- Chapter 229—**Modoc County**, p. 1762.
creating and organizing, Act 2931, p.
1762.
payment of semi-annual interest and
principal of bonds, Act 2932, p. 1763.
lawful and partition fences, Act 2933,
p. 1763.
herding sheep in Modoc county, Act 2935,
p. 1763.
- Chapter 230—**Mono County**, p. 1763.
- Chapter 231—**Monterey Bay**, p. 1763.
government breakwater, Act 2970, p. 1763.
- Chapter 232—**Monterey City**, p. 1764.
freeholders' charter of Monterey, Act
2974, p. 1764.
waterfront grant, Act 2976, p. 1765.
- Chapter 233—**Monterey County**, p. 1766.
court house and jail, Act 2980, p. 1766.
copies of certain records made valid, Act
2986, p. 1766.
- Chapter 234—**Monterey Custom House**, p.
1766.
preservation of Monterey custom house,
Act 2995, p. 1766.
- Chapter 235—**Motor Vehicles**, p. 1767.
"motor vehicle act of 1915," Act 3012,
p. 1767.
repayment of illegally imposed fees un-
der "motor vehicle act," Act 3013, p.
1808.
auto-bus transportation act, Act 3014, p.
1809.

TABLE OF CONTENTS.

Chapter 236 — Municipal Corporations, p. 1813.
 classification act, Act 3016, p. 1814.
 abandonment of freeholders' charter, Act 3017, p. 1817.
 validation act of 1919, Act 3018, p. 1817.
 reorganization validation act of 1909, Act 3027, p. 1818.
 disposition of public lands in townsites, Act 3029, p. 1818.
 disposition of public lands in townsites, Act 3030, p. 1819.
 acquisition of land for cemetery purposes, Act 3032, p. 1819.
 private spur tracks, Act 3034, p. 1820.
 disposition of residue of public improvement funds, Act 3037, p. 1820.
 acquisition of public utilities act of 1913, Act 3040, p. 1820.
 "street lighting act of 1919," Act 3040a, p. 1828.
 joint system of water supply act of 1903, Act 3041, p. 1835.
 sale of excess water act of 1911, Act 3043, p. 1836.
 municipal building act of 1895, Act 3044, p. 1837.
 municipal gravel beds and quarries, Act 3045, p. 1839.
 drainage and protection from overflow, Act 3046, p. 1839.
 acquisition of water rights, etc., Act 3048, p. 1842.
 municipal indebtedness act of 1889, Act 3049, p. 1843.
 acquisition of property sold for delinquent assessments, Act 3050, p. 1848.
 municipal improvement act of 1901, Act 3051, p. 1849.
 public assembly and convention halls, Act 3052, p. 1857.
 annexation act of 1889, Act 3054, p. 1859.
 "annexation act of 1913," Act 3055, p. 1866.
 annexation of uninhabited territory act of 1899, Act 3056, p. 1874.
 annexation validation act of 1915, Act 3057, p. 1876.
 exclusion act of 1889, Act 3059, p. 1876.
 exclusion of uninhabited territory act of 1913, Act 3060, p. 1878.
 census, Act 3062, p. 1880.
 consolidation act of 1909, Act 3063, p. 1880.
 municipal annexation act of 1913, Act 3064, p. 1888.
 ratification of conveyance of certain property, Act 3065, p. 1897.
 change of name of freeholder charter cities, Act 3066, p. 1897.
 change of name from "town" to "city," Act 3067, p. 1898.
 change of name from "city" to "town," Act 3067a, p. 1899.
 approving leases of tide lands, Act 3068, p. 1899.
 permit for county highways, Act 3069, p. 1900.
 botanical gardens and historical museums, Act 3070, p. 1900.

Chapter 236 — Municipal Corporations — (Continued).
 waterworks and power plants, Act 3071, p. 1901.
 joint sewers, water mains and other conduits, Act 3072, p. 1902.
 tax for park, music and advertising, Act 3073, p. 1905.
 public utility crossings of highways, etc., Act 3074, p. 1906.
 franchise for steam heating pipes, Act 3075, p. 1907.
 permits for passage ways over or under alleys, Act 3076, p. 1907.
 public utilities act of 1907, Act 3076a, p. 1908.
 public utilities act of 1911, Act 3077, p. 1908.
 municipal improvement act of 1915, Act 3077a, p. 1909.
 municipal tax district act of 1919, Act 3077b, p. 1914.
 harbor improvement act of 1911, Act 3078, p. 1918.
 establishment of harbor lines, Act 3079, p. 1919.
 waterfront improvement act of 1917, Act 3079a, p. 1921.
 third-class cities, waterfront improvement, Act 3079b, p. 1921.
 grant of tide lands to United States, Act 3080, p. 1922.
 municipal hospital, Act 3081, p. 1922.
 noxious and dangerous weeds, a nuisance, Act 3087, p. 1924.
 organization validation, cities of sixth class, Act 3088, p. 1926.
 election of officers, cities of the sixth class, Act 3089, p. 1927.
 validating election of officers, cities of the sixth class, Act 3090, p. 1929.
 municipal elections, fifth and sixth class cities, Act 3090a, p. 1929.
 disincorporation of sixth-class cities, Act 3091, p. 1937.
 reorganization act of 1899, Act 3092, p. 1940.
 ownership of property of disincorporated municipality, Act 3093, p. 1941.
 city planning commissions, Act 3093a, p. 1943.
 initiative and referendum, Act 3093b, p. 1945.
 hours of labor of municipal employees, Act 3093c, p. 1949.
 fiscal year of freeholder charter cities, Act 3093d, p. 1949.
 refunding act of 1897, Act 3093e, p. 1949.
 destruction of unsold bonds, Act 3093f, p. 1952.
 bonds declared due before maturity, Act 3093g, p. 1952.
 payment of bonds before maturity, Act 3093h, p. 1953.
 registration of bonds, Act 3093i, p. 1954.
 investment bond act of 1909, Act 3093j, p. 1955.
 investment bond act of 1915, Act 3093k, p. 1956.
 legalization act of 1919, Act 3093l, p. 1957.
 validation act of 1915, Act 3093m, p. 1958.

TABLE OF CONTENTS.

Chapter 236 — Municipal Corporations — (Continued).

validation of improvement and public utility bonds, Act 3093m, p. 1959.
special tax levy, Act 3093o, p. 1959.
municipal ordinances, Act 3093p, p. 1960.
municipal incorporation act of 1883 ("municipal corporation bill"), Act 3094, p. 1961.

Chapter 237—Municipal Water Districts, p. 2157.

organization act of 1909, Act 3100, p. 2157.
organization act of 1911, Act 3101, p. 2157.
municipal water district bonds declared legal investments, Act 3102, p. 2172.
municipal water district bonds legalized, Act 3103, p. 2173.
"Marin municipal water district," Act 3104, p. 2173.
Richmond municipal water district, Act 3105, p. 2175.

Chapter 238—Names, p. 2176.

registration of farm, ranch and villa names, Act 3106, p. 2176.

Chapter 239—Napa City, p. 2176.

freeholders' charter, Act 3111, p. 2176.

Chapter 240—Napa County, p. 2176.

legalizing Bonham notarial acknowledgments, Act 3117, p. 2177.
court house and jail, Act 3119, p. 2177.
trespassing animals, Act 3123, p. 2177.
transcribing records, Act 3127, p. 2177.
preservation of records, Act 3128, p. 2177.

Chapter 241—Napa Ladies' Seminary, p. 2177.

grant of diplomas, Act 3138, p. 2177.

Chapter 242—National City, p. 2177.

tide land grant, Act 3145, p. 2178.

Chapter 243—National Guard, p. 2180.

camp of instruction, Act 3151, p. 2180.
organizations of the United States volunteer service in the Spanish-American war, Act 3152, p. 2181.
expenses of mustering in of organizations in the United States volunteer service in the Spanish-American war, Act 3153, p. 2182.

encampments at state camp of instruction, Act 3154, p. 2183.

San Francisco armory site, Act 3157, p. 2183.

expenses in insurrections, etc., Act 3158, p. 2183.

Los Angeles armory, Act 3160, p. 2183.

Sacramento armory, Act 3161, p. 2183.

San Diego armory, Act 3162, p. 2184.

revolving fund for adjutant general's office, Act 3164, p. 2185.

return of officers and members to state organizations from United States volunteer service, Act 3165, p. 2186.

Chapter 244—Nautical School, p. 2187.

establishment, Act 3170, p. 2187.

Chapter 245—Naval Battalion, p. 2188.

establishment, Act 3173, p. 2188.

Chapter 246—Navigation, p. 2189.

submarine sites for lighthouses, Act 3179, p. 2189.

Chapter 247—Net Containers, p. 2189.

net container act, Act 3189, p. 2189.

Chapter 247a—Nevada City, p. 2192.

incorporation act, Act 3199, p. 2192.

Chapter 248—Nevada County, p. 2192.

lawful fences, Act 3205, p. 2192.

remedy defects in records, Act 3207, p. 2192.

indexing records, Act 3208, p. 2192.

removal of bodies of deceased persons, Act 3212, p. 2193.

Chapter 249—Newport Beach, p. 2193.

tide-land grant, Act 3223, p. 2193.

construction of conduits, Act 3224, p. 2194.

Chapter 250—North San Francisco Homestead and Railroad Association, p. 2194.

conveyance of lands, Act 3232, p. 2194.

Chapter 251—Notice, p. 2195.

publication, Act 3244, p. 2195.

Chapter 252—Nuisances, p. 2196.

property infested with rodents, Act 3259, p. 2196.

Chapter 253—Nursing, p. 2197.

education and registration of nurses, Act 3267, p. 2197.

examination and licensing of trained attendants on the sick, Act 3268, p. 2200.

Chapter 254—Oakland, p. 2202.

freeholders' charter, Act 3272, p. 2202.

settlement of controversies, Act 3273, p. 2205.

Alameda, Oakland and Piedmont Railroad Company, Act 3274, p. 2205.

Oakland Railroad Company, Act 3274a, p. 2205.

issue of bonds to cancel school bonds, Act 3279, p. 2205.

funding of floating indebtedness, Act 3280, p. 2205.

issue of bonds for certain purposes, Act 3281, p. 2205.

bridge across San Antonio estuary, Act 3282, p. 2205.

canal for harbor, Act 3285, p. 2205.

tide and salt marsh land grant of 1874, Act 3287, p. 2205.

tide and salt marsh land grant of 1909, Act 3288, p. 2206.

tide and salt marsh land grant of 1911, Act 3297, p. 2206.

tide-land grant of 1911, Act 3298, p. 2207.

Chapter 255—Odd Fellows, p. 2208.

authorizing lease of lot, Act 3304, p. 2209.

grant of certain lands to San Diego lodge, No. 153, Act 3305, p. 2209.

Chapter 256—Officers, p. 2210.

intoxication of officers, Act 3317, p. 2210.

state officers not to profit by labor of inmates of state institutions, Act 3319, p. 2210.

unlawful removal from office, Act 3320, p. 2210.

vacations of certain state employees, Act 3321, p. 2211.

liability of officers in damages, Act 3322, p. 2211.

recall of elective officers, Act 3323, p. 2214.

transfer of certain powers of municipal to county officers, Act 3324, p. 2216.

TABLE OF CONTENTS.

- Chapter 257—**Olive Oil**, p. 2217.
sale of imitation olive oil, Act 3344, p. 2217.
- Chapter 258—**Optometry**, p. 2219.
practice of optometry act, Act 3349, p. 2219.
- Chapter 259—**Orange County**, p. 2225.
organization act, Act 3354, p. 2225.
increase of superior judges, Act 3355, p. 2226.
tide-land grant, Act 3356, p. 2227.
- Chapter 260—**Orphan Asylums**, p. 2228.
binding of apprentices from orphan asylums, Act 3374, p. 2228.
guardians for orphan children, Act 3375, p. 2228.
- Chapter 261—**Overflow Districts**, p. 2228.
overflow district act, Act 3355, p. 2228.
- Chapter 262—**Oysters**, p. 2238.
planting and cultivation of oysters, Act 3392, p. 2238.
- Chapter 263—**Palo Alto**, p. 2239.
freeholders' charter, Act 3397, p. 2239.
- Chapter 264—**Pandering**, p. 2239.
pandering prohibited, Act 3398, p. 2240.
- Chapter 265—**Pardon Board**, p. 2241.
advisory pardon board, Act 3400, p. 2241.
- Chapter 266—**Parole of Prisoners**, p. 2242.
board of parole commissioners, Act 3408, p. 2242.
county parole commissioners, Act 3409, p. 2244.
parole headquarters for state schools, Act 3410, p. 2245.
- Chapter 267—**Pasadena**, p. 2245.
freeholders' charter, Act 3421, p. 2245.
- Chapter 268—**Paupers**, p. 2246.
support of indigent, incompetent and incapacitated persons, Act 3428, p. 2246.
- Chapter 269—**Pawnbrokers**, p. 2249.
personal property brokers' act, Act 3434, p. 2249.
- Chapter 270—**Pensions**, p. 2251.
old age and mothers' pensions, Act 3439, p. 2251.
retirement system for county employees, Act 3440, p. 2251.
- Chapter 271—**Petaluma**, p. 2260.
freeholders' charter, Act 3450, p. 2260.
widening English street, Act 3453, p. 2260.
- Chapter 272—**Petaluma Creek**, p. 2260.
drawbridge, Act 3458, p. 2260.
improvement of navigation, Act 3459, p. 2260.
- Chapter 273—**Pharmacy**, p. 2260.
practice of pharmacy act, Act 3464, p. 2261.
hours of labor, Act 3465, p. 2269.
- Chapter 274—**Pilots**, p. 2272.
board of pilot commissions for San Diego, Act 3474, p. 2272.
- Chapter 275—**Pimping**, p. 2275.
pimping prohibited, Act 3476, p. 2275.
- Chapter 276—**Placer County**, p. 2276.
trespassing animals, Act 3484, p. 2276.
legalizing records, Act 3491, p. 2277.
- Chapter 277—**Plumas County**, p. 2277.
- Chapter 278—**Plumbers**, p. 2277.
plumbers' act, Act 3550, p. 2277.
- Chapter 279—**Poisons**, p. 2279.
poison act, Act 3528, p. 2279.
- Chapter 280—**Police**, p. 2288.
relief and pension fund, Act 3536, p. 2288.
increase of police forces, Act 3537, p. 2293.
annual vacations, Act 3538, p. 2294.
hours of service, Act 3539, p. 2294.
rights of seniority act, Act 3540, p. 2295.
special police, Act 3541, p. 2295.
boards of police commissioners, Act 3542, p. 2296.
- Chapter 281—**Police Courts**, p. 2299.
"Whitney act," Act 3547, p. 2299.
police courts in cities of first and a half class, Act 3550, p. 2303.
police courts in cities of the second class, Act 3551, p. 2311.
prosecuting attorneys in police courts in cities of the second class, Act 3552, p. 2313.
police judges in freeholder charter cities, Act 3553, p. 2314.
mayor as ex-officio police judge in certain cities, Act 3554, p. 2314.
- Chapter 282—**Pomona**, p. 2315.
freeholders' charter, Act 3558, p. 2315.
- Chapter 283—**Potatoes**, p. 2315.
inspection and certification act, Act 3560, p. 2315.
standard seed potato act of 1915, Act 3561, p. 2316.
- Chapter 284—**Poultry**, p. 2317.
poultry experiment station, Act 3563, p. 2317.
- Chapter 285—**Preston School of Industry**, p. 2319.
Preston School of Industry established, Act 3568, p. 2319.
transfer of inmates, Act 3572, p. 2325.
- Chapter 286—**Prisons**, p. 2326.
matrons in cities of certain classes, Act 3582, p. 2326.
acknowledgment of deeds by inmates, Act 3583, p. 2327.
employment of prisoners in certain roads, Act 3600, p. 2327.
employment of prisoners, Act 3601, p. 2328.
revolving fund for manufacturing department of San Quentin prison, Act 3601a, p. 2329.
rock crushing plants, Act 3602, p. 2329.
purchase of California-grown hemp, Act 3606, p. 2331.
Folsom state hospital, Act 3608, p. 2331.
employment of paroled and discharged prisoners, Act 3609, p. 2333.
- Chapter 287—**Process**, p. 2334.
validation of writs, etc., without seal, Act 3627, p. 2334.
- Chapter 288—**Prostitution**, p. 2334.
"red light abatement act," Act 3634, p. 2334.
- Chapter 289—**Protection Districts**, p. 2340.
protection district act of 1895, Act 3641, p. 2340.
protection district act of 1907, Act 3642, p. 2351.
dissolution of protection districts, Act 3643, p. 2373.
dissolution of protection district No. 2, Act 3643a, p. 2374.

TABLE OF CONTENTS.

Chapter 290—Public Buildings, p. 2375.
 completion of unfinished buildings, act of 1887, Act 3655, p. 2375.
 completion of unfinished buildings, act of 1895, Act 3656, p. 2376.
 State building act, Act 3657, p. 2377.
 joint county and municipal buildings, Act 3658, p. 2381.
 San Francisco state building, bond issue, Act 3661, p. 2381.
 San Francisco state building, construction, etc., Act 3663, p. 2385.
 grant of sites for state buildings by freeholder charter cities, Act 3664, p. 2386.
Chapter 291—Public Debt, p. 2387.
 payment of indebtedness by certain cities, Act 3669, p. 2387.
 creation of state indebtedness in excess of appropriations, Act 3670, p. 2387.
Chapter 292—Public Health, p. 2388.
 operation of garbage crematories, Act 3675, p. 2388.
 sanitation of food producing and food storage establishments, Act 3676, p. 2389.
 public health act, Act 3677, p. 2391.
 attorney for state board and San Francisco board of health, Act 3678, p. 2402.
 introduction of contagious diseases into California, Act 3682, p. 2402.
 introduction of contagious diseases, act of 1913, Act 3684, p. 2403.
 purchase and manufacture of diphtheria antitoxin, Act 3685, p. 2405.
 purchase, preparation and distribution of anti-rabic virus, Act 3686, p. 2405.
 school vaccination act, Act 3690, p. 2405.
 dissemination of knowledge as to tuberculosis, Act 3692, p. 2409.
 treatment for tuberculosis, Act 3693, p. 2410.
 bureau of tuberculosis, Act 3694, p. 2412.
 sterilizing rags, Act 3695, p. 2414.
 local health districts, Act 3696, p. 2416.
 department of sanitary engineering, Act 3697, p. 2421.
 drinking receptacles for public use, Act 3698, p. 2422.
 towels for public use, Act 3699, p. 2422.
 bureau of child hygiene, Act 3699a, p. 2423.
Chapter 293—Public Institutions, p. 2424.
 exchange of commodities, Act 3700, p. 2424.
Chapter 294—Public Lands, p. 2425.
 withdrawing certain school lands from sale, Act 3715, p. 2426.
 sale of school lands containing minerals, Act 3715a, p. 2427.
 reservation from sale of certain school lands, Act 3716, p. 2427.
 management and sale of state lands, Act 3717, p. 2427.
 survey and disposition of certain salt marsh and tide lands, Act 3719, p. 2429.
 distribution of swamp land fund, Act 3720, p. 2429.
 sale of certain lands, Act 3720a, p. 2430.

Chapter 294—Public Lands—(Continued).
 sale and conveyance of certain lands, Act 3721, p. 2430.
 sale of certain lands in reclamation district 1600, Act 3721a, p. 2430.
 sale of school lands not suitable for cultivation, Act 3721b, p. 2431.
 sale of school lands suitable for cultivation, Act 3721c, p. 2432.
 preferential right to purchase, Act 3721d, p. 2432.
 purchase of school lands, Act 3722, p. 2433.
 possessory actions, Act 3724, p. 2434.
 protection of actual settlers, Act 3725, p. 2435.
 better protection of settlers, Act 3726, p. 2436.
 protection of settlers on land claimed by state, Act 3727, p. 2436.
 protection of pre-emption and homestead claimants, Act 3729, p. 2436.
 protection of bona fide settlers, Act 3730, p. 2436.
 relief of purchasers of state lands, Act 3731, p. 2436.
 legalizing applications to purchase, Act 3734, p. 2437.
 legalizing payments for school land, Act 3735, p. 2438.
 forfeiture for non-payment of interest, Act 3735a, p. 2438.
 judicial determination of forfeitures, reinstatement, Act 3735b, p. 2442.
 redemption from forfeiture for non-payment of interest, Act 3736, p. 2443.
 forfeiture act of 1889, Act 3737, p. 2443.
 rights of parties in Fresno and Kern counties, Act 3737a, p. 2444.
 relief of John D. Justice, Act 3738, p. 2444.
 relief of Peter Anderson, Act 3739, p. 2444.
 relief of Mary Ann Bath, and others, Act 3739a, p. 2445.
 relief of heirs at law of P. W. Fahey, Act 3739b, p. 2445.
 relief of Ella Glenn Leonard, and others, Act 3739c, p. 2445.
 relinquishment of title to certain lands to George Herget, Act 3739d, p. 2445.
 relief of purchasers of school lands, Act 3740, p. 2445.
 restitution appropriations, principal, Act 3740a, p. 2446.
 restitution appropriation, interest, Act 3740b, p. 2446.
 payment of certain swamp land warrants, Act 3740c, p. 2447.
 cancellation of unlocated school land warrants, Act 3741, p. 2447.
 forfeiture of payments on fraudulent titles, Act 3742, p. 2448.
 removal of improvements made under void locations, Act 3743, p. 2448.
 quieting title to certain swamp lands in Yolo and Colusa counties, Act 3744a, p. 2449.
 title to certain lien lands validated, Act 3744b, p. 2449.
 quieting title to certain swamp lands, Act 3745, p. 2449.

TABLE OF CONTENTS.

Chapter 294—Public Lands—(Continued).

- reselections where original selections were cancelled or rejected, Act 3745a, p. 2449.
- reselection act of 1919, Act 3745b, p. 2450.
- amendment of base land selections, Act 3745c, p. 2451.
- quieting title of certain land in Yolo county, Act 3745d, p. 2451.
- quieting title to certain lands in Yolo county, Act 3745e, p. 2451.
- cancellation of lien land applications, Act 3746, p. 2451.
- relinquishment of lien lands, Act 3746a, p. 2452.
- cancellation of tax liens on certain school lands, Act 3747, p. 2452.
- "Carey act commission," Act 3748, p. 2453.
- school land leasing act of 1917, Act 3749, p. 2470.
- effect of state land patents, Act 3750, p. 2472.
- official map of patented state lands, Act 3751, p. 2472.
- consent of state to provisions of act of congress as to withdrawal of mineral lands, Act 3752, p. 2474.
- swamp and overflowed lands, determination as to character, Act 3753, p. 2474.

Chapter 295—Public Museums, p. 2474.

- public museums, Act 3755, p. 2474.

Chapter 296—Public Parks, p. 2477.

- maintenance of public parks, Act 3760, p. 2477.
- park and boulevard act, Act 3761, p. 2478.
- maintenance of public parks in cities, Act 3762, p. 2480.
- acceptance of donations, Golden Gate park, Act 3763, p. 2483.
- roads and boulevards to public parks, Act 3764, p. 2484.
- jurisdiction of cities over parks outside limits, Act 3765, p. 2484.
- consent of state to reservation of certain lands by congress, Act 3766, p. 2484.
- acceptance of Bidwell grant in Butte county, Act 3767, p. 2485.
- public park and playground act, Act 3768, p. 2485.
- abandonment of parks, Act 3769, p. 2496.

Chapter 297—Public Utilities, p. 2499.

- "public utilities act of 1915," Act 3775, p. 2499.
- public utility districts act of 1913, Act 3776, p. 2602.
- public utilities district act of 1915, Act 3776a, p. 2611.
- retention of municipal power of regulation, Act 3778, p. 2637.
- pipe lines declared common carriers, Act 3779, p. 2643.
- pipe lines, license act, Act 3779a, p. 2646.
- pipe line combinations, Act 3780, p. 2650.
- "food warehouseman act," Act 3780a, p. 2657.

Chapter 298—Public Welfare, p. 2661.

- county boards of public welfare, Act 3781, p. 2661.

Chapter 299—Public Works, p. 2663.

- retention of ex-soldiers, sailors and marines in employment on, Act 3789, p. 2663.
- grant to United States of right of way for Mormon Channel canal, Act 3791, p. 2664.

- minimum wage law, Act 3792, p. 2666.
- security for claims for labor and materials, Act 3793, p. 2666.

Chapter 300—Quarantine, p. 2668.

- livestock quarantine, Act 3806, p. 2668.

Chapter 301—Railroads, p. 2670.

- right of way through asylum grounds, Act 3821, p. 2670.
- extending time for completion, Act 3825, p. 2670.
- validating permits for right of way through municipalities, Act 3826, p. 2671.

- free transportation for mail carriers, Act 3828, p. 2671.

- "full crew act," Act 3832, p. 2672.

- regulating transmission of train orders, Act 3832a, p. 2674.

- hours of labor of trainmen, despatchers and telegraph operators, Act 3833, p. 2674.

- conditional sales of equipment, Act 3834, p. 2676.

- regulating headlights on locomotives, Act 3835, p. 2677.

- regulating derailing switches, Act 3836, p. 2678.

- "solid water glass" for locomotives, Act 3837, p. 2678.

- automatic bell-ringing devices, Act 3838, p. 2679.

Chapter 302—Real Estate Brokers, p. 2679.

- real estate brokers' act of 1919, Act 3841, p. 2679.

Chapter 303—Reclamation Districts, p. 2687.

- "American river reclamation district No. 1," Act 3843, p. 2688.

- "reclamation district No. 10," Act 3850, p. 2688.

- "reclamation district No. 54," legalizing, Act 3853, p. 2688.

- "reclamation district No. 70," Act 3856, p. 2689.

- "reclamation district No. 108," Act 3857, p. 2689.

- "reclamation district No. 108," payment of assessment warrants, Act 3858, p. 2689.

- reclamation districts Nos. 108 and 729, legalizing consolidation, Act 3859, p. 2689.

- "reclamation district No. 108," consolidated district, Act 3859a, p. 2689.

- consolidated "reclamation district No. 108," validation act, Act 3859b, p. 2690.

- consolidated "reclamation district No. 108," boundaries, etc., act of 1919, Act 3859c, p. 2690.

- "reclamation district No. 124," Act 3862, p. 2691.

- "reclamation district No. 252," Act 3866, p. 2691.

TABLE OF CONTENTS.

Chapter 303—**Reclamation Districts**—(Continued).

"reclamation district No. 254," Act 3867, p. 2691.

"reclamation district No. 317," Act 3869, p. 2691.

"reclamation district No. 348," Act 3870, p. 2691.

"reclamation district No. 535," Act 3871, p. 2691.

"reclamation district No. 548," Act 3872, p. 2691.

"reclamation district No. 730," Act 3873, p. 2692.

"reclamation district No. 802," legalizing formation, Act 3874, p. 2692.

reclamation districts Nos. 742 and 900, consolidation, Act 3875, p. 2692.

"reclamation district No. 785," Act 3876, p. 2692.

"reclamation district No. 787," Act 3877, p. 2693.

"reclamation district No. 791," Act 3878, p. 2693.

"reclamation district No. 800," Act 3879, p. 2693.

"reclamation district No. 800," legalizing formation, Act 3880, p. 2693.

"reclamation district No. 812," validation act, Act 3881, p. 2693.

"reclamation district No. 830," Act 3882, p. 2693.

"reclamation district No. 832," Act 3884, p. 2693.

"reclamation district No. 833," Act 3885, p. 2693.

"reclamation district No. 900," Act 3886, p. 2693.

"reclamation district No. 900," changing boundaries, Act 3886a, p. 2694.

"reclamation district No. 999," Act 3887, p. 2694.

"reclamation district No. 999," changing boundaries, Act 3887a, p. 2694.

"reclamation district No. 1000," Act 3888, p. 2694.

"reclamation district No. 1001," Act 3889, p. 2694.

"reclamation district No. 1400," Act 3890, p. 2694.

"reclamation district No. 1500," Act 3891, p. 2694.

"reclamation district No. 1600," Act 3892, p. 2695.

authorizing formation of district, Mor-mon slough, Act 3893, p. 2695.

reclamation districts Nos. 209 and 223, legalizing formation, Act 3894, p. 2695.

Union Island reclamation districts Nos. 1 and 2, Act 3897, p. 2696.

"reclamation district No. 1660," Act 3897a, p. 2696.

"reclamation district No. 2020," Act 3897b, p. 2696.

"reclamation district No. 2031," Act 3897c, p. 2696.

reclamation districts subject to Political Code, Act 3899, p. 2696.

equalization of assessments, Act 3901, p. 2696.

Chapter 303—**Reclamation Districts**—(Continued).

dissolution, Act 3902, p. 2697.

bonds, Act 3903, p. 2697.

assessments to pay bonds issued under Act 3903, Act 3904, p. 2697.

appeals from orders forming or refusing to form reclamation districts, Act 3906, p. 2698.

Chapter 304—**Recorders**, p. 2699.

certain acts legalized, Act 3911, p. 2699.

certificates of status of school land fur-nished surveyor general, Act 3912, p. 2699.

Chapter 305—**Red Bluff**, p. 2699.

survey legalized, Act 3923, p. 2699.

distribution of townsite lots, Act 3924, p. 2700.

Chapter 306—**Redondo Beach**, p. 2700.

tide-land grant, Act 3940, p. 2700.

Chapter 307—**Redwood City**, p. 2701.

opening and extension of Stambaugh street, Act 3943, p. 2701.

Chapter 308—**Richmond**, p. 2701.

freeholders' charter, Act 3954, p. 2701.

tide-land grant, Act 3955, p. 2703.

tide-land lease authorized, Act 3956, p. 2705.

Chapter 309—**Riverside City**, p. 2706.

freeholders' charter, Act 3965, p. 2706.

Chapter 310—**Riverside County**, p. 2706.

organization act, Act 3970, p. 2706.

Chapter 311—**Rodeos**, p. 2706.

rodeos, Act 3975, p. 2706.

Chapter 312—**Sacramento and San Joaquin Drainage District**, p. 2707.

"reclamation board act," Act 3986, p. 2707.

purchase of construction warrants, Act 3987, p. 2739.

bonds, Act 3988, p. 2741.

conveyance of rights of way, easements, weir sites, etc., Act 3989, p. 2757.

Sutter-Butte by-pass project No. 6, Act 3990, p. 2758.

Chapter 313—**Sacramento City**, p. 2760.

freeholders' charter, Act 3991, p. 2760.

grant of certain swamp and overflowed lands, Act 4009, p. 2761.

Chapter 314—**Sacramento County**, p. 2761.

protection of East Park, Act 4021, p. 2761.

additional judge, Act 4024, p. 2761.

construction and repair of levees, Act 4026, p. 2761.

transcribing records, Act 4028, p. 2761.

Georgiana slough road, Act 4030, p. 2761.

sheep herded and running at large, Act 4031, p. 2761.

authorizing conveyance of certain prop-erty to, Act 4035, p. 2762.

Chapter 315—**Salinas City**, p. 2764.

freeholders' charter, Act 4045, p. 2764.

Chapter 316—**San Benito County**, p. 2764.

organization act, Act 4059, p. 2764.

trespassing animals, Act 4060, p. 2764.

legalizing transcribed records, Act 4062, p. 2764.

transcription of records, Act 4063, p. 2765.

Chapter 317—**San Bernardino City**, p. 2765.

freeholders' charter, Act 4067, p. 2765.

grant of certain lands, Act 4068, p. 2765.

TABLE OF CONTENTS.

- Chapter 318—**San Bernardino County**, p. 2765.
 county charter, Act 4070, p. 2765.
 trespassing animals, Act 4072, p. 2766.
 timekeepers for irrigation ditches, Act 4077, p. 2766.
 additional judge, Act 4078, p. 2766.
 transcribing public records, Act 4079, p. 2766.
 legalizing certain records, Act 4081, p. 2766.
 construction of wagon road, Act 4085, p. 2766.
 regulating beekeeping, Act 4087, p. 2766.
- Chapter 319—**San Diego City**, p. 2767.
 freeholders' charter, Act 4094, p. 2767.
 validating conveyances by municipal authorities, Act of 1874, Act 4096, p. 2770.
 validating conveyances by municipal authorities, Act of 1872, Act 4097, p. 2770.
 conveyance of lands to United States for military purposes, Act 4098, p. 2770.
 conveyance of certain pueblo lands to the United States, Act 4099, p. 2790.
 ratifying conveyance to Richard C. McCormick, Act 4100, p. 2770.
 ratifying and repealing ordinances, Act 4101, p. 2770.
 boundaries of school districts, Act 4103, p. 2770.
 conveyance of part La Jolla park to University of California, Act 4104, p. 2770.
 tide-land grant, Act 4106, p. 2770.
 purchase of armory building and wharf, Act 4107, p. 2774.
- Chapter 320—**San Diego County**, p. 2774.
 transfer of tide lands to United States, Act 4111, p. 2774.
 trespassing animals, Act 4114, p. 2774.
 funding indebtedness against road fund, Act 4121, p. 2774.
 increasing number of judges, Act 4125, p. 2774.
 use of waters of "False Bay" to propel machinery, Act 4127, p. 2774.
- Chapter 321—**San Francisco**, p. 2775.
 freeholders' charter, Act 4133, p. 2776.
 opening Army street, Act 4135, p. 2798.
 grading Bay street, Act 4138, p. 2798.
 exchange of public school, lot 122, Potrero Nuevo, Act 4139, p. 2799.
 "water lot act," Act 4141, p. 2799.
 erection of city hall, sale of lots, Act 4142, p. 2800.
 deeds to purchasers of city hall lots, Act 4143, p. 2800.
 completion of city hall, Act 4144, p. 2800.
 Cemetery avenue, Act 4146, p. 2800.
 canal through Channel street, Act 4147, p. 2800.
 sanitary canal through Channel street and Mission creek, Act 4148, p. 2801.
 legalizing certain conveyances, Act 4153, p. 2801.
 conveyance of lands to lying-in hospital and foundling asylum, Act 4155, p. 2801.
 conveyance of overflowed lands to South San Francisco Homestead and Railroad Association, Act 4157, p. 2801.
- Chapter 321—**San Francisco**—(Continued).
 preservation of name of Dupont street, Act 4169, p. 2801.
 widening of Dupont street, Act 4170, p. 2801.
 define and establish the width of East street, Act 4171, p. 2801.
 closing portion of Elm street, Act 4172, p. 2801.
 opening Fifteenth avenue extension, Act 4174, p. 2802.
 authorizing certain officers to administer oaths, Act 4181, p. 2802.
 hunting on private grounds, Act 4192, p. 2802.
 closing Ivy avenue, Act 4199, p. 2802.
 opening and extending Leidesdorff street, Act 4203, p. 2802.
 establishing and opening Montgomery street, south, Act 4212, p. 2802.
 opening and establishing "Montgomery avenue," Act 4213, p. 2802.
 sales and conveyances of "Mutual Real Estate Company," Act 4215, p. 2802.
 conveyance of lot to Ladies' Protection and Relief Society, Act 4246, p. 2803.
 modification of grades of certain streets, Act 4253, p. 2803.
 change of certain street grades, Act 4254, p. 2803.
 legalizing grades of certain streets, Act 4255, p. 2803.
 opening Seventh street, Act 4256, p. 2803.
 opening Sixth street, Act 4257, p. 2803.
 vacating certain streets and market places, Act 4263, p. 2803.
 Channel street and Mission creek, opening street and constructing sewer, Act 4275, p. 2803.
 opening and extending Tehama street, Act 4278, p. 2804.
 opening Valencia street, Act 4284, p. 2804.
 establishing grade of Vallejo street, Act 4285, p. 2804.
 ratifying and confirming Van Ness ordinance, Act 4286, p. 2804.
 improving Van Ness avenue, Act 4287, p. 2805.
 sale of certain state land within the waterfront line, Act 4291, p. 2805.
 further extension of waterfront line, Act 4292, p. 2805.
 confirming title to certain waterfront property, Act 4293, p. 2805.
 quit claiming city slip lot No. 116, Act 4294, p. 2806.
 quit claiming water lot No. 415, Act 4295, p. 2806.
 compromising litigation concerning waterfront property, Act 4298, p. 2806.
 conveyance to William Scholle, Act 4299, p. 2806.
 sales of perishable products on wharves, Act 4300, p. 2806.
 municipal street railroad, Act 4301, p. 2808.
 maintenance of fire boats, Act 4302, p. 2808.
 exchange of real estate, Act 4303, p. 2809.

TABLE OF CONTENTS.

- Chapter 321—**San Francisco**—(Continued).
annexation of San Mateo territory, Act 4306, p. 2809.
passenger transportation on the Embarcadero, Act 4307, p. 2821.
- Chapter 322—**Sanitary Districts**, p. 2822.
validation act of 1915, Act 4309, p. 2822.
sanitary district act of 1919, Act 4310, p. 2823.
- Chapter 323—**San Joaquin County**, p. 2839.
construction of levees on Mokelumne river, Act 4314, p. 2839.
protection of lands from overflow, Act 4315, p. 2839.
legalizing certain records, Act 4317, p. 2839.
additional judge of the superior court, Act 4326, p. 2839.
- Chapter 324—**San Joaquin River**, p. 2839.
public wharves, Act 4331, p. 2839.
right of way for cut offs, Act 4332, p. 2840.
construction of cut off, Act 4333, p. 2840.
- Chapter 325—**San Jose**, p. 2841.
freeholders' charter, Act 4337, p. 2841.
law library, Act 4338, p. 2842.
confirming opening of Market street, Act 4339, p. 2842.
Santa Clara avenue and Penetencia reservation, Act 4340, p. 2842.
erection of high school building, Act 4341, p. 2842.
- Chapter 326—**San Luis Obispo City**, p. 2842.
freeholders' charter, Act 4360, p. 2843.
bonds, Act 4361, p. 2843.
substitution of bonds, Act 4362, p. 2843.
settlement of title to townsite lands, Act 4366, p. 2843.
- Chapter 327—**San Luis Obispo County**, p. 2843.
transcribing records, Act 4375, p. 2843.
bond issue for road purposes, Act 4378, p. 2843.
squirrel nuisance act applied, Act 4381, p. 2843.
additional judge of the superior court, Act 4382, p. 2844.
reducing number of superior judges, Act 4383, p. 2844.
- Chapter 328—**San Mateo City**, p. 2844.
tide-land grant, Act 4387, p. 2844.
- Chapter 329—**San Mateo County**, p. 2846.
boundary fences and trespassing animals, Act 4389, p. 2846.
declaring certain tide lands public grounds, Act 4399, p. 2846.
- Chapter 330—**San Pasqual Battlefield**, p. 2846.
gift of battlefield accepted, Act 4402, p. 2846.
- Chapter 331—**San Rafael**, p. 2847.
freeholders' charter, Act 4405, p. 2847.
- Chapter 332—**Santa Barbara City**, p. 2848.
freeholders' charter, Act 4410, p. 2848.
legalizing certain grants, Act 4413, p. 2848.
legalizing and confirming certain grants, Act 4414, p. 2849.
confirming conveyances to Santa Barbara Cemetery Association, Act 4415, p. 2849.
- Chapter 333—**Santa Barbara County**, p. 2849.
validating certain conveyances, Act 4423, p. 2849.
- Chapter 334—**Santa Clara, Town Of**, p. 2849.
reincorporation act of 1872, Act 4334, p. 2849.
trustee of townsite lands, Act 4435, p. 2850.
- Chapter 335—**Santa Clara County**, p. 2850.
Alameda road, Act 4440, p. 2850.
auditor's seal of office, Act 4443, p. 2850.
additional judge, Act 4448, p. 2850.
legalizing certain records, Act 4452, p. 2850.
translation of Spanish records, Act 4453, p. 2850.
transcribing records, Act 4454, p. 2850.
- Chapter 336—**Santa Cruz City**, p. 2851.
freeholders' charter, Act 4465, p. 2851.
authority to lay water pipes, Act 4466, p. 2851.
- Chapter 337—**Santa Cruz County**, p. 2852.
change of line of Santa Cruz Railroad Company, Act 4479, p. 2852.
- Chapter 338—**Santa Monica**, p. 2852.
freeholders' charter, Act 4485, p. 2852.
tide-land grant, Act 4487, p. 2852.
- Chapter 339—**Santa Rosa**, p. 2854.
freeholders' charter, Act 4491, p. 2854.
- Chapter 340—**Schools**, p. 2855.
acting districts declared incorporated, Act 4498, p. 2855.
confirming and validating organization of districts, Act 4499, p. 2856.
California polytechnic school, Act 4500, p. 2856.
high school building in state normal grounds at San Jose, Act 4513, p. 2857.
union high school district libraries, Act 4517, p. 2857.
high school cadet companies, Act 4518, p. 2863.
Humboldt state normal school, Act 4520, p. 2866.
Fresno state normal school, Act 4521, p. 2867.
"Los Angeles state normal school," Act 4522, p. 2867.
Los Angeles state normal school abolished, branch of University of California established, Act 4523, p. 2867.
branch state normal school in Northern California, Act 4526, p. 2867.
state normal school in San Diego county, Act 4527, p. 2868.
San Francisco state normal school, Act 4528, p. 2869.
"San Jose state normal school," Act 4531, p. 2871.
"Santa Barbara state normal school," Act 4535, p. 2871.
physical education in schools, Act 4536, p. 2871.
compiling certain text books of the state series, Act 4539, p. 2873.
compiling a certain text book of the state series, Act 4540, p. 2875.

TABLE OF CONTENTS.

Chapter 340—Schools—(Continued).

- compiling a state series of school text books, Act 4541, p. 2875.
 - revision of series, and compiling additional text books, Act 4542, p. 2878.
 - free text-book act of 1917, Act 4542a, p. 2879.
 - purchase of California text books, Act 4543, p. 2883.
 - levee and collection of school taxes, Act 4545, p. 2884.
 - change of name of school districts, Act 4546, p. 2885.
 - change of name of high school districts, Act 4547, p. 2885.
 - clerk in office of superintendent of public instruction, Act 4548, p. 2885.
 - teachers' retirement salary fund, Act 4550, p. 2886.
 - data concerning teachers, Act 4550a, p. 2891.
 - certain teachers subject to retirement fund act, Act 4550b, p. 2892.
 - withdrawal of contributors to teachers' retirement fund, Act 4551, p. 2892.
 - disposal of money remaining in school building funds, Act 4552, p. 2893.
 - transfer of excess building funds, Act 4552, p. 2894.
 - compulsory school attendance act, Act 4554, p. 2894.
 - compulsory school attendance, enforcement aid act, Act 4555, p. 2906.
 - instruction of blind students, Act 4556, p. 2907.
 - discrimination against female teachers, Act 4557, p. 2907.
 - eligibility of women for educational offices, Act 4558, p. 2907.
 - teachers' diplomas validated, Act 4559, p. 2907.
 - school fraternities, Act 4562, p. 2908.
 - registration of minors, Act 4563, p. 2908.
 - validation of school district bonds, Act 4564, p. 2910.
 - registration of school bonds, Act 4570, p. 2911.
 - issue of school bonds in cities of the fifth class, Act 4571, p. 2912.
 - civic center act, Act 4574, p. 2914.
 - janitors and employees in certain districts, Act 4575, p. 2915.
 - closing schools during war, Act 4576, p. 2915.
 - vocational education, Act 4517, p. 2916.
 - trade schools, employment agencies, Act 4578, p. 2917.
 - civic and vocational education in high schools, Act 4579, p. 2917.
- Chapter 341—Sewers, p. 2924.
- sewer districts adjacent to municipalities, Act 4601, p. 2924.
 - separate sewer districts in municipalities, Act 4602, p. 2925.
 - sewer districts in municipalities, act of 1911, No. 1, Act 4604, p. 2925.
 - sewer district in municipalities, act of 1911, No. 2, Act 4605, p. 2930.
 - validating sewer district No. 2, town of Willows, Act 4606, p. 2931.

Chapter 342—Shasta County, p. 2932.

- transcribing records, Act 4613, p. 2932.
- authority to sign certain records, Act 4614, p. 2932.
- compensation of jurors, Act 4619, p. 2932.
- incorporation of tramroad companies, Act 4620, p. 2932.

Chapter 343—Shasta, Town Of, p. 2933.

- hogs running at large, Act 4623, p. 2933.

Chapter 344—Sheep, p. 2933.

- eradication of scabies, Act 4635, p. 2934.

Chapter 345—Sierra County, p. 2935.

- Chapter 346—Sierra Iron Company, p. 2935.
- construction of road authorized, Act 4666, p. 2935.

Chapter 347—Silk Culture, p. 2935.

- state board of silk culture, Act 4672, p. 2935.

Chapter 348—Siskiyou County, p. 2936.

- marks and brands, Act 4679, p. 2936.

Chapter 349—Solano County, p. 2936.

- irrigation and navigation canal, Act 4695, p. 2936.
- branch jail, Act 4698, p. 2936.
- legalizing certain records, Act 4704, p. 2936.
- transcribing certain records, Act 4705, p. 2936.

Chapter 350—Soldiers and Sailors, p. 2937.

- right to peddle without license, Act 4711, p. 2937.
- burial of indigent soldiers, sailors and marines, Act 4712, p. 2937.
- care of graves of soldiers, sailors and marines, Act 4712a, p. 2939.
- home for soldiers' widows and orphans and army nurses, Act 4713, p. 2939.
- preference in public service, Act 4714, p. 2939.
- auditing claims of veterans of Indian wars, Act 4714a, p. 2940.
- soldiers' employment and readjustment committee, Act 4716, p. 2940.
- county relief for indigent*soldiers, etc., Act 4717, p. 2941.

Chapter 351—Sonoma City, p. 2943.

- sale of pueblo lands, Act 4722, p. 2943.
- confirmation of certain sales of pueblo lands, Act 4723, p. 2943.
- board of commissioners of the pueblo, Act 4724, p. 2943.
- bear flag monument, Act 4725, p. 2943.

Chapter 352—Sonoma County, p. 2944.

- division fences, Act 4734, p. 2944.
- transcribing records, Act 4738, p. 2944.
- transcribing certain records, Act 4739, p. 2944.
- translation of foreign records, Act 4740, p. 2944.

Chapter 353—South San Francisco, p. 2945.

- tide-land grant, Act 4773, p. 2945.

Chapter 354—Southern Pacific Railroad Company, p. 2946.

- change of line of road authorized, Act 4775, p. 2946.

Chapter 355—Spanish Archives, p. 2947.

- preservation of Spanish archives, Act 4778, p. 2947.

TABLE OF CONTENTS.

- Chapter 356—**Stallions**, p. 2947.
service of stallions and jacks, Act 4784, p. 2947.
- Chapter 357—**Stanford University**, p. 2952.
exemption of university buildings from taxation, Act 4788, p. 2952.
incorporation, Act 4789, p. 2953.
- Chapter 358—**Stanislaus County**, p. 2953.
increase number of judges, Act 4806, p. 2953.
- Chapter 359—**Stanislaus River**, p. 2954.
establishment of ford, Act 4810, p. 2954.
- Chapter 360—**State**, p. 2954.
suits against the state, Act 4824, p. 2954.
suits for coyote scalp bounties, Act 4825, p. 2956.
suits to quiet title to escheated estates, Act 4826, p. 2957.
suits to quiet title to portion of Estell lands, Act 4826a, p. 2958.
suits to quiet title against the state, Act 4827, p. 2958.
suit by the Coulterville and Yosemite Turnpike Company, Act 4828, p. 2958.
suits to quiet title against the state, Alameda county lands, Act 4830, p. 2959.
suit by John Hoagland and others, Act 4831, p. 2959.
suit by Robert C. Ball, Act 4832, p. 2959.
suit by Drury Melone, and others, Act 4833, p. 2959.
suit to quiet title to certain salt-marsh lands, Act 4834, p. 2959.
suits to quiet title, property in Oakland, Act 4835, p. 2960.
suits for damages by "Newtown jetties," Act 4836, p. 2961.
suits to quiet title when deeds are lost, Act 4837, p. 2962.
- Chapter 361—**State Engineering**, p. 2963.
state department of engineering, Act 4847, p. 2964.
state highway revolving fund, Act 4847a, p. 2974.
water resources, topographic survey, Act 4848, p. 2974.
survey for additional outlet for the Sacramento, San Joaquin and Feather rivers, Act 4848a, p. 2975.
rectification of channels of the Sacramento, San Joaquin and Feather rivers, Act 4849, p. 2975.
direct improvement of navigation of Sacramento, San Joaquin and Feather rivers, Act 4850, p. 2977.
additional rights of way for highways, Act 4858, p. 2978.
- Chapter 362—**State Flower**, p. 2979.
state flower, Act 4862, p. 2979.
- Chapter 363—**State Land Settlement Board**, p. 2979.
state land settlement board, Act 4868, p. 2979.
- Chapter 364—**State Library**, p. 2987.
acceptance of "Sutro Library" validated, Act 4873, p. 2987.
- Chapter 365—**State Market Commission**, p. 2988.
"state market commission act," Act 4875, p. 2988.
"state fish exchange act," Act 4876, p. 2991.
- Chapter 366—**State Purchasing Department**, p. 2999.
state purchasing department act, Act 4880, p. 2999.
- Chapter 367—**Statistics**, p. 3002.
agricultural and industrial statistics, Act 4883, p. 3002.
- Chapter 368—**Statutes**, p. 3002.
omnibus repeal act, Act 4894, p. 3002.
- Chapter 369—**Steam Boilers**, p. 3003.
steam boiler inspection act, Act 4903, p. 3003.
- Chapter 370—**Stockton**, p. 3005.
freeholders' charter, Act 4910, p. 3005.
- Chapter 371—**Storm Water Districts**, p. 3006.
storm water districts, Act 4925, p. 3006.
Coachella Valley storm water district, validation act, Act 4926, p. 3018.
- Chapter 372—**Street Railroads**, p. 3019.
- Chapter 373—**Streets**, p. 3019.
"tree-planting act of 1915," Act 4941, p. 3019.
tree-planting act of 1893, Act 4942, p. 3024.
tree-planting act of 1913, Act 4943, p. 3029.
street opening act of 1889, Act 4945, p. 3035.
"street opening act of 1903," Act 4946, p. 3047.
street opening act of 1893, Act 4947, p. 3065.
"Vrooman act"—"street work act," Act 4948, p. 3065.
"local improvement act of 1919," Act 4948a, p. 3140.
"local improvement act of 1901," Act 4949, p. 3150.
street improvement bond act of 1893, Act 4950, p. 3167.
"improvement act of 1915," Act 4950a, p. 3176.
redemption from sales for delinquent assessments, Act 4951, p. 3184.
abandonment of proceeding under "street improvement act of 1909," Act 4952, p. 3184.
"street improvement act of 1913," Act 4953, p. 3185.
"change of grade act of 1909," Act 4954, p. 3207.
special improvement bond act of 1911, Act 4955, p. 3211.
improvement act of 1911, Act 4956, p. 3217.
boundary improvement act of 1911, Act 4957, p. 3258.
disposition of land of abandoned streets, Act 4958, p. 3272.
opening streets through cemeteries, Act 4959, p. 3273.
- Chapter 374—**Subways**, p. 3273.
tunnels under navigable streams, Act 4973, p. 3273.
- Chapter 375—**Supervisors**, p. 3274.
expenses of posse comitatus, criminal cases, Act 4998, p. 3274.
- Chapter 376—**Surveyor General**, p. 3275.
office furniture and vaults, Act 5024, p. 3275.
- Chapter 377—**Surveyors**, p. 3275.
licensing land surveyors, Act 5030, p. 3275.
- Chapter 378—**Surveys**, p. 3278.
perpetuation of makings of government survey, Act 5035, p. 3278.

TABLE OF CONTENTS.

- Chapter 379—**Sutter County**, p. 3279.
 separate judge, Act 5043, p. 3279.
 protection of lands from overflow, Act 5044, p. 3279.
 transcribing records, Act 5045, p. 3279.
- Chapter 380—**Sutter Fort**, p. 3279.
 acquisition of Sutter's Fort, Act 5062, p. 3280.
 guardian of Sutter's Fort, Act 5063, p. 3280.
 gardener at Sutter's Fort, Act 5064, p. 3280.
 assistant gardener at Sutter's Fort, Act 5065, p. 3280.
 memorial of California pioneers, Act 5066, p. 3280.
 improvement of Twenty-sixth street, Sacramento, Act 5067, p. 3280.
- Chapter 381—**Swamp and Overflowed Land Districts**, p. 3280.
 payment to counties of swamp land district funds, Act 5072a, p. 3281.
 "swamp land district No. 17," Act 5073, p. 3281.
 "swamp land district No. 118," Act 5074, p. 3281.
 "swamp land district No. 150," Act 5075, p. 3281.
 "swamp land district No. 221," Act 5076, p. 3281.
 "swamp land district No. 307," Act 5077, p. 3281.
- Chapter 382—**Syndicalism**, p. 3281.
 criminal syndicalism act, Act 5086, p. 3281.
- Chapter 383—**Taxation**, p. 3283.
 inheritance tax act, Act 5092, p. 3284.
 inheritance tax lien, enforcement actions, Act 5093, p. 3308.
 county special tax for certain purposes, Act 5098, p. 3309.
 municipal tax for specific public improvements, Act 5099, p. 3310.
 municipal taxation, Act 5100, p. 3311.
 reassessment and equalization act of 1893, Act 5102, p. 3315.
 compensation for the collection of delinquent taxes, Act 5103, p. 3316.
 tax commissions and fees abolished, Act 5105, p. 3316.
 suits for tax commissions and fees prohibited, Act 5106, p. 3317.
 payment of tax commissions and fees prohibited, Act 5107, p. 3317.
 assessment of animals pasturing in another county, Act 5109, p. 3317.
 assessment of migratory livestock, Act 5110, p. 3318.
 tax deeds validated, Act 5116, p. 3318.
 certificates of sales and tax deeds validated, Act 5117, p. 3319.
 suits for delinquent personalty taxes, Act 5118, p. 3319.
 form of complaint in suits for delinquent taxes, Act 5119, p. 3220.
 corporation tax act, Act 5122, p. 3321.
 assessment and collection of taxes, in freeholder charter municipalities, Act 5126, p. 3322.
 tax commission act of 1915, Act 5128, p. 3325.
- Chapter 383—**Taxation**—(Continued).
 validation of assessments, Act 5129, p. 3326.
 destruction by fire of certain reports and documents authorized, Act 5130, p. 3327.
 duplicate and excess payments of taxes, Act 5131, p. 3327.
 daily payment of excess taxes authorized, refunding of such payments, Act 5132, p. 3328.
- Chapter 384—**Tehama County**, p. 3329.
 trespassing animals, Act 5135, p. 3329.
 support of cemeteries, Act 5138, p. 3329.
 refunding county debt, Act 5140, p. 3329.
 partition fences, Act 5141, p. 3329.
 transcribing records, Act 5142, p. 3329.
 county charter, Act 5147, p. 3330.
- Chapter 385—**Telegraph Lines**, p. 3330.
 Atlantic and Pacific telegraph line, Act 5158, p. 3330.
 San Jose and San Bernardino telegraph line, Act 5159, p. 3330.
 Los Angeles to Wilmington telegraph line, Act 5160, p. 3330.
 telegraph communication between America and Asia, Act 5161, p. 3331.
- Chapter 386—**Tenement Houses**, p. 3331.
 state tenement house act, Act 5166, p. 3331.
- Chapter 387—**Thistle**, p. 3366.
 propagation of Scotch and Canadian thistle, Act 5177, p. 3366.
- Chapter 388—**Tide Lands**, p. 3366.
 state board of tide land commissioners abolished, Act 5184, p. 3366.
- Chapter 389—**Time**, p. 3367.
 moratorium act of 1906, Act 5187, p. 3367.
- Chapter 390—**Titles**, p. 3367.
 "McEnerney act," Act 5192, p. 3367.
 McEnerney act, supplementary act, Act 5193, p. 3374.
 Torrens land title and transfer act, "land title law," Act 5194, p. 3375.
 regulation of land titles, Act 5196, p. 3403.
 settlement of titles in Branciforte, Act 5197, p. 3404.
 quieting title to lands in Napa and Solano counties, Act 5198, p. 3404.
 settlement of titles in Benicia, Act 5199, p. 3404.
- Chapter 391—**Tobacco**, p. 3404.
 tobacco culture, Act 5200, p. 3404.
- Chapter 392—**Towpaths**, p. 3404.
 towpaths along navigable rivers, Act 5206, p. 3404.
- Chapter 393—**Trademarks and Trade Names**, p. 3405.
 protection of owners of bottles, etc., Act 5211, p. 3405.
- Chapter 394—**Trading Stamps**, p. 3408.
 trading stamp act, Act 5216, p. 3408.
- Chapter 395—**Training Ship**, p. 3409.
 training ship in San Francisco, Act 5221, p. 3409.
- Chapter 396—**Treasurers**, p. 3409.
 treasurers in cities of 200,000 population, Act 5231, p. 3409.
- Chapter 397—**Trespassing Animals**, p. 3410.
 damages from trespassing of animals, Act 5243, p. 3410.

TABLE OF CONTENTS.

Chapter 397—Trespassing Animals—(Cont'd)
 animals trespassing on private property, Act 5244, p. 3411.
 protection of agriculture from trespassing animals in certain counties, Act 5244a, p. 3412.
 protection of agriculture from trespassing animals in certain counties, Act 5245, p. 3412.
 protection of agriculture and distraining of animals in certain counties, Act 5245a, p. 3412.
 protection of agriculture from trespassing animals, Act 5246, p. 3412.
 protection of agriculture from trespassing animals in certain counties, Act 5246a, p. 3413.
 protection of agriculture from trespassing animals in certain counties, Act 5246b, p. 3413.
 trespassing animals on private lands in certain counties, Act 5246c, p. 3413.
 trespassing of livestock in certain counties, Act 5246d, p. 3414.
 animal trespasses in certain counties, Act 5246e, p. 3414.

Chapter 398—Trinity County, p. 3414.
 free bridges, Act 5247, p. 3415.
 free bridges, Act of 1874, Act 5248, p. 3415.
 transcribing records, Act 5250, p. 3415.

Chapter 399—Trusts, p. 3415.
 execution of express trusts in case of death of last surviving trustee, Act 5259, p. 3415.
 trusts for public libraries, etc., Act 5260, p. 3415.
 trusts for universities, etc., Act 5261, p. 3418.
 trusts for universities, etc., supplemental act, Act 5262, p. 3421.
 determination of character and effect of trust, Act 5263, p. 3422.
 "Cartwright act," Act 5264, p. 3425.

Chapter 400—Tulare County, p. 3429.
 increase number of judges, Act 5279, p. 3429.

Chapter 401—Tuolumne County, p. 3430.
 lawful fences, Act 5287, p. 3430.

Chapter 402—Tuolumne River, p. 3430.
 bridge at Modesto, Act 5297, p. 3430.

Chapter 403—Turnpike Roads, p. 3430.
 authorizing John Lawley to construct a turnpike, Act 5304, p. 3430.

Chapter 404—Unfair Competition, p. 3431.
 unfair competition act of 1913, Act 5314, p. 3431.

Chapter 405—Unincorporated Associations, p. 3432.
 authorized to hold real estate, Act 5319, p. 3433.

Chapter 406—United States, p. 3433.
 grant of right of way for a railroad from Atlantic to Pacific, Act 5325, p. 3433.
 ceding jurisdiction of lands on Lime Point, Act 5327, p. 3434.
 relinquishing title to certain tide lands, Act 5328, p. 3434.
 Soboda Indian land grant, Act 5329, p. 3434.
 quit-claim deed to lands erroneously conveyed to state, Act 5330, p. 3435.
 accepting jurisdiction over portion of Presidio, Act 5331, p. 3435.

Chapter 406—United States—(Continued).
 consent of state to reservation of certain lands, Act 5331a, p. 3460.
 ceding jurisdiction over certain lands, Act 5331b, p. 3436.
 release of claims of state to certain lands, Act 5332, p. 3436.
 ceding jurisdiction over all lands in the state acquired for military purposes, Act 5332a, p. 3436.
 rights of way over state lands to United States, Act 5332b, p. 3436.
 reconveyance of part of agricultural college land grant, Act 5332c, p. 3436.
 settlement of controversy between the state and the United States, Act 5333, p. 3437.
 settlement of controversy as to disputed school land claims, Act 5333a, p. 3437.
 right of way for Mormon Channel Canal, Act 5333b, p. 3439.

Chapter 407—University of California, p. 3440.
 creation and organization act, Act 5351, p. 3440.
 endowment act of 1870, Act 5352, p. 3450.
 endowment act of 1878, Act 5353, p. 3451.
 endowment act of 1911, Act 5356, p. 3452.
 continuous appropriation act of 1913, Act 5358, p. 3454.
 grant of land, Act 5359, p. 3454.
 payment of interest on outstanding bonds, Act 5360, p. 3454.
 restoration of income lost by disaster and fire, Act 5364, p. 3455.
 replacement and repairs at Lick observatory, Act 5365, p. 3455.
 management of funds, Act 5367, p. 3455.
 insurance of property, Act 5368, p. 3455.
 selection and sale of university lands, Act 5369, p. 3456.
 farmers' institutes, Act 5370, p. 3456.
 Santa Monica forestry station, Act 5371, p. 3456.
 "Toland" medical department, Act 5375, p. 3456.
 department of music, Act 5376, p. 3457.
 Los Angeles department, college of medicine, Act 5377, p. 3457.
 pathological laboratory of plant diseases, Act 5378, p. 3458.
 hygiene laboratory, Act 5380, p. 3459.
 university farm, Act 5381, p. 3460.
 dormitory at university farm, Act 5382, p. 3462.
 classroom and library at university farm, Act 5383, p. 3462.
 purchase of land and water rights for the department of agriculture, Act 5384, p. 3463.
 Imperial county branch agricultural and experiment station, Act 5385, p. 3463.
 branch agricultural experiment station at Riverside, Act 5387, p. 3463.
 branch agricultural experiment station, Act 5388, p. 3463.
 co-operative agricultural extension work, Act 5390, p. 3464.
 "University of California building bond act," Act 5391, p. 3464.
 university farm in Riverside county, Act 5393, p. 3468.

TABLE OF CONTENTS.

- Chapter 408—**Usury Law**, p. 3469.
usury law, Act 5394, p. 3469.
- Chapter 409—**Vallejo**, p. 3471.
freeholders' charter, Act 5399, p. 3471.
tide-land grant, Act 5401, p. 3472.
- Chapter 410—**Venice**, p. 3474.
tide-land grant, Act 5403, p. 3474.
- Chapter 411—**Ventura County**, p. 3475.
- Chapter 412—**Veterans' Home**, p. 3475.
hospital at Yountville Home, Act 5418, p. 3475.
veterans' home at Yountville recognized as state home, Act 5419, p. 3475.
conveyance of veterans' home to state, Act 5420, p. 3475.
exchange of lands by veterans' home association authorized, Act 5422, p. 3475.
transfer of veterans' home to the United States, Act 5426, p. 3476.
- Chapter 413—**Veterinary Surgery**, p. 3476.
veterinary act of 1907, Act 5433, p. 3476.
state veterinarian, Act 5434, p. 3480.
employment of sheep-dipping inspectors, Act 5436, p. 3482.
- Chapter 414—**Visalia**, p. 3483.
quieting title to certain lots, Act 5441, p. 3483.
- Chapter 415—**Vital Statistics**, p. 3483.
"vital statistics act of 1915," Act 5446, p. 3483.
- Chapter 416—**Viticulture**, p. 3496.
viticultural act of 1880, Act 5453, p. 3496.
viticultural district act, Act 5454, p. 3496.
viticultural research act of 1911, Act 5456, p. 3498.
phyloxera act, Act 5457, p. 3499.
- Chapter 417—**War**, p. 3500.
council of defense, Act 5462, p. 3500.
mobilization camps, Act 5463, p. 3502.
public defense sites, Act 5464, p. 3504.
Spanish-American war of 1898 account, Act 5465, p. 3506.
world war memorial, Act 5465a, p. 3506.
- Chapter 418—**Warehouses**, p. 3507.
sale of goods for storage charges, Act 5466, p. 3507.
warehouse receipts and sale of goods stored in other states, Act 5468, p. 3507.
uniform law of warehouse receipts, Act 5469, p. 3508.
- Chapter 419—**Water Commission**, p. 3520.
"water commission act," Act 5489, p. 3520.
- Chapter 420—**Water Companies**, p. 3540.
regulation of the sale, rental and distribution of appropriation water, Act 5498, p. 3540.
regulation of water companies by the railroad commission, Act 5500, p. 3541.
unlawful supply of polluted waters, Act 5501, p. 3546.
proper and adequate service of water, Act 5502, p. 3548.
- Chapter 421—**Water Districts**, p. 3549.
county water works district act, Act 5505, p. 3549.
county water district act No. 1, Act 5506, p. 3556.
- Chapter 421—**Water Districts**—(Continued).
county water district act No. 2, Act 5507, p. 3571.
county waterworks district bonds, Act 5508, p. 3587.
Pleasanton township county water district, validation, Act 5509, p. 3590.
Alameda county water district, validation, Act 5510.
- Chapter 422—**Waters**, p. 3590.
water resources of state, joint investigation, Act 5517, p. 3590.
"miner's inch," defined, Act 5520, p. 3591.
artesian wells, Act 5521, p. 3592.
franchises to build booms, Act 5527, p. 3593.
examining commission on rivers and harbors, Act 5529, p. 3593.
mooring of houseboats, etc., Act 5532, p. 3594.
appropriation of water for power, Act 5534, p. 3595.
construction of canals, and canalization of rivers, Act 5536, p. 3604.
water conference, Act 5537, p. 3605.
subterranean storage act, Act 5538, p. 3606.
recording of water users' association contracts, Act 5539, p. 3606.
- Chapter 423—**Watsonville**, p. 3607.
freeholders' charter, Act 5542, p. 3607.
- Chapter 424—**Weights and Measures**, p. 3607.
weights and weighers for warehousemen and wharfingers, Act 5554, p. 3607.
standard of weights and measures act of 1913, Act 5556, p. 3608.
public weighmaster, Act 5557, p. 3620.
- Chapter 425—**Whittier State School**, p. 3622.
act of establishment, Act 5581, p. 3622.
commitments, Act 5583, p. 3632.
acquisition of property, Act 5585, p. 3633.
department of defectives, Act 5586, p. 3633.
department of clinical diagnosis, Act 5587, p. 3634.
sale of property, Act 5588, p. 3635.
- Chapter 426—**Wine**, p. 3636.
wine nomenclature, Act 5592, p. 3636.
- Chapter 427—**Woman's Relief Corps**, p. 3636.
Woman's Relief Corps home at Evergreen, Act 5597, p. 3637.
nurses and medical attendants, Act 5598, p. 3637.
- Chapter 428—**Yolo County**, p. 3637.
trespassing animals, Act 5623, p. 3637.
hogs and goats running at large in Yolo county, Act 5634, p. 3638.
- Chapter 429—**Yosemite Valley**, p. 3638.
cession to United States of exclusive jurisdiction, Act 5645, p. 3638.
regrant to the United States, Act 5646, p. 3638.
- Chapter 430—**Yuba County**, p. 3639.
trespassing animals in Marysville and Long Bar township, Act 5662, p. 3639.
transcribing records, Act 5669, p. 3639.
transcribing torn and mutilated records, Act 5670, p. 3640.
separate judge, Act 5673, p. 3640.

GENERAL LAWS

OF THE STATE OF CALIFORNIA

VOLUME II

CHAPTER 216.

MATTRESSES.

CONTENTS OF CHAPTER.

ACT 2788. MATTRESS ACT OF 1915.

MATTRESS ACT OF 1915.

ACT 2788—An act defining mattresses; regulating the making, remaking, and sale thereof; prohibiting the use of unsanitary and unhealthy materials therein; requiring that materials used shall be accurately described, and the percentage of materials used in each mattress stated, and prescribing the manner in which mattresses shall be labeled; and making the violation of any of the provisions of this act a misdemeanor, and repealing legislation inconsistent with this act.

History: Approved June 7, 1915. In effect August 8, 1915. Stats. 1915, p. 1267.

Definitions. "Mattress."

§ 1. (1) The term "mattress," as used in this act, shall be construed to mean any quilted pad, comforter, mattress, mattress pad, bunk quilt, or cushion, stuffed or filled with wool, hair, or other soft material to be used on a couch or other bed for sleeping or reclining purposes.

"Person."

(2) The term "person," as used in this act, shall be construed to include all individuals and all firms or copartnerships.

"Corporation."

(3) The term "corporation," as used in this act, shall be construed to include all corporations, companies, associations, and joint stock associations or companies.

(4) Whenever the singular is used in this act it shall be construed to include the plural; whenever the masculine is used in this act it shall include the feminine and neuter genders.

Material used in mattresses.

§ 2. (1) No person or corporation, by himself or by his agents, servants or employees, shall employ or use in the making, remaking or renovating of any mattress, any material of any kind that has been used in or has formed a part of, any mattress used in or about any public or private hospital, or institution for the treatment of persons suffering from disease, or for or about any person having any infectious or contagious disease; any material known as "shoddy," and made in whole or in part

from old or worn clothing, carpets or other fabric, or material previously used, or any other fabric or material from which shoddy is constructed; any material, not otherwise prohibited by this act, of which prior use has been made; unless any and all of said material have been thoroughly sterilized, and disinfected by a reasonable process, approved by the board of health of the city or town where said mattress is made, remade, or renovated.

Selling certain mattresses prohibited.

(2) No person or corporation by himself or by his agents, servants or employees, shall sell, offer to sell, deliver or consign, or have in his possession with intent to sell, deliver or consign any mattress made, remade or renovated in violation of subsection one of this section.

Mattresses must be labeled.

§ 3. No person or corporation, by himself or his agents, servants or employees, shall, directly or indirectly, at wholesale or retail, or otherwise, sell, offer for sale, deliver or consign, or have in his possession with intent to sell, deliver, or consign, any mattress that shall not have plainly and indelibly stamped or printed thereon, or upon a muslin or linen tag not smaller than three inches square securely sewed to the covering thereof, a statement in the English language setting forth the kind or kinds of materials used in filling the said mattress, and whether the same are in whole or in part, new or old, or secondhand, or shoddy, and the name and address of the manufacturer or vendor thereof, or both.

“Felt.”

§ 4. Whenever the word “felt” as applied to cotton is used in the said statement concerning any mattress it shall be designated in said statement whether said felt is “felted cotton” or “felted linters.”

“Floss.”

§ 5. It shall be unlawful to use in the said statement concerning any mattress the word “floss” or words of like import, if there has been used in filling said mattress any materials which are not termed as “Kapok.”

“Hair.”

§ 6. It shall be unlawful to use in said statement concerning any mattress the word “hair” unless said mattress is entirely manufactured of animals’ hair.

§ 7. It shall be unlawful to use in the description in the said statement any misleading term or designation, or term or designation likely to mislead.

Percentage of materials used.

§ 8. Any mattress made from more than one new material, shall have stamped upon the tag attached thereto the percentage of each material so used.

“Secondhand material.”

§ 9. Any mattress made from any material of which prior use has been made shall have stamped or printed upon the tag attached thereto in type not smaller than twenty-point the words “secondhand material.”

“Shoddy material.”

§ 10. Any mattress made from material known as “shoddy,” shall have stamped or printed upon the tag attached thereto in type not smaller than twenty-point the words “shoddy material.”

Form of label.

§ 11. The statement required under section three of this act, shall be the following form:

MATERIALS USED IN FILLING.

.....
.....
.....

Vendor.....

Address.....

This article is made in compliance with the act of the state of California, approved the.....day of.....

Removing label prohibited.

§ 12. Any person who shall remove, deface, alter, or in any manner attempt the same, or shall cause to be removed, defaced, or altered, any mark or statement placed upon any mattress under the provisions of this act shall be guilty of a violation of this act.

Unit for separate offense.

§ 13. The unit for a separate and distinct offense in violation of this act shall be each and every mattress made, remade, renovated, sold, offered for sale, delivered, consigned, or possessed with intent to sell, deliver or consign, contrary to the provisions hereof.

Penalty.

§ 14. Any person or corporation violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars, and not to exceed one hundred dollars, for each offense, or by imprisonment for not less than three months and not exceeding six months or by both such fine and imprisonment.

Institution of proceedings.

§ 15. Any individual who has reason to believe that this act has been or is being violated may institute proceedings to enforce this act and to punish violations of its provisions.

§ 16. All acts or parts of acts inconsistent herewith are hereby repealed.

MAYFIELD.

See Act 3094, nota.

MAYORS.

See tit. "Municipal Corporations."

McKITTRICK.

See Act 3094, note.

CHAPTER 217.

MECHANICS' INSTITUTE.

References: See, generally, tits. "Acknowledgments"; "Corporations."

See Kerr's Cyc. Civil Code, tits. "Chambers of Commerce"; "Boards of Trade," etc.

CONTENTS OF CHAPTER.

ACT 2800. MECHANICS' INSTITUTE OF SAN FRANCISCO—POWER TO SELL, ETC., REAL ESTATE.

MECHANICS' INSTITUTE OF SAN FRANCISCO—POWER TO SELL, ETC.,
REAL ESTATE.

ACT 2800—An act to authorize the Mechanics' Institute of San Francisco to sell, mortgage and convey realty.

History: Approved April 14, 1863, Stats. 1863, p. 290.

CHAPTER 218.

MEDICINE.

References: See, generally, tits. "Cemeteries"; "Coroners"; "Public Health"; "Vital Statistics."

CONTENTS OF CHAPTER.

ACT 2805. PREVENTION OF INFANT BLINDNESS.

2809. PRACTICE OF MEDICINE ACT OF 1913.

2810. REFUND OF TAXES, ETC., COLLECTED BY MISTAKE, ETC.

PREVENTION OF INFANT BLINDNESS.

ACT 2805—An act to prevent blindness from ophthalmia neonatorum; to vest certain powers and duties in the state board of health and health officers; to impose certain duties upon physicians, midwives, nurses, and other persons; and to provide for the enforcement of this act, and the repeal of chapter XIV statutes of 1897 entitled "An act to regulate medical practice, to prevent blindness in infants," and other acts in conflict herewith.

History: Approved June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1431. Prior act of February 17, 1897, Stats. 1897, p. 12, repealed by the present act.

Ophthalmia neonatorum defined.

§ 1. Any condition of the eye, or eyes, of any infant in which there is any inflammation, swelling or redness in either one or both eyes of any such infant, either apart from or together with any unnatural discharge from the eye, or eyes, of any such infant, at any time within two weeks after its birth, shall, independent of the nature of the infection, for the purpose of this act, be called ophthalmia neonatorum.

Duty of physicians, etc., to report cases.

§ 2. It shall be the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home or hospital of any nature, parent, relative, and any person or persons attendant upon, or assisting in any way whatsoever, either the mother or child, or both, at childbirth, in all cases where such child shall develop within two weeks after its birth ophthalmia neonatorum, and such person shall know the same to exist, to report the case within twenty-four hours after knowledge of the same, in such form as the state board of health shall direct, to the local health officer of the county or municipality within which the mother of any such infant may reside.

Duty of local health officer.

§ 3. It shall be the duty of the local health officer:

1. To investigate each case as shall be filed with him in pursuance with this act, and all other such cases as may come to his attention.

2. To report all cases of ophthalmia neonatorum coming to his knowledge, and the result of all such investigations as he shall make to the state board of health, in such form as said board shall direct.

3. To conform to such rules and regulations as the state board of health shall promulgate for the purpose of carrying out the provisions of this act.

Duty of state board of health.

§ 4. It shall be the duty of the state board of health:

1. To enforce the provisions of this act.

2. To promulgate such rules and regulations as the state board of health may deem necessary to properly carry out the provisions hereof.

3. To provide for the gratuitous distribution of a scientific prophylactic for ophthalmia neonatorum, together with proper directions for the use and administration thereof, to all physicians, midwives and such other persons as may be lawfully engaged in the practice of obstetrics or assisting at childbirths.

4. To print and publish such further advice and information concerning the dangers of ophthalmia neonatorum and the necessity for prompt and effective treatment thereof, as said board may deem necessary.

5. To furnish without cost copies of this law to all physicians, midwives and such other persons as may be lawfully engaged in the practice of obstetrics or assisting at childbirths.

6. To keep a proper record of any and all cases of ophthalmia neonatorum as shall be filed in their office in pursuance with this law, and as may come to their attention in any way, and to constitute such records a part of the biennial report to the governor and the legislature.

7. To report any and all violations of this act as may come to their attention to the district attorney of the district wherein any violation of any provision of this act may have been committed, for the purpose of prosecution.

Duty of maternity homes.

§ 5. It shall be the duty of all maternity homes, hospitals, and similar institutions wherein childbirths shall occur, to keep a record of all cases of ophthalmia neonatorum occurring or discovered therein. Such records shall be in the form and contain the matters which the state board of health shall prescribe.

Penalty.

§ 6. The failure of any person mentioned in section 2 hereof to report, or the failure of any maternity home, hospital, or similar institution, to record any and all cases of ophthalmia neonatorum, as herein directed, or the failure or refusal of any person or institution, herein mentioned, to obey any rule or regulation adopted by the state board of health under this act, shall constitute a misdemeanor, and upon conviction thereof shall be fined, for the first offense not to exceed fifty dollars; for a second offense not to exceed one hundred dollars; and for a third offense, and thereafter not to exceed two hundred dollars for each violation; and after the third conviction, if the person be a physician, midwife, or other person professionally employed, such conviction shall be a sufficient cause for the revocation of the license of such person by the board which granted the same. One-half of all fines collected hereunder shall go to the county wherein the prosecution was had, and the remaining one-half thereof shall go into the state treasury and constitute a special fund to be expended by the state board of health for the purposes of carrying out the provisions of this act. Any case of ophthalmia neonatorum, or the resultant blindness therefrom, upon which the accused may have been in attendance as hereinbefore set forth, shall be prima facie evidence of knowledge of such case by the accused.

Repealed.

§ 7. Chapter XIV, statutes of 1897, entitled, "An act to regulate medical practice, to prevent blindness in infants," approved February 17, 1897, and all other acts and parts of acts in conflict herewith, are hereby repealed.

PRACTICE OF MEDICINE ACT OF 1913.

ACT 2809—An act to regulate the examination of applicants for license, and the practice of those licensed, to treat diseases, injuries, deformities, or other physical or mental conditions of human beings; to establish a board of medical examiners to provide for their appointment and prescribe their powers and duties, and to repeal an act entitled "An act for the regulation of the practice of medicine and surgery, osteopathy, and other systems or modes of treating the sick or afflicted, in the state of California, and for the appointment of a board of medical examiners in the matter of said regulation," approved March 14, 1907, and acts amendatory thereof, and also to repeal all other acts and parts of acts in conflict with this act.

History: Approved June 2, 1913. In effect August 10, 1913. Stats. 1913, p. 722. Amended (1) April 24, 1915; in effect August 8, 1915, Stats. 1915, p. 184; (2) April 11, 1917; in effect July 27, 1917, Stats. 1917, p. 93; (3) May 27, 1919; in effect July 27, 1919, Stats. 1919, p. 1296; (4) May 27, 1919; in effect July 27, 1919, Stats. 1919, p. 1299. Prior act of April 3, 1876, Stats. 1875-76, p. 792, amended April 1, 1878, Stats. 1877-78, p. 918, repealed by the act of February 27, 1901, Stats. 1901, p. 56, which act was undoubtedly superseded by the act of March 14, 1907, Stats. 1907, p. 252; amended (1) March 19, 1909, Stats. 1909, p. 418; (2) May 1, 1911, Stats. 1911, p. 1437, which act was repealed by the present act. The amendatory act of 1878 to the act of 1876, was described as supplemental. Also, the practice of osteopathy act of March 9, 1901, Stats. 1901, p. 113, was undoubtedly superseded, if not repealed by the present act.

Board of medical examiners created. Term. Not to own medical college. Removal of members.

§ 1. A board of medical examiners to consist of ten members, and to be known as the "board of medical examiners of the state of California," is hereby created and established. The governor shall appoint the members of the board, each of whom shall have been a citizen of this state for at least five years next preceding his appointment. Each of the members shall be appointed from among persons who hold licenses under any of the medical practice acts of this state. The governor shall fill by appointment all vacancies on the board. The term of office of each member shall be four years; provided, that of the first board appointed, three members shall be appointed for one year, two for two years, two for three years and three for four years, and that thereafter all appointments shall be for four years, except that appointments to fill vacancies shall be for the unexpired term only. No person in any manner owning any interest in any college, school or institution engaged in medical instruction shall be appointed on the board, nor shall more than one member of the board be appointed from the faculty of any one university, college, or other educational institution. The governor shall have power to remove from office any member of the board for neglect of duty required by this act, for incompetency, or for unprofessional conduct. Each member of the board shall, before entering upon the duties of his office, take the constitutional oath of office.

Board of medical examiners organized. Meetings. Notice of meetings. Board to receive applications for certificates. Directory of practitioners. Contents. Additional fee. Forfeiture of license because of failure to pay. Restoration of license. Surplus receipts.

§ 2. The board shall be organized on or before the first Tuesday of September, 1913, by electing from its number a president, vice-president, and a secretary who shall also be the treasurer, who shall hold their respective positions during the pleasure of the board. The board shall hold one meeting annually beginning on the third Monday in October in the city of Sacramento and at least two additional meetings annually, one of which shall be held in the city of Los Angeles, and the other in the city of San Fran-

cisco, with power of adjournment from time to time until its business is concluded; provided, however, that examinations of applications [applicants] for certificates may, in the discretion of the board, be conducted in any part of the state designated by the board. Special meetings of the board may be held at such time and place as the board may designate. Notice of each regular or special meeting shall be given twice a week for two weeks next preceding each meeting in one daily paper published in the city of San Francisco, one published in the city of Sacramento, and one published in the city of Los Angeles, which notice shall also specify the time and place of holding the examination of applicants. The secretary of the board upon an authorization from the president of the board or the chairman of a committee, may call meetings of any duly appointed committee of the board at a specified time and place and it shall not be necessary to advertise such committee meetings. The board shall receive through its secretary applications for certificates provided to be issued under this act and shall, on or before the first day of January of each year, transmit to the governor a full report of all its proceedings together with a report of its receipts and disbursements. The board shall, on or before the first day of January of each year, compile and may thereafter publish and sell, a complete directory giving the addresses of all persons within the state of California who hold unrevoked licenses to practice under any medical practice act of the state of California, which license shall in any manner authorize the treatment of human beings for diseases, injuries, deformities, or any other physical or mental conditions. The board is hereby authorized to require said persons to furnish such information as it may deem necessary to enable it to compile the directory. The directory shall contain in addition to the names and addresses of said persons, the names and symbols indicating the title, name or names, school or schools, which such person has attended and from which graduated, the date of issuance of the license, the present residence of said person and a statement of the form of certificate held. The directory shall be prima facie evidence of the right of the person or persons named therein to practice. It shall be the duty of every person holding a license to practice under any medical act of this state, or who may hereafter be so licensed to practice, to report immediately each and every change of residence, giving both the old and the new address. To comply with the provisions of this section relating to the compilation, publication and sale of a directory in addition to the fee required for the filing of any application, or the issuance of any certificate hereinafter provided for, each licentiate granted a certificate under the provisions of this act, or any preceding medical practice act of the state of California, shall, on or before the first day of January of each year, pay to the secretary-treasurer of the board of medical examiners an annual tax and registration fee of two dollars (\$2.00). Receipt or acknowledgment of payment by the secretary-treasurer shall be evidence that the holder and possessor of such certificate is entitled to practice the particular system for which he was granted such certificate for a period of one year from the first day of January; but notwithstanding the possession by any certificate holder of such receipt or acknowledgment of payment, the license or certificate issued to such licentiate to practice any system recognized by this or any preceding medical practice act of the state of California, may, at any time, be forfeited or revoked for a violation of the further provisions and requirements of this act. The failure, neglect and refusal of any person holding a license or certificate to practice a system under this or any preceding medical practice act of the state of California, to pay said annual tax of two dollars (\$2.00) during the time his or her license remains in force, shall, after a period of sixty days from the first day of January of each year, ipso facto, work a forfeiture of his or her license or certificate, and it shall not be restored except upon the written application therefor, and the payment to the said board of a fee of ten dollars (\$10.00) except that such licentiate who fails, refuses or neglects to pay

such annual tax within a period of sixty days after the first day of January of each year shall not be required to submit to an examination for the reissuance of such certificate. It shall be the duty of the executive officer herein designated as the secretary-treasurer of said board of medical examiners to mail to the last known address of each licentiate who has paid said annual tax a copy of the said directory, and all new issues thereof and copies of all supplements thereto. The receipts of the said annual tax referred to herein shall be paid into the contingent fund of the board of medical examiners of California, and after the expenses of issuing said directories have been paid, in the event that there shall be a surplus of such funds, the board may from time to time, in its discretion, apply said surplus for any other expenses incurred by the board under the provisions of this act. [Amendment of April 11, 1917. In effect July 27, 1917. Stats. 1917, p. 94.]

This section was also amended April 24, 1915, Stats. 1915, p. 185.

Location of office.

§ 3. The office of the board shall be in the city of Sacramento. Sub-offices may be established in Los Angeles and San Francisco and such records as may be necessary may be transferred temporarily to such sub-offices. Legal proceedings against the board may be instituted in any one of said three cities. [Amendment of April 24, 1915. In effect August 8, 1915. Stats. 1915, p. 186.]

Rules. Persons who may be designated as examiners. Official record.

§ 4. The board may from time to time adopt such rules as may be necessary to enable it to carry into effect the provisions of this act. It shall require the affirmative vote of seven members of said board to carry any motion or resolution, to adopt any rules, to pass any measure, or to authorize the issuance of any certificate as in this act provided. Any member of the board may administer oaths in all matters pertaining to the duties of the board, and the board shall have authority to take evidence in any matter cognizable by it. The board may in its discretion appoint or designate any qualified and competent person or persons to give the whole or any portion of any examination as provided in this act; such person or persons need not be a member of the board of medical examiners and shall be designated as a commissioner on examination and shall be subject to the same rules and regulations and entitled to the same fee and remuneration as if a member of the board. The board shall keep an official record of all its proceedings, a part of which record shall consist of a register of all applicants for certificates under this act, together with the action of the board upon each application. [Amendment of April 24, 1915. In effect August 8, 1915. Stats. 1915, p. 186.]

Prosecution of violators. Salary of secretary. Compensation for board. Affidavit.

§ 5. The board is authorized to prosecute all persons guilty of violation of the provisions of this act. It shall have the power to employ legal counsel for such purpose, and may also employ inspectors, special agents and investigators and such clerical assistance as it may deem necessary to carry into effect the provisions of this act. The board may fix the compensation to be paid for such service and may incur such other expenses as it may deem necessary. It shall also fix the salary of the secretary, not to exceed the sum of three thousand dollars per annum, and the sum to be paid to other members of the board, not to exceed ten dollars per diem each, for each and every day of actual service in the discharge of official duties; such service to include the attendance at special meetings of the board and committee meetings of the board and while actively engaged in the review of examination papers, based upon one per diem for each thirty papers or fraction thereof. Each member of the board shall make an affidavit before some duly authorized person in the state of California that such service

has been actually performed; and the board may in its discretion, add to said sum necessary traveling expenses. [Amendment of April 24, 1915. In effect August 8, 1915. Stats. 1915, p. 186.]

Report of receipts. Use of contingent fund. Revolving fund.

§ 6. All fees collected on behalf of the board of medical examiners, and all receipts of every kind and nature, shall be reported at the beginning of each month, for the month preceding, to the state controller, and at the same time the entire amount of such collections shall be paid into the state treasury, and shall be credited to a fund to be known as the board of medical examiners' contingent fund, which fund is hereby created. Such contingent fund shall be for the uses of the board of medical examiners and out of it shall be paid all salaries and all other expenses necessarily incurred in carrying into effect the provisions of this act. An amount not to exceed one thousand dollars (\$1000) may be drawn from the contingent fund herein created, to be used as a revolving fund where cash advances are necessary; but expenditures from such revolving fund must be substantiated by vouchers and itemized statements at the end of each fiscal year, or at any other time when demand therefor is made by the board of control.

Fee of applicant for certificate.

§ 7. Every applicant for a certificate shall pay to the secretary of the board a fee of twenty-five dollars (\$25), which shall be paid to the treasurer of the board by said secretary. In case the applicant's credentials are insufficient or in case he does not desire to take the examination, the sum of ten dollars (\$10) shall be retained, the remainder of the fee being returnable on application.

Forms of certificates. "Physician and surgeon certificate." "Drugless practitioner certificate." Chiropody certificate. Midwifery certificate. "Reciprocity certificate."

§ 8. Four forms of certificates shall be issued by said board under the seal thereof and signed by the president and secretary; first, a certificate authorizing the holder thereof to use drugs or what are known as medicinal preparations in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, or other physical or mental conditions, which certificate shall be designated "physician and surgeon certificate"; second, a certificate authorizing the holder thereof to treat diseases, injuries, deformities, or other physical or mental conditions without the use of drugs or what are known as medicinal preparations and without in any manner severing or penetrating any of the tissues of human beings except the severing of the umbilical cord, which certificate shall be designated "drugless practitioner's certificate"; third, a certificate authorizing the holder thereof to practice chiropody; for the purpose of this act chiropody is defined to be the surgical treatment of abnormal nails and superficial excreescences occurring on the feet, such as corns, callosities, and the treatment of bunions; but it shall not confer the right to operate upon the feet for congenital or acquired deformities, or for conditions requiring the use of anesthetics other than local, or incisions involving structures below the level of the true skin; fourth, a certificate to practice midwifery which shall be in the form designated by the board and in conformity with this act. Such certificate shall entitle the holder thereof to attend cases of childbirth. As used in this act, the practice of midwifery means the furthering or undertaking by any person to assist a woman in normal childbirth, but it does not include at any childbirth the use of any instrument, except such instrument as is necessary in severing the umbilical cord, nor the assisting of childbirth by any artificial, forcible or mechanical means, nor the performance of any version, nor the removal of

adherent placenta, nor the administering, prescribing, advising or employing in child-birth of any drug, other than a disinfectant or cathartic. The provisions hereof shall not authorize any midwife to practice medicine and surgery. A "reciprocity certificate" shall also be issued under the provisions hereinafter specified. Any of these certificates on being recorded in the office of the county clerk, as hereinafter provided, shall constitute the holder thereof a duly licensed practitioner in accordance with the provisions of his certificate. [Amendment of April 11, 1917. In effect July 27, 1917. Stats. 1917, p. 96.]

This section was also amended April 24, 1915, Stats. 1915, p. 187.

Applicants must file testimonials, diplomas, etc. In lieu of diplomas before July 1, 1918. Application on blank furnished by board. Preliminary education. In lieu of high school diploma. Work in physics, chemistry and biology. Preliminary education for chiropodist.

§ 9. Every applicant must file with the board, at least two weeks prior to the regular meeting thereof, satisfactory testimonials of good moral character, and a diploma or diplomas issued by some legally chartered school or schools approved by the board, the requirements of which school or schools shall have been at the time of granting such diploma or diplomas in no degree less than those required under this act, or satisfactory evidence of having possessed such diploma or diplomas, and must file an affidavit stating that he is the person named in said diploma or diplomas, and that he is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination without fraud or misrepresentation; provided, that in addition thereto, each applicant for a "physician and surgeon certificate" must show that he has attended four courses of study, each such course to have been of not less than thirty-two weeks duration, but not necessarily pursued continuously, or consecutively, and that at least ten months shall have intervened between the beginning of any course and the beginning of the preceding course; Provided, further, that an applicant for a "drugless practitioner certificate" must show that he has attended two courses of study, each such course to have been of not less than thirty-two weeks duration, but not necessarily pursued continuously or consecutively, and that at least ten months shall have intervened between the beginning of any course and the beginning of the preceding course; the course in chiropody is to consist of not less than thirty-nine weeks consisting of not less than six hundred sixty-four hours; provided, further, that an applicant for a certificate to practice midwifery must show that the applicant has attended a one-year course in a hospital recognized as reputable by the board, and that a course of instruction in anatomy, physiology, obstetrics and hygiene and sanitation as set forth in section ten hereof has been taken, covering a period of one year; provided, further, that in lieu thereof, an applicant who can submit satisfactory proof of the possession of a diploma from a recognized reputable hospital, and who in addition thereto has attended a course of instruction in the subjects enumerated in section ten hereof and satisfactory proof that such instruction has been taken covering a period of at least three months; and provided, further, that in lieu thereof an applicant may present proof satisfactory to the board that the applicant has taken a course of instruction with the minimum requirements as designated in section ten of any school or schools approved by the board as giving a course of instruction in said subjects for a certificate to practice medicine and surgery; provided, also, that before July 1, 1918, in lieu of the diploma or diplomas and preliminary requirements herein referred to where the applicant can show to the satisfaction of the board of medical examiners that he has taken courses hereinafter required in a school or schools approved by the board totaling for applicants for "drugless practitioner certificate" not less than sixty-four weeks consisting of not less than two thousand hours and for "physician and surgeon certificate" totaling not less than one hundred twenty-eight weeks consisting

of not less than four thousand hours, it being required that all applicants shall have received passing grades in all such courses, that the applicant or applicants shall be admitted to examination for their respective form of certificates.

The said application shall be made upon a blank furnished by said board and it shall contain such information concerning the medical instruction and the preliminary education of the applicant as the board may by rule prescribe. In addition to the requirements hereinabove provided for, applicants for any form of certificate hereunder shall present to said board at the time of making such application a diploma from a California high school or other school in the state of California requiring and giving a full four years' course of same grade, or other schools elsewhere, requiring and giving a full four years' standard high school course, or its equivalent, approved by the board, together with satisfactory proof that he is the lawful holder of such diploma, and that the same was procured in the regular course of instruction. The passing of an examination before the entrance examining board for the entrance to the academic department of the University of California, or Stanford University or the University of Southern California, or the possession of documentary evidence of admission to the academic department of such institutions as a regular student or in full standing shall be sufficient basic or preliminary educational qualifications. In lieu of such diploma, the applicant may present: (1) a certificate from the college entrance examination board, or the college examining board of any state or territory showing that such applicant has successfully passed the examination of said board; or (2) if such applicant be thirty years or more of age he may show to the satisfaction of the board of medical examiners proof of preliminary education equivalent in training power to the foregoing requirements. After January 1, 1919, every applicant for a "physician and surgeon certificate" shall in addition to the foregoing requirements, present to the board satisfactory evidence that before beginning the last half of the second year in the study of medicine he has completed a course which includes at least one year of work, of college grade, in each of the subjects of physics, chemistry and biology. The preliminary or basic educational requirements for a chiroprapist shall be as follows: On and after July 1, 1915, the successful completion of one year of high school work or its equivalent; on and after July 1, 1918, two years of high school work or its equivalent; on and after July 1, 1920, three years of high school work or its equivalent; on and after July 1, 1922, four years of high school work or its equivalent.

The preliminary or basic educational qualifications for an applicant to practice midwifery in this state shall be the completion of one year of high school work or its equivalent, and after October, 1918, the presentation to the board of a diploma from a California high school giving a full four years' standard high school course or its equivalent. [Amendment of April 11, 1917. In effect July 27, 1917. Stats. 1917, p. 97.]

This section was also amended April 24, 1915, Stats. 1915, p. 187.

Course of instruction.

§ 10. Applicants for any form of certificate shall file satisfactory evidence of having pursued in any legally chartered school or schools, approved by the board, a course of instruction covering and including the following minimum requirements:

Physicians and surgeons.

For a "Physician and Surgeon Certificate."

Group 1. 775 hours.

Anatomy	550 hours
Embryology	75 hours
Histology	150 hours

Group 2. 620 hours.

Elementary chemistry and toxicology.....	140 hours
Advanced chemistry.....	180 hours
Physiology	300 hours

Group 3. 450 hours.

Elementary bacteriology.....	60 hours
Advanced bacteriology.....	80 hours
Hygiene	60 hours
Pathology	250 hours

Group 4. 240 hours.

Materia medica.....	80 hours
Pharmacology	105 hours
Therapeutics	55 hours

Group 5. 940 hours.

Dermatology and syphilis	45 hours
General medicine and general diagnosis.....	600 hours
Genito urinary diseases.....	45 hours
Nervous and mental diseases.....	110 hours
Pediatrics	140 hours

Group 6. 680 hours.

Laryngology, otology, rhinology.....	60 hours
Ophthalmology	60 hours
Surgery and surgical diagnosis.....	500 hours
Orthopedic surgery.....	30 hours
Physical therapy, including electrotherapy, X-ray, radiography, hydro-therapy	30 hours

Group 7. 265 hours.

Gynecology	100 hours
Obstetrics	165 hours

Miscellaneous. 30 hours.

Ethics, jurisprudence, etc.....	30 hours
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Total4,000 hours

Drugless practitioners.

For a "Drugless Practitioner Certificate."

Group 1. 600 hours.

Anatomy	485 hours
Histology	115 hours

Group 2. 270 hours.

Elementary chemistry and toxicology.....	70 hours
Physiology	200 hours

Group 3. 235 hours.

Elementary bacteriology.....	40 hours
Hygiene	45 hours
Pathology	150 hours

Group 4. 370 hours.

Diagnosis	370 hours
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Group 5. 260 hours.

Manipulative and mechanical therapy.....	260 hours
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Group 6. 265 hours.

Gynecology	100 hours
Obstetrics	165 hours
Total	2,000 hours

Chiropodists.**For a Certificate to Practice Chiropody.****Group 1. 117 hours.**

Anatomy	78 hours
Histology	39 hours

Group 2. 156 hours.

Chemistry and toxicology.....	78 hours
Physiology	78 hours

Group 3. 103 hours.

Bacteriology	39 hours
Hygiene	25 hours
Pathology	39 hours

Group 4. 44 hours.**Diagnosis:**

Syphilis	20 hours
Dermatology	24 hours

Group 5. 215 hours.**Manipulative and mechanical therapy:**

Didactic and clinical chiropody.....	136 hours
Orthopedics	20 hours
Surgery	59 hours

Group 6. 29 hours.

Materia medica and therapeutics.....	29 hours
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Total 664 hours

Midwives.**For a Certificate to Practice Midwifery.****Group 1. 150 hours.**

Anatomy	75 hours
Physiology	75 hours

Group 2. 265 hours.

Hygiene and sanitation.....	100 hours
Obstetrics	165 hours

Total 415 hours

Hours required.

In the course of study herein outlined the hours required shall be actual work in the classroom, laboratory, clinic or hospital, and at least eighty (80) per cent of actual attendance shall be required; provided, that the hours herein required in any subject need not exceed seventy-five (75) per cent of the number specified, but that the total number of hours in all the subjects of each group shall not be less than the total number specified for such group. [Amendment of April 11, 1917. In effect July 27, 1917. Stats. 1917, p. 99.]

This section was also amended April 24, 1915, Stats. 1915, p. 189.

Board must approve schools meeting requirements. Action in event of disapproval.

§ 10½. The board must approve every school which shall comply with the requirements of section ten of this act and must admit to the examination every applicant who shall comply with the requirements of sections nine and ten of this act. Nothing in this act shall prohibit the board from considering the quality of the course of instruction outlined in section ten hereof. If any school should be disapproved by the board or any applicant for examination rejected by it, then such school so disapproved or such applicant so rejected may commence an action in the superior court against said board to compel the board to approve such school or to admit such applicant to examination or for any other appropriate relief. In any such action, the court shall have full power to investigate and decide all facts anew without regard to any previous determination of the board thereon. Such action shall be speedily determined by said court and shall take precedence over all matters pending therein save and except criminal cases, applications for injunction or other matters to which special precedence may be given by law. [New section added May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1299.]

Additional requirements for physicians and surgeons.

§ 11. In addition to above requirements, all applicants for "physician and surgeon certificate" must pass an examination to be given by the board in the following subjects:

1. Anatomy and histology.
2. Physiology.
3. Bacteriology and pathology.
4. Chemistry and toxicology.
5. Obstetrics and gynecology.
6. Materia medica and therapeutics, pharmacology, including prescription writing.
7. General medicine, including clinical microscopy.
8. Surgery.
9. Hygiene and sanitation.

For drugless practitioners.

All applicants for "drugless practitioner certificates" must pass an examination in the following subjects:

1. Anatomy and histology.
2. Physiology.
3. General diagnosis.
4. Pathology and elementary bacteriology.
5. Obstetrics and gynecology.
6. Toxicology and elementary chemistry.
7. Hygiene and sanitation.

Exceptions.

Provided, that a person who holds a "drugless practitioner certificate," issued upon satisfactory proof of the course of instruction and minimum requirements demanded in section ten hereof and who presents evidence of having successfully completed the additional courses required for the "physician and surgeon certificate" as hereinbefore provided, shall be permitted to take his examination in subjects required for a "physician and surgeon certificate" without being re-examined in "drugless practitioner" subjects.

The subjects for such examination shall be:

1. Advanced chemistry.
2. Advanced bacteriology.
3. Surgery.

4. Materia medica and therapeutics, pharmacology, including prescription writing.
5. General medicine, including clinical microscopy.

Examination for chiroprodists.

All applicants for a certificate to practice chiroprody must pass an examination in the following subjects:

1. Anatomy and histology.
2. Physiology, chemistry and hygiene.
3. Pathology and bacteriology.
4. Dermatology and syphilis.
5. Orthopedics and surgery.
6. Chiroprody and therapeutics.

Examination for midwives.

All applicants for a certificate to practice midwifery must pass an examination in the following subjects:

1. Anatomy and physiology.
2. Obstetrics.
3. Hygiene and sanitation.

Character of examinations. Use of. Average required. Re-examination. Admission to drugless practitioner examination. Admission to practice without examination.

All examinations shall be practical in character and designed to ascertain the applicant's fitness to practice his profession, and shall be conducted in the English language, and at least a portion of the examination in each of the subjects shall be in writing. The board in its discretion upon the submission of satisfactory proof from the applicant that he is unable to meet the requirements of the examination in the English language, may allow the use of an interpreter either to be present in the examination room or to thereafter interpret and transcribe the answers of the applicant. The selection of such interpreter is to be left entirely to the board and the expenses thereof to be borne by the applicant, the payment therefor to be made before such examination is held. There shall be at least ten questions on each subject, the answers to which shall be marked on a scale of zero to one hundred. Each applicant must obtain no less than a general average of seventy-five per cent, and not less than sixty per cent in any two subjects; provided, that any applicant shall be granted a credit of one per cent upon the general average for each year of actual practice since graduation; provided, further, that any applicant for "physician and surgeon certificate" obtaining seventy-five per cent each in seven subjects and any applicant for "drugless practitioner certificate" obtaining seventy-five per cent each in five subjects and an applicant for a certificate to practice chiroprody obtaining over seventy-five per cent in seven subjects, and an applicant for a certificate to practice midwifery obtaining seventy-five per cent in one subject, shall be subsequently re-examined in those subjects only in which he failed, and without additional fee. Any person who at any time prior to January 1, 1916, shall pay to the secretary of said board the fee of twenty-five dollars and submits satisfactory proof of good moral character and of a resident one-year course of not less than one thousand hours in a legally chartered school approved by the board and satisfactory proof of three years of actual practice of a drugless system of the healing art, such three years of actual practice to have been in the state of California, shall be admitted to the drugless practitioner examination; provided, however, that in the event of a license being granted to such applicant he will not be eligible thereafter for the physician's and surgeon's certificate without a full and complete compliance with the terms and provisions of sections nine and ten hereof. Any one who shall pay the fee of fifty dollars to the secretary of the board prior to January 1, 1916, and submits to the board

satisfactory proof of good moral character and proof of six years' actual practice of a drugless system of the healing art, three years of which must have been in the state of California, and satisfactory proof of a resident one-year course of not less than one thousand hours in a legally chartered school approved by the board and upon proof of competency in a drugless system may be granted a certificate to practice a drugless system in this state; provided, however, that such licensee shall not be permitted to take the physician's and surgeon's examination without a full and complete compliance with the terms of sections nine and ten hereof.

Examination papers kept on file. Secretary not to be an examiner.

The examination papers shall form a part of the records of the board, and shall be kept on file by the secretary for a period of one year after each examination. In said examination the applicant shall be known and designated by number only, and the name attached to the number shall be kept secret until after the board has finally voted upon the application. The secretary of the board shall in no instance participate as an examiner in any examination held by the board. All questions on any subject in which examination is required under this act shall be provided by the board of medical examiners upon the morning of the day upon which examination is given in such subject, and when it shall be shown that the secretary or any member of the board has in any manner given information in advance of or during examination to any applicant it shall be the duty of the governor to remove such person from the board of medical examiners, or from the office of secretary.

Form of certificates.

All certificates issued hereunder must state the extent and character of practice which is permitted thereunder and shall be in such form as shall be prescribed by the board. [Amendment of April 11, 1917. In effect July 27, 1917. Stats. 1917, p. 102.]

This section was also amended April 24, 1915, Stats. 1915, p. 191.

Army and navy surgeons authorized to practice. Fee. When certificate may be refused. Exceptions.

§ 12. Any medical director, medical inspector, passed assistant surgeon, or assistant surgeon of the United States navy, honorably discharged or temporarily detached, or placed upon the retired list without being discharged or on active duty, from the medical department of the United States navy, or who by resignation has honorably severed all connection with the service, and any surgeon of the United States army, honorably discharged, or temporarily detached or placed upon the retired list without being discharged or on active duty from the medical department of the United States army, or who by resignation has honorably severed all connection with the service and any commissioned officer, viz.: surgeon general, assistant surgeon general, senior surgeon, surgeon, passed assistant surgeon and assistant surgeon of the United States public health service on active duty with such service, temporarily detached or who has honorably severed all connection with the United States public health service, is hereby authorized to practice medicine and surgery within the state of California by filing a sworn copy of his discharge, if he be discharged, or of the order temporarily detaching him or the order placing him upon the retired list, with the state board of medical examiners or by proving to the satisfaction of the board that by resignation he has honorably left the service of either the army or navy, and paying said board a fee of fifty dollars; provided, that when it appears to the satisfaction of the board, that in the year in which the applicant was appointed or commissioned in the United States army, navy or public health service, that the requirements of such service for such appointment or commission, were in any degree or particular less than those which were required for the issuance of a similar certificate to practice in California at the date of such issuance, then the board in its discretion may refuse to issue such certificate; provided,

further, that the provisions of this section shall not apply to any contract surgeon in the United States army, navy or public health service, and shall not apply to any officer of the medical reserve corps of said army, navy or public health service. [Amendment of April 11, 1917. In effect August 8, 1917. Stats. 1917, p. 104.]

This section was also amended April 24, 1915, Stats. 1915, p. 193.

Chiropody certificate for persons already practicing.

§ 12½. Any person who at any time within ninety days from and after the passing of this act shall pay to said board, the registration fee of fifty dollars, as herein provided, and furnish to said board satisfactory proof of the fact that such applicant has been actually engaged in the practice of chiropody in the state of California for the period of one year prior to July 1, 1915, and that such applicant possesses a good moral character and competency in the practice of chiropody, shall be entitled to practice chiropody, and said board must issue to him a chiropody certificate.

Midwifery certificate to persons already practicing.

Any person who at any time within one hundred eighty days from and after the passing of this act shall pay to said board the registration fee of twenty dollars as herein provided, and furnish to said board satisfactory proof that such applicant has been actually engaged in the practice of midwifery in the state of California for at least a period of one year, and that such applicant possesses a good moral character and competency in the practice of midwifery, shall be entitled to practice midwifery, and said board must issue to such applicant a midwifery certificate.

Proof of actual practice. Investigation upon moral character. Refund. Applicants licensed to practice osteopathy. Examination. Fee.

The actual practice referred to herein shall consist in satisfactory proof that the applicant has attended at least twenty-five cases of labor and has had the care of at least twenty-five mothers and new-born infants during the lying-in period. The lying-in period referred to herein shall consist of a period of ten days following delivery. The good moral character referred to herein shall be evidenced by the certificates of two physicians and surgeons or practitioners licensed under this or any preceding medical practice act of this state, and the certificate of one layman, preferably a clergyman, priest, rabbi or recognized minister of the gospel. The competency referred to herein shall be evidenced by affidavits of reputable citizens preferably physicians of the vicinity wherein the applicant has recently resided. The board, however, may disregard such certificates and in its discretion may give an oral, practical or clinical examination. The proof of the attendance and completion of the twenty-five cases of labor referred to herein shall be evidenced, if the board shall so require of any applicant, by the submission of the name of the mother, and a reference to the birth certificate required under the law. The board shall have the power to disregard the certificates of moral character referred to herein and may order that an investigation under the direction of the board be held upon the moral character of the applicant. If the said investigation should result in an adverse report to applicant, the applicant shall be entitled to a hearing before said board and after such hearing the board shall be the judges of the moral fitness of the applicant to receive a certificate to practice midwifery. In the event that a certificate to practice midwifery shall not be granted under the provisions of this section, the applicant will be entitled to a refund of ten dollars. Any person who files an application for a "physician and surgeon certificate" two weeks prior to a regular or special meeting, and who submits satisfactory proof to the board that the applicant has been licensed to practice osteopathy under the provisions of an act entitled "An act to regulate the practice of osteopathy in the state of California and to provide for the state board of osteopathic examiners, and to license osteopaths who practice in this

state, and to punish persons violating the provisions of this act," which became a law under constitutional provision without the governor's approval March 9, 1901, or who submits satisfactory proof that the applicant has been licensed to practice osteopathy under an act entitled "An act to provide for the regulation of the practice of medicine and surgery, osteopathy and other systems or modes of treating the sick or afflicted in the state of California, and for the appointment of a board of medical examiners in the matter of said regulation, approved March 14, 1907, and who submits satisfactory testimonials of good moral character and a diploma or diplomas issued by some legally chartered school or schools approved by the board, or satisfactory evidence of having possessed such diploma or diplomas and that he is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination without fraud or misrepresentation, and that the applicant has complied with the provisions of sections nine, ten and eleven of this act, may be granted an oral, practical or clinical examination for the "physician and surgeon certificates"; provided, that the board must accept in lieu thereof the educational qualifications enumerated in this section or in sections nine, ten and eleven of this act satisfactory proof to the board of actual practice in the system of treatment known and designated as osteopathy for a period of four years, and upon the presentation of such proof the applicant will be entitled to an oral, practical or clinical examination for a "physician and surgeon certificate." The fee for filing such application shall be twenty-five dollars, fifteen dollars to be returned to the applicant in the event that a certificate is not issued under the provisions hereof. [Amendment of April 11, 1917. In effect July 27, 1917. Stats. 1917, p. 105.]

This was a new section added April 24, 1915, Stats. 1915, p. 194.

Certificates to applicants licensed to practice since August 1, 1901. Requirements must be as high as for California certificate. Contracts of reciprocity. Applicant with certificate prior to August 1, 1901. Examination. Fee.

§ 13. Said board must also issue a certificate to practice a system or mode of treating the sick or afflicted recognized by this act or any preceding practice act in the state of California to any applicant, without any examination, authorizing the holder thereof to practice a system or mode of treating the sick or afflicted in the state of California, upon payment of a registration fee of one hundred dollars, upon the following terms and conditions and upon satisfactory proof thereof, viz.: The applicant shall produce a certificate entitling him to practice a system or mode of treating the sick or afflicted, as provided in this act or any preceding practice act of the state of California, issued either by the medical examining board, or by any other board or officer authorized by the law to issue a certificate entitling such applicant to practice a system or mode for treating the sick or afflicted either in the District of Columbia or in any state or territory of the United States, or if such certificate shall have been lost, then a copy thereof, with proof satisfactory to the board of medical examiners of the state of California that the copy is a correct copy. Said certificate must not have been issued to such applicant prior to the first day of August, 1901, and the requirements from the college from which such applicant may have graduated, and the requirements of the board which was legally authorized to issue such certificate permitting such applicant to practice a system or mode of treating the sick or afflicted shall not have been at the time such certificate was issued, in any degree or particular less than those which were required for the issuance of a similar certificate to practice a system or mode of treating the sick or afflicted in the state of California at the date of the issuance of such certificate, or which may hereafter be required by law and which may be in force at the date of the issuance of any such certificate; and provided, further, that said applicant shall furnish from the board which issued said certificate, evidence satisfactory to the board of medical examiners of the state of California showing what the requirements

were of the college and of the board, issuing such certificate at the date of such issuance. If, after an examination of such certificate, and the production on the part of the applicant of such further reasonable evidence of the said requirements as may be deemed necessary by the board of medical examiners of the state of California and any other or further examination or investigation which said board may see fit to make on its own part, it shall be found that the requirements of the board issuing such certificate were, when said certificate was issued, in any degree or particular less than the requirements provided by the law of the state of California at the date of the issuance of such certificate or that the applicant has not been a resident of the state from which the application is based for a period of one year subsequent to the issuance of such certificate he will not be entitled to practice within the state of California without an examination. An oral examination shall not be deemed to be of equal merit with a written examination and no certificate shall be issued in the case where a written examination was given in California and an applicant was given an oral examination in another state at the same time. The board is hereby authorized to enter into a contract or contracts of reciprocity with other states wherein the standard of such states is not in any degree or particular less than were the requirements in the state of California in the same year, for the issuance of a certificate to practice a system or mode of treating the sick or afflicted, such certificate to be similar in scope of practice as the certificate issued in the other state; provided, however, that an application based upon a certificate to practice any system or mode of treating the sick or afflicted issued in the District of Columbia or in any state or territory prior to March 4, 1907, if refused or denied by reason of the insufficiency of the standard of such state or territory then such applicant may have the privilege of either a written or oral examination before the board at the option of the applicant. Any person may file an application with the said board to practice medicine and surgery within the state of California, in the event that such applicant has been duly licensed prior to August 1, 1901, and has practiced medicine and surgery in another state or territory, or the District of Columbia, for a period of time commencing prior to the first day of August, 1901. Such application shall be verified and shall contain a statement showing: (a) the full name of the applicant; (b) all institutions at which he has studied and the period of such study, and all institutions from which he has graduated (c) a statement of whatever certificate or certificates to practice medicine and surgery may have been issued to him, together with the date of such certificate and a description of the same, and, if required by the board, the certificates themselves, or satisfactory proof of their issuance; (d) a statement of all places in which said applicant has practiced medicine and surgery; (e) such other general information as to his past practice, as may be required by the said board. The said board shall make such independent investigation of the character, ability and standing of the applicant as it may deem proper and necessary, and if it shall find after such investigation that said applicant has been a practicing physician and surgeon in any other state or territory or the District of Columbia, prior to August 1, 1901, and prior to said last named date has been duly licensed so to practice, and that his reputation as such physician and surgeon is good in the community in which he has so practiced medicine and surgery, and has been a resident of his last state of residence for a period of one year prior to date of filing his application in the state of California, they shall afford him an examination on a day suiting the convenience of the board not more than six months subsequent to the presentation of said application. Said examination shall be oral, practical, and clinical in nature, and full consideration shall be given to the duration and character of the applicant's practice. If after such last mentioned examination it is determined by a majority vote of the said medical examiners conducting said examination, that such applicant is so qualified to practice medicine and surgery within the state of California, and that his reputation and standing in the community in which he has previously practiced is good, the said

applicant shall be entitled to receive a "physician and surgeon certificate." Each applicant on making such application shall pay to the secretary of the board, a fee of one hundred dollars, which shall be paid to the treasurer of the board, of which sum ninety dollars shall be returned to him should he not receive a certificate hereunder. All certificates issued pursuant to this section shall be marked across the face thereof "reciprocity certificate." Any person granted a "reciprocity certificate" to practice any system or mode for treating the sick or afflicted recognized by this or any preceding medical practice act in this state, such certificates not being of equal scope with the certificates known and designated as the "physician and surgeon certificate," will not be eligible for the "physician and surgeon certificate" as designated in this act without a full and complete compliance with the terms and provisions of sections nine, ten and eleven hereof. [Amendment of April 11, 1917. In effect July 27, 1917. Stats. 1917, p. 107.]

This section was also amended April 24, 1915, Stats. 1915, p. 194.

Refusal of certificate for unprofessional conduct. Refusal to obey subpoena. Charges deemed sufficient. Revocation of certificate for unprofessional conduct. Facts entered on register.

§ 14. Said board must refuse a certificate to any applicant guilty of unprofessional conduct. On the filing with the secretary of a sworn complaint, charging the applicant with having been guilty of unprofessional conduct, the secretary must forthwith issue a citation, under the seal of the board and make the same returnable at the next regular session of said board, occurring at least thirty days next after filing the complaint. Such citation shall notify the applicant when and where the charges of said unprofessional conduct will be heard, and that the applicant shall file his written answer, under oath, within twenty days next after the service on him of said citation or that default will be taken against him and his application for a certificate refused. The attendance of witnesses at such hearing may be compelled by subpoenas issued by the secretary of the board under its seal. Said citation and said subpoenas shall be served in accordance with the statutes of this state then in force as to the service of citation and subpoenas generally, and all the provisions of the statutes of this state then in force relating to subpoenas and to citations are hereby made applicable to the subpoenas and citations provided for herein. Upon the secretary's certifying to the fact of refusal of any person to obey a subpoena or citation to the superior court of the county in which the service was had, said court shall thereupon proceed to hear said matter in accordance with the statutes of this state then in force as to contempts for disobedience of process of the court, and should said court find that the subpoena or citation has been legally served, and that the party so served has wilfully disobeyed the same, it shall proceed to impose such penalty as provided in cases of contempt of court. In all cases of alleged unprofessional conduct, arising under this act, depositions of witnesses may be taken, the same as in civil cases and all the provisions of the statutes of this state then in force as to the taking of depositions are hereby made applicable to the taking of depositions under this act. If the applicant shall fail to file with the secretary of said board his answer, under oath, within twenty days after service on him of said citation, or within such further time as the board may allow, and the charges on their face shall be deemed sufficient by the board, default shall be entered against him, and his application refused. If the charges on their face be deemed sufficient by the board, and issue be joined thereon by answer, the board shall proceed to determine the matter, and to that end shall hear such proper evidence as may be adduced before it; and if it appear to the satisfaction of the board that the applicant is guilty as charged, no certificate shall be issued to him. Whenever any holder of a certificate herein provided for is guilty of unprofessional conduct, as the same is defined in this act, and the said unprofessional conduct has been brought to the attention of the board granting said certifi-

cate, in the manner hereinafter provided or whenever a certificate has been procured by fraud or misrepresentation, or issued by mistake, or the person holding such certificate is found to be practicing contrary to the provisions thereof and of this act, it shall be the duty of said board either to suspend the right of the holder of said certificate to practice for a period not exceeding one year, or in its discretion to revoke his certificate. In the event of such suspension, the holder of such certificate shall not be entitled to practice thereunder during the term of suspension; but, upon the expiration of the term of said suspension, he shall be reinstated by the board and shall be entitled to resume his practice, unless it shall be established to the satisfaction of the board that said person so suspended from practice, has, during the term of such suspension, practiced in the state of California, in which event the board shall revoke the certificate of such person. No such suspension or revocation shall be made unless such holder is cited to appear and the same proceedings are had as is hereinbefore provided in this section in case of refusal to issue certificates. Said secretary in all cases of suspension or revocation shall enter on his register the fact of such suspension or revocation, as the case may be, and shall certify the fact of such suspension or revocation under the seal of the board, to the county clerk of the counties in which the certificates of the person whose certificate has been revoked is recorded; and said clerk must thereupon write upon the margin or across the face of his register of the certificate of such person, the following: "The holder of this certificate was on the day of suspended for,," or, "This certificate was revoked on the day of,," as the case may be, giving the day, month and year of such revocation or length of suspension, as the case may be, in accordance with said certification to him by said secretary. The record of such suspension or revocation so made by said county clerk shall be prima facie evidence of the fact thereof, and of the regularity of all the proceedings of said board in the matter of said suspension or revocation. The words "unprofessional conduct" as used in this act, are hereby declared to mean:

Unprofessional conduct defined.

First. The procuring or aiding or abetting or attempting or agreeing or offering to procure a criminal abortion.

Second. The wilfully betraying of a professional secret.

Third. All advertising of medical business which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, and so be harmful or injurious to public morals or safety.

Fourth. All advertising of any medicine or of any means whereby the monthly periods of women can be regulated or the menses re-established if suppressed.

Fifth. Conviction of any offense involving moral turpitude in which case the record of such conviction shall be conclusive evidence.

Sixth. Habitual intemperance or excessive use of cocaine, opium, morphine, codeine, heroin, alpha eucaine, beta eucaine, novocaine or chloral hydrate or any of the salts, derivatives or compounds of the foregoing substances or the prescribing, selling, furnishing, giving away or offering to prescribe, sell, furnish, or give away such substances to a habitue who is not under the direct personal and continuous treatment and care of the physician for the cure of the above-mentioned drugs.

Seventh. The personation of another licensed practitioner or permitting or allowing another person to use his certificate in the practice of any system or mode of treating the sick or afflicted.

Eighth. The use, by the holder of any certificate, in any sign or advertisement in connection with his said practice or in any advertisement or announcement of his practice, of any fictitious name, or any name other than his own.

Ninth. The use, by the holder of a "drugless practitioner certificate" of drugs or what are known as medicinal preparations, in or upon any human being, or the severing or penetrating by the holder of said "drugless practitioner certificate" of the tissues of any human being in the treatment of any disease, injury, deformity, or other physical or mental condition of such human being, excepting the severing of the umbilical cord.

Tenth. Advertising, announcing or stating, directly, indirectly, or in substance, by any sign, card, newspaper, advertisement or other written or printed sign or advertisement, that the holder of such certificate or any other person, company, or association by which he is employed or in whose service he is, will cure or attempt to cure, or will treat, any venereal disease, or will cure or attempt to cure or treat any person or persons for any sexual disease, for lost manhood, sexual weakness, or sexual disorder or any disease of the sexual organs; or being employed by, or being in the service of, any person, firm, association, or corporation so advertising, announcing or stating.

Eleventh. The use by the holder of any certificate of any letter, letters, word, words, or term or terms used either as prefix or affix or suffix indicating that such certificate holder is entitled to practice a system or mode of treating the sick or afflicted for which he was not licensed in the state of California.

Twelfth. The employment of "cappers" or "steerers" or other persons in procuring practice for a practitioner for a system or mode of treating the sick or afflicted provided for in this act.

Unprofessional conduct: midwifery.

Thirteenth. The certificate issued herein for the practice of midwifery may be revoked when it appears to the satisfaction of the board that in any case or cases that the licentiate may have treated, that due caution and circumspection was not used or that the holder of said certificate in its treatment of any case or cases had not used proper aseptic and antiseptic precautions.

Fourteenth. The certificate to practice midwifery herein may be revoked upon conviction for the violation of any health statute, order or ordinance or for the neglect or refusal to comply with the health rules and regulations of any state, county, city and county, city or township.

Fifteenth. The certificate issued herein for the practice of midwifery may be revoked for the treatment by any midwife in any case of labor in which case there is a complicated vertex presentation in which said licentiate did not call or attempt to call a licentiate licensed to practice a system including the practice of obstetrics under this act or any preceding medical practice act in this state.

Sixteenth. The certificate issued herein for the practice of midwifery may be revoked for a failure to refer to a licentiate under this act or any preceding act in the state of California licensed to practice a system including obstetrics, a case which during pregnancy has, or develops any of the following conditions: a contracted pelvis or other deformity that will interfere with labor; bleeding from the uterus; swelling of the face and hands; excessive vomiting; persistent headache; dimness of vision; convulsions; or for failure to call or summons a physician if any of the following conditions exist or develop at the beginning of or during labor: Complicated presentation of a vertex (head); convulsions, excessive bleeding; prolapse of the cord; a swelling or tumor that obstructs the birth of the child; signs of exhaustion or collapse; unduly prolonged labor; or the failure to refer to a licentiate in this act or any preceding act in the state of California licensed to practice a system including obstetrics, a case, which during the lying-in period, develops the following conditions: Convulsions; excessive bleeding; foul smelling discharge (lochia); persistent rise of temperature to one hundred one degrees Fahrenheit for twenty-four hours; swelling and redness of the breasts; severe chill (rigor) with rise of temperature; inability to nurse the child; or for a failure to refer

to a licentiate under this act or any preceding act in the state of California licensed to practice a system including obstetrics, a case where the child has or develops any of the following conditions: Deformities or malformations or injuries; inability to suckle or nurse; inflammation around or discharge from the navel; swelling and redness of the eyelids with a discharge of pus from the eyes (ophthalmia neonatorum); bleeding from the mouth, navel or bowels, inability to urinate.

Seventeenth. The certificate issued herein for the practice of midwifery may be revoked for the treatment by the said midwife licentiate known as the introduction of the hand into the vagina or uterus to remove placenta or membranes.

Eighteenth. The certificate issued herein for the practice of midwifery may be revoked for the failure to have the following equipment (in each case): Nail brush; wooden or bone nail cleaner; jar of green or soft castile soap; rubber gloves; tube of sterile vaseline, clinical thermometer; agate or glass douche reservoir; two rounded vaginal douche nozzles; two rectal nozzles, large and small; one soft rubber catheter; blunt scissors for cutting cord; either lysol, carbolic acid or bichloride of mercury tablets; boric acid powder; one per cent solution of nitrate of silver; medicine dropper; narrow tape or soft twine for tying cord; absorbent cotton (preferably in one-quarter pound packages); no other instruments are to be used, owned or possessed by a midwife. [Amendment of April 11, 1917. In effect July 27, 1917. Stats. 1917, p. 109.]

This section was also amended April 24, 1915, Stats. 1915, p. 196.

Certificates to be recorded.

§ 15. Every person holding a certificate under the laws of this state authorizing him to practice any system or mode of treating the sick or afflicted in this state must have it recorded in the office of the county clerk of the county or counties in which the holder of said certificate is practicing his profession, and the fact of such recordation shall be endorsed on the certificate by the county clerk recording the same. Any person holding a certificate as aforesaid, who shall practice or attempt to practice any system or mode of treating the sick or afflicted in this state, without having first filed his certificate with the county clerk, as herein provided, shall be deemed guilty of a misdemeanor and shall be punished as hereinafter designated in this act. [Amendment of April 11, 1917. In effect July 27, 1917. Stats. 1917, p. 113.]

County clerk's record of certificates.

§ 16. The county clerk shall keep [in] a book provided for the purpose a complete list of the certificates recorded by him, with the date of the record; and said book shall be open to public inspection during his office hours.

Practice without license. Penalty.

§ 17. Any person who shall practice or attempt to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this state, or who shall diagnose, treat, operate for, or prescribe for, any disease, injury, deformity, or other mental or physical condition of any person, without having at the time of so doing a valid unrevoked certificate as provided in this act, or who shall in any sign or in any advertisement use the word "doctor," the letters or prefix "Dr.," the letters "M. D.," or any other term or letters indicating or implying that he is a doctor, physician, surgeon or practitioner, under the terms of this or any other act, or that he is entitled to practice hereunder, or under any other law without having at the time of so doing a valid unrevoked certificate as provided in this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as designated in this act. [Amendment of April 11, 1917. In effect July 27, 1917. Stats. 1917, p. 114.]

This section was also amended April 24, 1915, Stats. 1915, p. 199.

Penalty for selling certificate. Altering of certificate. Practice under false name. Records of associates of practitioner.

§ 18. Any person, or any member of any firm, or official of any company, association, organization or corporation shall be guilty of a misdemeanor and upon conviction thereof shall be punishable as designated in this act, who, individually or in his official capacity, shall himself sell or barter, or offer to sell or barter, any certificate authorized to be granted hereunder, or any diploma, affidavit, transcript, certificate or any other evidence required in this act for use in connection with the granting of certificates or diplomas, or who shall purchase or procure the same either directly or indirectly with intent that the same shall be fraudulently used, or who shall with fraudulent intent alter any diploma, certificate, transcript, affidavit, or any other evidence to be used in obtaining a diploma or certificate required hereunder or who shall use or attempt to use fraudulently any certificate, transcript, affidavit, or diploma, whether the same be genuine or false, or who shall practice or attempt to practice any system or treatment of the sick or afflicted, under a false or assumed name, or any name other than that prescribed by the board of medical examiners of the state of California on its certificate issued to such person authorizing him to administer such treatment, or who shall assume any degree or title not conferred upon him in the manner and by the authority recognized in this act, with intent to represent falsely that he has received such degree or title, or who shall wilfully make any false statement on any application for examination, license or registration under this act, or who shall engage in the treatment of the sick or afflicted without causing to be displayed in a conspicuous manner and in a conspicuous place in his office the name of each and every person who is associated with or employed by him in the practice of medicine and surgery or other treatment of the sick or afflicted, or who shall, within ten days after demand made by the secretary of the board, fail to furnish to said board the name and address of all such persons associated with or employed by him or by any company or association with which he is or has been connected at any time within sixty days prior to said notice, together with a sworn statement showing under and by what license or authority said person or persons, or said employee or employees, is or are, or has or have been practicing medicine or surgery, or any other system of treatment of the sick or afflicted. It shall be the duty of any person or persons upon whom the board of medical examiners may make a demand for the name or names and address or addresses of a person or persons associated or employed by him or them to make affidavit that there are no such person or persons associated or employed by him or them, if such be the fact; provided, that such affidavit shall not be used as evidence against said person or employee in any proceedings under this action. [Amendment of April 11, 1917. In effect July 27, 1917. Stats. 1917, p. 114.]

This section was also amended April 24, 1915, Stats. 1915, p. 199.

Filing false certificate, felony.

§ 19. Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in or entitled to, such certificate, shall be guilty of a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of forgery.

Impersonating member of board.

§ 20. Any person not a member of the state board of medical examiners who shall sign, or issue, or cause to be signed or issued, any certificate authorized by this act, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than six hundred (\$600.00), or by imprisonment

for a term not less than sixty (60) nor more than one hundred and eighty (180) days, or by both such fine and imprisonment.

The title of the amending act of 1917 recites that this section is amended, but no such amendment appears in the body of the act.

Certificates heretofore issued not revoked.

§ 21. Nothing in this act shall be construed to prohibit the practice by any person holding an unrevoked certificate heretofore issued under or validated by any medical practice act of this state, but all such certificates may be revoked for unprofessional conduct in the same manner and upon the same grounds as if they had been issued under this act.

To whom act is not applicable.

§ 22. Nothing in this act shall be construed to prohibit service in the case of emergency, or the domestic administration of family remedies; nor shall this act apply to any commissioned medical officer in the United States army, navy or marine hospital, or public health service, in the discharge of his official duties; nor to any licensed dentist when engaged exclusively in the practice of dentistry. Nor shall this act apply to any practitioner from another state or territory, when in actual consultation with a licensed practitioner of this state, if such practitioner is, at the time of such consultation, a licensed practitioner in the state or territory in which he resides; provided, that such practitioner shall not open an office or appoint a place to meet patients or receive calls within the limits of this state. Nor shall this act be construed so as to discriminate against any particular school of medicine or surgery, or any other treatment, nor to regulate, prohibit or to apply to, any kind of treatment by prayer, nor to interfere in any way with the practice of religion. Nothing in this act shall be construed to prevent a student regularly matriculated in any legally chartered school or schools approved by the board from treating without compensation to such student the sick or afflicted as a part of his course of study. [Amendment of May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1297.]

Repealed.

§ 23. An act entitled "An act for the regulation of the practice of medicine and surgery, osteopathy, and other systems or modes of treating the sick or afflicted, in the state of California, and for the appointment of a board of medical examiners in the matter of said regulation," approved March 14, 1907, as amended by a certain act approved March 19, 1909, as amended by a certain act approved May 1, 1911, is hereby repealed, and also all other acts and parts of acts in conflict with this act are hereby repealed.

Title of act. Penalties. Disposition of fines.

§ 24. This act when referred to, cited or amended may be designated as the state medical practice act, and for a violation of any provision of this act, the said violator shall be guilty of a misdemeanor, unless otherwise specifically provided in this act, and shall be punished by a fine of not less than one hundred dollars nor more than six hundred dollars or by imprisonment for a term of not less than sixty days nor more than one hundred eighty days or by both such fine and imprisonment. The fines or forfeitures of bail in any case wherein any person is charged with a violation of the provisions of this act shall be paid upon the collection by the proper officer of the court seventy-five per cent thereof to the state treasurer to be deposited to the credit of the contingent fund of the board of medical examiners and such payment to said treasurer shall be made without placing such fine or forfeiture of bail in any special or contingent or general fund of any county, city and county, city, or township. The balance or twenty-five per cent of such fines or forfeitures of bail shall be paid to the county wherein

the case is pending. [New section added April 11, 1917. In effect July 27, 1917. Stats. 1917, p. 115.]

1. Constitutionality—Federal constitution.—The practice of medicine, Act of June 2, 1913, is not invalid and in violation of the federal constitution.—*Ex parte Chow Juyan*, 235 Fed. 1014.

2. Same—Legislative power to create offices of medical examiners.—The legislature was empowered to create the offices of medical examiners, and since they were not constitutional offices, to provide for the manner of filling them.—*Ex parte Gerino*, 143 Cal. 412.

3. Same—Does not confer judicial powers on medical board.—The Practice of Medicine Act of 1915 is not unconstitutional on the ground that it confers judicial powers upon the board.—*Lanterman v. Anderson*, 36 Cal. App. 472, 172 Pac. 625.

4. Same—Police power—Appointment of members of medical board.—In the exercise of its police power the state may provide medical examining boards to examine persons seeking to be admitted to practice medicine, the same to be appointed by any citizen or citizens named.—*Ex parte Frazer*, 54 Cal. 94.

5. Same—Title sufficient.—The title of the act sufficiently indicates its subject, and there is no conflict with the title in the body of the act, or not within its scope.—*People v. Ah Fong*, 25 Cal. App. 724; *People v. Chong*, 28 Cal. App. 121.

6. Same—Same.—The title of the act (1913-722) is sufficiently expressive of the subject matter to satisfy the requirements of section 24, article IV of the constitution.—*People v. Jordan*, 172 Cal. 391, 393, 156 Pac. 451; *People v. Ratledge*, 172 Cal. 401, 156 Pac. 455; also, *People v. Vermillion*, 30 Cal. App. 417, 158 Pac. 504.

7. Same—Same.—The title of the Medical Practice Act is sufficiently comprehensive to include the matters contained in section 17.—*People v. T. Wah Hing*, 32 Cal. App. Dec. 108.

8. Same—Discriminatory classification.—The act (1913-722) is not unconstitutional by reason of discriminatory classification of practitioners.—*People v. Jordan*, 172 Cal. 391, 395, 156 Pac. 451; *People v. Ratledge*, 172 Cal. 401, 402, 156 Pac. 455; also, *People v. Vermillion*, 30 Cal. App. 417, 158 Pac. 504.

9. Same—Grant of special privileges or immunities.—The act is not obnoxious to subdivision 19, section 25 of article IV of the constitution.—*Ex parte Gerino*, 143 Cal. 412.

10. Same—Grant of special privileges or immunities—Treatment by prayer.—The provision of the act of 1907, in effect permitting treatment by prayer does not render the act unconstitutional, by granting special privileges and immunities to some that are not granted to all, since in the nature of things the same privilege is granted to all.—*Ex parte Bohannon*, 14 Cal. App. 321.

11. Same—Revocation of certificate—Provision as to "advertising," etc., void.—The provision in the act of 1909 that "all advertising of medical business in which grossly improbable statements are made" shall constitute unprofessional conduct warranting revocation of the certificate, is void, because it leaves to the whim or caprice of the medical examiners the determination as to what statements are "grossly improbable."—*Hewitt v. State Board*, 148 Cal. 590.

12. Same—Unprofessional conduct—Revocation of certificate—Provisions of act belong to police power—Requirements.—Provisions for the revocation of the certificate of medical practitioners for "unprofessional conduct" belong to the police power, in order to produce a forfeiture of the right to practice must apply to matters of conduct declared with definiteness and certainty, so that those to be affected thereby may know what they are.—*Hewitt v. State Board*, 148 Cal. 590.

13. Same—Requirement of reciprocity certificate.—The requirement that no diploma shall be accepted unless issued by a medical board whose requirements at the time of the issuance of such diploma were "in no particular less than those prescribed by the Association of American Colleges for that year," is not a delegation of legislative power to such association, or void for that reason.—*Arwine v. Board of Medical Examiners*, 151 Cal. 499.

14. Same—Fitness of candidates and standard of colleges.—Sections 9 and 10 of the act are not unconstitutional because it vests the board of examiners with power to determine the fitness of candidates and the standard of colleges.—*People v. Chong*, 28 Cal. App. 121.

15. Same—Legislative power to impose restrictions for public good.—In matters relating to public health, the scientific correctness of the legislative body in imposing certain restrictions deemed to be for the public good is, generally speaking, open to review, and is a rule applicable to the legislative requirements as to examinations under the medical practice act.—*People v. Ratledge*, 172 Cal. 401, 405, 156 Pac. 455; also, *People v. Vermillion*, 30 Cal. App. 417, 158 Pac. 504.

16. Same—Equal protection of laws—Drugless practitioners.—The California medical practice act of 1913 as amended in 1915, is not invalid as denying the equal protection of the laws granted by the 14th amendment in the federal constitution, because it requires persons who practice drugless healing to obtain a drugless practitioner's certificate.—*Crane v. Johnson*, 242 U. S. 339, 61 L. ed. 348, 37 Sup. Ct. 176, Ann. Cas. 1917B, 796.

17. Same—Police Power—Drugless practitioners.—The exercise of its police power by the state of California in requiring that

drugless practitioners who employ faith, hope and the processes of mental suggestion and mental adaptation in the treatment of disease, shall have completed a prescribed course of study and passed an examination, is proper and valid.—Crane v. Johnson, 242 U. S. 339, 61 L. ed. 348, 37 Sup. Ct. 176, Ann. Cas. 1917B, 796.

18. Same—Drugless practitioners—Subjects of examination reasonable.—The requirement that such subjects as histology, elementary chemistry, toxicology, physiology, elementary bacteriology, and pathology, in the examination to be taken by drugless healers, is not unreasonable.—People v. Ratledge, 172 Cal. 401, 405, 156 Pac. 455; also, People v. Vermillion, 30 Cal. App. 417, 158 Pac. 504.

19. Same—"Sever."—Section 8 of the act is not unconstitutional as an unrestricted invasion of the art of osteopathy, chiropractice, and mechanotherapy, in that it prevents practitioners of said systems of the healing art from practicing their profession "without in any manner severing or penetrating any of the tissues of the human being.—People v. Chong, 28 Cal. App. 121.

20. Same—Not special legislation—Act of 1876.—The medical practice act of 1876 held not unconstitutional as special legislation.—Ex parte Frazer, 54 Cal. 94.

21. Same—Supplemental act of 1877—Delegation of legislative power to declare act a misdemeanor.—The legislation can not delegate to the board of examiners the power to declare an act a misdemeanor, and if it were otherwise, and the board could establish a crime by rules and regulations, in the absence of such rules and regulations, no conviction could be had.—Ex parte McNulty, 77 Cal. 164.

22. Same—Same—Not proper exercise of police power.—A law punishing a medical practitioner as for a criminal offense for "unprofessional conduct," in advertising as a specialist, is not a proper exercise of the police power.—Ex parte McNulty, 77 Cal. 164.

23. Same — Same. — The amending and supplemental act of 1878 held not unconstitutional as a whole; quare, whether certain independent provisions are unconstitutional.—Ex parte McNulty, 77 Cal. 164.

24. Same — Case followed — Prosecution under medical practice act.—People v. Jordan, 172 Cal. 391, 156 Pac. 451, followed by People v. Eilersficken, 172 Cal. 815, 156 Pac. 458; People v. Williams, 172 Cal. 816, 156 Pac. 457.

25. Medical board—A state agency.—The board of medical examiners is a state agency for the regulation of the practice of medicine and surgery, and is not the agencies of the medical societies by whom they are elected under the act of 1901 and the act is constitutional.—Ex parte Gerino, 143 Cal. 412.

26. Compliance with act—Right to license.—The right of an applicant to a certificate depends upon his compliance with

the provisions of the act.—Arwine v. Board of Medical Examiners, 151 Cal. 499.

27. Reciprocity certificates—When sufficient.—One who relies on certificates from other states will not be entitled to a certificate in California in the absence of a showing that the boards of such other states granted licenses "only upon actual examination," or that the legal requirements were at the time the issuance of such certificates in no particular or degree less than the requirements in California.—Arwine v. Board of Medical Examiners, 151 Cal. 499.

28. Certificate does not relate back to date of application—Contract for services prior to issue.—A certificate will not relate back to the date of the application therefor, so as to authorize a physician to enter into a contract for professional services, although such certificate was paid for at the time of the application.—Gardner v. Tatum, 81 Cal. 370.

29. County physician need not be medical graduate.—A county physician need not be a graduate of a medical college or university, and it is sufficient if he has passed a satisfactory examination before the board of examiners, and is legally licensed to practice medicine under the laws of the state.—People v. Eichelroth, 78 Cal. 141.

30. Jurisdiction—Criminal prosecutions—Fairness of action of board not reviewable.—In a prosecution under the medical practice act, the only question with which the court is concerned is whether defendant is practicing without a license, not the fairness or unfairness of the state board in excluding defendant from examination.—People v. Ratledge, 172 Cal. 401, 403, 156 Pac. 455.

Also, People v. Vermillion, 30 Cal. App. 417, 158 Pac. 504.

31. Criminal prosecution—Only persons engaged in practice as a business liable.—In order to bring one within the penal provisions of the medical practice act it must appear that he is engaged in the line of work specified in the act, as a business, or is holding himself out as being so engaged.—Ex parte Greenall, 153 Cal. 767.

32. Practice without certificate unlawful whether gratuitous or not.—The act makes the practice of medicine unlawful without first obtaining the required certificate, whether gratuitous or not, or whatever may be the particular form of treatment used.—People v. Vermillion, 30 Cal. App. 417; People v. Oakley, 30 Cal. App. 419.

33. Case of emergency—When treatment may be made by unlicensed physician.—A case of emergency authorizing medical treatment by another than a licensed physician, is one where the ordinary licensed physicians are not obtainable, and not one where they were present and had given up the patient as incurable.—People v. Lee Wah, 71 Cal. 80.

34. Osteopathy—Licensee not authorized to practice optometry.—A license to practice osteopathy under the medical practice act, does not authorize the licensee to prac-

tice optometry.—*Ex parte Rust*, 181 Cal. 73, 183 Pac. 548 (35 Cal. App. 422).

35. Drugless practitioners—"Sever."—The word "sever" means a severance by cutting and not a severance of tissues of human beings as drugless practitioners produce or cause by manipulation and adjustment.—*Ex parte Chow Juyan*, 235 Fed. 1014.

36. Information—Sufficiency.—An information which establishes that the defendant willfully and unlawfully practiced, attempted to practice and did advertise and hold himself out as practicing a system or mode of treating the sick and afflicted, without having at the time of so doing a valid unrevoked certificate from the state board of medical examiners, sufficiently charges a violation of section 17 of that act.—*People v. T. Wah Hing*, 32 Cal. App. Dec. 108.

37. Same—Sufficient.—An information for a violation of the medical practice act of 1913 is not insufficient in attempting to identify the statute which the defendant is charged with violating by specifically pleading a portion of the act of 1907, since the language employed actually describes the offense set out in the latter act.—*People v. Chow Juyan*, 28 Cal. App. 124; *People v. Chow Let*, 28 Cal. App. 803.

38. Information imputing many offenses—Sufficiency of.—Information held sufficient to charge a violation of the medical practice act and not to be open to the criticism that it seeks to impute many offenses to defendant, because any one of the acts or omissions averred and conjunctively pleaded would suffice as the basis of an information.—*People v. Ratledge*, 172 Cal. 401, 402, 156 Pac. 455.

Also, *People v. Vermillion*, 30 Cal. App. 417, 158 Pac. 504.

39. Information—Negative averment as to possession of certificate.—An information which charges defendant with practicing medicine without a license contains a negative averment as to a fact peculiarly within defendant's knowledge, and he is required to disprove the same, and if he fails to do so the fact must be taken as true.—*People v. Boo Doo Hong*, 122 Cal. 606.

40. Complaint, sufficiency of—Attempting abortion.—A complaint charging a physician in the language of subdv. 1, section 12 of the medical practice act of 1915 with attempting a criminal abortion, is held sufficient without stating the particular acts required by the Penal Code.—*Lantermann v. Anderson*, 36 Cal. App. 472, 172 Pac. 625.

41. Evidence sufficient to sustain conviction.—The evidence examined and held to sustain the conviction in this case of a violation of the act.—*People v. Ah Fong*, 25 Cal. App. 724.

42. Evidence showing intent and motive—Testimony of prior acts.—In a prosecution under the medical practice act, testimony as to acts six months prior to the time fixed in the information was properly admitted as going to show intent and mo-

tive.—*People v. Ratledge*, 172 Cal. 401, 403, 156 Pac. 455.

Also, *People v. Vermillion*, 30 Cal. App. 417, 158 Pac. 504.

43. Evidence—"Treatments"—Not conclusions.—In a prosecution under the medical practice act, testimony that the witnesses had received "treatments," was not conclusions as to whether certain acts constituted "treatments" or not, and was properly admitted.—*People v. Ratledge*, 172 Cal. 401, 403, 156 Pac. 455.

Also, *People v. Vermillion*, 30 Cal. App. 417, 158 Pac. 504.

44. Same—Burden of proof—Possession of certificate.—In a prosecution for unlawfully practicing medicine the burden is upon the defendant to prove that he has a certificate; and when no proof is afforded, it is presumed that the defendant has no certificate.—*People v. T. Wah Hing*, 32 Cal. App. Dec. 108.

45. Same—Reciprocity certificate—Burden of proof.—Where an applicant had successfully passed the required examination, and had presented a diploma issued to him by a medical school, upon issue taken as to the sufficiency of such diploma, before he is entitled to have mandate to compel the issuance to him of the certificate to entitle him to practice in California, the burden is upon him to show that at the time the diploma was issued to him, the requirements of the medical school were in no particular less than those prescribed by the association of medical colleges for that year.—*Arwine v. Board of Medical Examiners*, 151 Cal. 499.

46. Same—Unprofessional conduct—Rule of uncorroborated testimony of accomplice.—The rule that a person may not be convicted upon uncorroborative testimony of an accomplice, does not apply to a proceeding where the board of medical examiners to revoke the license of a physician on the ground of unprofessional misconduct.—*Lantermann v. Anderson*, 36 Cal. App. 472, 172 Pac. 625.

47. Jury trial—Conviction by police court without, invalid.—One charged with practicing medicine without a certificate from the board of examiners, is entitled to a jury trial, and if, after demand for and refusal of such a trial, a police court tries and convicts him, without a jury, he will be released on habeas corpus.—*Ex parte Wong You Ting*, 106 Cal. 296.

48. Certiorari—Revocation of certificate under void provision—Annulment.—The attempted revocation of the certificate under a void provision of the act will be annulled on certiorari.—*Hewitt v. State Board*, 148 Cal. 599.

49. Contract to render services by unlicensed physician.—A contract to render services as a physician and surgeon entered into by one who has not obtained a certificate entitling him to practice, is illegal, against public policy, and void, and no recovery can be had thereunder, although he might recover for services rendered under an implied contract, after pro-

curing a certificate.—*Gardiner v. Tatum*, 81 Cal. 370.

50. **As to Christian Science practitioners** coming within the law prohibiting the practice of medicine without a license, see (holding they do not) *Wheeler v. Sawyer* (Me. Aug. 7, 1888), 15 Atl. 67; *Kansas City v. Baird*, 92 Mo. App. 204; *Evans v. State*, 6 Ohio N. P. 129; *State v. Anthony*, 20 R. I. 644, 40 Atl. 1135; *State v. Mylord*, 20 R. I. 632, 40 Atl. 573, 41 L. R. A. 428.

See, also, case of *In re First Church of Christ, Scientist*, 205 Pa. St. 543, 97 Am. St. Rep. 753, 55 Atl. 536, 63 L. R. A. 411.

51. **"Christian Science and the Law."**—Article in 10 Va. Law Reg. 285.

52. **Compare** (holding they do come within the statute) *State v. Buswell*, 40 Neb. 158, 58 N. W. 728, 24 L. R. A. 68 (the first case holding Christian Science practitioners amenable to the law regulating the practice of medicine); *State v. Marble* (Ohio, Feb. 28, 1905), 73 N. E. 1063 (taking fee for "treatment"); *People ex rel. Board of Health v. Bratsch*, (Ill.) 32 Chic. L. News 35.

53. **"Manslaughter, Christian Science, and the Law."**—Article in 7 American Lawyer 5.

Christian Science, practicing of as practicing medicine, see note in 98 Am. State Rep. 752.

REFUND OF TAXES, ETC., COLLECTED BY MISTAKE, ETC.

ACT 2810—An act authorizing the state board of medical examiners to refund taxes, fees and penalties collected by mistake, error or inadvertence, and providing an appropriation therefor. [Approved May 6, 1919. In effect July 22, 1919. Stats. 1919, p. 324.]

History: Approved May 6, 1919. In effect July 22, 1919. Stats. 1919, p. 324.

Refund of money collected through error.

§ 1. The state board of medical examiners is hereby authorized, empowered and directed to refund any taxes, penalties or fees collected by the state board of medical examiners illegally, by mistake, inadvertence or error.

Payments from contingent fund.

§ 2. The state board of medical examiners is hereby authorized to expend out of its contingent fund whatever sum may be necessary to carry out the provisions of this act, and the state treasurer, and all other officials having custody of such funds are hereby authorized upon request or direction of the state board of medical examiners to pay out such refunds or approve such payments from said contingent fund.

CHAPTER 219.

MENDOCINO COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3931, and tit. "County Boundaries."

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

Disposal of lots in towns on public lands, see tit. "Municipal Corporations," Acts 3029, 3030.

CONTENTS OF CHAPTER.

ACT 2815. FREE BRIDGES IN BIG RIVER TOWNSHIP.
2816. ISSUE OF ROAD AND BRIDGE BONDS.

FREE BRIDGES IN BIG RIVER TOWNSHIP.

ACT 2815.—An act to provide for the purchase and construction of free bridges in Big River township, in the county of Mendocino.

History: Approved March 23, 1874, Stats. 1873-74, p. 544. Amended and supplemented March 30, 1874, Stats. 1873-74, p. 791.

This act provided for an election to authorize the levy of a tax of ten thousand dollars and the issue of "Toll Bridge Scrip" for the purpose indicated.

ISSUE OF ROAD AND BRIDGE BONDS.

ACT 2816—An act to provide for the purchase and erection of certain bridges, and for the building and improvement of certain roads in the county of Mendocino.

History: Approved March 20, 1876, Stats. 1875-76, p. 376.

This act authorized the issue of \$32,000 county 8 per cent twenty year bonds, for the purpose indicated, and the creation of the "special road and bridge redemption fund."

MERCED.

See Act 3094, note.

CHAPTER 220.

MERCED COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3932, and tit. "County Boundaries."

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

Water commission, see tit. "Water Commission."

CONTENTS OF CHAPTER.

ACT 2839. SALE OF COURT HOUSE BLOCK AT SNELLING.

SALE OF COURT HOUSE BLOCK AT SNELLING.

ACT 2839—An act to authorize the board of supervisors of Merced county to sell and convey the court house block and buildings thereon, in the town of Snelling.

History: Approved March 3, 1874, Stats. 1873-74, p. 239.

CHAPTER 221.

MEXICAN WAR VETERANS.

CONTENTS OF CHAPTER.

ACT 2844. AUTHORIZING EXCHANGE OF CERTAIN LANDS.

ACT 2844—An act to authorize the trustees of the Associated Veterans of the Mexican War to exchange certain lands for certain other property belonging to said city and county, or for a lease of such property.

History: Approved March 14, 1872, Stats. 1871-72, p. 363. Amended March 7, 1881, Stats. 1881, p. 68.

CHAPTER 222.

MILITARY ACADEMY.

References: See tit. "Arms."

CONTENTS OF CHAPTER.

ACT 2849. ARMS FOR MILITARY ACADEMIES.

ARMS FOR MILITARY ACADEMIES.

ACT 2849—An act to furnish arms for the use of military academies in the state.

History: Approved February 20, 1872, Stats. 1871-72, p. 121.

Military academies. Majors.

§ 1. That when a military academy has been established within the state, having not less than eighty boys, uniformed, drilled, and instructed in strict accordance with the tactics of the regular United States army service, and all its course of education and economy conducted upon strict military principles, the military instructor of such

academy, when regularly elected by the board of trustees or other lawful authority of the academy, be commissioned in the national guard of California, with the rank of major.

Bond and issue of arms, etc.

§ 2. That upon giving bond, with good security, to be approved by the county judge of the county where the academy is situated, conditioned for the safekeeping against fire, loss and against all damages, in twice the value, that arms and accoutrements, the property of the state, be issued for the use of such military academy.

Requisition.

§ 3. The adjutant-general of the state is hereby authorized to issue such arms and accoutrements as may be needed by the said military academies, without a monthly allowance, in the same manner as arms and accoutrements are issued to regular organized companies of the national guard of California, upon requisition made for this purpose, approved by the commander-in-chief.

§ 4. This act shall take effect immediately.

Power of governor to issue arms and accoutrements, see Kerr's Cyc. Political Code, § 380, subdv. 14.

CHAPTER 223.

MILITARY COMPANIES.

References: See tit. "National Guard."

CONTENTS OF CHAPTER.

ACT 2854. ORGANIZATION AND CONTROL OF MILITARY COMPANIES.

ORGANIZATION AND CONTROL OF MILITARY COMPANIES.

ACT 2854—An act authorizing the governor of the state of California to issue licenses to bodies of men to organize, drill, and bear arms as military companies or organizations, and providing for their control.

History: Approved March 9, 1911, Stats. 1911, p. 325.

Organization of military companies. Active service. Students exempt.

§ 1. The governor shall have power to issue licenses to bodies of men to organize, drill and bear arms as military companies or organizations; provided, that whenever any such body of men shall associate themselves as a military company or organization and drill with arms under the license of the governor, such military company or organization shall file with the adjutant general of this state, at such time as the governor may designate, a muster roll of such military company or organization, certified by the oath of the commanding officer thereof, which muster roll shall contain the names, ages, occupations and places of residence of all members thereof, and the number and character of all arms in the possession of such organization, and shall appear for inspection by the adjutant general or such military inspector as the governor shall designate, at least once a year, at their respective armories, at such time as the governor shall designate; and provided, further, that each member of such military company or organization shall take and subscribe to an oath, before any officer authorized to administer the same, that he will support the constitution of the United States and the constitution of the state of California and will obey and maintain all laws and all officers employed in administering the same; and provided, further, that whenever the governor, in his judgment, shall deem it necessary for the public safety, he may call into active service of the state for the causes and purposes for which he may call the national guard into the active service of the state, any such military company or

organization, and such military company or organization shall rendezvous and report for active service at such time and place and to such officer as the governor shall designate, and shall enter the active service of the state and obey all lawful orders and commands as shall be issued by the governor or any officer placed in command by his orders, in the manner as if such military company or organization were a part of the national guard, and the members of such military company or organization when called into active service by order of the governor shall be subject to all military penalties and punishments for violation of the orders of the governor, or of any officer placed in command of such organization by order of the governor, as are the members of the national guard, and shall be subject to the articles of war, the rules and regulations governing the national guard and shall receive the same pay and allowances while in active service as the members of the national guard; and provided, however, that students in educational institutions where military science is a part of the course of instruction shall be exempt from the provisions of this act.

MILL VALLEY.

See Act 3094, note.

MINERAL CABINET.

See tit. "Mining Bureau."

MINERAL WATER.

See tit. "Adulteration."

MINERALS.

See tit. "Adulteration"; "Mines and Mining"; "Mining Bureau."

CHAPTER 224.

MINES AND MINING.

References: Larceny from mines, see Kerr's Cyc. Penal Code, § 487, and tit. "Larceny."
Mining bureau, see tit. "Mining Bureau."

CONTENTS OF CHAPTER.

- ACT 2865. WORKS FOR RESTRAINING AND IMPOUNDING DEBRIS.
- 2866. TITLE TO DEBRIS IMPOUNDING WORKS.
- 2869. PROTECTION FROM MINING OPERATIONS.
- 2870. PURE QUICKSILVER FOR MINERS.
- 2871. MINING PARTNERSHIPS.
- 2872. CONVEYANCE OF MINING CLAIMS.
- 2873. COVERING OR FENCING ABANDONED MINING CLAIMS.
- 2874. PROTECTION OF MINERS.
- 2875. PROTECTION OF COAL MINES AND MINERS.
- 2876. STATE HOSPITAL FOR MINERS.
- 2878. MINE TELEPHONE SYSTEM.
- 2880. RIGHTS OF WAY TO MINES.
- 2881. WORKING, RIGHTS OF WAY, ETC., OF MINES.
- 2883. HOURS OF EMPLOYMENT, ACT OF 1913.
- 2884. EXTRACTING MINERALS FROM WATERS.
- 2885. WATERS CONTAINING MINERALS WITHDRAWN FROM SALE.

WORKS FOR RESTRAINING AND IMPOUNDING DEBRIS.

ACT 2865—An act to appropriate the sum of \$150,000 to be used in the construction of works for the restraining and impounding of debris resulting from mining operations, natural erosions and other causes, and for the purchase of sites therefor, and to provide for the manner of expending such appropriation.

History: Approved February 14, 1901, Stats. 1901, p. 7.

TITLE TO SITE OF DEBRIS IMPOUNDING WORKS.

ACT 2866—An act to provide in whose name title shall be taken to the site or sites for the construction of the works provided for in the act of the legislature of the state of California entitled "An act to provide for the appointment, duties and compensation of a debris commissioner, and to make an appropriation to be expended under his directions in the discharge of his duties as such commissioner," approved March 24, 1893, and the amendments thereto.

History: Approved March 13, 1901, Stats. 1901, p. 282.

§ 1. The title, estate and interests in all sites purchased under the act of the legislature of the state of California entitled "An act to provide for the appointment, duties and compensation of a debris commissioner, and to make an appropriation to be expended under his directions in the discharge of his duties as such commissioner," approved March twenty-fourth, eighteen hundred and ninety-three, and the amendments thereto, for the construction of the works in said acts contemplated, shall be taken in the name of the government of the United States of America.

§ 2. This act shall take effect immediately.

PROTECTION FROM MINING OPERATIONS.

ACT 2869—An act to protect owners of growing crops, buildings and other improvements in the mining districts of this state.

History: Approved April 25, 1855, Stats. 1855, p. 145.

This act protected the owners of growing crops from injury by miners.

Unconstitutional in part: Gillan v. Hutchinson, 16 Cal. 153.

PURE QUICKSILVER FOR MINERS.

ACT 2870—An act to secure to the miners of this state pure and unadulterated quicksilver.

History: Approved March 10, 1866, Stats. 1865-66, p. 191.

This act is not in terms repealed but, as to the criminal portion it is superseded.—See Kerr's Cyc. Penal Code, §§ 366, 377.

It is difficult to determine how much, if any, of the balance remains in force. Under any circumstances it is regarded as of sufficient importance to refer to it here.

MINING PARTNERSHIPS.

ACT 2871—An act concerning partnerships for mining purposes.

History: Approved April 2, 1866, Stats. 1865-66, p. 828.

This act required partners to pay their proportionate part of the expenses of working the claims, and for assessments for that purpose.

This act has not been in terms repealed and in the absence of direct legislation it is difficult to tell whether it is in force or not. It would appear to be one of the statutes clearly superseded by the codes.—See Kerr's Cyc. Civil Code, §§ 2428, 2511-2520, and decisions there noted.

1. Application — Partners not merely owners.—The act applies only to copartners and not to those who are owners without the partnership relation.—Brundage v. Adams, 41 Cal. 619.

2. Notice—Absence of partnership relation.—Where there is no partnership relation notice to the joint owner that he will thereafter be deemed a copartner for the purpose of working the mine is required to change the relation of the parties and create a mining partnership so as to warrant the assessment provided for.—Brundage v. Adams, 41 Cal. 619.

3. Sale to pay assessment—Absence of notice.—A sale under the act to pay a delinquent assessment is invalid where no notice of the assessment given as required by the act.—Sayer v. Donahue, 1 Cal. Unrep. 410.

CONVEYANCE OF MINING CLAIMS.

ACT 2872—An act to provide for the conveyance of mining claims.

History: Approved April 13, 1860, Stats. 1860, p. 175. Amended March 26, 1863, Stats. 1863, p. 98.

1. **Code commissioners' note.**—"Probably repealed by § 1091, et seq., Civil Code. If not, then modified as to corporations by 1880, p. 131."

2. **Conveyance—Not under seal.**—Mining claims may be conveyed by bills of sale or other instruments of writing not under seal, and such conveyances have the same effect as prima facie evidence as conveyances under seal.—*St. John v. Kidd*, 26 Cal. 263.

3. **Evidence—Record of bill of sale.**—The record of a bill of sale of a mining claim made by the recorder of the district as provided by custom and law is admissible in evidence, as secondary evidence.—*St. John v. Kidd*, 26 Cal. 263.

4. **Act of 1860 applied to gold claims.**—The act of 1860 applied to gold claims only

until the amendment of 1863, after which it applied to all mining claims.—*Paterson v. Keystone Mining Co.*, 30 Cal. 360.

5. **Requirement as to conveyances mandatory.**—The requirement of section 1 of the act as to the conveyance of mining claims was mandatory, and it was intended thereby to exclude conveyances by parol, even though accompanied by delivery of possession.—*Goller v. Fett*, 30 Cal. 481; *Felger v. Coward*, 35 Cal. 650.

See, also, *Moore v. Hamerstag*, 109 Cal. 122, 41 Pac. 805.

6. **Same.**—Since the passage of the act conveyances of mining claims must be by deed of conveyance duly acknowledged or by bill of sale accompanied by delivery of possession.—*King v. Randlett*, 33 Cal. 318.

COVERING OR FENCING ABANDONED MINING CLAIMS.

ACT 2873—An act to provide for the covering or fencing of abandoned mining shafts, pits or excavations, the penalty, and also the penalty for removing or destroying the covering or fencing from same.

History: Approved March 20, 1903, Stats. 1903, p. 283.

Owners of land must cover abandoned pits, etc.

§ 1. All abandoned mining shafts, pits or other abandoned excavations dangerous to passersby or livestock shall be securely covered or fenced, and kept so, by the owners of the land or persons in charge of the same, on which such shafts, pits or other excavations are located. Any person or persons failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

Duty of supervisors.

§ 2. All abandoned mining shafts, pits or other excavations situated on unoccupied public lands may be securely covered or fenced by order of the board of supervisors of the county wherein the same is situated, and it shall be the duty of the board of supervisors to keep the same securely fenced or covered whenever it appears to them, by proof submitted, that the same is dangerous or unsafe to man or beast. The cost of said covering or fencing to be a county charge.

Removing covers a misdemeanor.

§ 3. Any person or persons maliciously removing or destroying any covering or fencing placed around or over any shaft, pit or other excavation, as hereinbefore provided, shall be deemed guilty of a misdemeanor.

§ 4. This act shall take effect six months from the day of passage.

PROTECTION OF MINERS.

ACT 2874—An act for the protection of miners.

History: Approved March 16, 1872, Stats. 1871-72, p. 413.

Protection to miners.

§ 1. It shall not be lawful for any corporation, association, owner, or owners of any quartz-mining claims within the state of California, where such corporations, association, owner or owners employ twelve men daily, to sink down into such mine or mines any perpendicular shaft or incline beyond a depth from the surface of three hundred feet without providing a second mode of egress from such mine, by shaft or tunnel, to connect with the main shaft at a depth of not less than one hundred feet from the surface.

Modes of escape.

§ 2. It shall be the duty of each corporation, association, owner, or owners of any quartz mine or mines in this state, where it becomes necessary to work such mines beyond the depth of three hundred feet, and where the number of men employed therein daily shall be twelve or more, to proceed to sink another shaft or construct a tunnel so as to connect with the main working-shaft of such mine as a mode of escape from underground accident, or otherwise. And all corporations, associations, owner, or owners of mines as aforesaid, working at a greater depth than three hundred feet, not having any other mode of egress than the main shaft, shall proceed as herein provided.

Liabilities.

§ 3. When any corporation, association, owner, or owners of any quartz mine in this state shall fail to provide for the proper egress as herein contemplated, and therein shall be hurt or injured, and from such injury might have escaped if the second mode of egress had existed, such corporation, association, owner or owners of the mine where the injuries shall have occurred shall be liable to the person injured in all damages that may accrue by reason thereof; and an action at law in a court of competent jurisdiction may be maintained against the owner or owners of such mine, which owners shall be jointly or severally liable for such damages. And where death shall ensue from injuries received from any negligence on the part of the owners thereof, by reason of their failure to comply with any of the provisions of this act, the heirs or relatives surviving the deceased may commence an action for the recovery of such damages as provided by an act entitled an act requiring compensation for causing death by wrongful act, neglect, or default, approved April twenty-sixth, eighteen hundred and sixty-two.

§ 4. This act shall take effect and be in force six months from and after its passage.

PROTECTION OF COAL MINES AND MINERS.**ACT 2875—An act for the protection of coal mines and coal miners.**

History: Approved March 27, 1874, Stats. 1873-74, p. 726.

Map.

§ 1. The owner or agent of every coal mine shall make or cause to be made an accurate map or plan of the workings of such coal mine, on a scale of one hundred feet to the inch.

Copies.

§ 2. A true copy of which map or plan shall be kept at the office of the owner or owners of the mine, open to the inspection of all persons, and one copy of such map or plan shall be kept at the mines by the agent or other person having charge of the mines, open to the inspection of the workmen.

Shafts or outlets.

§ 3. The owner or agent of every coal mine shall provide at least two shafts, or slopes, or outlets, separated by natural strata of not less than one hundred and fifty feet in breadth, by which shafts, slopes, or outlets distinct means of ingress and egress are always available to the persons employed in the coal mine; provided, that if a new tunnel, slope, or shaft will be required for the additional opening, work upon the same shall commence immediately after the passage of this act, and continue until its final completion, with reasonable dispatch.

Ventilation.

§ 4. The owner or agent of every coal mine shall provide and establish for every such mine an adequate amount of ventilation, of not less than fifty-five cubic feet per second of pure air, or thirty-three hundred feet per minute, for every fifty men working

in such mine, and as much more as circumstances may require, which shall be circulated to the face of each and every working place throughout the entire mine, to dilute and render harmless and expel therefrom the noxious, poisonous gases, to such an extent that the entire mine shall be in a fit state for men to work therein, and be free from danger to the health and lives of the men by reason of said noxious and poisonous gases, and all workings shall be kept clear of standing gas.

Inside overseer. Duties.

§ 5. To secure the ventilation of every coal mine, and provide for the health and safety of the men employed therein, otherwise and in every respect, the owner, or agent, as the case may be, in charge of every coal mine, shall employ a competent and practical inside overseer, who shall keep a careful watch over the ventilating apparatus, over the air-ways, the traveling-ways, the pumps and sumps, the timbering, to see as the miners advance in their excavations that all loose coal, slate, or rock overhead is carefully secured against falling; over the arrangements for signaling from the bottom to the top, and from the top to the bottom of the shaft or slope, and all things connected with and appertaining to the safety of the men at work in the mine. He, or his assistants, shall examine carefully the workings of all mines generating explosive gases, every morning before the miners enter, and shall ascertain that the mine is free from danger, and the workmen shall not enter the mine until such examination has been made and reported, and the cause of danger, if any, removed.

§ 6. The overseer shall see that hoisting machinery is kept constantly in repair and ready for use, to hoist the workmen in or out of the mine.

Owner.

§ 7. The word "owner" in this act shall apply to lessee as well.

Right of action.

§ 8. For any injury to person or property occasioned by any violation of this act, or any willful failure to comply with its provisions, a right of action shall accrue to the party injured for any direct damages he or she may have sustained thereby, before any court of competent jurisdiction.

Liability.

§ 9. For any willful failure or negligence on the part of the overseer of any coal mine, he shall be liable to conviction of misdemeanor, and punished according to law; provided, that if such willful failure or negligence is the cause of the death of any person, the overseer, upon conviction, shall be deemed guilty of manslaughter.

Boilers.

§ 10. All boilers used for generating steam in and about coal mines shall be kept in good order, and the owner or agent thereof shall have them examined and inspected, by a competent boiler-maker, as often as once in three months.

§ 11. This act shall not apply to opening a new coal mine.

§ 12. This act shall take effect immediately.

See notes to Act 2874.

STATE HOSPITAL FOR MINERS.

ACT 2876—An act to provide a state hospital and asylum for miners.

History: Approved March 14, 1881, Stats. 1881, p. 81.

Erection of state hospital for miners.

§ 1. There shall be erected, as soon as conveniently may be, upon some suitable site, to be determined and obtained as is hereinafter provided, a public hospital and asylum

for the reception, care, medical, and surgical treatment, and relief of the sick, injured, disabled, and aged miners, which shall be known as the "California State Miners' Hospital and Asylum."

Trustees of, how appointed.

§ 2. The governor shall nominate, and by and with the advice and consent of the senate appoint five persons to serve as trustees of the said institution, who shall be a body politic and corporate by the name and style of the "Trustees of the California State Miners' Hospital and Asylum," and shall manage and direct the concerns of the institution, and make all necessary by-laws and regulations, and shall have power to receive, hold, dispose of, and convey all real and personal property conveyed to them by gift, devise, or otherwise, for the use of said institution, and shall serve without compensation. Of those first appointed, two shall serve for two years, and three for four years; and at the expiration of the respective terms, each class thereafter shall be appointed for four years. A vacancy in said board, from any cause, shall be filled by appointment by the governor for the unexpired term.

Superintendent, how appointed.

§ 3. The said trustees shall have charge of the general interests of the institution; they shall appoint the superintendent, who shall be a skillful physician and surgeon, subject to removal or re-election no oftener than in periods of ten years, except by infidelity to the trust reposed in him, or for incompetency.

By-laws.

§ 4. The trustees, by and with the consent of the governor, shall make such by-laws and regulations for the government of the institution as shall be necessary; they shall appoint a treasurer, who shall give bonds to the people of the state of California for the faithful discharge of his duties; and they shall fix the compensation of all officers, assistants, and attaches, who may be necessary for the just and economical administration of the affairs of said institution.

Charges for medical attendance.

§ 5. Indigent miners shall be charged for medical attendance, surgical operations, board, and nursing while residents in the hospital and asylum, no more than the actual cost; paying patients, whose friends can pay their expenses, and who are not chargeable upon townships and counties, shall pay according to the terms directed by the trustees.

Powers of boards of supervisors.

§ 6. The several boards of supervisors of counties, or any constituted authority in the state having care and charge of any indigent sick, or aged person or persons, if satisfactorily proven by them to have been miners, shall have authority to send to the "California State Miners' Hospital and Asylum" such persons, and they shall be severally chargeable with the expenses of the care, maintenance, and treatment, and removal to and from the hospital and asylum of such patients.

Trustees to report.

§ 7. The trustees shall annually, at such time as the governor may designate, report to him, for transmission to the legislature, such a statement as he may require as to the management of the said hospital and asylum.

§ 8. This act shall take effect immediately.

See notes to Act 2874.

MINE TELEPHONE SYSTEM.

ACT 2878—An act providing for the establishment and maintenance of a telephone system in mines and prescribing a penalty for the violation thereof.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 782.

Telephone systems in mines over 500 feet deep.

§ 1. In all mines operated and worked in this state where a depth of more than 500 feet underground has been reached, a telephone system must be established, equipped and maintained by the owners or lessees thereof with stations at each working level below the depth aforesaid, communicating with a station thereof on the surface of any such mine.

Penalty.

§ 2. The failure or refusal of any owner or lessee to install or maintain such telephone system shall be deemed guilty of misdemeanor and punished accordingly.

RIGHTS OF WAY TO MINES.**ACT 2880—An act to regulate the rights of owners of mines.**

History: Approved April 1, 1870, Stats. 1869-70, p. 569.

Editor's note: This act gave rights of way to miners and provided a means by which rights of way and places of deposit could be obtained. It has not been in terms repealed, but as county courts have been abolished, and there being no court machinery for making it effective it is probably not in force.

1. Right of condemnation cumulative, not exclusive.—The right of condemnation

given by the act is cumulative, and does not exclude the enforcement of a right existing by local custom independent of statute.—*Bliss v. Kingdom*, 46 Cal. 651.

2. Right by custom to tunnel preserved by injunction.—If a mine owner has a right by local custom to construct a tunnel through an adjoining claim equity will enjoin interference with that right.—*Bliss v. Kingdom*, 46 Cal. 651.

WORKING, RIGHTS OF WAY, ETC., OF MINES.**ACT 2881—An act entitled an act relating to the working, rights of way, easement, and drainage of mines in the state of California.**

History: Approved March 31, 1891, Stats. 1891, p. 219.

Affidavit to be filed with county recorder. Effect of failure. Co-owners may perform work. Tunnels and cuts.

§ 1. Whenever any mine owner, company, or corporation shall have performed the labor and made the improvements required by law for the location and ownership of mining claims or lodes, such owner, company, or corporation shall file or cause to be filed, within thirty days after the time limited for performing such labor or making such improvements, with the county recorder of deeds of the county in which the mine or claim is situated, [an affidavit] particularly describing the labor performed and improvements made, and the value thereof, which affidavit shall be prima facie evidence of the facts therein stated. Upon the failure of any claimant or mine owner to comply with the conditions of this act in the performance of labor, or making of improvements upon any claim, mine, or mining ground, the claim or mine upon which such failure occurred shall be opened to relocation in the same manner as if no location of the same had ever been made. But if, previous to relocation, the original locators, their heirs, assigns, or legal representatives, resume work upon such claim, and continue the same with reasonable diligence until the required amount of labor has been performed or improvements made, and the required statement of accounts and affidavits filed with the county recorder, then the claim shall not be subject to relocation because of previous failure to file accounts. Upon the failure of any one of the several co-owners to contribute his portion of the expenditures, required hereby, the co-owners who have performed the labor or made the improvement may, at the expiration of the year, give such delinquent co-owner personal notice, in writing, or by publication in the newspaper published nearest the claim for at least once a week for ninety days; and if, at the expiration of ninety days after such notice in writing or publication, such delinquent shall fail or refuse to contribute his portion of the expenditures required by this section, his interest in the claim shall become the property of his co-owners who made

the required expenditures. A copy of such notice, together with an affidavit showing personal service or publication, as the case may be, of such notice, when filed or recorded with the recorder of deeds of the county in which such mining claim is situated, shall be evidence of the acquisition of title of such co-owners. Where a person or company has or may run a tunnel or cuts for the purpose and in good faith for the purpose of developing a lode, lodes, or claims owned by said person or company or corporation, the money so expended in running said tunnel shall be taken and considered as expended on said lodes or claims; provided, further, that said lode, claim, or claims shall be distinctly marked on the surface as provided by law.

Rights of way reserved. Damages.

§ 2. All mining locations and mining claims shall be subject to a reservation of the right of way through or over any mining claims, ditches, roads, canals, cuts, tunnels, and other easements for the purpose of working other mines; provided, that any danger occasioned thereby shall be assessed and paid for in the manner provided by law for land taken for public use under the right of eminent domain.

§ 3. This act shall take effect immediately.

1. Construction of act—Omission of word "affidavit."—It is doubtful what construction should be given the statute by reason of the evident misprision in omitting the word "affidavit" from section 1 thereof, but giving it all the construction claimed, a right of relocation would not be acquired by the failure to file the "affidavit" until thirty days had expired after the time of

doing the work.—*Harris v. Kellogg*, 117 Cal. 484, 49 Pac. 708.

2. Affidavit is prima facie evidence.—The affidavit or proof of labor required by the act when duly recorded is prima facie evidence of the facts therein stated, and it is error to exclude them.—*Big Three, etc., Co. v. Hamilton*, 157 Cal. 130, 107 Pac. 301, 137 Am. St. Rep. 118.

HOURS OF EMPLOYMENT, ACT OF 1913.

ACT 2883—An act regulating the hours of employment in underground mines, underground workings, whether for the purpose of tunneling, making excavations or to accomplish any other purpose or design, or in smelting and reduction works.

History: Approved May 30, 1913. In effect August 10, 1913. Stats. 1913, p. 331. Prior act of March 10, 1909, Stats. 1909, p. 279, which was word for word identical with the present act, was probably superseded by it.

Eight-hour day for underground workers.

§ 1. That the period of employment for all persons who are employed or engaged in work in underground mines in search of minerals, whether base or precious, or who are engaged in such underground mines for other purposes, or who are employed or engaged in any other underground workings whether for the purpose of tunneling, making excavations or to accomplish any other purpose or design, or who are employed in smelters and other institutions for the reduction or refining of ores or metals shall not exceed eight hours within any twenty-four hours, and the hours of employment in such employment or workday shall be consecutive, excluding, however, any intermission of time for lunch or meals; provided, that, in case of emergency where life or property is in imminent danger, the period may be a longer time during the continuance of the emergency or emergency.

Penalty.

§ 2. Any person who shall violate any provision of this act, and any person who as foreman, manager, director or officer of a corporation, or as the employer or superior officer of any person, shall command, persuade or allow any person to violate any provision of this act, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than three hundred

dollars (\$300.00), or by imprisonment of not more than three months. And the court shall have discretion to impose both fine and imprisonment as herein provided.

§ 3. All acts and parts of acts inconsistent with this act are hereby repealed.

1. Constitutionality upheld.—The act is constitutional.—In re Martin, 157 Cal. 51, 106 Pac. 235, 26 L. R. A. (N. S.) 242.

2. Constitutionality—Decision as to Utah act.—The Utah state statute limiting the period of employment of workers in underground mines or in smelting, reduction, or refining of ores or metals to eight hours a day, is a valid exercise of the police power of the state.—Holden v. Hardy, 169 U. S. 366, 42 L. ed. 780, 18 Sup. Ct. 383.

3. Same—Same.—The right of contract between mine owners and employees is limited by a proper exercise of the police power of the state.—Holden v. Hardy, 169 U. S. 366, 42 L. ed. 780, 18 Sup. Ct. 383.

4. Same—Right of contract restricted under police power.—Freedom of contract may be properly restricted under the police power in the matter of hours of labor in mines, upon the ground of the preservation of the public health.—In re Martin, 157 Cal. 51, 106 Pac. 235, 26 L. R. A. (N. S.) 242.

5. Same—Same—Test of violation of federal guarantees.—In determining whether an act restricting the hours of labor in any given occupation is in violation of the guarantees of the federal constitution, the test is whether the occupation is dangerous to health such as to justify the restriction.—In re Martin, 157 Cal. 51, 106 Pac. 235, 26 L. R. A. (N. S.) 242.

6. Same—Not special legislation.—The act is not special legislation because it does not include all underground work.—In re Martin, 157 Cal. 51, 106 Pac. 235, 26 L. R. A. (N. S.) 242.

7. Same—Classification reasonable.—The act is not special because it selects for its operation a special class, the classification thus made being reasonable.—In re Martin, 157 Cal. 51, 106 Pac. 235, 26 L. R. A. (N. S.) 242.

8. Same—Not arbitrary discrimination.—The act is not arbitrarily discriminative because it does not select other equally dangerous occupations.—In re Martin, 157 Cal. 51, 106 Pac. 235, 26 L. R. A. (N. S.) 242.

9. Same—Act and title embraces only one subject.—The act and title embraces only one subject.—In re Martin, 157 Cal. 51, 106 Pac. 235, 26 L. R. A. (N. S.) 242.

10. Construction—Time at meals excluded.—The act requires that the hours of employment, excluding meals, shall be consecutive, and that is a matter for the legislature, and it can not be said that it has no reasonable relation to the health of the miner.—In re Martin, 157 Cal. 51, 106 Pac. 235, 26 L. R. A. (N. S.) 242.

11. Same—Same.—The act refers to the time actually engaged in work, and does not include the time going and coming from work.—In re Martin, 157 Cal. 59, 106 Pac. 238.

EXTRACTING MINERALS FROM WATERS.

ACT 2884—An act regulating the extraction of minerals from the waters of any stream or lake and prohibiting the extraction of minerals from said waters except under lease from or express permission of the state for a period not exceeding twenty-five years.

History: Approved April 14, 1911, Stats. 1911, p. 904.

Extracting minerals from waters.

§ 1. Minerals contained in the waters of any stream or lake in this state shall not be extracted from said waters except upon charges, terms and conditions prescribed by law. No person, firm, corporation or association shall hereafter gain the right to extract or cause to be extracted said minerals from said waters by user, custom, prescription, appropriation, littoral rights, riparian rights, or in any manner other than by lease from or express permission of the state as prescribed by law; and no such lease or permission shall be granted for a longer period than twenty-five years.

§ 2. All acts or parts of acts in conflict herewith are hereby repealed.

§ 3. This act shall take effect immediately.

See, post, Act 2885.

WATERS CONTAINING MINERALS WITHDRAWN FROM SALE.

ACT 2885—An act relating to lakes and streams, the waters of which contain minerals in commercial quantities; withdrawing state lands within the meander lines thereof from sale; prescribing conditions for taking such minerals from said waters and lands, and providing for the leasing of lands uncovered by the recession of the waters of such lakes and streams.

History: Approved April 27, 1911, Stats. 1911, p. 1154.

Waters containing minerals withdrawn from sale.

§ 1. There is hereby withdrawn from selection and sale all of the lands embraced within the original meander lines of streams and lakes belonging to the state, the waters of which contain minerals in commercial quantities, and all such lands which may hereafter inure to the state by virtue of its sovereignty, excepting such lands now contracted to be sold under sections 3493m to 3493t, both inclusive, of the Political Code.

Water may be taken only under this act.

§ 2. No person, firm or corporation shall take water from such streams or lakes containing minerals and extract from such waters such minerals, except under the terms and conditions of this act; and no person, firm or corporation may lease any land herein referred to and extract therefrom minerals deposited therein or thereon, except under the terms and conditions of this act.

Statement to be filed with county assessor and state controller.

§ 3. Every person, firm or corporation taking from the waters of such stream, lakes or lands any minerals, shall file, on or before the last Monday in January of each year, with the county assessor of the county in which any such stream or lake is situated, and also with the state controller, a written statement, duly verified, showing in tons of two thousand pounds, the amount of mineral taken by such person, firm or corporation from such water or land during the year ending December 31st last preceding and sold by said person, firm or corporation during the said year preceding. Any such person, firm or corporation neglecting or refusing to furnish such statement shall be subject to a fine of one hundred dollars for each day after the said last Monday in January such person, firm or corporation shall fail to furnish such statement, and, in addition to said fine, shall forfeit all leases granting the right to extract such minerals from said water and said land. Any person who shall, either on behalf of himself or any firm or corporation, verify any such statement which shall be untrue in any material part, shall be deemed guilty of a misdemeanor.

Examination of statement.

§ 4. In case either the assessor or the state controller shall not be satisfied with the statement as returned, he may make an examination of the matters necessary to verify or correct said statement, and, for that purpose, may subpoena witnesses and call for and compel the production of necessary books and papers belonging to the person, firm or corporation making the returns.

Royalty.

§ 5. The county assessor of the county shall, after examination and approval by him and the state controller of such statement, proceed to collect from such person, firm or corporation a royalty of twenty-five cents for each ton of two thousand pounds of mineral taken from such water or land by such person, firm or corporation and sold during the preceding year, in the manner provided for the collection of personal property taxes; provided, that the royalty on sodium bicarbonate and on sodium hydrate so taken shall be fifty (50) cents for each ton of two thousand pounds.

Application to lease lands.

§ 6. Any person, firm or corporation desiring to lease any lands under this act must make application therefor to the surveyor general of the state, describing the lands sought to be leased by legal subdivisions, or, if the legal subdivisions are unknown to the applicant, by metes and bounds. The application must be accompanied by a filing fee of ten dollars.

Survey of lands.

§ 7. Upon the receipt of such application, the surveyor general shall direct the county surveyor of the county in which such lands are situated to survey the land sought to be leased. The county surveyor shall make an actual survey of the land, at the expense of the applicant, establishing the four corners to each quarter section, and connecting the same with a United States survey; and within thirty days file with the surveyor general a copy, under oath, of his field-notes and plat. If the county surveyor fails to make the survey as herein provided, the surveyor general shall immediately direct another person to make the survey at the expense of the applicant, and said survey shall be made and completed within thirty days after the authorization, and the field-notes and plats, or copies thereof, shall be sworn to by the surveyor making them and shall be filed with the surveyor general.

Approval or rejection of application.

§ 8. All applications to lease land under this act shall be approved or rejected by the surveyor general within ninety days after the receipt thereof. Immediately after the approval of the application, the surveyor general shall execute and deliver to the applicant a lease of the lands described in the application.

Rental.

§ 9. The lands designated in this act shall be leased at the rate of two dollars and fifty cents per acre, per year, payable yearly in advance. All moneys received as rental for such lands and as royalty upon the mineral product of the waters of the lakes, streams or lands above mentioned, shall be paid into the state school land fund.

First payment. Limit of lease.

§ 10. Whenever any lease is delivered to the applicant by the surveyor general, the lessee shall, within fifteen days thereafter, present said lease to the treasurer of the state of California, and make payment of the first annual rental. The treasurer shall receive the money and give a receipt therefor. All subsequent annual payments of rental must be paid to the state treasurer, in like manner, within fifteen days after they become due. In case payments are not made as herein provided, the lease and all rights thereunder shall cease and terminate. No lease shall run for more than twenty-five years; provided, that upon the expiration of any lease, such lease may be extended for a period of twenty-five years upon such terms and conditions as may then be prescribed by law.

Reservations to state.

§ 11. All leases made under the authority of this act shall contain a reservation to the state of a right to locate rights of way across such leased lands, subject only to the requirements that the rights of way shall be located in such manner as to cause the least injury to the leased lands across which the same may be located, and that any damage suffered by the lessee of such lands shall be compensated by the lessee of the lands for whose benefit the right of way is required; and every such lease shall be subject to, and shall contain a reservation of, the right of any city and county or incorporated city or town of this state to at any time appropriate and take, under the laws of this state relative to the appropriation of waters, water from any stream or

lake tributary to or discharging into any stream or lake of the character mentioned in section 1 of this act for any use or uses within the authorized powers of such city and county, or incorporated city or town.

Lease to rights of way.

§ 12. Leases of rights of way, not exceeding one hundred feet in width, for access to any waters or lands designated by this act, may be applied for and granted in the manner herein provided for leasing lands. Such rights of way shall be leased at an annual rental of two dollars and fifty cents an acre, and the same shall be paid as herein provided for leased lands.

Termination of lease.

§ 13. All leases of mineral lands provided for by this act shall cease and terminate on December 31st of any year if the lessee or assigns has not, during the year preceding, extracted or removed from such land and water an amount of mineral equal, in the aggregate, to a minimum of five tons per acre of land leased; provided, that when a lease is not delivered to the lessee until after the fifteenth day of January of any year, the minimum tonnage for such year shall be less than five (5) tons, and shall be proportional to the number of days remaining in such year after the completion of the works.

Powers of surveyor general.

§ 14. The surveyor general is hereby authorized to prepare, make, execute and deliver all papers, instruments and documents, and to do any and all things necessary to carry out the provisions of this act.

Legislature may change royalty.

§ 15. The legislature shall have the right to change, from time to time, the royalty per ton of minerals extracted and the annual rental per acre of land, and such change shall apply to all persons, firms or corporations holding leases hereunder; provided, that no lease given under this act shall be subject to any change, as to the royalty or rental provided for in said lease, subsequent to the execution of such lease until after ten years from the passage of this act.

Abandonment of lease.

§ 16. Any lessee hereunder may abandon and surrender a lease at the expiration of any calendar year by filing with the county assessor of the county in which is situated the lands described in said lease, and with the surveyor general and the state controller, notices of said abandonment or surrender; but said notices must be filed at least sixty days before the expiration of said calendar year; and said abandonment and surrender shall not absolve the said lessee from the payment of any royalty which may be due at the end of said fiscal year for minerals extracted from the waters or lands in this act specified.

§ 17. This act shall take effect immediately.

See, ante, Act 2884.

CHAPTER 225.

MINING BUREAU.

Reference: See, generally, tit. "Mines and Mining." *

CONTENTS OF CHAPTER.

ACT 2893. STATE MINING BUREAU.

2894. STATE MINING BUREAU—DEPARTMENT OF PETROLEUM AND GAS.

STATE MINING BUREAU.

ACT 2893—An act establishing a state mining bureau, creating the office of state mineralogist, fixing his salary and prescribing his powers and duties; providing for the employment of officers and employees of said bureau, making it the duty of persons in charge of mines, mining operations and quarries to make certain reports, providing for the investigation of mining operations, dealings and transactions and the prosecution for defrauding, swindling and cheating therein, creating a state mining bureau fund for the purpose of carrying out the provisions of this act and repealing an act entitled "An act to provide for the establishment, maintenance, and support of a bureau, to be known as the state mining bureau, and for the appointment and duties of a board of trustees, to be known as the board of trustees of the state mining bureau, who shall have the direction, management and control of said state mining bureau, and to provide for the appointment, duties, and compensation of a state mineralogist, who shall perform the duties of his office under the control, direction and supervision of the board of trustees of the state mining bureau," approved March 23, 1893, and all acts amendatory thereof and supplemental thereto or in conflict herewith.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1327. Prior act of April 16, 1880, Stats. 1880, p. 115, and the supplemental act of March 21, 1885, Stats. 1885, p. 217, were repealed by the act of March 23, 1893, Stats. 1893, p. 203; amended March 10, 1903, Stats. 1903, p. 113, and March 23, 1907, Stats. 1907, p. 935, which was repealed by the present act. Supplemented June 10, 1915. In effect August 9, 1915. Stats. 1915, p. 1404. See Act 2894.

Mining bureau created.

§ 1. There is hereby created and established a state mining bureau. The chief officer of such bureau shall be the state mineralogist, which office is hereby created.

State mineralogist. Salary.

§ 2. It shall be the duty of the governor of the state of California and he is hereby empowered to appoint a citizen and resident of this state, having a practical and scientific knowledge of mining, to the office of state mineralogist. Said state mineralogist shall hold his office at the pleasure of the governor. He shall be a civil executive officer. He shall take and subscribe the same oath of office as other state officers. He shall receive for his services a salary of three hundred dollars (\$300) per month, to be paid at the same time and in the same manner as the salaries of other state officers. He shall also receive his necessary traveling expenses when traveling on the business of his office. He shall give bond for the faithful performance of his duties in the sum of ten thousand dollars (\$10,000), said bond to be approved by the governor of the state of California.

Employees.

§ 3. Said state mineralogist shall employ competent geologists, field assistants, qualified specialists and office employees when necessary in the execution of his plans and operations of the bureau, and fix their compensation. The said employees shall be allowed their necessary traveling expenses when traveling on the business of said department and shall hold office at the pleasure of said state mineralogist.

Duties.

§ 4. It shall be the duty of said state mineralogist to make, facilitate, and encourage, special studies of the mineral resources and mineral industries of the state. It shall be his duty: to collect statistics concerning the occurrence and production of the economically important minerals and the methods pursued in making their valuable constituents available for commercial use; to make a collection of typical geological and mineralogical specimens, especially those of economic and commercial importance, such collection constituting the museum of the state mining bureau; to provide a library of books, reports, drawings, bearing upon the mineral industries, and sciences of mineralogy and geology, and arts of mining and metallurgy, such library constituting the library of the state mining bureau; to make a collection of models, drawings and descriptions of the mechanical appliances used in mining and metallurgical processes; to preserve and so maintain such collections and library as to make them available for reference and examination, and open to public inspection at reasonable hours; to maintain, in effect, a bureau of information concerning the mineral industries of this state, to consist of such collections and library, and to arrange, classify, catalogue, and index the data therein contained, in a manner to make the information available to those desiring it; to issue from time to time such bulletins as he may deem advisable concerning the statistics and technology of the mineral industries of this state.

Annual reports of mine owners.

§ 5. It is hereby made the duty of the owner, lessor, lessee, agent, manager or other person in charge of each and every mine, of whatever kind or character, within the state, to forward to the state mineralogist, upon his request, at his office not later than the 30th day of June, in each year, a detailed report upon forms which will be furnished showing the character of the mine, the number of men then employed, the method of working such mine and the general condition thereof, the total mineral production for the past year, and such owner, lessor, lessee, agent, manager or other person in charge of any mine within the state must furnish whatever information relative to such mine as the state mineralogist may from time to time require for the proper discharge of his official duties. Any owner, lessor, lessee, agent, manager or other person in charge of each and every mine, of whatever kind or character within the state, who fails to comply with the above provisions shall be deemed guilty of a misdemeanor.

Incumbent to act.

§ 6. The state mineralogist now performing the duties of the office of state mineralogist shall perform the duties of the office of state mineralogist as in this act provided until the appointment and qualification of his successor as in this act provided.

To take possession of office, etc.

§ 7. The said state mineralogist shall take possession, charge and control of the offices now occupied and used by the board of trustees and state mineralogist and the museum, library and laboratory of the mining bureau located in San Francisco as provided for by a certain act of the legislature approved March 23, 1893, and hereafter referred to in section 14 hereof, and shall maintain such offices, museum, library and laboratory for the purposes provided in this act.

Power to enter mines.

§ 8. Said state mineralogist or qualified assistant shall have full power and authority at any time to enter or examine any and all mines, quarries, wells, mills, reduction works, refining works and other mineral properties or working plants in this state in order to gather data to comply with the provisions of this act.

Report.

§ 9. The state mineralogist shall make a biennial report to the governor on or before the 15th day of September next preceding the regular session of the legislature.

Disposition of receipts.

§ 10. All moneys received by the state mining bureau or any officer thereof (except such as may be paid to them by the state for disbursement) shall be receipted for by the state mineralogist or other officer authorized by him to act in his place and at least once a month accounted for by him to the state controller and paid into the state treasury to the credit of a fund which is hereby created and designated "state mining bureau fund." All moneys now in the possession of the state mining bureau or any officer thereof received from any source whatsoever, shall be immediately paid over to the state mineralogist and by him accounted for to the controller and paid into the state treasury to the credit of said fund. Said fund shall be used and is hereby appropriated for the use of said bureau in carrying out the purposes of this act.

Gifts.

§ 11. The said state mineralogist is hereby authorized and empowered to receive on behalf of this state, for the use and benefit of the state mining bureau, gifts, bequests, devises and legacies of real or other property and to use the same in accordance with the wishes of the donors, and if no instructions are given by said donors, to manage, use, and dispose of the gifts and bequests and legacies for the best interests of said state mining bureau and in such manner as he may deem proper.

Exhibition collections.

§ 12. The state mineralogist may whenever he deems it advisable, prepare a special collection of ores and minerals of California to be sent to or used at any world's fair or exposition in order to display the mineral wealth of the state.

Sale of reports, etc.

§ 13. The state mineralogist is hereby empowered to fix a price upon and to dispose of to the public, at such price, any and all publications of the state mining bureau, including reports, bulletins, maps, registers or other publications, such price shall approximate the cost of publication and distribution. Any and all sums derived from such disposition, or from gifts or bequests made, as hereinbefore provided must be accounted for by said state mineralogist and turned over to the state treasurer to be credited to the mining bureau fund as provided for in section 10. He is also empowered to furnish without cost to public libraries the publications of the bureau, and to exchange publications with other geological surveys and scientific societies, etc.

Successor to board.

§ 14. The state mineralogist provided for by this act shall be the successor in interest of the board of trustees of the state mining bureau, and the state mineralogist, under and by virtue of that certain act, entitled "An act to provide for the establishment, maintenance, and support of a bureau, to be known as the state mining bureau, and for the appointment and duties of a board of trustees, to be known as the board of trustees of the state mining bureau, who shall have the direction, management, and control of said state mining bureau, and to provide for the appointment, duties, and compensation of a state mineralogist, who shall perform the duties of his office under the control, direction and supervision of the board of trustees of the state mining bureau," approved March 23, 1893, and all books, papers, documents, personal property, records, and property of every kind and description obtained or possessed, or held or controlled by the said board of trustees of the said state mining bureau, and the state mineralogist, and the clerks and employees thereof, under the provisions of said act of

March 23, 1893, or any act supplemental thereto or amendatory thereof, shall immediately be turned over and delivered to the said state mineralogist herein provided for, who shall have charge and control thereof.

Repealed.

§ 15. That certain act entitled "An act to provide for the establishment, maintenance, and support of a bureau, to be known as the state mining bureau, and for the appointment and duties of a board of trustees, to be known as the board of trustees of the state mining bureau, and to provide for the appointment, duties and compensation of a state mineralogist, who shall perform the duties of his office under the control, direction, and supervision of the board of trustees of the state mining bureau," approved March 23, 1893, together with all acts amendatory thereof and supplemental thereto and all acts in conflict herewith are hereby repealed.

This act was not affected by the act of June 10, 1915, Stats. 1915, p. 1404 (Act 2894). See section 54 of that act.

STATE MINING BUREAU—DEPARTMENT OF PETROLEUM AND GAS.

ACT 2894—An act establishing and creating a department of the state mining bureau for the protection of the natural resources of petroleum and gas from waste and destruction through improper operations in production; providing for the appointment of a state oil and gas supervisor; prescribing his duties and powers; fixing his compensation; providing for the appointment of deputies and employees; providing for their duties and compensation; providing for the inspection of petroleum and gas wells; requiring all persons operating petroleum and gas wells to make certain reports; providing precedence for arbitration of departmental rulings; creating a fund for the purposes of the act; providing for assessment of charges to be paid by operators and providing for the collection thereof; and making an appropriation for the purposes of this act.

History: Approved June 10, 1915. In effect August 9, 1915. Stats. 1915, p. 1404. Amended (1) June 1, 1917; in effect July 31, 1917; Stats. 1917, p. 1586; (2) May 25, 1919; in effect July 25, 1919; Stats. 1919, p. 1165.

Department of petroleum and gas created.

§ 1. A separate department of the state mining bureau is hereby established and created, to be known as the department of petroleum and gas. Such department shall be under the general jurisdiction of the state mineralogist. He shall appoint a supervisor who shall be either a competent engineer or geologist experienced in the development and production of petroleum, or a competent oil operator, having had not less than five year' actual practical experience in California oil fields, and who shall be designated the "state oil and gas supervisor," and whose term of office shall be four years from the date of his appointment. [Amendment of 1919. In effect July 25, 1919. Stats. 1919, p. 1166.]

State mineralogist's compensation. Secretary's added compensation. Supervisor's salary.

§ 2. For his services in the general supervision of said department, the state mineralogist shall receive as compensation one thousand four hundred dollars annually which shall be in addition to his compensation fixed in section two of the act of June 16, 1913, relating to the state mining bureau.

The secretary of the state mining bureau shall receive for his services in connection with the department of petroleum and gas, a sum not to exceed six hundred dollars annually, which sum shall be in addition to his compensation paid from the funds of the state mining bureau.

The supervisor shall receive an annual salary of six thousand dollars, and shall be allowed his necessary traveling expenses. The state mineralogist may, at the request of the state oil and gas supervisor, and subject to the civil service laws of the state, appoint one chief clerk at a salary of not to exceed one thousand eight hundred dollars annually; twelve office assistants or stenographers each at a salary not to exceed one thousand two hundred dollars annually; four geological draftsmen each at a salary not to exceed one thousand five hundred dollars annually; four petroleum engineers each at a salary not to exceed two thousand four hundred dollars annually; twelve inspectors each at a salary not to exceed one thousand eight hundred dollars annually.

The additional salary herein authorized to be paid to the state mineralogist and the secretary of the state mining bureau and the salaries of the supervisor and of the deputies, clerks, stenographers, assistants and other employees shall be paid out of the funds hereinafter provided for at the times and in the manner that salaries of other state officers and employees are paid. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1586.]

Duty of oil and gas supervisor.

§ 3. It shall be the duty of the state oil and gas supervisor so to supervise the drilling, operation and maintenance and abandonment of petroleum or gas wells in the state of California, as to prevent, as far as possible, damage to underground petroleum and gas deposits from infiltrating water and other causes and loss of petroleum and natural gas.

Deputies.

§ 4. It shall be the duty of the state oil and gas supervisor to appoint one chief deputy and five field deputies, one for each of the districts hereinafter provided for, and prescribe their duties and fix their compensation, which shall not exceed four thousand dollars per annum for the chief deputy, and not to exceed three thousand six hundred dollars per annum for each field deputy. Such deputies shall serve during the pleasure of the supervisor. He shall also employ an attorney at a compensation not exceeding three thousand dollars per year, payable out of said fund. The supervisor and the deputies shall not be subject to the civil service act. [Amendment of May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1166.]

This section was also amended June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1587.

Qualifications of deputies.

§ 5. The chief deputy appointed by the supervisor shall be a competent engineer or geologist experienced in the development and production of petroleum; and each field deputy shall be either a competent engineer or geologist, experienced in the development and production of petroleum, or shall be a competent and experienced oil operator, having had not less than five years' actual experience in the oil fields of the state of California. At the time any field deputy is appointed, notice of such appointment shall be transmitted in writing to the board of commissioners of the district for which said deputy is appointed, which field deputy shall maintain an office in the district which he is appointed, convenient of access to the petroleum and gas operators therein. The office shall be open and the deputy shall be present at certain specified times, which shall be posted at such office. [Amendment of May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1166.]

This section was also amended June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1587.

Deputies' duties.

§ 6. It shall be the duty of each deputy, to collect all necessary information regarding the oil wells in the district, with a view to determining the presence and source of water in the oil sand, and to make all maps and other accessories necessary to deter-

mine the presence and source of water in the oil sands. This work shall be done with the view to advising the operators as to the best means of protecting the oil and gas sands, and with a view to aiding the supervisor in ordering tests or repair work at wells. All such data shall be kept on file in the office of the deputy oil and gas supervisor of the respective district.

Records open to inspection.

§ 7. The records of any and all operators, when filed with the deputy supervisor as hereinafter provided, shall be open to inspection to those authorized in writing by such operators, to the state officers, and to the board of commissioners hereinafter provided for. Such records shall in no case other than those hereinafter and in this section provided, be available as evidence in court proceedings and no officer or employee or member of any board of commissioners shall be allowed to give testimony as to the contents of said records, except at such court proceedings as are hereinafter provided for in the review of the decision of the state oil and gas supervisor, or a board of commissioners, or in any proceedings initiated for the enforcement of an order of the supervisor, or any proceeding initiated for the enforcement of a lien created by this act, or any proceeding for the collection of the assessment levied under and pursuant to the provisions of this act or in criminal proceedings arising out of such records, or the statements upon which they are based. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1588.]

Tests and remedial work.

§ 8. It shall be the duty of the supervisor to order such tests or remedial work as in his judgment are necessary to protect the petroleum and gas deposits from damage by underground water, to the best interests of the neighboring property owners, and the public at large. The order shall be in written form, signed by the supervisor, and shall be served upon the owner of the well, or the local agent appointed by such owner, either personally or by mailing a copy of said order to the post-office address given at the time the local agent is designated, or if no such local agent has been designated, by mailing a copy of said order to the last known post-office address of said owner, or if the owner be unknown by posting a copy of said order in a conspicuous place upon the property, and publishing the same in some newspaper of general circulation throughout the county in which said well is located, once a week for two successive weeks. Said order shall specify the condition sought to be remedied and the work necessary to protect such deposits from damage from underground waters. For this purpose each operator or owner shall designate an agent, giving his post-office address, who resides within the county where the well or wells are located, upon whom all orders or notices provided for in this act may be served.

Whenever the supervisor or any deputy supervisor or inspector makes any written recommendation or gives any written direction concerning the drilling, testing or other operation in any oil or gas well drilled, in process of drilling or being abandoned, and the operator, owner or representative of either, serves written notice, either personally or by mail, addressed to the supervisor or his deputy at his office in the district, requesting that a definite order be made upon such subject, the supervisor or his deputies shall, within five days after such notice, deliver a final written order on such subject matter in such manner and form that an appeal may be taken at once therefrom, to the board of oil and gas commissioners of the district created under this chapter. [Amendment of May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1167.]

This section was amended June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1588.

Owner's objections.

§ 9. The well owner, or his or its local agent, may, within ten days from the date of the service of any order from the supervisor or his chief deputy or field deputy, file

with the supervisor or his deputy in the district where the property is located, a written statement that the order is not acceptable, and that appeal from said order is taken to the board of commissioners of said district under the provisions of this chapter. Such appeal shall operate as a stay of any order issued under or pursuant to the provisions of this act. Immediately upon the filing of such notice of appeal, the deputy supervisor of the district, as secretary ex officio of the board of oil and gas commissioners, shall immediately call a meeting of said commissioners to hear and pass upon said appeal. The hearing upon said appeal before said district board of oil and gas commissioners, shall be de novo and at such place in the district as the commissioners may designate, and within ten days from the taking of such appeal; five days' notice in writing shall be given to the appellant of the time and place of such hearing, and for good cause the commissioners may postpone such hearing on the application of appellant, or the state oil and gas supervisor, or the field deputy in said district, for not exceeding five days. [Amendment of May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1167.]

This section was also amended June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1588.

State divided into five districts.

§ 10. For the purposes of this act, the state shall be divided into five districts, as follows:

District No. 1, including the counties of Los Angeles, Riverside, Orange, San Diego, Imperial, and San Bernardino.

District No. 2, the county of Ventura.

District No. 3, including the counties of Santa Barbara, San Luis Obispo, Monterey, Santa Cruz, San Benito, Santa Clara, Contra Costa, San Mateo, Alameda, and San Francisco.

District No. 4, including the counties of Tulare, Inyo, and Kern.

District No. 5, including the counties of Fresno, Madera, Kings, Mono, Mariposa, Merced and all other counties in California not included in any of said other districts.

District oil and gas commissioners elected.

There shall be elected, at the times and in the manner hereinafter provided, district oil and gas commissioners for each such districts, as follows: For district number one, five; for district number two, five; for district number three, five; for district number four, seven; for district number five, five.

Said district oil and gas commissioners shall be elected by vote of the companies, individuals, copartnerships or associations, who shall have been assessed, and whose names shall appear on the last record of assessments (next preceding such election) for and on account of the fund in this act provided to be raised, within said districts respectively, said vote to be taken at a meeting to be held in each of said districts, respectively, and on the third Monday in September of each year, such place and the time and details of such meeting to be fixed by the state oil and gas supervisor, and of which meeting at least two weeks previous notice shall have been given by letter addressed to each of said persons, corporations, copartnerships and associations, entitled to vote as aforesaid, at his or its post-office address or principal place of business.

Votes to which voter entitled. Term.

At said meeting each of those entitled to vote as herein provided may be represented by one person holding the written authority of such voter to act for him at such meeting. At said meeting each voter shall be entitled to one vote for each member of the board of district oil and gas commissioners who are required to be selected for such district. In addition thereto, in each district in which five commissioners are to be

elected, each voter shall be entitled, for each one hundred dollars, or fraction thereof, which said voter shall have paid in accordance with his last assessment hereunder, to cast one vote for the two commissioners who are elected for three years; and in each district in which seven commissioners are to be elected, each voter shall be entitled, for each one hundred dollars, or fraction thereof, which such voter shall have paid in accordance with his last assessment hereunder, to cast one vote for the three commissioners who are elected for three years. In all subsequent elections the qualification of voters in the election of a commissioner shall be the same as in the election of the commissioner whose successor in office is being elected. Said meeting shall select by ballot, by a majority vote of the votes represented, the number of persons as hereinbefore specified to act as district oil and gas commissioners for such district. In any district entitled to seven commissioners, two shall be chosen for a term of one year, two for two years and three for three years. In any district entitled to five commissioners, one shall be chosen for a term of one year, two for two years and two for three years.

Certificate of election. Eligibility.

The chairman and secretary of the meeting shall issue a written certificate to the state oil and gas supervisor, setting forth the result of such election, and the name and address of each of the persons elected at said meeting as the district oil and gas commissioners for said district, and the term for which each has been elected. No person shall be eligible as a district oil and gas commissioner who is not a resident of the district for which he is elected, nor shall any person be eligible for such position who is not actually engaged in the business of oil and gas development or production within the district. Upon receipt of the certificate so made by the chairman and secretary of any such meeting, the state oil and gas supervisor shall issue a certificate of election to the respective persons in said district named as the district oil and gas commissioners for said district, and for the periods of one, two or three years from and after the first Monday in October, 1917, as shall be shown in such certificate, and until their respective successors shall have been elected.

Chairman.

Within thirty days after their appointment by the state oil and gas supervisor, the district oil and gas commissioners for each district shall meet at a time and place within the district to be designated by the state oil and gas supervisor, and shall thereupon select one of the number as chairman. The deputy supervisor of the district shall be ex officio secretary of said board, and shall keep a record of its proceedings, and his office shall be the office of the commissioners.

Assistant secretary.

Each board of commissioners may appoint one of its number as assistant secretary who shall, in the absence of the secretary, keep the minutes of said board, and shall perform such further secretarial duties as the board, by resolution, may direct.

Attorney.

In case of any litigation in which any district board of oil and gas commissioners shall be a party, such board shall have full authority to employ a competent attorney for each such litigation, and to fix his compensation, either before or after his services shall be concluded, and said compensation shall, when certified by the chairman of said board and by the state board of control, be paid from the fund created by this chapter.

Expenses.

Said commissioners shall serve without compensation, except their necessary traveling expenses and other actual expenses incident to their office.

In case of any hearing upon appeal before any board of district oil and gas com-

missioners, they shall have authority to employ a competent stenographer to take the testimony and proceedings, and in case either party shall take proceedings in the superior court, by writ of certiorari, from any order or decision of such board, it shall cause the stenographer so employed to make a full transcript of the testimony and proceedings before said board of commissioners, and three copies in addition to the original thereof. The original and one copy shall be for the use of said board of commissioners, and one copy shall be furnished to the state oil and gas supervisor, and one copy shall be furnished to the owner of the well in question. The cost and expense of employing any such stenographer, and the transcribing of his notes and making said copies, shall be part of the expenses of said commissioners, and when certified by the chairman of said board, and audited by the state board of control, shall be paid from said fund.

The traveling expenses of said commissioners, and all actual expenses incurred by or under the order of said commissioners, in the hearing and determination and carrying out of orders appealed to them, shall be certified by the deputy supervisor and the chairman of such board of supervisors, to the state supervisor, and when audited by him and by the state board of control, shall be paid from said fund.

Successors elected.

On the third Tuesday in September of each year at an hour and place in said respective districts to be fixed by the state oil and gas supervisor, and of which notices shall have been given as hereinbefore specified, the successor of each of the district oil and gas commissioners whose term of appointment shall expire that year, shall be elected and qualified in the manner and subject to the provisions hereinbefore set forth, and the term of each shall be for a period of three years from and after the first Monday in October next succeeding.

Recall of commissioners.

All, either or any of the district oil and gas commissioners elected in any district may be recalled by the votes of a majority of the qualified votes of the district entitled to vote as to such commissioners, respectively. In case there shall be filed in the office of the state oil and gas supervisor, a written petition, signed by not less than forty per cent of those entitled to vote as to the election of any commissioner or commissioners, asking the recall of such commissioner or commissioners, said state oil and gas supervisor shall, within ten days thereafter, order and give notice of, a special election in such district to fill the office or offices of the commissioner or commissioners named in said petition for recall; and shall cause notice to be given of said election in the manner and for the time required for regular election, and said notice shall fix the time and place of such election. At such election, the commissioner or commissioners named in such petition for recall shall be voted upon as though candidates for election for the unexpired portion of the term for which they, respectively, were originally elected, and any other candidate or candidates may, at the same time, be voted upon. It shall require a majority of all the qualified votes entitled to vote for such commissioners, respectively, to constitute an election. In case less than a majority of all qualified votes shall be cast for any candidate, said recall shall be deemed to have failed as to the commissioner concerning whose office such vote was taken; and in case such commissioner himself shall receive a majority of the votes, said recall shall be deemed to have failed, and in either of such cases, such commissioner shall continue to serve until the expiration of his term, as though no such special election had been held. But in case any person other than such commissioner shall receive a majority of the votes for such unexpired term, then such recall shall become effective and the office of the commissioner so recalled shall be vacant and upon written certificate of such election being filed with the state oil and gas supervisor, the person so chosen and elected for such

unexpired term shall become the successor of the commissioner so recalled, and a certificate of his election for such unexpired term shall be issued and transmitted to him by the state oil and gas supervisor. And like proceedings shall be had in case more than one commissioner shall be included in said petition for recall.

Voting in recall elections.

In all recall elections, qualifications for voters and the number of votes which they will be entitled to cast shall be the same as they respectively were in the election of the commissioner as to whom such recall election is being held.

Vacancy.

In case of vacancy caused by the death, resignation or removal from district or ceasing to be engaged in the business of development or production of oil or gas in the district as to the office of any commissioner, such vacancy shall be filled until the next annual election by the remaining commissioners of such district.

Advice of supervisor.

Upon any subject in which any commissioner is personally interested, or upon which any corporation, copartnership, association or individual by whom he is employed is directly interested as a party, such commissioner shall not be entitled to sit or vote. The board of commissioners shall be entitled to call upon the supervisor for advice, and written report upon any matter referred to the board of commissioners, and the supervisors shall be entitled to call meetings of the commissioners at the office of the field supervisor, upon five days' written notice, to obtain their written advice upon any matters relating to his work within their district. [Amendment of May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1168.]

This section was also amended June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1589.

Investigation upon complaint.

§ 11. Upon receipt by the supervisor or deputy supervisor of a written complaint specifically setting forth the condition complained against, signed by a person, firm, corporation or association owning land or operating wells within a radius of one mile of any well or group of wells complained against, or upon the written complaint specifically setting forth the condition complained against, signed by any one of the board of commissioners for the district in which said well or group of wells complained against is situated, the supervisor must make an investigation of said well or wells and render a written report stating the work required to repair the damage complained of, or stating that no work is required. A copy of said order must be delivered to the complainant, or if more than one, each of said complainants, and if the supervisor order the damage repaired, a copy of such order shall be delivered to each of the owners, operators or agents having in charge the well or wells upon which the work is to be done. Said order shall contain a statement of the conditions sought to be remedied or repaired and a statement of the work required by the supervisor to repair such condition. Service of such copies shall be made by mailing to such persons at the post-office address given. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1592.]

Oaths and subpoenas. Depositions. Refusal to comply with order, etc., misdemeanor.

§ 12. In any proceeding before the board of commissioners as herein provided, or in any other proceeding or proceedings instituted by the supervisor for the purpose of enforcing or carrying out the provisions of this act, or for the purpose of holding an investigation to ascertain the condition of any well or wells complained of, or which in the opinion of the supervisor may reasonably be presumed to be improperly drilled, operated, maintained or conducted, the supervisor and the chairman of the board of commissioners shall have the power to administer oaths and may apply to a judge

of the superior court of the state of California, in and for the county in which said proceeding or investigation is pending, for a subpoena for witnesses to attend at said proceeding or investigation. Upon said application of said supervisor or said chairman of said board of commissioners, said judge of said superior court must issue a subpoena directing said witness to attend said proceeding or investigation; provided, however, that no person shall be required to attend upon such proceeding, either with or without such books, papers, documents or accounts unless residing within the same county or within thirty miles of the place of attendance. But the supervisor or the chairman of the board of commissioners may in such case cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in superior courts of this state, and to that end may, upon application to a judge of the superior court of the county within which said proceeding or investigation is pending, obtain a subpoena compelling the attendance of witnesses and the production of books, papers and documents at such places as he may designate within the limits hereinbefore prescribed. Witnesses shall be entitled to receive the fees and mileage fixed by law in civil causes, payable from the fund hereinafter created. In case of failure or neglect on the part of any person to comply with any order of the supervisor as hereinbefore provided, or any subpoena, or upon the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, or upon refusal or neglect to appear and attend at any proceeding or hearing on the day specified, after having received a written notice of not less than ten days prior to such proceeding or hearing, or upon his failure, refusal or neglect to produce books, papers or documents as demanded in said order or subpoena upon such day, such failure, refusal or neglect shall constitute a misdemeanor and each day's further failure, refusal or neglect shall be and be deemed to be a separate and distinct offense, and it is hereby made the duty of the district attorney of the county in which said proceeding, hearing or investigation is to be held, to prosecute all persons guilty of violating this section by continuous prosecution until such person appears or attends or produces such books, papers or documents or complies with said subpoena or order of the supervisor or chairman of the board of commissioners. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1593.]

Decision of board.

§ 13. Within ten days after hearing the evidence, the board of commissioners must make a written decision with respect to the order appealed from and in case the same is affirmed or modified, shall retain jurisdiction thereof until such time as the work ordered to be done by such order shall be finally completed. This written decision shall be served upon the owner or his agent and shall supersede the previous order of the supervisor. In case no written decision be made by said board of commissioners within thirty days after the date of notice by the supervisor as provided in section ten hereof, the order of the supervisor shall be effective and subject only to review by writ of certiorari from the superior court as provided in section fourteen hereof. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1594.]

Commencement of work. Review of decision. Extent of review. Lien enforced.

§ 14. On or before thirty days after the date of serving an order of the supervisor, provided for in section eight hereof, or in case of appeal to the board of commissioners, on or before thirty days after date of serving the decision of the board, as provided in sections twelve and thirteen hereof, or in the event review be taken of the order of the board of commissioners within ten days after affirmance of such order, the owner shall commence in good faith the work ordered and continue until completion. If the work has not been so commenced and continued to completion, the supervisor shall appoint agents as he deems necessary who shall enter the premises and perform the

work. Accurate account of such expenditures shall be kept and the amount paid from the fund hereinafter created upon the warrant of the state controller. Any amount so expended shall constitute a lien against the property upon which the work is done. The decision of the board of commissioners in such case may be reviewed by writ of certiorari from the superior court of the county in which the district is situated, if taken within ten days after the service of the order upon said owner, operator or agent of said owner or operator as herein provided; or within ten days after decision by the board of commissioners upon petitions by the supervisor. Such writ shall be made returnable not later than ten days after the issuance thereof and shall direct the district board of oil and gas commissioners to certify their record in the cause to such court. On the return day the cause shall be heard by the court unless for good cause the same be continued, but no continuance shall be permitted for a longer period than thirty days. No new or additional evidence shall be introduced in the court before the cause shall be heard upon the record of the district board of oil and gas commissioners. The review shall not be extended further than to determine whether or not—

1. The commission acted without or in excess of its jurisdiction.
2. The order, decision or award was procured by fraud.
3. The order, decision, rule or regulation is unreasonable.
4. The order, decision, regulation or award is clearly unsupported by the evidence.

If no review be taken within ten days, or if taken in case the decision of the board is affirmed, the lien upon the property shall be enforced in the same manner as the other liens on real property are enforced, and shall first be enforced against the owner of the well, against the operator and against the personal property and fixtures used in the construction or operation thereof, and then if there be any deficiency against the land upon which the work is done, upon the request of the supervisor, the state controller must, in the manner provided in section forty-four of this act, bring an action for the enforcement of said lien. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1594.]

Wells to be cased. Shut-off test.

§ 15. It shall be the duty of the owner of any well now drilled, or that may be drilled in the state of California, on lands producing or reasonably presumed to contain petroleum or gas, to properly case such well or wells with metal casing, in accordance with methods approved by the supervisor, and to use every effort and endeavor in accordance with the most approved methods to effectually shut off all water overlying or underlying the oil or gas-bearing strata, and to effectually prevent any water from penetrating such oil or gas-bearing strata.

Whenever it appears to the supervisor that any water is penetrating oil or gas-bearing strata, he may order a test of water shut-off and designate a day upon which the same shall be held. Said order shall be in written form and served upon the owner of said well at least ten days prior to the day designated in said order as the day upon which said shut-off test shall be held. Upon the receipt of such order it shall be the duty of the owner to hold said test in the manner and at the time prescribed in said order. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1595.]

Abandonment of well.

§ 16. It shall be the duty of the owner of any well referred to in this act, before abandoning the same, or before removing the rig, derrick or other operating structure therefrom, or removing any portion of the casing therefrom, to use every effort and endeavor in accordance with methods approved by the supervisor, to shut off and exclude all water from entering oil bearing strata encountered in the well. Before any well is abandoned the owner shall give written notice to the supervisor, or his local deputy, of his intention to abandon such well and of his intention to remove the derrick or any

portion of the casing from such well and the date upon which such work of abandonment or removal shall begin. The notice shall be given to the supervisor, or his local deputy, at least five days before such proposed abandonment or removal. The owner shall furnish the supervisor, or his deputy with such information as he may request showing the condition of the well and proposed method of abandonment or removal. The supervisor, or his deputy, shall before the proposed date of abandonment or removal, furnish the owner with a written order of approval of his proposal or a written order stating what work will be necessary before approval, to abandon or remove will be given. If the supervisor shall fail within the specified time to give the owner a written order such failure shall be considered as an approval of the owner's proposal to abandon the well, or to remove the rig or casing therefrom. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1596.]

Notice of intention to drill.

§ 17. The owner or operator of any well referred to in this act shall, before commencing the work of drilling an oil or gas well, file with the supervisor, or his local deputy, a written notice of intention to commence drilling. Such notice shall also contain the following information: (1) Statement of location and elevation above sea level of the floor of the proposed derrick and drill rig; (2) the number or other designation by which such well shall be known, which number or designation shall not be changed after filing the notice provided for in this section, without the written consent of the supervisor being obtained therefor; (3) the owner's or operator's estimate of the depth of the point at which water will be shut off, together with the method by which such shut-off is intended to be made and the size and weight of casing to be used; (4) the owner's or operator's estimate of the depth at which oil or gas producing sand or formation will be encountered.

After the completion of any well the provisions of this section shall also apply, as far as may be, to the deepening or redrilling of any well, or any operation involving the plugging of any well or any operations permanently altering in any manner the casing of any well; and provided, further, that the number or designation by which any well heretofore drilled has been known, shall not be changed without first obtaining a written consent of the supervisor. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1596.]

Drilling log. Prospect wells.

§ 18. It shall be the duty of the owner or operator of any well referred to in this act, to keep a careful and accurate log of the drilling of such well, such log to show the character and depth of the formation passed through or encountered in the drilling of such well, and particularly to show the location and depth of the water bearing strata, together with the character of the water encountered from time to time (so far as ascertained) and to show at what point such water was shut off, if at all, and if not, to so state in such log, and show completely the amounts, kinds and size of casing used, and show the depth at which oil-bearing strata are encountered, the depth and character of same, and whether all water overlying and underlying such oil-bearing strata as successfully and permanently shut off so as to prevent the percolation or penetration into such oil-bearing strata; such log shall be kept in the local office of the owner or operator, and together with the tour reports of said owner or operator, shall be subject, during business hours, to the inspection of the supervisor, or any of his deputies, or any of the commissioners of the district, except in the case of a prospect well as hereinafter defined. Upon the completion of any well, or upon the suspension of operations upon any well, for a period of six months if it be a prospect well, or for thirty days, if it be in proven territory, a copy of said log in duplicate, and in such form as the supervisor may direct, shall be filed within ten days after such completion, or after the expiration of

said thirty-day period, with the field supervisor, and a like copy shall be filed upon the completion of any additional work in the deepening of any such well.

The state oil and gas supervisor shall determine and designate what wells are prospect wells within the meaning of this act and no reports shall be required from such prospect wells until six months after the completion thereof.

The owner or operator of any well drilled previous to the enactment of this act shall furnish to the supervisor or his deputy a complete and correct log in duplicate and in such form as the supervisor may direct, or his deputy, of such well, so far as may be possible, together with a statement of the present condition of said well. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1597.]

Notice of shut-off test.

§ 19. It shall be the duty of the owner or operator of any well referred to in this act to notify the deputy supervisor of the time at which the owner or operator shall test the shut-off of water in any such well. Such notice shall be given at least five days before such test. The deputy supervisor or an inspector designated by the supervisor shall be present at such test and shall render a report in writing of the result thereof to the supervisor, a duplicate of which shall be delivered to the owner. If any test shall be unsatisfactory to the supervisor he shall so notify the owner or operator in said report and shall within five days after the completion of such test, order additional tests of such work as he deems necessary to properly shut off the water in such well and in such order shall designate a day upon which the owner or operator shall again test the shut-off of water in any such well, which day may, upon the application of the owner, be changed from time to time in the discretion of the deputy supervisor. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1597.]

Statement of oil produced.

§ 20. It shall be the duty of every person, association or corporation producing oil in the state of California, to file with the supervisor, at his request but not oftener than once in each month, a statement showing amount of oil produced during the period indicated from each well, together with its gravity and the amount of water produced from each well, estimated in accordance with methods approved by the supervisor, and the number of days during which fluid was produced from each well, the number of wells drilling, producing, idle or abandoned, owned or operated by said person, association or corporation; provided, that, upon request and satisfactory showing a longer interval may be fixed by the state oil and gas supervisor as to such reports in the case of any specific owner or operator.

This information shall be in such form as the supervisor may designate. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1598.]

Penalties.

§ 21. Any owner or operator of a well referred to in this act, or employee thereof, who refuses to permit the supervisor, or his deputy, to inspect the same, or who willfully hinders or delays the enforcement of this act, and every person, firm, or corporation, who violates any provision of this act, is guilty of a misdemeanor and shall be punishable by a fine of not less than one hundred dollars, or by imprisonment in the county jail for not less than thirty days, or by both such fine and imprisonment.

Primary interest of state.

§ 21a. The charges hereinafter provided for are directed to be levied by the state of California as necessary in the exercise of its police power and to provide a means by which to supervise and protect deposits of petroleum and gas within the state of Cali-

fornia, in which deposits the people of the state of California are hereby declared to have a primary and supreme interest. [New section added June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1598.]

Charges for support of department.

§ 22. Charges levied, assessed and collected as hereinafter provided upon the properties of every person, firm, corporation or association operating any well or wells for the production of petroleum in this state, or operating any well or wells for the production of natural gas in this state which gas wells are situate on lands situate within two miles, as near as may be, of any petroleum or gas well the production of which is chargeable under this act, shall be used exclusively for the support and maintenance of the department of petroleum and gas hereinbefore created, and shall be assessed and levied by the state mineralogist, and collected in the manner hereinafter provided. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1598.]

Annual charge on oil produced.

§ 23. Every person, firm, corporation or association operating any petroleum well or wells in this state shall annually pay a charge to the state treasurer at a uniform rate per barrel of petroleum produced for the preceding calendar year at the time and in the manner hereinafter provided, based upon a verified report as herein provided.

Annual charge on gas.

§ 24. Every person, firm, corporation or association operating any gas well or wells in this state shall annually pay a charge to the state treasurer based upon the amount of gas sold in the preceding calendar year, at a fixed rate per thousand cubic feet, at the times and in the manner hereinafter provided, based upon a verified report as herein provided. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1599.]

Annual charge per acre.

§ 25. Every person, firm, corporation or association owning any oil land, as determined by the supervisor, shall annually pay a charge to the state treasurer at the time and in the manner hereinafter provided, which charge shall be a uniform rate per acre. Said charge shall be based upon a verified report as provided herein; provided, however, that such lands so assessed shall not be called upon to pay more than one-tenth of the total charges or moneys proposed to be assessed, levied and collected under the provisions of this act for any one year.

In addition to taxes.

§ 26. The charges assessed, levied and to be collected under the provisions of this act shall be in addition to any and all charges, taxes, assessments or licenses of any kind or nature paid by or upon the properties assessed hereunder.

Estimate of moneys required.

§ 27. The state mineralogist shall annually, on or before the first Monday in March, acting in conjunction with the state board of control, make an estimate of the amount of moneys which shall be required to carry out the provisions of this act.

At the time of making such estimate, the state mineralogist shall report to the state board of control the amount of money in the petroleum and gas fund on the day such estimate is made, less the amount of money necessary for the support of the department of petroleum and gas for the remainder of the fiscal year, and the amount of such estimate shall in no event exceed the difference between the amount thus determined as remaining in the petroleum and gas fund at the end of the fiscal year and the sum of one hundred fifty thousand dollars. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1599.]

Form of report prescribed.

§ 28. The state mineralogist shall prescribe the form and contents of all reports for making the charge or other purposes to carry out the intent and provisions of this act, which form shall be mailed in duplicate to the person, firm, corporation or association owning property or assessed under the provisions of this act.

Annual report of corporations.

§ 29. Every person, firm, corporation or association chargeable under the provisions of this act, shall within ten days after the first Monday in March of each year, report to and file with the state mineralogist, a report in such form as said officer may prescribe, giving any and all items of information as may be demanded by said report, and necessary to carry out the provisions of this act, which report shall be verified by such person or officer as the state mineralogist may designate.

Failure or refusal to act.

§ 30. If any person, firm, corporation or association chargeable under the provisions of this act shall fail or refuse to furnish the state mineralogist within the time prescribed in this act the verified report provided for in this act, the state mineralogist must note such failure or refusal in the record of assessments hereinafter in this act provided for, and must make an estimate of the petroleum or gas production, or landed area to be assessed of any such person, firm, corporation or association and must assess the same at the amount thus estimated and compute the charge thereon, which assessment and charge shall be the assessment and charge for such year. And if in the succeeding year any such person, firm, corporation or association shall again fail and refuse to furnish the verified report required by this act, the state mineralogist shall make an estimate as aforesaid, which estimate shall not be less than twice the amount of the estimate made by him for the previous year, and shall note such failure or refusal as above provided, and the said estimate so made shall be the assessment or charge for said year. In case of each succeeding consecutive failure or refusal the said state mineralogist shall follow the same procedure until a true statement or report shall be furnished.

Penalty.

§ 31. Any person, firm, corporation or association failing or refusing to make or furnish any report which may be required pursuant to the provisions of this act, or who wilfully renders a false or fraudulent report, shall be guilty of a misdemeanor and subject to a fine of not less than three hundred dollars, nor more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or both such fine and imprisonment for each such offense. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1599.]

Extension of time of reports.

§ 32. The state mineralogist may, for good cause shown, by order entered upon his minutes, extend for not exceeding thirty days, the time fixed in this act for filing any report herein provided for.

Determination of rate.

§ 33. On or before the third Monday before the first Monday in July of each year, the state mineralogist shall determine the rate or rates which shall produce the sums necessary to be raised as provided in section twenty-seven of this act. Within the same time the said state mineralogist shall extend into the proper column of the record of assessments hereinafter provided for, the amount of charges due from each person, firm, corporation or association. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1599.]

Assessments.

§ 34. Between the first Monday in March and the third Monday before the first Monday in July of each year, the state mineralogist must assess and levy the charges as and in the manner provided for in this act. The assessments must be made to the person, firm, corporation or association owning or operating the property subject to assessment hereunder on the first Monday in March. If the name of the owner is unknown to the state mineralogist, such assessment must be made to unknown owners. Clerical errors occurring or appearing in the name of any person, firm, corporation or association whose property is properly assessed and charged, or in the making, or extension of any assessment or charge upon the records, which do not affect the substantial rights of the payer, shall not invalidate the assessment or charge.

Board of review.

§ 35. The state mineralogist and the chairman of the state board of control and the chairman of the state board of equalization shall constitute a board of review, correction and equalization, and shall have all the powers and perform such duties as usually devolve upon a county board of equalization under the provisions of section three thousand six hundred seventy-two of the Political Code. The state mineralogist shall act as secretary of said board, and shall keep an accurate minute of the proceedings thereof. Said board of review, correction and equalization shall meet at the state capitol on the third Monday before the first Monday in July of each year, and remain in session from day to day until the first Monday in July for the purpose of carrying out the provisions of this section.

Notice of assessment published.

§ 36. On the third Monday before the first Monday in July of each year the state mineralogist shall cause to be published a notice, one or more times, in a daily, or weekly, or semiweekly newspaper of general circulation published in the counties of Fresno, Kern, Los Angeles, Orange, Ventura and Santa Barbara, and such other counties as may contain lands or produce oil or gas charged under and pursuant to the terms and provisions of this act, if one be published therein, otherwise in a newspaper of general circulation published in the county nearest to such county designated herein in which no such paper is published, that the assessment of property and levy of charges under and in pursuance of this act has been completed and that the records of assessments containing the charges due will be delivered to the state controller on the first Monday in July, and that if any person, firm, corporation or association is dissatisfied with the assessment made or charge fixed by the state mineralogist, he or it may, at any time before said first Monday in July, apply to said board of review, correction and equalization to have the same corrected in any particular. The said board shall have the power at any time before said first Monday in July to correct the record of assessments and may increase or decrease any assessment or charge therein if in its judgment the evidence presented or obtained warrants such action. Costs of such publication in any county shall be paid from the petroleum and gas fund; provided, however, that the omission to publish said notice as hereinbefore and in this section provided, shall not affect the validity of any assessment levied under or pursuant to the provisions of this act. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1600.]

Record of assessments and charges.

§ 37. The state mineralogist must prepare each year a book in one or more volumes, to be called the "Record of assessments and charges for the petroleum and gas fund," in which must be entered, either in writing or printing, or both writing and printing, each assessment and levy or charge made by him upon the property provided to be

assessed and charged under this act, describing the property assessed, and such assessments may be classified and entered in such separate parts of said record as said state mineralogist shall prescribe. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1600.]

Record delivered to controller.

§ 38. On the first Monday in July the state mineralogist must deliver to the state controller the record of assessments and charges for the petroleum and gas fund, certified to by said state mineralogist, which certificate shall be substantially as follows: "I,, state mineralogist, do hereby certify that between the first Monday in March and the first Monday in July, 19...., made diligent inquiry and examination to ascertain all property and persons, firms, corporations and associations subject to assessment for the purpose of the petroleum and gas fund as required by the provisions of the act of legislature approved June 10, 1915, providing for the assessment and collection of charges for oil protection; that I have faithfully complied with all the duties imposed upon me by law; that I have not imposed any unjust or double assessment through malice or ill will, or otherwise; nor allowed any person, firm, corporation or association or property to escape a just assessment or charge through favor or regard, or otherwise." But the failure to subscribe such certificate to such record of assessments and charges for oil protection, or any certificate, shall not in any manner affect the validity of any assessment or charge. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1600.]

Charges due and payable.

§ 39. The charges levied and assessed under the provisions of this act shall be due and payable on the first Monday in July in each year, and one-half thereof shall be delinquent on the sixth Monday after the first Monday in July at six o'clock p. m. and unless paid prior thereto, fifteen per cent shall be added to the amount thereof, and unless paid prior to the first Monday in February next thereafter at six o'clock p. m., an additional five per cent shall be added to the amount thereof, and the unpaid portion, or the remaining one-half of said charges shall become delinquent on the first Monday in February next succeeding the day upon which they become due and payable, at six o'clock p. m.; and if not paid prior thereto five per cent shall be added to the amount thereof.

Publication of controller's notice.

§ 40. Within ten days after the receipt of the record of assessments and charges for oil protection, the state controller must begin the publication of a notice to appear daily for five days, in one daily newspaper of general circulation published in each of the counties of Fresno, Kern, Los Angeles, Orange, Ventura and Santa Barbara, and such other counties as may contain lands or produce oil or gas charged under or pursuant to the terms and provisions of this act, if one be published therein, otherwise for at least two times in a weekly or semiweekly paper of general circulation published therein, or if there be neither a daily nor weekly nor semiweekly paper of general circulation published in any one of such counties, then the publication of the notice for such county shall be made in a similar manner in a newspaper of general circulation published in the county nearest such county, specifying: (1) That he has received from the state mineralogist the record of assessments and charges for oil protection; (2) that the charges therein assessed and levied are due and payable on the first Monday in July and that one-half thereof will be delinquent on the sixth Monday after the first Monday in July at six o'clock p. m., and that unless paid to the state treasurer at the capital prior thereto, fifteen per cent will be added to the amount thereof, and unless paid prior to the first Monday in February next thereafter at six o'clock p. m., an additional five

per cent will be added to the amount thereof; and that the remaining one-half of said charges will become delinquent on the first Monday in February next succeeding the day upon which they become due and payable, at six o'clock p. m. and if not paid to the state treasurer at the capital prior thereto, five per cent will be added to the amount thereof. Costs of such publication in any county shall be paid from the petroleum and gas fund. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1601.]

Assessments constitute lien.

§ 41. The assessments and charges levied under the provisions of this act shall constitute a lien upon all the property of every kind and nature belonging to the persons, firms, corporations and associations assessed under the provisions hereof, which lien shall attach on the first Monday in March of each year. Such lien shall be enforced and said charges collected by an action by the state controller as provided in section forty-four of this act. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1601.]

Charges paid to state treasurer.

§ 42. All charges assessed and levied under the provisions of this act shall be paid to the state treasurer upon the order of the state controller. The controller must mark the date of payment of any charge on the record of assessments for the petroleum and gas fund and shall give a receipt for such payment in such form as the controller may prescribe. Errors appearing upon the face of any assessment on said record of assessments or overcharges may be corrected by the controller by and with the consent of the state board of control, in such manner and at such time as said controller and said board shall agree upon. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1602.]

Action to recover damages.

§ 43. Any person, firm, corporation or association claiming and protesting as herein provided that the assessment made or charges assessed against him or it by the state mineralogist is void, in whole or in part, may bring an action against the state treasurer for the recovery of the whole or any part of such charges, penalties or costs paid on such assessment, upon the grounds stated in said protest, but no action may be brought later than the third Monday in February next following the day upon which the charges were due, nor unless such person, firm, corporation or association shall have filed with the state controller at the time of payment of such charges, a written protest stating whether the whole assessment or charge is claimed to be void, or if a part only, what part, and the grounds upon which such claim is founded, and when so paid under protest the payment shall in no case be regarded as voluntary.

Procedure.

Whenever, under the provisions of this action, an action is commenced against the state treasurer, a copy of the complaint and of the summons must be served upon the treasurer, or his deputy. At the time the treasurer demurs or answers, he may demand that the action be tried in the superior court of the county of Sacramento, which demand must be granted. The attorney employed by the state oil and gas supervisor must defend such action; provided, however, the said mineralogist may at the request of the said oil and gas supervisor employ additional counsel, the expense of which employment shall be paid from the petroleum and gas fund. The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials and appeals are applicable to the proceedings herein provided for.

Failure to bring action.

A failure to begin such action within the time herein specified shall be a bar against the recovery of such charges. In any such action the court shall have the power to

render judgment for the plaintiff for any part or portion of the charge, penalties, or costs found to be void and so paid by plaintiff upon such assessment. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1602.]

Action to collect delinquent charges. Procedure.

§ 44. The state controller shall, on or before the thirtieth day of May next following the delinquency of any charge as provided in this act, bring an action in a court of competent jurisdiction, in the name of the people of the state of California, in the county in which the property assessed is situated, to collect any delinquent charges or assessments, together with any penalties or costs, which have not been paid in accordance with the provisions of this act and appearing delinquent upon the records of assessments and charges for the petroleum and gas fund in this action provided for.

The attorney for the state oil and gas supervisor shall commence and prosecute such action to final judgment and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings herein provided for. The state mineralogist may employ additional counsel to assist the attorney for the state oil and gas supervisor, and the expense of such employment shall be paid from the petroleum and gas fund.

Payments of the penalties and charges, or amount of the judgment recovered in such action must be made to the state treasurer. In such actions the record of assessment and charges for oil protection, or a copy of so much thereof as is applicable in said action, duly certified by the controller showing unpaid charges against any person, firm, corporation or association assessed by the state mineralogist is prima facie evidence of the assessment upon the property, the delinquency, the amount of charges, penalties, and costs due and unpaid to the state, and that the person, firm, corporation or association is indebted to the people of the state of California in the amount of charges and penalties therein appearing unpaid and that all the forms of law in relation to the assessment of such charges have been complied with. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1603.]

First assessment.

§ 45. The first assessment under the provisions of this act shall be as of the first Monday in March, nineteen hundred sixteen, and the reports of petroleum production and sales of gas herein provided to be assessed shall be reported for the calendar year ending December thirty-first, nineteen hundred fifteen. The lands herein provided to be assessed and charged shall be assessed to the owners thereof as of the first Monday in March, nineteen hundred sixteen.

Petroleum and gas fund.

§ 46. All the moneys heretofore paid to the state treasurer under or pursuant to the provisions of this act and deposited to the credit of the oil protection fund, shall be withdrawn from said fund, which is hereby abolished, and deposited to the credit of the petroleum and gas fund which is hereby created. All of the moneys hereafter paid to the state treasurer under or pursuant to the provisions of this act shall be deposited to the credit of the petroleum and gas fund. All moneys in such fund shall be expended under the direction of the state mineralogist, drawn from such fund for the purpose of this act upon warrants drawn by the controller of the state, upon demands made by the state mineralogist, and audited by the state board of control. Of the moneys in said petroleum and gas fund, when such action has been authorized by the state board of control, the state mining bureau may withdraw, without at the time furnishing vouchers and itemized statements, a sum not to exceed five hundred dollars, said sum so drawn to be used as a revolving fund where cash advances are necessary. At the close of each fiscal year, or at any other time, upon demand of the board of control, the moneys so

drawn shall be accounted for and substantiated by vouchers and itemized statements submitted to and audited by the board of control. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1603.]

Repair work.

§ 47. All moneys received in repayment of repair work done under the order and direction of the supervisor as hereinbefore provided, shall be returned and credited to the petroleum and gas fund. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1604.]

Supervisor's annual report.

§ 48. On or before the first day of October of each and every year the supervisor shall submit a report in writing to the state mineralogist showing the total number of barrels of petroleum produced in each county in the state during the previous calendar year, together with the total cost of said department for the previous fiscal year and the net amount remaining in the petroleum and gas fund available for the succeeding fiscal year's expense, also the total amount delinquent and uncollected from any assessments or charges levied under or pursuant to the provisions of this act. Such report shall also include such other information as the supervisor may deem advisable. The state mineralogist shall make public such statements promptly after receipt of the same from the supervisor for the benefit of all parties interested therein. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1604.]

Certificate showing names of persons claiming interest.

§ 49. The owner or operator of any lands or tenements subject to assessment under this act shall, within six months after this act goes into effect, file with the supervisor a certificate which shall contain the names of all the parties claiming an interest in or to said lands and full description of the property and the names of all parties in interest where such interest is held by lease, license or assignment. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1604.]

Definitions.

§ 50. Whenever the term "supervisor" is used in this act it shall be taken to mean the "state oil and gas supervisor," the term "oil" shall include "petroleum," the term "petroleum" shall include "oil," the term "gas" shall mean natural gas coming from the earth, the term "operator" shall mean any person, firm or corporation drilling, maintaining, operating, pumping, or in control of a well in any territory which the supervisor determines to be oil or gas producing territory, the term "owner" shall include "operator" when any oil or gas well is operated or has been operated or is about to be operated by any person, firm or corporation other than the owner thereof, and the term "operator" shall include "owner" when any such well is or has been or is about to be operated by or under the direction of the owner, except that all the provisions of this act relating to assessments for the purposes of this act based upon the annual production of oil or petroleum or sale of gas, as set forth in sections 22 to 45, inclusive of this act, shall apply only to a person, firm or corporation operating an oil or petroleum or gas well, and shall not apply to the owner of such well if some person, firm or corporation, other than such owner, has been actually operating the well during the whole period for which such annual charge is made, but in the event that the actual operation of any such well changes hands during such period, the charge shall be apportioned upon the basis of the oil or petroleum or gas produced, and the lien provided for in section 41 of this act shall be a lien against the property of each and all such operators.

Appropriation.

§ 51. There is hereby appropriated out of the moneys in the state treasury, not otherwise appropriated, the sum of twenty thousand dollars which said sum shall be immediately transferred by the state controller on the books of his office from the general fund to the "oil protection fund" created by section 46 of this act.

The above mentioned fund shall be available for the uses of the state mineralogist for the maintenance of the department of the petroleum and gas and for the necessary expenses of the controller in carrying out the provisions of this act. When the collections paid to the state treasurer, as herein provided, equal the sum of thirty thousand dollars then said sum of twenty thousand dollars shall be re-transferred from the oil protection fund to the general fund. The moneys received into the state treasury through the provisions of this act are hereby appropriated for the uses and purposes herein specified.

Constitutionality.

§ 52. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Construction of act.

§ 53. This act shall be liberally construed to meet its purposes and the supervisor shall have all powers which may be necessary to carry out the purposes of this act, but the provisions of this act shall not apply to any land or wells situated within the boundaries of an incorporated city where the drilling of oil wells is prohibited.

Repealed.

§ 54. That certain act entitled "An act to prevent injury to oil, gas or petroleum-bearing strata or formations by the penetration or infiltration of water thereon," approved March 20, 1909, together with all acts amendatory thereof and supplemental thereto and all acts in conflict herewith are hereby repealed. Nothing herein shall be construed as affecting the provisions of the act of June 16, 1913, establishing a state mining bureau.

CHAPTER 226.**MINING COMPANIES.**

Reference: See tit. "Mining Corporations."

CONTENTS OF CHAPTER.

ACT 2902. REMOVAL OF MINING COMPANIES.

REMOVAL OF MINING COMPANIES.

ACT 2902—An act authorizing mining companies of Aurora, Nevada, to remove their place of business to California.

History Became a law by constitutional provision without governor's approval February 27, 1864, Stats. 1863-64, p. 109.

MINING CORPORATIONS.

See Kerr's Cyc. Civil Code, tit. "Corporations."

MISSING PERSONS.

See Kerr's Cyc. Code Civil Procedure, §§ 1822, et seq.

CHAPTER 227.

MISSIONS.

CONTENTS OF CHAPTER.

ACT 2915. MISSION SAN FRANCISCO DE SOLANO.

MISSION SAN FRANCISCO DE SOLANO.

ACT 2915—An act to provide for restoration and rebuilding of the Mission San Francisco de Solano of the city of Sonoma.

History: Approved March 27, 1911, Stats. 1911, p. 522. Later act of June 6, 1913, Stats. 1913, appropriated \$2,000 for the completion of the restoration and rebuilding provided for in the present act.

The act appropriated \$5000 for the purpose indicated.

MOBS.

See Kerr's Cyc. Political Code, §§ 4452-4457.

CHAPTER 228.

MODESTO.

CONTENTS OF CHAPTER.

ACT 2925. FREEHOLDERS' CHARTER.

2926. GRANT OF FRANCHISE TO SUPPLY WATER TO MODESTO.

FREEHOLDERS' CHARTER.

ACT 2925—Freeholders' charter of Modesto.

History: Voted for and ratified at the special municipal election September 14, 1910; filed with the secretary of state February 3, 1911, Stats. 1911, p. 1493. The present charter superseded incorporation under the general act of 1883.

GRANT FRANCHISE TO SUPPLY WATER TO MODESTO.

ACT 2926—An act to grant to C. F. Leavenworth and his assigns the right to supply the inhabitants of the town of Modesto with fresh water.

History: Approved February 10, 1876, Stats. 1875-76, p. 41.

CHAPTER 229.

MODOC COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3933.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 2931. CREATING AND ORGANIZING.

2932. PAYMENT OF SEMI-ANNUAL INTEREST AND PRINCIPAL OF BONDS.

2933. LAWFUL AND PARTITION FENCES.

2935. HERDING SHEEP IN MODOC COUNTY.

CREATING AND ORGANIZING.

ACT 2931—An act creating Modoc county.

History: Approved February 17, 1874, Stats. 1873-74, p. 124. Supplemented March 23, 1874, Stats. 1873-74, p. 517. Section 4 of the last named act extended the act of March 26, 1857, Stats. 1857, p. 106, to Modoc county, and this section was repealed by the act of February 25, 1878, Stats. 1877-78, p. 111.

PAYMENT OF SEMI-ANNUAL INTEREST AND PRINCIPAL OF BONDS.

ACT 2932—An act to provide for the semi-annual payment of interest and principal on bonds issued by Modoc county to Siskiyou county.

History: Approved March 31, 1876, Stats. 1875-76, p. 649.

LAWFUL AND PARTITION FENCES.

ACT 2933—An act concerning lawful and partition fences in Modoc county.

History: Approved March 13, 1874, Stats. 1873-74, p. 362. Amended February 25, 1876, Stats. 1875-76, p. 71.

HERDING SHEEP IN MODOC COUNTY.

ACT 2935—An act restricting herding of sheep in certain pastures in Modoc county.

History: Approved March 14, 1878, Stats. 1877-78, p. 241.

MOKELUMNE HILL.

See tit. "Lodi."

MOKELUMNE RIVER.

See Kerr's Cyc. Political Code, § 2349.

MONEY.

See Kerr's Cyc. Political Code, §§ 3272-3274; and Kerr's Cyc. Penal Code, §§ 6, 648.

CHAPTER 230.

MONO COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3934.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

Stallions running at large in, see Kerr's Cyc. Penal Code, § 597g; and see tit. "Stallions."

Teachers, see Kerr's Cyc. Political Code, § 1696; and see tit. "Schools."

MONROVIA.

See Act 3094, note.

MONTAGUE.

See Act 3094, note.

CHAPTER 231.

MONTEREY BAY.

CONTENTS OF CHAPTER.

ACT 2970. GOVERNMENT BREAKWATER.

GOVERNMENT BREAKWATER.

ACT 2970—An act making an appropriation to aid in the construction of a breakwater in Monterey bay, California.

History: Approved May 14, 1917. In effect July 27, 1917. Stats. 1917, p. 475. Prior act of March 15, 1911, Stats. 1911, p. 371, superseded by present act (§ 5).

Appropriation: breakwater in Monterey bay.

§ 1. The sum of two hundred thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, to be applied toward the construction of a breakwater in Monterey bay, California, in accordance with such plans therefor as shall have been or may hereafter be adopted by the government of the United States and approved by congress.

Conditions.

§ 2. This act shall become operative only upon condition that the government of the United States shall, under, by and through the war department, assume full charge and control of all work to be done as provided by this act, and also upon condition that the sum of not less than two hundred thousand dollars shall have been appropriated in furtherance thereof by the congress of the United States.

Paid to treasurer of United States.

§ 3. The amount hereby appropriated shall be paid to the treasurer of the United States whenever the sum of not less than two hundred thousand dollars shall have been appropriated by the congress of the United States conditioned on the payment of two hundred thousand dollars for the prosecution of the work hereinbefore set forth by the state of California; provided, that the whole of such amount appropriated by the congress of the United States and by the state of California shall be expended under the direction of the secretary of war and the supervision of the chief of engineers of the United States.

Controller's warrant.

§ 4. The controller of the state of California is hereby authorized and directed to draw his warrant on the state treasurer in favor of the treasurer of the United States for the amount hereby appropriated, and the state treasurer is hereby directed to pay the same.

Stats. 1911, p. 371, superseded.

§ 5. This act is a revision of and shall supersede an act entitled "An act to provide for the accomplishment of the work of constructing a breakwater in Monterey bay, California, as recommended in the report of the chief of engineers, United States army, and printed in a document of the United States house of representatives, No. 1084, sixty-first congress, third session, calling for an expenditure of eight hundred thousand dollars and making an appropriation for such work," approved March 15, 1911.

CHAPTER 232.**MONTEREY CITY.****CONTENTS OF CHAPTER.**

ACT 2974. FREEHOLDER'S CHARTER OF MONTEREY.

2976. WATERFRONT GRANT.

FREEHOLDERS' CHARTER OF MONTEREY.**ACT 2974—Freeholder's charter of the city of Monterey.**

History: Voted for and ratified at a special municipal election December 12, 1910; filed with the Secretary of State March 2, 1911, Stats. 1911, p. 1742. Originally incorporated in 1850, Stats. 1850, p. 131. Act of incorporation repealed and city reincorporated in 1851, Stats. 1851, p. 367. This act repealed and city reincorporated May 11, 1853, Stats. 1853, p. 159. This last act was amended (1) March 4, 1857, Stats. 1857, p. 5; (2) April 13, 1862, Stats. 1862, p. 274; (3) April 2, 1864, Stats. 1863-64, p. 834; and repealed March 16, 1889, Stats. 1889, p. 227. The city was incorporated in the general act of 1883, in 1889, which incorporation was superseded by the present charter.

1. Pueblo lands—Acquisition of—Conditions.—The city of Monterey acquired control by its acts of incorporation of the pueblo lands as successor of the former pueblo, and held them in trust as a chartered agent of the state, and could hold

them only under the conditions and for such time as the state might permit.—*Monterey v. Jacks*, 139 Cal. 542, 73 Pac. 436.

2. Same—Legislative power to authorize conveyance.—There was no provision in the

constitution of 1849 preventing the legislature from authorizing the town of Monterey to convey the pueblo lands, and to confirm a conveyance thereof follows as a matter of course.—*Monterey v. Jacks*, 139 Cal. 542, 73 Pac. 436.

3. Same—Intention of act of 1866.—By the act of 1866 the legislature intended to confirm a conveyance theretofore made of pueblo lands by the city.—*Monterey v. Jacks*, 139 Cal. 542, 73 Pac. 436.

4. Same—Construction of act of 1866.—The act of 1866 not only ratified and unauthorized conveyance of pueblo lands by the town of Monterey, but it operated to cure all defects in the manner and form of the conveyance itself, including want of a corporate seal.—*Monterey v. Jacks*, 139 Cal. 542, 73 Pac. 436.

5. Same—Legislative power to ratify conveyance.—The California legislature was empowered to pass an act ratifying conveyances made by the corporate authorities of the city of Monterey of pueblo lands confirmed and patented to that city by the United States.—*City of Monterey v. Jacks*, 203 U. S. 360, 51 L. ed. 220, 27 Sup. Ct. 67.

6. Same—Van Ness ordinance.—The power of the legislature to dispose of the pueblo lands is fully discussed in *Hart v. Burnett*, 15 Cal. 530.—*Monterey v. Jacks*, 139 Cal. 542, 73 Pac. 436.

See, also, *Payne v. Treadwell*, 16 Cal. 233; *San Francisco v. Canavan*, 42 Cal. 552; and as to the power of disposition of such lands in the local authorities under Mexican law.—*Grogan v. San Francisco*, 18 Cal. 590, 615; *Redding v. White*, 27 Cal. 282.

WATER FRONT GRANT.

ACT 2976—An act granting to the city of Monterey the title to the water-front of said city in the bay of Monterey.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1359. Prior act of March 21, 1868, Stats. 1867-68, p. 202, amended March 20, 1903, Stats. 1903, p. 299, presumably superseded by the present act.

Lands granted to Monterey.

§ 1. The state of California does hereby cede, grant and relinquish forever, unto the city of Monterey, a municipal corporation organized and existing under and by virtue of the laws of the state of California, all the right, title, interest and estate whatsoever of the said state of California, of, in and to, all the real estate, lands and property situate within the corporate limits of said city of Monterey, and bounded and described as follows, to wit: Commencing at a point where the line of the corporation limits of said city strikes the bay of Monterey on the north, and running along the entire water front thereof in a southerly and westerly direction to the point where the southern or western boundary of said city strikes the said bay, comprising the entire water front of said city, out to a depth of sixty feet at low tide water; provided, that the rights of all persons, if any exist, under any title derived from said state of California, in and to any part of said property and premises hereby ceded and granted, be and the same are hereby reserved from the operation of this act.

Conditions of grant.

§ 2. The entire water front hereby granted shall be held by the city of Monterey and its lawful successors forever, for the use and benefit of said city, and shall not be subject to execution upon any judgment against said city, but from time to time, may be let or leased for a term not exceeding fifty years, as the said city or its successors may deem to be most advantageous to said city; provided, that not more than three hundred feet frontage of said water front shall be leased to one lessee; and provided, further, that at and upon any wharf erected or built upon property so leased any and all vessels shall have a right to dock, land and discharge passengers or merchandise upon payment to such lessee or lessees of reasonable dockage and wharfage. The dockage and wharfage shall be regulated and prescribed in such lease, and as thereafter, from time to time, may be determined by ordinance or resolution of said city of Monterey or by statute of the state of California.

Repealed.

§ 3. All acts or parts of acts in conflict herewith are hereby repealed.

CHAPTER 233.

MONTEREY COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3935.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 2980. COURT HOUSE AND JAIL.

2986. COPIES OF CERTAIN RECORDS MADE VALID.

COURT HOUSE AND JAIL.

ACT 2980—An act to provide for the purchase of a site and the erection of a court house and jail thereon in the county of Monterey.

History: Approved January 22, 1878, Stats. 1877-78, p. 28. Amended April 1, 1878, Stats. 1877-78, p. 1034.

COPIES OF CERTAIN RECORDS MADE VALID.

ACT 2986—An act to legalize and make valid copies of certain records of the county of Monterey.

History: Approved March 30, 1878, Stats. 1877-78, p. 736.

CHAPTER 234.

MONTEREY CUSTOM HOUSE.

CONTENTS OF CHAPTER.

ACT 2995. PRESERVATION OF MONTEREY CUSTOM HOUSE.

PRESERVATION OF MONTEREY CUSTOM HOUSE.

ACT 2995—An act to provide for the appointment of a board of Monterey custom-house trustees and for the acquisition of the control of the Monterey custom-house property, and providing for an appropriation for the preservation, protection, and improvement of said property.

History: Approved March 16, 1901, Stats. 1901, p. 516.

The nature of this act sufficiently appears from its title.

MONTEREY PARK.

See Act 3094, note.

MORGAN HILL.

See Act 3094, note.

MORO COJO SLOUGH.

See Kerr's Cyc. Political Code, § 2349.

MORTGAGES.

See tit. "Foreclosure."

CHAPTER 235.

MOTOR VEHICLES.

References: Collision, see Kerr's Cyc. Penal Code, § 367c.

Driving while intoxicated, see Kerr's Cyc. Penal Code, § 367d.

Insurance, see Kerr's Cyc. Political Code, § 594, subds. 16, 18.

Intoxicated driver of, injuring person, see Kerr's Cyc. Penal Code, § 367e.

Removing from garage surreptitiously, see Kerr's Cyc. Penal Code, § 537d.

Shooting game from, see Kerr's Cyc. Penal Code, § 626a.

Temporarily taking without consent, see Kerr's Cyc. Penal Code, § 499c.

See, generally, tits. "Highways"; "Industrial Accident Commission"; "Insurance"; "Public Utilities."

CONTENTS OF CHAPTER.

ACT 3012. "MOTOR VEHICLE ACT OF 1915."

3013. REPAYMENTS OF ILLEGALLY IMPOSED FEES UNDER "MOTOR VEHICLE ACT."

3014. AUTO-BUS TRANSPORTATION ACT.

"MOTOR VEHICLE ACT OF 1915."

ACT 3012—An act to regulate the use and operation of vehicles upon the public highways and elsewhere; to provide for the registration and identification of motor vehicles and for the payment of registration fees therefor; to provide for the licensing of persons operating motor vehicles; to prohibit certain persons from operating vehicles upon the public highways; to prohibit the possession or use of a motor vehicle without the consent of the owner thereof, and to prohibit the offer to or acceptance by certain persons of any bonus or discount or other consideration for the purchase of supplies or parts for motor vehicles, or for work or repair done thereon; to provide penalties for violations of provisions of this act, and to provide for the disposition of fines and forfeitures imposed thereon; to limit the power of local authorities to enact or enforce ordinances, rules or regulations in regard to matters embraced within the provisions of this act; to provide for the disposition of registration and license fees, fines and forfeitures collected hereunder; to create a motor vehicle department and to provide for the organization and conduct thereof; to provide for carrying out the objects of this act, and to make appropriation therefor; and to repeal all acts or parts of acts in conflict with this act.

History: Approved May 10, 1915. In effect—see §§ 38, 41; Stats. 1915, p. 397. Amended (1) May 10, 1917; in effect—see § 29; Stats. 1917, p. 382; (2) May 2, 1919; in effect—see § 20; Stats. 1919, p. 192. Prior act of March 22, 1905, Stats. 1905, p. 816, amended March 23, 1907, Stats. 1907, p. 914, was repealed by the act of May 31, 1913; in effect December 31, 1913, Stats. 1913, p. 639; which latter act was repealed by the present act. No mention was made in the title of the act of 1913 of the repeal of the act of 1905, but section 40 of that act expressly repealed the prior act; so, also, of the present act, which makes no mention of the repeal of the act of 1913 in its title, but in section 38 it is expressly repealed.

Words and phrases defined.

§ 1. The words and phrases used in this act shall for the purposes of this act, unless the same be contrary to or inconsistent with the context, be construed as follows: (1) "motor vehicle" shall include all vehicles propelled otherwise than by muscular power, except trailers and such vehicles as run upon stationary rails or tracks; (2) "automobile" shall include all motor vehicles excepting motoreycles; (3) "motoreycle" shall include all motor vehicles designed to travel on not more than three wheels in contact with the ground, and of not exceeding ten horsepower, and of not exceeding the weight of five hundred pounds unladen; provided, however, that any motor vehicle which shall be operated on the public highway drawing a trailer shall be deemed to be an automobile for all the purposes of this act; and provided, further, that for the

purposes of this act a trailer shall be deemed to be any vehicle which is at any time drawn upon the public highway by a motor vehicle, excepting any implements of husbandry temporarily drawn, propelled or moved upon such highway; (4) "highway" shall include any public highway, county road, state highway or state road, public street, avenue, alley, park, parkway, driveway, square or place, bridge, viaduct, trestle, or any other territory or structure, whether public or private, designed, intended or used by or for the general public for the passage of vehicles, in any county, or incorporated city and county, city or town within the state of California, including driveways, upon the grounds of universities, colleges, schools, and other institutions, whether public or private; (5) "business district" shall mean the territory of any county or incorporated city and county, city or town, contiguous to a public highway, which is on the line of said highway mainly built up with structures devoted to business; provided, that the local authorities having charge of such highway shall have placed conspicuously thereon at the boundary lines of such business district, signs which shall be placed on the right side of such highway looking toward such district, and which shall be triangular in shape, apex upward, the sides thereof being of equal length and not less than twenty-four inches in length, which shall bear in white letters of a size to be easily readable by a person using the highway the words and figures: "15 miles speed limit." Such letters shall be on a background colored dark green and the back of such sign shall also be colored dark green; (6) "closely built up" shall mean the territory of any county or incorporated city and county, city or town, contiguous to a public highway, which is on the line of said highway not mainly devoted to business, where for not less than a quarter of a mile the dwelling houses and business structures on such highway average less than one hundred feet apart; provided, that the local authorities having charge of such highway shall have placed conspicuously thereon at the boundary lines of such district, signs of sufficient size to be easily readable by a person using the highway, bearing the words and figures "20 miles speed limit" which words shall be printed in white letters on a red background; such signs shall also be colored red on the back thereof and shall be of the same size and shape as those specified in subdivision five of this section and shall be similarly placed on the highway; (7) "local authorities" shall include all boards of supervisors, trustees or councils, commissions, committees, and other public officials of counties, incorporated cities and counties, cities or towns, or municipal or quasi-municipal corporations when such officials possess or exercise legislative or police powers; (8) "chauffeur" shall mean any person who operates an automobile in the transportation of persons or property and who receives any compensation for such service in wages, commission or otherwise, paid directly or indirectly, or who as owner or employee operates an automobile carrying passengers or property for hire; provided, however, that this definition shall not include manufacturers' agents, proprietors of garages and dealers, salesmen, mechanics, or demonstrators of automobiles in the ordinary course of their business; (9) the term "state" as used in this act, except where otherwise expressly provided, shall also include the territories, federal districts and insular possessions of the United States; (10) "non-residents" shall mean residents of states or countries other than the state of California whose sojourn in this state, or whose occupation of their regular place of abode or business in this state, if any, covers a total period of less than three months in the calendar year; (11) "owner" shall include any person, firm, association, or corporation, having the lawful use or control, or the right to the use or control, of a vehicle, under a lease or otherwise, for a period of ten or more successive days; (11a) the legal owner is hereby defined as the owner of the legal title; (12) "manufacturer" or "dealer" shall signify a person, firm, association, or corporation regularly in the business of having in his, its or their possession vehicles for sale or trade and for use and operation pursuant thereto, and shall be considered owners of vehicles manufactured or dealt in by them for the purposes of this act, prior to sale and delivery thereof,

and of all vehicles in their possession and operated or driven by them or by their employees; provided, however, that anything to the contrary herein notwithstanding, the determination of the motor vehicle department shall be final and conclusive upon the question whether or not an applicant for registration shall be a manufacturer or dealer within the meaning and intent of this act; (13) "garage" shall mean every place of business where motor vehicles are received for housing, storage or repair, for compensation; (14) "intersecting highway" shall mean any highway which joins another at an angle, whether or not it crosses the other; (15) "operator" shall mean any person other than a chauffeur who operates a motor vehicle and any person who operates, rides, drives or propels any vehicle other than a motor vehicle; (16) "person" shall include any corporation, association, copartnership, company, firm, or other aggregation of individuals; and where the term "person" is used in connection with the registration of a vehicle, it shall include any corporation, association, copartnership, company, firm, or other aggregation of individuals which owns or controls such vehicle as actual owner, or for the purpose of sale or for renting, whether as agent, salesman, or otherwise; (17) "department" as used in this act shall mean the motor vehicle department of California, acting directly or through its duly authorized agent; (18) "vehicle" shall include every wagon, hack, coach, carriage, omnibus, bicycle, tricycle, automobile, cyclecar, motorcycle, truck, trailer, traction engine, tractor, or other conveyance or contrivance for moving persons, animals or things, in whatever manner and by whatever force or power the same may be ridden, driven, propelled, drawn or moved, which is ridden, driven, propelled, drawn or moved on the public highway, including implements of husbandry temporarily drawn, propelled or moved on the public highway, and excepting only conveyances drawn or propelled by pedestrians, and railroad, street or interurban cars, engines and motors moving upon stationary rails or tracks; (19) the city and county of San Francisco shall be considered a county; (20) "net receipts" shall signify the balance remaining of the money paid to the department in conformity with the provisions of this act after the payment of all salaries, expenses and refunds incident to the administration and enforcement of this act; (21) "specially constructed" motor vehicle shall mean a motor vehicle which shall not have been originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of motor vehicles; provided, that in case of dispute the determination of said department as to the character of construction of any such motor vehicle shall be conclusive; (22) "reconstructed motor vehicle" shall mean a motor vehicle which shall have been assembled or constructed largely by means of essential parts, new or used, derived from other motor vehicles or makes of motor vehicles of various names, models or types, or which, if originally otherwise constructed, shall have been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other motor vehicles or makes of motor vehicles; provided, that for the purpose of this act the term "essential parts" shall include not only integral parts but also body parts, such as fenders, hood, cowl, and other parts the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the motor vehicle; and provided, further, that in case of dispute the determination of said department as to the character of such assembly, reconstruction or alteration shall be conclusive; (23) "imported motor vehicle" shall mean any motor vehicle which shall be brought into this state from another country or state otherwise than in the ordinary course of business by or through a manufacturer or dealer, and which has not been registered in this state, except such motor vehicles, owned by nonresidents, as are provided for by section twenty-seven of this act; (24) "highway commission" shall mean the appointed members of the advisory board of the department of engineering of the state of California. [Amendment of May 2, 1919. In effect—see section 20. Stats. 1919, p. 193.]

This section was also amended May 10, 1917, Stats. 1917, p. 382.

Exempt from tax.

§ 2. All motor vehicles owned and used in the transaction of official business by the representatives of foreign powers or by officers, boards or departments of the government of the United States, and all motor vehicles owned by and used in the operative work of such corporations as are taxed solely for state purposes under the provisions of the constitution of this state and such self-propelling vehicles as are used neither for the conveyance of persons for hire, pleasure, or business, nor for the transportation of freight, are hereby exempted from the payment of the fees in this act prescribed. The department shall furnish, free of charge, distinguishing plates for motor vehicles thus exempt.

Application for registration. Horsepower formula. Steam-driven motor vehicle. Specially constructed motor vehicle. Imported motor vehicle. Trailers.

§ 3. Every owner of a motor vehicle which shall be operated or driven upon the public highways shall, for each motor vehicle owned, except as herein otherwise expressly provided, cause to be filed, by mail, or otherwise, with the department an application for registration on a blank to be furnished by said department for that purpose, containing, in addition to such other particulars as may be required by said department, a statement of the name and post-office address of the applicant and the name and post-office address of the legal owner, a description of such motor vehicle, including the name of the maker, the number, if any, affixed to the motor or engine by the maker, the character of the motive power, and the diameter of the cylinder bore and the number of cylinders; and with such application the applicant shall deposit the proper registration fee as provided in section seven of this act; provided, that for all the purposes of this act the horsepower of any motor vehicle, except electric or steam-driven vehicles, shall be determined by the formula commonly known as that of the association of licensed automobile manufacturers (A. L. A. M.), being as follows: Square the diameter of the cylinder in inches, multiply by the number of cylinders, and divide by two and five-tenths; provided, further, that for the purpose of this act the horsepower of any steam-driven motor vehicle shall be the horsepower rating fixed and advertised by the manufacturer thereof; provided, further, that in case the motor vehicle sought to be registered shall be a specially constructed or a reconstructed motor vehicle, that fact must be stated by the applicant in his application for registration and he shall furnish the department on demand such additional information relating to said motor vehicle as shall be satisfactory to the department before it may register such vehicle; and provided, further, that in case the motor vehicle sought to be registered shall be an imported motor vehicle, within the meaning of this act, that fact must be stated by the applicant in his application for registration, and he shall furnish the department on demand such additional information relating to said motor vehicle as shall be satisfactory to the department before it may register such vehicle, and in case such vehicle shall have been theretofore registered in any other state or country, the applicant shall with his original application for registration supply the department with full information relating to such former registration and shall surrender to the department any number plates, seals, certificates of registration or other evidences of such former registration as may be in the applicant's possession or control. Every owner of a trailer or trailers which shall be drawn upon a public highway when any such trailer shall exceed one ton in weight shall cause to be filed by mail or otherwise, with the department, an application for registration on a blank to be furnished by said department for that purpose, containing in addition to such other particulars as may be required by said department, a statement of the name and post-office address of the applicant, and with such application the applicant shall deposit the proper registration fee, as provided in section seven of this act.

Notice of change of address.

Whenever the owner of any motor vehicle shall after making application for registration of any motor vehicle move from the address named in such application or change his post-office address he shall within ten days after such moving or change of address notify the department in writing of such change and of his new post-office address. Failure to so notify the department shall constitute a misdemeanor. [Amendment of May 2, 1919. In effect—see section 20. Stats. 1919, p. 196.]

This section was also amended May 10, 1917, Stats. 1917, p. 385.

Registration. Record posted.

§ 4. Upon the receipt by the department of an application for registration of a motor vehicle or trailer or trailers accompanied by the fee required by section seven of this act, the department shall file such application and if satisfied that the applicant is entitled to registration of said vehicle or vehicles as the owner thereof, within the meaning of this act, and if all fees theretofore payable to the department in connection with the registration, or any renewal thereof, of said vehicle or vehicles shall have been duly paid, shall alphabetically, and also numerically, register such motor vehicle or trailer or trailers with the name and post office of the owner, and of the legal owner together with the facts stated in such application, in a book or on index cards to be kept for the purpose, under a distinctive number assigned to such motor vehicle or trailer or trailers by the department, which book or index cards shall be opened to inspection by the public during reasonable business hours. A full record of all motor vehicle registration shall be posted daily by the department upon a bulletin board so located as to be easily accessible to the public, and no information relative to any such registrations shall be made public by any employee of the department in advance of such posting.

Assignment of number.

Upon the filing of such application and the payment of the fee provided in this act, the department shall upon registration assign to such motor vehicle or trailer or trailers, a distinctive registration number. [Amendment of May 2, 1919. In effect—see section 20. Stats. 1919, p. 197.]

This section was also amended May 10, 1917, Stats. 1917, p. 386.

Number plates. Annual change.

§ 5. The department shall furnish to every person whose motor vehicle or trailer or trailers shall be registered as aforesaid, on original registration, one number plate for motoreycles and trailers, and two number plates for automobiles, the same to have displayed upon them the registration number assigned to such vehicle, together with the abbreviation "Cal."; provided, however, that number plates furnished for trailers and for such motor vehicles as are exempted by section two of this act from the payment of the fees in this act prescribed shall contain suitable distinguishing marks or symbols, and the numbers assigned in such cases shall run in different numerical series from the numbers assigned to other vehicles registered under the provisions of this act; and provided, further, anything to the contrary in this act notwithstanding, that it shall not be necessary to apply for registration of implements of husbandry temporarily drawn, moved or otherwise propelled upon the public highway, nor shall it be necessary for the department to assign any distinguishing numbers to such implements of husbandry or to furnish number plates for display thereon; the number plates assigned as herein provided shall be and remain with the motor vehicle for the period of registration mentioned in the application therefor; such number plates shall be changed annually and shall be of a distinctly different color each year, and there shall be a

marked contrast between the color of the number plates and that of the numerals or letters thereon. [Amendment of May 2, 1919. In effect—see section 20. Stats. 1919, p. 198.]

This section was also amended May 10, 1917, Stats. 1917, p. 387.

Renewal of registration.

§ 6. All motor vehicle registrations under this act shall expire January 31 of each year and shall be renewed annually in the same manner and upon the payment of the same fee as provided for original registrations, such renewal to take effect on the first day of February of each year. The plates and certificates of registration furnished by the said department as heretofore provided shall be valid during the year only in which they are furnished or issued. [Amendment of May 2, 1919. In effect—see section 20. Stats. 1919, p. 198.]

This section was also amended May 10, 1917, Stats. 1917, p. 387.

Registration fees. Motorcycles. Automobiles. Electric motor vehicles. Chauffeur's license. Duplicates.

§ 7. The following fees shall be paid to the department upon the registration of a vehicle in accordance with the provisions of this act and shall accompany the application hereinabove provided for: For the registration of every motorcycle, two dollars; for the registration of every automobile, except electric automobiles, the sum of forty cents for each horsepower, or major fraction thereof, according to the formula specified in section three of this act; for the registration of every motor vehicle equipped with other than pneumatic tires, and used for commercial purposes, weighing under four thousand pounds unladen, five dollars in addition to the fees provided herein for horsepower rating or for electric motor vehicles; for every such vehicle weighing four thousand pounds and over and less than six thousand pounds unladen, ten dollars in addition to the fees provided herein for horsepower rating or for electric motor vehicles; for every such vehicle, weighing six thousand pounds and over and less than ten thousand pounds unladen, fifteen dollars in addition to the fees provided herein for horsepower rating or for electric motor vehicles; for every such vehicle weighing ten thousand pounds and over unladen, twenty dollars in addition to the fees provided herein for horsepower rating or for electric motor vehicles; for the registration of every electric motor vehicle, five dollars; for the registration of motor vehicles owned by or under the control of a manufacturer of, or dealer in, motor vehicles, ten dollars for the first set of number plates, and five dollars for each additional set, two number plates of the same kind shall constitute a set; for the registration of the motorcycles owned by or under the control of a manufacturer of or dealer in motorcycles five dollars for the first number plate and one dollar for each additional number plate; for every registration number plate for trailers, two dollars; for every chauffeur's license, two dollars; for an original operator's license no fee shall be charged; for the registration of every transfer of ownership shall be charged a fee of one dollar. Upon the filing of an affidavit showing the fact of loss or mutilation or illegibility, the fees for additional number plates, duplicate container, certificate of registration, chauffeur's badge, chauffeur's certificate, or duplicate operator's license shall be as follows; provided, that no affidavit will be required for duplicate operator's license: For every such number plate, one dollar; for every such duplicate container, twenty-five cents; for every such certificate of registration, fifty cents; for every such chauffeur's badge, one dollar; for every such chauffeur's certificate, fifty cents; for every such operator's license, twenty-five cents.

Portion of Year.

Anything herein to the contrary notwithstanding, if application for the registration of a motor vehicle or for chauffeur's license is made during the period beginning on the

first day of May and ending on the thirty-first day of July in any year, three-fourths of the annual fee shall be paid; if application is made during the period beginning on the first day of August and ending on the thirty-first day of October, one-half of such annual fee; if application is made during the period beginning on the first day of November and ending on the thirty-first day of January, one fourth of such annual fee. [Amendment of May 2, 1919. In effect—see section 20. Stats. 1919, p. 198.]

This section was also amended May 10, 1917, Stats. 1917, p. 387.

Certificate of registration. Legal owner designated. Container.

§ 8. The department shall also furnish with each number plate for motorcycles and with each pair of number plates for automobiles, and on each annual renewal of registration, a certificate of registration which shall contain upon the face thereof the following data: The name of the registered owner of the motor vehicle, his post-office address, the name and address of the legal owner, and the make of the vehicle, the year model denoted by the manufacturer, the model or letter denoted by the manufacturer, if any, the engine or motor number, the registered horsepower, the registration number and the amount of annual registration fee, together with the date of issue of the certificate; provided, however, the name and address of the legal owner shall appear on the bottom line of the certificate of registration. In case of motorcycles, the manufacturer's serial number shall be stated in lieu of the engine number. Such certificate shall contain a blank space for the signature of the registered owner and shall be signed by such owner. The reverse side of said certificate shall contain forms (a) for notice to the department by the registered owner and the legal owner in case of transfer of ownership, as hereinafter required, and (b) for application to the department by the transferee, in case of transfer of said motor vehicle, for registration thereof in his name, said application to be in the form of a joint statement to be signed by both transferor and transferee and the legal owner and to contain in addition to such other particulars as may be required by said department, a statement of the post-office address of the transferee so applying for registration. Said certificate shall contain the identical registration number denoted on the number plate or plates in connection with which such certificate is issued, and it shall be valid only for the year in which it is issued. Said certificate shall be enclosed in a suitable container, to be furnished by the department, such container to have a frame of aluminum or other metal and to have a cover of isinglass or other transparent material, through which such certificate can be easily inspected, and with such container said department shall furnish screws or other suitable means of attachment to the motor vehicle. Said number plates, certificates and containers shall be furnished by the department without further charge than the fees specified in section seven of this act, with transportation prepaid, and shall be of substantial character and suitable form and design, to be determined by the department.

Transfer of ownership.

Upon the transfer of ownership of any motor vehicle registered under section three of this act the person in whose name such vehicle is registered shall forthwith (a) file with the department a notice, upon the form furnished by the department and attached to the certificate of registration, containing the date of such transfer of ownership and the name and post-office address of the transferee, and upon such transfer the title of the number plates shall vest in the transferee.

Joint statement.

Upon the transfer of ownership of any motor vehicle, the person in whose name such vehicle is registered and the person to whom ownership of such vehicle is to be transferred shall forthwith join in a statement of said transfer endorsed upon the reverse side of the certificate of registration of said motor vehicle in the space provided for

said purpose, which statement shall be signed by the transferor and the legal owner in the manner and form of his signature contained on the face of said certificate and which statement shall likewise be signed by the transferee, who shall also set forth below his signature his post-office address. Said statement shall include an application by the transferee for registration of said vehicle in his name. Said certificate so endorsed and bearing upon the reverse side thereof the signatures of the transferor and transferee, shall be forwarded by the transferee within ten days to the department together with proper fee of one dollar required by section seven of this act. The department shall file said certificate so jointly endorsed by transferor and transferee and upon receipt of the proper fee as above provided, the department, if satisfied of the genuineness and regularity of said transfer, shall register said motor vehicle in the name of said transferee.

New registration certificate. Transfer by operation of law.

Upon such registration the department shall issue and forward to the applicant without further charge than as provided in section seven of this act, a new registration certificate in the manner and form as hereinabove provided for original registration. Until said transferee has received said certificate of registration and has written his name upon the face thereof in the blank space provided for said purpose by the department, delivery of said motor vehicle shall be deemed not to have been made and title thereto shall be deemed not to have passed and said intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose; provided, that where such transfer is made to a manufacturer or dealer to whom has been assigned a general distinguishing number and who intends to resell or otherwise retransfer said vehicle the provisions of this act relative to the joint statement of transferor and transferee endorsed thereon, shall be complied with upon such sale or transfer. In case of transfer of ownership of a motor vehicle, registered under the provisions of this act, by operation of law, as upon inheritance, devise or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in performance of the terms of a lease or executory sales contract, or otherwise than by the voluntary act of the registered owner, the notice of transfer as well as the joint statement hereinabove provided for shall be signed by the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the registered owner, in lieu of such owner, and the transferee's application for registration shall be accompanied by a statement of the special facts in the premises; provided, that the department may in its discretion require from the transferee, before registering such motor vehicle, such additional information respecting such involuntary loss of ownership by the former registered owner as may be satisfactory to the department.

When vehicle not to be operated on highway.

Anything to the contrary hereinabove notwithstanding, upon the transfer of ownership of any motor vehicle to a person not intending either to operate the same or to cause or permit the same to be operated upon the public highways and not intending to transfer such motor vehicle to another person, a statement by said transferee of such fact or intent shall accompany the application for registration, in which case no fee for registration need be paid by the applicant, whereupon the department, if satisfied of the genuineness and regularity of said transfer and if satisfied of the facts stated in said application for registration, shall register, without any charge whatever, such motor vehicle in the name of said transferee and shall issue and forward to him a new registration certificate in a distinctive form to be determined by the department; provided, that until said transferee has received said registration certificate, delivery of said motor vehicle shall be deemed not to have been made, and title thereto shall be deemed not to have passed and said intended transfer shall be deemed to be incomplete

and not to be valid or effective for any purpose; and provided, further, that nothing herein contained shall be so construed as to permit such motor vehicle to be operated upon the public highway under such distinctive certificate of registration last hereinabove provided for.

Registration refused or revoked.

If the department shall determine, at any time, that for any reason a motor vehicle or trailer is unsafe or is improperly equipped or is otherwise unfit to be operated, or that the applicant for registration thereof is not entitled as owner thereof to such registration, the department may refuse to register such vehicle and may, for a like reason, revoke any registration already acquired. [Amendment of May 2, 1919. In effect—see section 20. Stats. 1919, p. 199.]

This section was also amended May 10, 1917, Stats. 1917, p. 388.

Dealer's registration. Unlawful use of dealer's registration.

§ 9. Every manufacturer of, or dealer in, motor vehicles may make application to the department, by mail or otherwise, upon a blank provided by the department, for a general distinguishing number or symbol, instead of registering each motor vehicle owned by him, and with such application he shall deposit the proper registration fee as provided in section seven of this act; and the department shall grant the application if satisfied of the facts stated in the application and shall issue to the applicant a certificate of registration containing the name and business address of the applicant and the general distinguishing number or symbol assigned to him, and made in such form and containing such further information as the department may determine; and every motor vehicle owned or controlled by such manufacturer or dealer shall be regarded as registered under such general distinguishing number or symbol until ten days after being sold, or until let for hire, or until loaned for a period of more than ten successive days. The department shall furnish, without other charge than the fee specified in section seven of this act, with transportation charges prepaid, to every manufacturer of or dealer in automobiles or motorcycles applying therefor whose vehicles are registered in accordance with the provisions of this section, one pair of automobile plates or one single motorcycle number plates, of suitable design, the plates to have displayed upon them the registration number which is assigned to the motor vehicles of such manufacturer or dealer, with a different symbol on each pair of automobile number plates and on each single motorcycle plate. The department shall furnish such additional number plates as required by any dealer, upon the payment of the fee therefor set forth in section seven of this act. If the department shall determine at any time for due cause that any such manufacturer or dealer to whom the certificate of registration provided for in this section has been issued and to whom such general distinguishing number or symbol has been assigned has failed to comply with the requirements of this section hereinafter contained with reference to notices or reports of transfer of motor vehicles, or has caused or suffered, or is causing or suffering, the unlawful use of such certificate or number, the department may revoke said certificate of registration and recall and cancel said general distinguishing number of symbol, in which event said manufacturer or dealer, after notice of such action on part of the department, shall, without further demand, return to the department any and all number plates that may have been furnished him by the department under said certificate so revoked; provided, that no manufacturer or dealer or any employee of such manufacturer or dealer, shall cause or permit the display, or other use, of any number plate, or certificate of registration which may have been furnished to such manufacturer or dealer under the general distinguishing number or symbol hereinbefore provided for, excepting upon motor vehicles owned by such manufacturer or dealer within the meaning and intent of this act; provided, further,

that no person shall display or otherwise use or have in his possession any number plate, or certificate of registration furnished by the department under a general manufacturer's or dealer's distinguishing number or symbol, except such manufacturer or dealer or his employees; and provided, further, that if the department, upon receiving from any manufacturer or dealer an application for the issuance for the ensuing calendar year of the certificate of registration and general distinguishing number or symbol provided for in this section, shall determine upon due cause that such manufacturer or dealer during the previous calendar year has failed to comply with the requirements of this section hereinafter contained respecting the filing of notices or reports of transfer of motor vehicles, or has caused or suffered, or is causing or suffering, the unlawful use of such certificate or number, the department may refuse such application.

Moving unregistered vehicle.

When it shall become necessary for a manufacturer of, or dealer in, or consignee of, motor vehicles to move any vehicles owned by or consigned to him, not being registered under any of the provisions of this act, from any vessel, railroad depot, or warehouse, to the salesrooms or other place of business of such manufacturer or dealer, or to a warehouse or other place of storage, over the public highways, he may operate such vehicle, either under its own power or otherwise, over such public highways as are necessary for said purpose, without first registering said motor vehicle or affixing thereto any number plates issued to him under the general distinguishing number or symbol hereinabove specified; provided, however, that in such event he shall first obtain from the police authorities or marshall of the city or town in which said vessel, railroad depot or warehouse is situated, a written permit authorizing such operation; and there is hereby conferred upon police authorities, including town marshals, within the state of California, authority to issue such permits in proper cases as hereinbefore provided.

Dealer's notice of sale. Notice of dismantling.

Upon the transfer of any motor vehicle by a manufacturer or dealer, whether by sale, lease or otherwise, such motor vehicle not being registered under the provisions of section three hereof, such manufacturer or dealer shall, forthwith upon such transfer, file with the department, upon a blank to be furnished by the department, a notice or report containing the date of such transfer, a description of such motor vehicle, and the name and post-office of the purchaser, lessee or other transferee. Before any person, firm or corporation shall wreck, dismantle or dissemble any motor vehicle, or substantially alter the form thereof, such person, firm or corporation shall give notice in writing upon forms to be furnished by the motor vehicle department of the intention so to do to the chief of police or marshal of the city or town in which such work is to be done or if such work is to be done outside of an incorporated city or town, such notice shall be given to the sheriff of the county in which the work is to be done.

Notice of transfer of engine.

Upon the transfer of any automobile engine or motor, except a new engine or motor transferred with intent that the same be installed in a new automobile, and whether such transfer be made by a manufacturer or dealer or otherwise, and whether by sale, lease or otherwise, the transferor shall within three days after such transfer file with the department, upon a blank to be furnished by the department, a notice or report containing the date of such transfer and a description, together with the maker's number of said engine or motor, the name and post-office address of the purchaser, lessee or other transferee. [Amendment of May 2, 1919. In effect—see section 20. Stats. 1919, p. 202.]

This section was also amended May 10, 1917, Stats. 1917, p. 392.

§ 10. [Repealed May 10, 1917. In effect—see section 29. Stats. 1919, p. 395.]

Display of number plates. Visibility.

§ 11. Except as in this act otherwise provided, no person shall operate or drive, or cause to be operated or driven, a motor vehicle, or cause a trailer to be drawn by a motor vehicle, on the public highways unless such vehicle shall at all times have displayed the number plate or plates furnished for it as hereinbefore provided; in case of automobiles, each such vehicle shall display one number plate on the front and the other on the back thereof; in case of motorcycles and trailers, but one number plate shall be required to be displayed and such number plate upon motorcycles and trailers shall be at the rear thereof; in all cases such number plates shall be securely fastened to the motor vehicle or trailer so as to prevent said plates from swinging, and at a minimum distance of sixteen inches from the ground. Nothing in this act shall be construed to require the display of any number plate on other than the rear trailer, when more than one trailer is drawn by a motor vehicle. No person shall attach to, or display on, such motor or other vehicle, any number plate, or registration seal or certificate other than as assigned to it for the current year, or a fictitious, or altered number plate, registration certificate, or a number plate, or registration certificate that shall have been canceled by the department. All letters, numbers, printing, writing and other identification marks upon said plates, and certificates, shall be kept clear and distinct and free from grease, dust or other blurring matter, so that they shall be plainly visible at all times during daylight and under artificial light in the night time; provided, that in case any such plate, or certificate of registration, operator's license or chauffeur's license or badge shall be lost, mutilated or shall have become illegible, the person to whom such plate, seal, certificate, license or badge shall have been furnished shall immediately apply to the department for a duplicate thereof, accompanying his application with the fee specified in section seven of this act.

Display of registration certificates.

No person shall operate or drive a motor vehicle on the public highway unless such vehicle shall at all times carry in or upon it, subject to inspection by any peace officer, or employee of the department, the registration certificate furnished for it as hereinabove provided, which in case of an automobile shall be affixed, in the container furnished by the department, in plain sight in the driver's compartment of the automobile and which, in case of a motorcycle, shall be carried either in plain sight affixed to said motorcycle, or in the tool bag or some other convenient receptacle attached to said motorcycle.

Added penalty for failure to register. Operation pending renewal of registration.

The registration fee required under this act to be paid upon a motor vehicle or trailer shall become delinquent in the case of any such vehicle forthwith upon the operation of the vehicle on the public highways without the registration fee required by this act first having been paid to the department, accompanied by the application for registration provided herein. It is hereby provided, in addition to any and all other penalties provided by this act, that if, at the expiration of thirty days after any registration fee becomes delinquent, such fee has not been paid and registration applied for, a penalty shall be added to the amount of such fee in an amount equal to twenty-five per cent of the fee required by section seven of this act, and that such fee, together with the amount of said penalty, shall be a lien upon the motor vehicle or trailer in regard to which said registration fee is delinquent, and the department shall have power and it is hereby made its duty to collect the said registration fee, together with the penalty, by seizure of such motor vehicle or trailer from the person in possession thereof, if any, and by the sale thereof. The seizure and sale herein authorized shall be conducted and carried out by the department in the same manner as is provided by law for the seizure and sale of personal property by the county tax collector for the collection of taxes due on

said personal property; provided, however, that in case of annual renewal of registration, where the applicants have in all things complied with the requirements of this act and have duly applied for such annual renewal of registration before the commencement of the ensuing calendar year, accompanying their applications with the proper fees for such registration, they shall be entitled to operate said vehicles during the month of February without displaying the registration certificates of the current year, on condition that they have at all times displayed upon said vehicles the number plates assigned to said vehicles respectively, together with the registration seals and certificates assigned thereto for the previous year. [Amendment of May 2, 1919. In effect—see section 20, Stats. 1919, p. 204.]

This section was also amended May 10, 1917, Stats. 1917, p. 395.

Warning bell, horn, etc.

§ 12. Every motor vehicle shall be equipped with a bell, gong, horn, whistle, or other device in good working order, capable of emitting an abrupt sound adequate in quality and volume to give warning of the approach of such vehicle to pedestrians and to the riders or drivers of animals or of other vehicles and to persons entering or leaving street, interurban and railroad cars. Every person operating a motor vehicle shall sound said bell, gong, horn, whistle or other device whenever necessary as a warning of danger, but not at other times, or for any other purpose.

Lights. Tail lights. Horse-drawn vehicles.

§ 13. (a) Where there is not sufficient light within the lateral boundaries of the public highway to reveal all persons, vehicles or other substantial objects within said boundaries for a distance of at least two hundred feet, and all times during the period from a half hour after sunset to a half hour before sunrise, every automobile while on the public highway shall carry at the front at least two lighted lamps, and every such automobile and every trailer, at the times and under the conditions in this section hereinbefore specified, shall carry at the rear a lighted lamp exhibiting a red light plainly visible, under normal atmospheric conditions, for a distance of five hundred feet toward the rear and so constructed and placed that the number plate carried on the rear of such automobile or trailer shall be illuminated by a white light in such manner that the number thereon can be plainly distinguished under normal atmospheric conditions at a distance of not less than fifty feet toward the rear; provided, however, that where more than one trailer is attached to a motor vehicle, only the rear trailer shall be required to exhibit said light. At the times and under the conditions in this section hereinbefore specified, all other vehicles, except bicycles, motorcycles and motor trucks of two tons carrying capacity or over which are so governed or mechanically constructed or controlled that they can not exceed a speed of fifteen miles per hour, shall carry one or more lighted red lamps or lanterns so arranged that said red lamp or lamps shall be visible from every direction for a distance of not less than two hundred feet.

Bicycles.

(b) At the times and under the conditions in this section hereinbefore specified, every bicycle while on the public highway shall carry a lighted lamp visible under normal atmospheric conditions at least three hundred feet in the direction toward which such bicycle is faced, and shall also carry at the rear of such bicycle a reflex mirror or a lighted lamp exhibiting a red light plainly visible under normal atmospheric conditions for a distance of at least two hundred feet toward the rear.

Motorcycles.

(c) At the time and under the conditions in this section hereinbefore specified, every motorcycle while on the public highway shall carry at the front at least one lighted lamp which shall give a light of sufficient power and so distributed as provided in sub-

division (f) and shall also carry at the rear of such motoreycles a lighted lamp, exhibiting a red light plainly visible under normal atmospheric conditions for a distance of at least two hundred feet towards the rear.

Motor trucks.

(d) At the time and under the conditions in this section hereinbefore specified, every motor truck of two tons carrying capacity or over, which is so governed or mechanically constructed or controlled that it can not exceed a speed of fifteen miles per hour, shall carry at the front at least two lighted lamps which shall be visible at least two hundred feet in the direction in which the motor truck is proceeding, and when the vehicle is proceeding on a street or highway not so lighted as to reveal any person, vehicle or substantial object on the street or highway straight ahead of such motor truck for a distance of at least two hundred feet, such front light shall be sufficient to reveal any person, vehicle or substantial object on the road straight ahead for a distance of seventy-five feet or over, and shall be equipped with a tail light such as is required on other motor vehicles.

Overhanging loads. Red flag.

(e) In any case where a motor or other vehicle shall be loaded with any material in such a manner that any portion of such load extends toward the rear four feet or more beyond the rear of the bed or body of such vehicle, there shall be displayed at the extreme end of the load, at the times and under the conditions in this section hereinbefore specified, in addition to the ordinary rear or tail light hereinbefore required to be displayed on such vehicle, a red light plainly visible under normal atmospheric conditions at least two hundred feet from the rear; provided, further, that at other times while such vehicle is upon the highway a red flag or cloth not less than sixteen inches in length nor less than sixteen inches in width shall be displayed at the extreme rear end of said load as a warning signal to persons operating vehicles approaching from the rear.

Headlights. Sidelights when lights not required.

(f) At the times and under the conditions in this section hereinbefore specified the headlights of all automobiles upon the highways shall give a light of sufficient power and so distributed as provided herein in addition to and irrespective of any other requirements concerning headlights in this section contained. The term "headlight" as used herein, shall denote any light, located upon any portion of the said motor vehicle other than on the windshield, the windshield supports or top thereof, the rays of which are projected forward, except sidelights of not to exceed four candle power; provided, further, anything to the contrary notwithstanding, that where there is sufficient light within the lateral boundaries of the public highway within any incorporated city, town or city and county, to reveal all persons, vehicles or substantial objects within said boundaries for a distance of two hundred feet, no lights shall be required to be displayed on any vehicle while the same is not in operation, providing that a wheel of such standing vehicle nearest the sidewalk is located within twelve inches of such sidewalk.

Candle power.

(g) The headlights of motor vehicles shall be so arranged, adjusted, and constructed when the car is fully loaded, that any pair of headlights under the conditions of use must produce a light which:

1. When measured on a level surface on which the vehicle stands at a distance of two hundred feet directly in front of the car and at some point between the said level surface and a horizontal passing through the top of the headlight reflector or lens, is not less than one thousand two hundred apparent candle power.

2. When measured at a point one hundred feet directly in front of the car, and at a height of sixty inches above the level surface on which the vehicle stands, does not exceed two thousand four hundred apparent candle power nor shall this value be exceeded at a greater height than sixty inches.

3. When measured at a distance of one hundred feet ahead of the car and seven feet or more to the left of the axis of same, and at a height of sixty inches above the level surface on which the vehicle stands, does not exceed eight hundred apparent candle power.

Tests of devices for controlling. Specifications.

(h) Any device or adjustment used in connection with a light upon a motor vehicle to enable the same to comply with the requirements of subdivision (f) hereof shall not be used upon a motor vehicle operated upon the highways of this state until the same shall have been tested as provided herein; such test shall be made by a skilled testing agency, appointed for that purpose by the superintendent of motor vehicle department and such tests shall be laboratory tests according to the following specifications:

Two pairs of samples of the device submitted shall be subject to test. In the case of front glasses the sample shall be of nine and one-fourth inches diameter when practicable.

The reflectors used in connection with the laboratory tests shall be of standard high-grade manufacture of one and one-fourth inch focal length, with clean and highly polished surfaces and as nearly truly paraboloidal in form as practicable, and as approved for this purpose by the testing agency selected by the superintendent of the motor vehicle department.

The incandescent lamps used in connection with the laboratory test shall be of standard high quality manufacture and as approved for this purpose by the testing agency selected by the superintendent of motor vehicle department.

The manufacturer of the device shall be given due notice of the date and place of test. Manufacturers' representatives present at the test shall be privileged to adjust their devices in any way which represents an ordinary and legitimate adjustment including tilting the lamps or reflectors, which can be carried out by purchasers of the device, or such adjustment may be made by the laboratory expert acting on the instructions of the manufacturer. The character of the adjustments so made shall be carefully noted and stated in the report as manufacturer's adjustment.

Tests.

The tests shall be as follows:

Test 1.

Test 1. Four-point test of pairs of samples. A pair of testing reflectors, mounted similarly to the headlamps on a car shall be set up in a dark room, or at the request of the applicant, out of doors in darkness under such conditions that no light thrown or reflected from any source other than from the device being tested shall materially affect the test readings, at a distance of not less than sixty feet, nor more than one hundred feet from a vertical white screen. If a testing distance of one hundred feet is taken the reflectors shall be set twenty-eight inches apart from center to center, and if a shorter testing distance is taken, the distance between reflectors shall be proportionately reduced. The axes of the lamps shall be parallel and horizontal, or as tilted in accordance with the manufacturer's adjustment. The intensity of the combined light shall then be measured with each pair of samples in turn, with the reflectors fitted with a pair of each of the following types of incandescent lamps in turn:

- (1) Vacuum type, 6—8 volts, 17 msep.
- (2) Gas-filled type, 6—8 volts, 20 msep.

The lamps shall be adjusted to give their rated candle power. Measurements shall be made at the following points at the surface of the screen:

- A. In the median vertical plane parallel to the lamp axes, on a level with the lamps.
- B. In the same plane one degree of arc below the level of the lamps.
- C. In the same plane one degree of arc above the level of the lamps.
- D. Four degrees of arc to the left of this plane and one degree of arc above the level.

In an acceptable device both pairs of samples shall conform to the following specifications for observed apparent candle power. Points A and B. At at least one of these points the apparent candle power shall not be less than one thousand two hundred. Point C. The apparent candle power shall not exceed two thousand four hundred. Point D. The apparent candle power shall not exceed eight hundred. Provided, however, that if the test indicates that a device which is unacceptable with either of the test lamps will come within the specifications with lamps of another candle power or of the other type, the device may be passed with corresponding limitations as to the incandescent lamps to be used in connection with it.

Test 2.

Test 2. Complete test of single sample.

A single sample taken as an average representative of the device as manufactured shall be submitted to a complete test with a vacuum incandescent lamp of seventeen candle power 6—8 volt rating. This test shall show its light distribution characteristics by actual measurements made according to recognized and exact methods.

One pair of the samples shall be retained by the testing agency for the purpose of future reference and as samples of construction and the other pair shall be returned to the office of the superintendent of the motor vehicle department.

The report of the tests shall be rendered in duplicate to the superintendent of the motor vehicle department, and shall be signed or initialed not only by the expert making the test, but also by an executive officer of the institution making the test.

It shall include a statement by the testing agency or the testing official as to whether or not the device when properly applied substantially complies with the requirements of section thirteen of the California motor vehicle act.

Report to local authorities.

(i) The superintendent of the motor vehicle department shall immediately upon the completion of the tests made as herein provided, prepare a written report of the results of such tests and transmit a copy thereof to the clerk of each county within the state of California, who shall thereupon immediately file such report. A copy shall also be sent to the city, town or county traffic departments, whose duty it is to enforce the law. The superintendent of the motor vehicle department shall endorse upon such report the statement of the testing agency or the testing officials as to whether or not the said device when properly applied, substantially complies with the requirements of section thirteen of the California motor vehicle act.

Homemade devices.

(j) It shall be unlawful for any manufactured device that is sold commercially to be used in connection with the headlight upon a motor vehicle to enable the same to comply with the provisions of subdivision (f) hereof unless such device shall have been first tested as provided in subdivision (h) hereof, and the testing agency shall have reported that such device, when properly applied, substantially complies with the requirements of section thirteen of the California motor vehicle act; and such reports shall have been incorporated in the said report of the said superintendent of the motor vehicle department and a copy thereof filed in the office of the clerk of the county in which said device is used and a copy sent to city, town or county traffic departments whose duty it is to enforce the law.

Submission of device for test. Fee. Certificate of approval. Diffusing lens.

(k) Any person, firm or corporation may submit to the superintendent of motor vehicle department a device for controlling the front lights of motor vehicles, so that they shall comply with the provisions of this section, together with an application that such device be tested as prescribed by this section. Such applicant shall pay to the motor vehicle department a fee of fifty dollars. Thereupon the superintendent of motor vehicle department shall upon notice to the applicant submit such device to the testing agency appointed for this purpose as hereinbefore provided with the request that it be tested as to its compliance with the provisions of this section. Upon notice from such testing agency that such test has been made and that such device, when properly applied, substantially complies with the provisions of this section, and specifying the maximum candle power to be used therewith, the superintendent of motor vehicle department shall issue a certificate to the applicant describing the device, certifying that such test has been made, that the device, when applied, complies with the provisions of this section and prescribing the said maximum candle power to be used therewith. All fees paid into the department with said applications shall be paid into the state treasury and deposited in a fund to be known as the "testing fee fund," and the moneys in said fund are hereby appropriated, or so much thereof as may be necessary to meet the expenses of the test provided for in this section, and the balance thereof, if any, after meeting all expenses incurred in connection with said test shall be paid into the motor vehicle fund. Diffusing type of lens may be used with a candle power not sufficiently great to produce a dangerous glare. The maximum of such candle power shall be established by the testing agency selected by the superintendent of the motor vehicle department, based upon tests as herein above provided. Any device so certified shall be equipped with light bulbs labeled with the true candle power thereof, not exceeding that prescribed.

Spotlights.

(1) The term "spotlights" as used herein shall denote any light fastened to the windshield, the windshield support or top of a motor vehicle, the rays of which are projected forward, except sidelights of not to exceed four candle power.

All spotlights used upon motor vehicles shall be so constructed or arranged that no portion of the main, substantially parallel beam of light when measured one hundred feet or more ahead of said lights shall rise or shall be capable of being raised from the driver's seat, to more than forty-two inches above the level surface upon which the vehicle stands directly ahead of such vehicle. [Amendment of May 2, 1919. In effect—see section 20. Stats. 1919, p. 206.]

This section was also amended May 10, 1917, Stats. 1917, p. 396.

Brakes.

§ 14. All motor vehicles must be provided at all times with adequate brakes kept in good working order.

Cleats, etc., on tires.

§ 15. (a) Other than on vehicles actually engaged at the time in construction or repair work on public highways, no tire on any motor or other vehicle operated on or over any public highway or bridge shall have on its periphery any block, stud, flange, cleat, ridge, bead or any other protuberance of metal or wood which projects beyond the tread or traction surface of the tire; but this section shall not be so construed as to prohibit the use of tire chains of reasonable proportions on motor vehicles when required for safety because of snow, ice or other conditions tending to cause such motor vehicle to slide or skid; provided, however, that traction engines or tractors the propulsive power of which is exerted not through wheels resting upon the ground but by

means of a flexible band or chain, known as a movable track, may be operated upon the public highways with transverse corrugations upon the periphery of said movable tracks, on condition that a permit shall first have been obtained as hereinafter in this section provided.

Total weight limit.

(b) No motor or other vehicle shall be operated on or over any public highway or bridge, nor shall any object be moved over or upon any public highway or bridge on wheels, rollers, or otherwise, except when transported in or upon vehicles running exclusively on stationary rails or tracks, in excess of a total weight, including load, of thirty thousand pounds, when said motor or other vehicle or contrivance is equipped with four wheels running on the highway, or in excess of a total weight, including load, of forty thousand pounds when said motor or other vehicle or contrivance shall be equipped with six wheels running on the highway and with three axles not less than ninety-six inches apart, without first obtaining a permit as hereinafter in this section provided.

Weight limit per inch of tire width. In freeholders' charter cities.

(c) No motor or other vehicle or other object, or contrivance for moving loads, except as hereinafter otherwise provided, shall be operated or moved upon or over any public highway or bridge, the weight of which resting upon the surface of said highway or bridge exceeds eight hundred pounds upon any inch of width of tire, when said vehicle is equipped with tires made of other material than metal; and no motor or other vehicle, object, or contrivance for moving loads shall be operated or moved upon or over any public highway or bridge the weight of which resting upon the surface of said highway or bridge exceeds six hundred pounds upon any inch of width of tire, roller, wheel or other object supported on the surface thereof when such tires or the rolling surface of such rollers, wheels or other objects are made in whole or in part of metal, without first obtaining a permit as hereinafter in this section provided; provided, however, that traction engines or tractors the propulsive power of which is exerted not through wheels resting upon the ground but by means of a flexible band or chain, known as a movable track, shall not be subject to the foregoing limitations upon permissible weights per inch of width of tire if the portions of the movable tracks in contact with the surface of the highway present plane surfaces; and provided, further, that cities heretofore or hereafter organized under freeholders' charters may permit or prohibit the increase, beyond the maximum weight per inch of width of tire hereinabove prescribed, of the weight of loads carried within the limits of such cities in or upon metal-tired vehicles drawn by muscular power, but where any such city has not by proper and suitable ordinance or other regulation permitted or prohibited such increase of maximum weight of loads, the regulations and limitations prescribed by this act shall not apply.

Regulation by county. Penalty.

The supervisors of any county shall have power to require a lighter load on county roads in their respective counties. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and is liable to a penalty of twenty dollars for each full ton in excess of the limitation herein imposed, and any peace officer making the arrest of the owner or driver of any vehicle violating the provisions of this subsection shall keep said vehicle with its load in his custody until such time as said penalty shall have been paid; provided, that the owner or driver of any such vehicle may give to said peace officer a bond in favor of the state of California in case of state highways, and in the name of the county in which the offense has occurred in the case of county roads, conditioned to secure the payment of said penalty within the time

prescribed in said bond. Furthermore, any peace officer may require the owner or the driver to drive any such vehicle to the nearest public scales to be designated by such peace officer for the purpose of establishing the weight and the load of any such vehicle.

Trailer limitation.

(d) No motor vehicle shall be operated or driven over any public highway or bridge drawing or having attached thereto more than two trailers; provided, that all four-wheeled trailers excepting light camping trailers shall be equipped with suitable brakes.

Permits by department of engineering.

(e) Anything to the contrary herein notwithstanding, upon application in writing to the state department of engineering, said department of engineering in its discretion may issue a special permit to the owner or operator of any vehicle allowing heavier or wider loads than hereinabove in this section or elsewhere in this act permitted to be moved or carried over and on the public highways and bridges, or allowing more than two trailers to be drawn by a motor vehicle; and may also issue such special permit to increase the permissible weights per inch of width of tire and may also permit the use of corrugations on the periphery of the movable tracks of traction engines or tractors propelled not by wheels resting upon the ground but by flexible bands or chains. Such permits shall be in writing and they may limit the time of use and operation over the particular highways and bridges which may be traversed and may contain such special conditions and provisions and require such undertaking or other security as the said department of engineering shall deem to be necessary to protect the public highways and bridges from injury, or provide indemnity for any injury resulting from such operation. All such special permits shall be carried in the vehicles to which they refer and shall upon demand be open to the inspection of any peace officer, any authorized agent of the department of engineering or of the motor vehicle department, or any officer or employee charged with the care or protection of the public highways. It shall be unlawful for any person to violate, or to cause or permit to be violated, the limitations or conditions of such special permits and any such violation shall be deemed for all purposes to be a violation of the provisions of this act.

Weight on bridges, etc.

(f) Anything to the contrary herein notwithstanding, the state department of engineering may in its discretion limit the maximum load to be carried over or on any public bridge, causeway, viaduct, trestle or dam, below the maximum established by law; provided, however, that in such event said department of engineering shall cause suitable signs to be erected and maintained, specifying such limitation of load, such signs to be placed at a distance of not less than one hundred feet nor more than one hundred fifty feet from the approaches to such bridge, causeway, viaduct, trestle or dam.

Liability for damages.

(g) Anything to the contrary in this act notwithstanding, the owner and the operator, driver or mover of any vehicle, object or contrivance over a public highway or bridge, shall be jointly and severally responsible for all damages which said highway or bridge may sustain as the result of so operating or driving or moving such vehicle and the amount of such damages may be recovered in an action at law by the authorities in control of such highway or bridge. [Amendment of May 2, 1919. In effect—see section 20. Stats. 1919, p. 212.]

This section was also amended May 10, 1917, Stats. 1917, p. 393.

Prevention of noise, smoke, etc.

§ 16. Every motor vehicle must have devices in good working order which shall be at all times in constant operation to prevent excessive or unusual noise, annoying smoke

and the escape of gas, steam or oil, as well as the falling out of residue from fuel, and all exhaust pipes carrying exhaust gases from the engines shall be directed parallel to the ground or slightly upward. Devices known as "muffler cut-outs" shall not be used within the limits of any incorporated city and county or city or town or on any public highway where the territory contiguous thereto is closely built up.

Intoxicated driver, penalty.

§ 17. No person who is under the influence of intoxicating liquor and no person who is an habitual user of narcotic drugs shall operate or drive a motor or other vehicle on any public highway within this state. Any person violating the provisions of this section shall be punished by imprisonment in the county jail for not less than six months nor more than one year or by imprisonment in the state prison for not less than one or more than three years or by a fine of not less than five hundred dollars nor more than five thousand dollars. [Amendment of May 2, 1919. In effect—see section 20. Stats. 1919, p. 214.]

This section was also amended May 10, 1917, Stats. 1917, p. 400.

§ 18. [Repealed May 10, 1917. In effect—see section 29. Stats. 1917, p. 400.]

Chauffeur to be licensed.

§ 19. No person shall employ for hire as a chauffeur of a motor vehicle any person not licensed as in this act provided. No person shall allow a motor vehicle owned by him or under his control to be operated by any person who has no legal right to do so, or in violation of the provisions of this act. No person having control or charge of a motor vehicle shall allow such vehicle to stand in any public street or public highway unattended without first effectively setting the brakes thereon and stopping the motor of said vehicle.

Rules of the road. Right side of road.

§ 20. (a) The driver or operator of any vehicle in or upon any public highway shall drive or operate such vehicle in a careful manner with due regard for the safety and convenience of pedestrians and of all other vehicles or traffic upon such highway, and wherever practicable shall travel on the right-hand side of such highway. Two vehicles which are passing each other in opposite directions shall have the right of way, and no other vehicle to the rear of either of such two vehicles shall pass or attempt to pass such two vehicles. On all occasions the driver or operator of any vehicle in or upon any public highway shall travel upon the right half of such highway unless the road ahead on the left-hand side is clear and unobstructed for at least one hundred yards ahead and in all cases while crossing an intersecting highway. For the purposes of this section and its subdivisions, an animal or animals attached to any conveyance shall, with such conveyance, be deemed to constitute one vehicle.

Passing vehicles.

(b) Vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other one-half the road as nearly as possible.

Overtaking vehicles.

(c) Vehicles overtaking other vehicles proceeding in the same direction shall pass to the left thereof and shall not again drive to the right until reasonably clear of such overtaken vehicle.

(d) It shall be the duty of the driver, rider or operator of a vehicle about to be overtaken and passed to give way to the right in favor of the overtaking vehicle, on suitable and audible signal being given by or on behalf of the operator, driver or other person in charge and control of such overtaking vehicle if such overtaking vehicle be a motor vehicle.

Distance between vehicles.

(e) Vehicles must be operated so as to allow a safe distance between such vehicles and any persons, vehicles or animals preceding them upon the highway, and outside of the business district of any county, incorporated city and county, city or town, contiguous to a public highway as such business district is defined in this act, no vehicle shall, while in motion, be closer than fifteen feet to any vehicle, person or animal in front thereof.

Intersections, right of way.

(f) Excepting where controlled by such traffic ordinances or regulations as are permitted under this act the operator of a vehicle shall yield the right of way at the intersection of their paths to a vehicle approaching from the right unless such vehicle approaching from the right is further from the point of the intersection of their paths than such first named vehicle.

(g) Any vehicle traveling on a public highway which is divided longitudinally by a parkway or an isle of safety, shall keep to the right of such parkway or isle of safety unless otherwise directed by the provisions of any ordinance, rule or regulation of competent local authorities.

(h) It shall be the duty of the person operating or in charge of an overtaking vehicle to sound audible and suitable signal before passing a vehicle proceeding in the same direction.

Turning at intersections.

(i) All vehicles approaching an intersection of a public highway, with the intention of turning thereat shall in turning to the right keep to the right of the center of such intersection, and in turning to the left shall run beyond the center of such intersection, passing to the right thereof, before turning such vehicle toward the left. For the purposes of this subdivision the "center of such intersection" shall be held to mean the meeting point of the medial lines of the two highways traversed by the vehicle making the turn.

Horses, precautions on meeting.

(j) In all passing and overtaking such assistance shall be given by the occupants of each vehicle respectively to the other as the circumstances shall reasonably demand in order to obtain clearance and avoid accidents; every person having control or charge of any motor vehicle or other vehicle upon any public highway and approaching any vehicle drawn by a horse or horses, or any horse upon which any person is riding, shall operate, manage and control such motor vehicle or other vehicle in such manner as to exercise every reasonable precaution to prevent the frightening of any such horse or horses and to insure the safety and protection of any person riding or driving the same; and if such horse or horses appear frightened the person in control of such motor vehicle or other vehicle shall reduce its speed, and if requested by signal or otherwise by the driver or rider of such horse or horses shall not proceed further toward such animal or animals unless such movement be necessary to avoid accident or injury, until such animal or animals be under the control of the driver or rider thereof.

(k) The operator of any vehicle shall not operate or drive the same so as to pass or overtake any other vehicle going in the same direction at any street intersection unless directed so to do by a traffic or police officer.

Slowly moving vehicle.

(l) The person in control of any vehicle moving slowly along and upon any public highway shall keep such vehicle as closely as practicable to the right-hand boundary of the highway, allowing more swiftly moving vehicles reasonably free passage to the left.

Mirror required, when.

(m) No person shall operate or drive any motor vehicle that is so covered, loaded or constructed as to obscure the driver's view of the highway to the rear, nor any vehicle which is so covered, loaded or constructed that any portion thereof to the rear of the driver projects more than twelve inches beyond the extreme left side of the driver's seat, unless there is placed on said vehicle a mirror so located as to reflect to the driver a view of the highway for at least two hundred feet behind such vehicle.

Arm signals. Mechanical or electrical device.

(n) The person in charge of any vehicle in or upon any public highway, before turning, stopping, or changing the course of such vehicle, and before turning such vehicle when starting the same, shall see first that there is sufficient space for such movement to be made in safety, and if the movement or operation of other vehicles may reasonably be affected by such turning, stopping or changing of course, shall give plainly visible signal to the persons operating, driving or in charge of such vehicles of his intention so to turn, stop, or change his course, either by the use of his hand and arm, which shall be visible from the rear, or by the use of an approved mechanical or electrical device. Any such device shall upon application to the motor vehicle department be tested and certified as adequate to give the signal herein required, in the same manner and upon the payment of the same fee as in the case of headlights.

When the signal required by this section is given by the use of the hand and arm the intention to turn such vehicle toward the right or the left shall be indicated by extending the hand and arm horizontally from and beyond the side of the vehicle toward which the turn is to be made or by extending the hand and arm vertically with the hand pointing upward from the side opposite the direction toward which the turn is to be made; when the signal to be given is to indicate the intention to stop a vehicle or to abruptly or suddenly check its speed, such signal if given with the hand and arm shall be given by extending the hand and arm out from and beyond either side of the vehicle and pointed in a downward direction.

Passing street cars.

(o) In passing any railroad, interurban or street-car while passengers are alighting from or boarding the same, vehicles shall be operated or driven on the right hand side of such cars and at a rate of speed not exceeding ten miles an hour and no portion thereof or of any load thereon shall come within six feet of the running board of steps of such cars, and shall at all times be operated with due care and caution so that the safety of such passengers shall be assured; provided, however, that where local authorities have plainly marked upon the surface of the highway safety zones for the protection of such passengers, vehicles shall not, at any time, be operated or driven within such zones; provided, further, that said safety zones shall only be marked at street corners or at other regularly established stations or stopping places of such railroad, or interurban, or street cars, and shall not extend beyond seven feet toward the boundary of the highway from the outer rail of such railroad, interurban or street car line.

(p) Every motor vehicle when moving in defiles, canyons, or mountain passes where the curvature of the road or highway prevents a clear view for a distance of one hundred yards shall be held under control and not permitted to coast and the operator thereof in approaching curves shall give a warning of his gong or other adequate signaling device.

(q) No vehicle except vehicles operated by the fire department or police department of any incorporated city and county, city or town, shall be turned so as to proceed in the opposite direction except at an intersection of the public highway. In so turning vehicles shall pass beyond and around the center of such intersection. This provision

shall not apply except in a business district or closely built up territory, as such district and such territory are defined in this act.

Police and fire department vehicles.

(r) Police and fire department vehicles shall at all times be equipped with a siren and it shall be unlawful for any other vehicle to be equipped with or use such a device.

(s) Vehicles of the police or fire department of any incorporated city or county, city or town, shall in all cases while being operated as such, have right of way over all other vehicles with due regard to the safety of the public; but this provision shall not protect the driver or operator of any such vehicle or his employer or principal from the consequence of the arbitrary exercise of this right, nor shall it be construed as permitting the violation by the operators of any such vehicles of any of the provisions of section twenty-two of this act, except the operators of police vehicles when such vehicles are being operated in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation.

(t) Upon the approach of any police or fire department vehicle it shall be the duty of the operator of any street car, upon the sounding of a signal by such police or fire department vehicle, to stop such street car forthwith, unless at the time such street car is crossing an intersection of the public highways, in which event it shall be operated so as to clear the intersection of the highways and then stopped, and every other vehicle shall immediately be moved to a position as near as possible and parallel to the right-hand curb, and shall remain there until the police or fire department apparatus has passed such vehicle.

Fire hydrants protected.

(u) No person shall hitch or leave standing, or cause or permit to be hitched or left standing, any animal, or leave standing or cause or permit to be left standing, any vehicle, or stop or cause or permit to be stopped any animal or vehicle at any time upon the public highway within fifteen feet of any public fire hydrant located upon the public highway or sidewalk, unless such animal is under the charge of some person capable of driving the same or unless such vehicle is in the charge of some person capable of operating or driving the same.

Width of vehicle. Luggage, trunks, etc. Hay wagons, etc.

(v) No motor or other vehicle as defined in this act shall be operated or driven on or over any public highway or bridge if the outside width of tread exceeds one hundred twelve inches or if the total outside width of the bed of said vehicle and any load thereon shall exceed one hundred two inches, nor shall any pleasure type automobile be operated on or over any public highway or bridge if any luggage, package, trunk, crate, box or other load carried thereon extends to the left side more than twelve inches beyond the body of such automobile; provided, however, that any city now or hereafter organized under freeholders' charter may permit or prohibit an increase beyond the maximum hereinbefore prescribed of the total outside width of the beds of vehicles and any loads thereon, where such vehicles are operated or driven and said loads are carried wholly within the limits of said city, but where any such city shall not by proper and suitable ordinance or other regulation permit or prohibit such increased width, the regulations and limitations prescribed by this act shall not apply; and provided, that the regulations and limitations prescribed by this act relative to the maximum widths of vehicles and their loads shall not apply to implements of husbandry temporarily drawn, propelled or moved upon the highway; and provided, further, that loads not exceeding ten feet in width of loosely-piled material not crated, baled, boxed, sacked or carried otherwise than loosely in bulk, may be carried upon vehicles on the highway; provided, that the extreme width of such vehicles, including any loading racks thereon, shall not exceed one hundred twenty inches, as hereinbefore prescribed.

Repairing vehicle on highway.

(w) No person shall leave standing, or cause or permit to be left standing upon the main traveled portion of any public highway, a vehicle undergoing repair, or which has been stopped for the purpose of having repairs made thereon, or for the purpose of camping: provided, however, that this provision shall not apply to a vehicle which shall be disabled, while on such main traveled portion of the highway, in such manner and to such extent that it shall be impossible to avoid stopping such vehicle on said main traveled portion of the highway, and impracticable to remove the same therefrom until repairs shall have been made.

Riding animals regulated.

(x) The provisions of subdivisions (a), (b), (c), (d), (e), (g), (j), (k), (l) of this section shall be applicable to the rider of every horse, mule or other riding animal ridden upon the public highway, to the end and effect that the same duties, rules and regulations imposed thereon upon the drivers or operators of vehicles upon the public highway, including the care to be exercised in driving or operating vehicles, the portion of the highway upon which they shall travel, the right of way as between vehicles passing or overtaking each other, or upon approaching intersections, the duty of giving way in favor of overtaking vehicles, the manner of turning at intersections and at other places upon the highway and of stopping or changing the course of the vehicles and the duties imposed upon operators or drivers of vehicles in passing railroad, interurban or street cars, shall be imposed, and they are hereby imposed, upon the riders of animals upon the public highways.

Livestock on highway.

(y) No person owning, or controlling the possession of, any horse, cow, mule, ass, sheep, goat, hog or other live stock, shall voluntarily or negligently permit such animal to stray upon or remain unaccompanied by a herder or other person in charge or control thereof upon a public highway, either side of which is adjoined by property which is separated from such highway by a fence, wall, hedge, sidewalk, curb, lawn or building, or shall permit the tether or any portion thereof to which such animal may be attached, to lie across or upon any public highway, and no person shall feed, pasture or camp any such live stock upon any public highway between the hours of sunset and sunrise without keeping a sufficient number of herders on continual duty to keep open the road so as to admit at all times of the ready passage of vehicles, and also keeping red lanterns or lights burning to warn the public of the presence of such stock.

Firearms.

(z) No person shall discharge any firearms on any public highway.

Leaking contents, etc.

(aa) No vehicle shall be operated on any public highway unless it is so constructed as to prevent its contents from dropping, sifting, leaking, or otherwise escaping from such vehicle.

Windshields.

(ab) Every motor vehicle used for commercial purposes shall be equipped with an adequate windshield. [Amendment of May 2, 1919. In effect—see section 20. Stats. 1919, p. 215.]

This section was also amended May 10, 1917, Stats. 1917, p. 400.

Duty in case of accident.

§ 21. Whenever an automobile, motorcycle, or other motor vehicle or any vehicle whatsoever, regardless of the power by which the same may be propelled or drawn,

strikes any person, or collides with any vehicle containing a person, the driver of, and all persons in, such automobile, motorcycle or other motor vehicle, or other vehicle, who have or assume authority over such driver, shall immediately cause such automobile, motorcycle, or other motor vehicle, or other vehicle, to stop and shall render to the person struck, or to the occupants of the vehicle collided with, all necessary assistance including the carrying of such person or occupant to a physician or surgeon for medical or surgical treatment, if such treatment be required, or if such carrying is requested by the person struck or any occupant of the vehicle struck; and such driver, and person having or assuming authority over such driver, shall further give to the occupants of such vehicle or person struck, the number of such automobile, motorcycle or other motor vehicle, or other vehicle, also the name of the owner thereof and the name of the passenger or passengers not exceeding five in each automobile, motorcycle or other motor vehicle, or other vehicle, at the time of such striking or collision. Any person violating any of the provisions of this section is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Speed limits. General. Maximum. Crossings and intersections. Signs at railway crossings. Regulations by highway commission, signs.

§ 22. (a) Any person operating or driving a motor or other vehicle on the public highways shall operate or drive the same in a careful and prudent manner and at a rate of speed not greater than is reasonable and proper, having regard to the traffic and use of the highway, and no person shall operate or drive a motor vehicle or other vehicle on a public highway at such rate of speed as to endanger the life or limb of any person or the safety of any property; provided, that it shall be unlawful to operate or drive at a rate of speed in excess of thirty miles an hour, except in the daytime and except when the operator or driver has a clear and uninterrupted view of the highway on which he is traveling in the direction toward which he is traveling and of all highways which intersect such highway within four hundred feet ahead of such operator or driver, to a distance of at least four hundred feet from the highway on which he is traveling and there is no person, vehicle or other object visible ahead on such highway on which such operator or driver is traveling within four hundred feet of such operator or driver or on any such intersecting highway within four hundred feet of the point of the intersection of the center lines of such highways; provided, also, that in no case shall any vehicle be operated at a rate of speed in excess of thirty-five miles an hour; and provided, further, that in any event no person shall operate or drive a motor vehicle or other vehicle on any public highway where the territory contiguous thereto is closely built up, at a greater rate of speed than twenty miles an hour, or in the business district of any incorporated city and county, city or town, at a greater rate of speed than fifteen miles an hour; provided, further, that no person shall operate or drive a motor vehicle or other vehicle on any public highway at a greater rate of speed than fifteen miles an hour in approaching any steam, electric or other railway crossing at grade, or in approaching or traversing an intersecting highway, or crossing or intersection of highways, or in approaching or going around corners or curves in the highway, when in any of the foregoing cases the operator's or driver's view of the road or railway traffic is obstructed, but anything to the contrary herein notwithstanding, no person shall operate or drive a motor vehicle or other vehicle on any public highway at a greater rate of speed than ten miles an hour in traversing any steam, electric or other railway crossing at grade when the operator's or driver's view of the crossing or of any traffic on such railway within four hundred feet of such crossing is obstructed; provided, further, that the board of supervisors of any county and city and county within this state, and the board of trustees, city council or other governing body of every municipality within this state, within six months after the passage

of this act, shall place and thereafter maintain warning signs on every public highway approaching a crossing at grade of such highway and the tracks of any railway, at a reasonable distance, not less than three hundred feet, from such crossing, and on either side thereof. Such sign shall consist of a metal disc twenty-four inches in diameter, the field enameled white, with an enameled black border line one inch wide, and with an enameled black vertical and horizontal cross-line two and one-half inches wide; the reverse side of such disc to be colored black. In each of the upper quarters shall appear in black enamel the letter "R," five inches high, three and three-quarter inches wide, lines one inch stroke. Anyone defacing, injuring, knocking down or removing any such sign shall be guilty of a misdemeanor; provided, further, that the maximum rate of speed over any bridge, dam, trestle, culvert, causeway or viaduct as well as the maximum rate of speed over any state highway or portion of state highway may be established by the state highway commission at less than the rate established by law, when in the judgment of said commission the safety of persons using the highway or the protection of the highway shall be promoted thereby, but whenever any such different rate of speed is so established by said commission, the commission shall cause to be erected suitable signs to mark the location and limits of the highway to which said different rate of speed shall apply, and such signs shall be placed at a distance of not less than one hundred feet or at a greater distance than one hundred fifty feet from the highway or portion of highway or from the approaches of any bridge, dam, trestle, culvert, causeway or viaduct with respect to which such different rate of speed may be so established. In the case of a bridge, dam, trestle, culvert, causeway or viaduct, such maximum rate of speed so established by said commission shall not be less than ten miles an hour, and in the case of any other highway or portion of highway, such maximum rate of speed so established shall not be less than fifteen miles an hour.

Speed limit of trucks. Equipped with pneumatic tires.

(b) No motor or other vehicle carrying a weight in excess of nine thousand pounds, including the vehicle, shall be operated, driven, drawn or otherwise moved on any public highway or bridge at a rate of speed greater than twenty-five miles an hour; no motor or other vehicle carrying a weight in excess of twelve thousand pounds, including the vehicle, shall be operated, driven, drawn or otherwise moved on any public highway or bridge at a rate of speed greater than fifteen miles an hour; no motor or other vehicle carrying a weight in excess of twenty-four thousand pounds, including the vehicle, shall be operated, driven, drawn or otherwise moved on any public highway or bridge at a rate of speed greater than ten miles an hour; provided, however, that no motor vehicle or trailer equipped with tires made wholly or partly of metal shall be operated, driven, drawn or otherwise moved on any public highway or bridge at a rate of speed greater than six miles an hour; provided, further, that any such motor vehicle or trailer, with tires made wholly or partly of metal, may be operated, driven, drawn or otherwise moved, subject to the other provisions of this act, up to ten miles an hour, if it be equipped with springs and if the rear wheels be not less than forty-six inches in diameter, with a bearing surface of not less than eighteen inches; and provided, further, however, anything to the contrary herein notwithstanding, that no motor or other vehicle constructed or otherwise adapted for carrying loads weighing four tons or more, exclusive of such vehicle, shall be operated, driven, drawn or otherwise moved upon the public highway, whether laden or unladen, at a rate of speed exceeding fifteen miles an hour; and provided, further, that nothing contained in this subdivision shall apply to motor vehicles equipped with pneumatic tires.

Arrests for speeding. Place of trial.

(c) In case of any person arrested for violation of the provisions of this section, unless such person shall demand that he be taken forthwith before the most accessible

magistrate, the arresting officer shall take the name and address of such person and the number of his motor vehicle and notify him in writing to appear before a magistrate of the township in which the offense for which such person is arrested is alleged to have been committed at a time and place to be specified in such writing at least five days subsequent to the date of such notice upon the promise in writing of such person to appear at such time and place, such officer shall forthwith release him from custody. In the event that any person arrested for any violation of the provisions of this section, demands to be or is taken forthwith after his arrest before a magistrate he shall be entitled to at least five days continuance of his case within which time to prepare to plead or prepare for trial and he shall not be required to plead or to be tried within such five days unless he waives such time in writing or in open court; provided, that he promises in writing, after notice in writing of the time and place for his further appearance in court to appear at such time and place. Upon the giving of such written promise or, if he refuse to give such promise, on bail fixed by the magistrate he shall thereupon be forthwith released from custody. Any person wilfully violating such promise shall be guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested.

Local regulations.

(d) Limitations as to the rate of speed herein fixed shall be exclusive of all other limitations fixed by any law of this state or any political subdivision thereof. Local authorities shall have no power to enact, enforce or maintain any ordinance, rule or regulation in any way in conflict with, contrary to or inconsistent with the provisions of this act, or of any section or other subdivision thereof, and no such ordinance, rule, or regulation of said local authorities heretofore or hereafter enacted shall have any force or effect, excepting, however, that (1) such powers as are now or may hereafter be vested in local authorities to enact ordinances and regulations, applicable equally and generally to all vehicles and other users of the highways, and providing for traffic or crossing officers or semaphores, to bring about the orderly passage of vehicles and other users of the public highways on certain portions thereof, where the traffic is heavy and continuous, as well as (2) the powers now or hereafter vested in local authorities to license and to regulate the operation of vehicles offered to the public for hire, and to regulate the use of the highways for processions or assemblages, shall remain in full force and effect, and all ordinances, rules and regulations which may have been or which may be hereafter enacted in pursuance of such powers, shall remain in full force and effect; and provided, further, that local authorities may by general rule, ordinance or regulation, exclude vehicles from any cemetery or ground used for the burial of the dead, or exclude vehicles used solely or principally for commercial purposes from any park or part of a park system where such general rule, ordinance, or regulation is applicable equally and generally to all other vehicles used for the same purpose; provided, that at the entrance, or at each entrance if there be more than one, to such cemetery or park from which vehicles are so excluded, there shall have been posted a sign plainly legible from the middle of the public highway on which such cemetery or park opens, plainly indicating such exclusion and prohibition; and provided, further, that the local authorities of any city, town, or city and county may impose additional restrictions to those herein contained applicable to vehicles exclusively used in the carrying of merchandise or articles of freight and of a capacity in excess of one ton in weight and may designate certain streets whereon heavily laden vehicles may be excluded or declared to be "one way" streets, may, further, restrict or prohibit, the use of trailers. [Amendment of May 2, 1919. In effect—see section 20, Stats. 1919, p. 220.]

This section was also amended May 10, 1917, Stats. 1917, p. 404.

§ 23. [Repealed May 10, 1917. In effect—see section 29, Stats. 1917, p. 407.]

Operator's and chauffeur's licenses. Certificate. Chauffeur's badge. Minor's license.

§ 24. (a) It shall be unlawful for any person to operate or drive a motor vehicle upon the public highway unless licensed by the department as hereinafter provided; provided, however, that the requirements of this section shall not apply to the operators or drivers of any implements of husbandry temporarily drawn, propelled or moved on the public highway. Before operating a motor vehicle upon the public highway, application for a license to operate such vehicle shall be made by mail or otherwise to the department upon a blank to be prepared and furnished on request by said department. To each person shall be assigned some distinguishing number or mark and the department shall issue to the licensee a certificate in such form as the department shall determine; it shall contain the distinguishing number or mark assigned to the licensee, his name, age, place of residence, business address if any, and a brief description of the licensee for the purpose of identification, and such other information as the said department shall deem necessary. Every person licensed to operate motor vehicles as aforesaid, whether as chauffeur or operator, shall indorse his usual signature in the space on the license certificate provided for the purpose, immediately upon the receipt of said certificate and his license shall not be valid until the certificate is so indorsed. Licenses, to chauffeurs shall be valid during the calendar year only in which issued. Licenses issued to operators shall be valid until revoked. The department shall furnish to every chauffeur licensed a suitable metal badge with the distinguishing number assigned to him stamped thereon, without extra charge therefor, such badge to have stamped thereon the words "Registered Chauffeur No., Cal." with the said license number and year of issue inserted therein. This badge shall thereafter be worn by such chauffeur, affixed to his clothing in a conspicuous place, at all times when he is operating or driving a motor vehicle upon the public highway, and the license certificate issued to each chauffeur or operator, under the provisions of this section, shall be carried by the licensee at all times when he is operating or driving a motor vehicle upon the public highway and shall be produced by him for inspection upon request of any peace officer. In case of the loss of such badge or certificate a duplicate will be issued by the department on the filing of an affidavit showing the fact of loss, and on payment of a fee of one dollar to the department in the case of a badge and fifty cents in case of a certificate. Duplicate license certificates shall be issued by the department to operators other than chauffeurs upon application therefor, whether in case of loss or otherwise, upon payment of a fee of twenty-five cents to the department. Applications for the annual renewal of licenses by chauffeurs shall be accompanied by the fee required by section seven of this act. No chauffeur's license or badge shall be issued to any applicant under the age of eighteen years; provided, that it shall be unlawful for any person to cause or knowingly to permit his or her child, ward or employee to operate or drive a motor vehicle upon the public highway, whether as a chauffeur or operator, without having first obtained such license as is hereinbefore specified; provided, that the application to the department of a minor to operate or drive a motor vehicle, whether as chauffeur or operator, shall not be granted by the department unless the parent or parents having the custody of such applicant or the guardian of such applicant shall have joined in said application by signing the same; and provided, further, that any negligence of a minor, so licensed, in operating or driving a motor vehicle upon the public highway, whether as chauffeur or operator, shall be imputed to the person or persons who shall have signed the application of such minor for said license, which person or persons shall be jointly and severally liable with such minor for any damages caused by such negligence. [Amendment of May 2, 1919. In effect—see section 20, Stats. 1919, p. 223.]

This section was also amended May 14, 1917. Stats. 1917, p. 407.

Register of licenses.

§ 25. Upon the receipt of an application as provided in section 24 of this act, the department shall thereupon file the same, and register the applicant in a book or on index cards which shall be kept in the same manner, subject to public inspection, as the books or index cards for the registration of motor vehicles.

Use of fictitious name, etc.

§ 26. (a) No person shall use a fictitious name in applying for such chauffeur's or operator's license, nor shall any chauffeur or operator licensed as herein provided voluntarily permit any other person to possess or use his license certificate or badge; nor shall any person while operating or driving a motor vehicle use or possess any license certificate or badge belonging to another person.

(b) No person shall display or cause or permit to be displayed, or have in his possession, any canceled, revoked, suspended, altered or fictitious registration number plate, registration seal, registration certificate, operator's license certificate, chauffeur's license certificate or chauffeur's badge, as the same are respectively provided for in this act.

(c) No person shall knowingly buy, sell, receive, dispose of, conceal or have in his possession any motor vehicle from which the manufacturer's serial number or motor number or any other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed for the purpose of concealment or misrepresenting the identity of said motor vehicle. [Amendment of May 10, 1917. In effect—see section 29, Stats. 1917, p. 408.]

In effect after December 31, 1917. Nonresident operator.

§ 27. No person shall operate or drive a motor vehicle or cause a trailer to be drawn upon a public highway after the thirty-first day of December, one thousand nine hundred seventeen, nor shall any owner of a motor vehicle or of any trailer permit such motor vehicle or trailer to be so operated, driven or drawn after said date, unless the requirements of this act relative to the registration of motor vehicles and trailers and to licensing of chauffeurs and operators shall have been in all respects complied with; provided, however, that a nonresident operator or chauffeur who has complied with the provisions of the country or state of his residence relative to the operation of motor vehicles and who, while operating a motor vehicle upon the highways of this state shall wear such badge and carry such license certificate as may have been assigned to him in the country or state of his residence, shall be exempt from license hereunder for a period not to exceed three months in any calendar year; and provided, further, that the provisions of this act relative to registration and the payment of the fees therefor and the display of registration number plates and seals shall not apply to a motor vehicle or trailer owned by a nonresident, other than a foreign corporation doing business in this state, who is only sojourning within this state; provided, that the registration number plate assigned and furnished for said motor vehicle or trailer for the current calendar year by the country or state of which such owner is a resident shall be displayed on such motor vehicle or trailer substantially as provided in this act for vehicles registered pursuant to the provisions hereof; provided, however, that a nonresident owner of a motor vehicle or trailer so registered in such other country or state shall, not later than twenty-four hours after commencing to operate said vehicle, or to cause or permit the same to be operated, on any public highway within this state, apply to the department for registration of such vehicle, said application to be made upon a form to be prepared and to be furnished on request by the department, and shall state in addition to such other matters as may be required by the department, the name and postoffice and residence address of the applicant, together with the registration number of said vehicle in the country or state in which the same shall be registered, which country or state shall be designated by the applicant in said application.

Registration certificate.

Upon receipt of said application, the department, if satisfied of the facts stated therein, shall, without charge to the applicant, register said motor vehicle or trailer and shall furnish to the applicant a registration certificate or device, of a distinctive form to be determined by the department, indicating that the holder thereof has complied with the requirements of this act and containing such other matter as may be deemed suitable by the department, which certificate or device shall be valid not to exceed three months from the date of its issuance, at the end of which period it shall be returned by said owner, transportation prepaid, to the department. In case of a motor vehicle, said certificate or device shall be carried, at all times while said motor vehicle is being operated or driven upon the public highways, in plain sight in or upon said motor vehicle, in the manner required of resident owners with respect to registration certificates, and in case of a trailer, such certificate or device shall be displayed in such manner as the department shall determine. The department shall file said applications for registration by nonresident owners, and shall suitably index said applications and registrations, which files and index shall be open to inspection by the public during reasonable business hours. [Amendment of May 10, 1917. In effect December 31, 1917. Stats. 1917, p. 409.]

Using car without owner's consent.

§ 28. It shall be unlawful for any person to drive or operate, or cause to be driven or operated, upon the public highway any motor vehicle not his own, whether with or without intent to steal the same, in the absence of the owner thereof without such owner's consent; provided, such consent shall not be implied in any instance because of the fact that upon a previous occasion such owner had consented to the use of the same or another motor vehicle by such person. Any person violating any of the provisions of this section shall be punished by imprisonment in the state prison for not less than one year nor more than five years. [Amendment of May 2, 1919. In effect—see section 20; Stats. 1919, p. 225.]

This section was also amended May 10, 1917, Stats. 1917, p. 410.

Putting glass, etc., on highway.

§ 29. Any person who throws or deposits any glass bottle, glass, nails, tacks, hoops, wire, cans, or any other substance likely to injure any person, animal, or vehicles upon any public highway, shall be guilty of a misdemeanor.

Injuring motor vehicle.

§ 30. (a) Any person who shall, individually or in association with one or more others, willfully break, injure, tamper with or remove any part or parts of any motor vehicle, for the purpose of injuring, defacing or destroying such vehicle, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of such vehicle or who shall in any other manner willfully or maliciously interfere with or prevent the running or operation of such vehicle, shall be guilty of a misdemeanor.

Getting into vehicle without owner's consent.

(b) Any person who shall, without consent of the owner or person in charge of a motor vehicle, climb upon or into such vehicle, whether the same be in motion or at rest; or who, while such vehicle is at rest and unattended, shall attempt to manipulate any of the levers, the starting crank, or other device, brakes, or mechanism thereof, or to set said vehicle in motion shall be guilty of a misdemeanor.

Discounts on supplies.

§ 31. No chauffeur or other person having the care of a motor vehicle for the owner shall receive or take, directly or indirectly, without the written consent of such owner, any bonus, discount or other consideration for supplies or parts furnished or purchased for such motor vehicle, or on any work or labor done thereon by others, or on the purchase of any motor vehicle for his employer, and no person furnishing such supplies or parts, work or labor, or selling any motor vehicle shall give or offer any such chauffeur or other person having the care of a motor vehicle for the owner thereof, directly or indirectly, without such owner's written consent, any bonus, discount, or other consideration thereon. Any person violating this section shall be guilty of a misdemeanor.

General penalties.

§ 32. (a) Excepting as in this act otherwise provided, or where a different penalty is expressly fixed by this act, any person violating any of its provisions, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in an application for the registration of a vehicle, or in an application for an operator's or chauffeur's license, shall be guilty of a misdemeanor, and upon conviction thereof, unless in this act otherwise provided, shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Revocation of license. Complaints of reckless driving. Hearing.

(b) Immediately upon receipt by the department of information concerning the conviction of any person for the violation of section seventeen of this act, or concerning the third conviction within one year of any person for the violation of any of the provisions of section twenty-two of this act, the department shall forthwith revoke the operator's or chauffeur's license issued to such person by the department and shall issue no operator's or chauffeur's license to any such person within one year thereafter.

Upon the suspension or revocation of any chauffeur's or operator's license, the department shall demand the surrender of the license certificate, and any duplicates thereof that may have been issued, and also the license badge, if any, and it shall be unlawful for any person whose license has been suspended or revoked as herein provided to fail or neglect forthwith to surrender to the department any such certificates or badge in his possession or under his control. Upon receiving within one year verified written complaints made by one or more persons of two or more separate instances of reckless, negligent or unlawful operation of a vehicle on any public highway in this state by any person to whom the department has issued a valid unrevoked operator's or chauffeur's license the department may, in the discretion of the superintendent thereof, fix a time and place for a hearing to determine whether or not the operator's or chauffeur's license held by such person should be revoked on the ground that such person is an unfit person to be so licensed. The person so complained of shall be served with a written notice, at least ten days prior to the date of said hearing, to appear and show cause, at such hearing, why his license to operate a motor vehicle upon the public highways should not be suspended or revoked. Such hearing shall be held by the superintendent of the department or by any person or persons, not exceeding three, officers or employees of the department whom he may designate. If upon such hearing it is determined that there is good and sufficient reason therefor findings and an order shall be made by the superintendent or by the person or persons holding such hearing on his behalf to the effect that such license should be revoked. The department shall thereupon cause such person's license as an operator or chauffeur to be forthwith revoked if the findings hereinbefore provided for show or declare that such operator or chauffeur

is a reckless or negligent driver or that he is incompetent or unfit to operate a motor vehicle because of mental or physical infirmities or disabilities.

If in any case the respondent shall fail to appear at the time and place fixed for any such hearing as is provided in this section, he shall be in default, and if in the opinion of the superintendent or of the person or persons holding such hearing on his behalf, there is sufficient reason therefor, the license of the respondent may be ordered revoked or suspended, whereupon the department shall upon notice of such order, revoke or suspend, as the case may be, such license.

The superintendent or the person or persons holding such hearing may summon witnesses in behalf of the state and may administer oaths and take testimony, may cause depositions to be taken, and may order the production of books, papers, agreements and documents.

The fees for the attendance and travel of witnesses shall be the same as for witnesses before the superior court, and shall be paid by the state upon demand by the department filed with the controller.

The supreme court, any district court of appeal or any superior court shall have jurisdiction, upon the application, to enforce all lawful orders of the department under this section.

Suspension of license by court.

(c) In addition to any or all other punishments provided in this act and imposed by the court upon any person for violation of any of the provisions of this act, the court may, in its discretion, suspend an operator's or chauffeur's license for a period of not to exceed thirty days, in which case the court shall take up the license certificate of such person together with, in case of a chauffeur, the license badge, and shall forward them to the department.

Return of license.

(d) Upon the expiration of the period of suspension of any license as hereinbefore in this section provided for, the department shall return to the licensee his license certificate, or in its discretion may issue to him a new certificate, and such license shall be valid for the remainder of the current calendar year, subject to the other provisions of this act; and in like manner the department shall return to any chauffeur whose license badge may have been forwarded to the department upon suspension of his license, such license badge or issue to such licensee a new badge. [Amendment of May 2, 1919. In effect—see section 20, Stats. 1919, p. 225.]

This section was also amended May 10, 1917, Stats. 1917, p. 410.

§ 33. [Repealed May 10, 1917. In effect—see section 29, Stats. 1917, p. 412.]

Motor vehicle fund. Transfer and operator's license fund. Payments to counties. State highway expenditures.

§ 34. There is hereby created in the state treasury a fund which shall be known as the "motor vehicle fund." All moneys received by the department under any of the provisions of this act must be paid into the state treasury within twenty-four hours after the receipt thereof and shall be deposited to the credit of the motor vehicle fund, but if at any time such payment can not be made because of the intervention of a Sunday or a holiday, then such money shall be paid into the state treasury before twelve o'clock noon of the first business day following such Sunday or holiday; provided, however, that there is also hereby created in the state treasury a fund which shall be known as the "transfer and operators' license fund," and the moneys received by the department for transfers and for operators' and chauffeurs' licenses shall not be cred-

ited to the motor vehicle fund but to the credit of said transfer and operators' license fund. One-half of the net receipts under this act except those credited to the transfer and operators' license fund shall be paid from the motor vehicle fund to the counties from which the moneys were received, as determined by the places of residence of the persons to whom the registration certificates are issued, and all such amounts so returned shall be paid into the road funds of the several counties receiving the same, and shall be expended by such counties exclusively in the construction and maintenance of roads, bridges and culverts in said counties respectively. In the event that any county has not established a road fund, its proportion of said net receipts shall be retained by the state until provision for such road fund has been made, and it shall then be paid over. In the months of February and August of each year the department shall make to the controller a report setting forth the gross and net receipts for the preceding six months, and thereafter the controller shall draw his warrants upon the motor vehicle fund in favor of the county treasurer of each county for the amount to which such county is entitled; provided, nevertheless, that the controller shall not draw such warrant in favor of any county which theretofore shall not have established a road fund or which shall be delinquent in its annual report to the state department of engineering as hereinafter required. Of the moneys in said motor vehicle fund, when such action has been authorized by the board of control, the department may draw, without at the time furnishing vouchers and itemized statements, sums not to exceed in the aggregate ten thousand dollars, said sums so drawn to be used as a revolving fund where cash advances are necessary. At the close of each fiscal year, or at any other time upon demand of the board of control, the moneys so drawn must be accounted for and substantiated by vouchers and itemized statements submitted to and audited by the board of control and by the controller. All moneys remaining in the motor vehicle fund after the expenditure herein authorized, in addition to all sums that have been heretofore or that may be appropriated hereafter by the legislature for the same purpose, shall be expended under the direction of the state department of engineering for the maintenance and improvement of the state roads and highways under the jurisdiction of said department of engineering, and for the maintenance and improvement of roads and highways in state parks subject to the approval of the official or officials charged by law with the management and control of such parks, such moneys to be so drawn from said motor vehicle fund for the purpose of such maintenance and improvement upon warrants executed by the state controller upon demand made by the state department of engineering, and allowed and audited by the board of control. The transfer and operators' license fund and so much of the motor vehicle fund as may be necessary is hereby appropriated to be expended by the department in carrying out the provisions of this act; provided, however, that there shall not be so expended out of the motor vehicle fund in any one year more than ten per cent of said fund; and provided, further, that the board of supervisors of each county in the state shall make an annual report to the state department of engineering not later than three months after the close of the county's fiscal year, upon forms to be provided by the state department of engineering, showing the amount of moneys received from the motor vehicle fund during the preceding fiscal year and the disposition of said moneys, specifying in such detail as may be required by said department of engineering the roads, bridges and culverts constructed or maintained out of said moneys and the sums applied to the several items of such construction or maintenance; and provided, further, that whenever said report shall not have been duly filed in the manner and form hereby provided at or before the time hereinbefore specified, no further warrants shall be drawn upon the motor vehicle fund in favor of the county treasurer of such delinquent county until said report has been furnished. [Amendment of May 2, 1919. In effect —see section 20, Stats. 1919, p. 227.]

This section was also amended May 10, 1917, Stats. 1917, p. 412.

Disposition of fines.

§ 35. (a) All fines or forfeitures collected in cases of conviction for violation of any of the provisions of this act following arrests by any officer employed by an incorporated municipality, except a city and county, shall be paid to the treasurer of the county in which such municipality is situated and such moneys shall belong to the several counties, to be used by them, when authorized and permitted by law, in the discretion of the respective boards of supervisors in the construction, maintenance and improvement of roads, streets, bridges and culverts within the limits of the incorporated municipalities of said counties, and for no other purpose; provided, however, that when not so authorized or permitted by law to use such moneys for said purposes, said counties shall receive said moneys for the benefit of, and said moneys shall belong to, the several incorporated municipalities in said counties respectively, excepting as herein otherwise provided, and at quarterly intervals the supervisors shall apportion and pay over said moneys to said municipalities according to their population ascertained in the manner provided by law, which moneys shall be expended by such municipalities solely in the construction, maintenance and improvement of streets, bridges and culverts within the city limits along routes directly connecting interurban public highways entering such cities respectively; provided, however, anything to the contrary herein notwithstanding, that no (1) incorporated city and county, (2) city of more than twenty-five thousand population, or (3) city operating under a freeholder's charter and enforcing or seeking to enforce any ordinance, rule, or regulation in conflict with or covering the same or any part of the ground covered by this act, except as expressly permitted therein, shall be entitled to share in said moneys.

(b) Any and all other fines or forfeitures collected by or in any court for violation of any of the provisions of this act, whether by a justice of the peace, police court, city recorder's court, city justice of the peace, or otherwise, shall be paid to the treasurer of the county or incorporated city and county in which the court is held, and said moneys shall be used by the several counties and incorporated cities and counties solely in the construction, maintenance and improvement of roads, streets, bridges and culverts within their respective limits, and for no other purpose. [Amendment of May 10, 1917. In effect—see section 29, Stats. 1917, p. 414.]

Record of cases by court.

§ 36. A full record shall be kept by every justice of the peace or police judge or court in this state of every case in which a person is charged with violation of any provision of this act, and an abstract of such record shall be sent forthwith by the justice of the peace, or police judge or court to the clerk of the county in which the justice of the peace, police judge, or other magistrate holds his court, whereupon said clerk shall forward said abstract to the department. Said abstracts shall be made upon forms prepared by the department and shall include all necessary information as to the parties to the case, the nature of the offense, the date of hearing, the plea, the judgment, the amount of the fine or forfeiture as the case may be, and every such abstract shall be certified by the justice of the peace, police judge or clerk of such police court as a true abstract of the record of the court. Each clerk of any court of record of this state shall also, within ten days after any final judgment of conviction of any violation of any of the provisions of this act, send to the department a certified copy of such judgment of conviction, together with any other information concerning said conviction required by said department. The said department shall keep such records in its office, and they shall be open to the inspection of any person during reasonable business hours.

Failure, refusal or neglect to comply with any of the provisions of this section shall constitute misconduct in office and shall be ground for removal therefrom. [Amendment of May 2, 1919. In effect—see section 20, Stats. 1919, p. 229.]

Motor vehicle department. Inspectors. Distribution of act and synopsis.

§ 37. There is hereby created a department to be known as the motor vehicle department of California. The chief officer shall be known as the superintendent, who shall be a civil executive officer and shall be appointed by the governor and shall hold office at the pleasure of the governor. He shall within fifteen days from the time of notice of his appointment take and subscribe to the constitutional oath of office and file the same in the office of the secretary of state and execute to the people of the state a bond in the penal sum of ten thousand dollars. He shall receive an annual salary of three thousand six hundred dollars to be paid monthly upon a warrant of the controller. He shall have the power to appoint one chief clerk, who shall be a civil executive officer; one cashier, and, with the approval of the board of control, such additional employees as the proper and economical conduct of the business of the department may demand, and shall fix and prescribe their duties, compensation and term of employment; provided, that such employees shall include field deputies or inspectors, upon whom are hereby conferred, for the purposes of the enforcement of this act, the powers now or hereafter vested by law in peace officers, and who may exercise said powers in any portion of the state or of any political subdivision thereof, but solely in the enforcement of the provisions of this act. The cashier shall execute to the people of the state a bond in the penal sum of five thousand dollars. The salaries herein provided for shall be payable monthly, and the expenditures authorized by this act, shall be made upon the certificate of the superintendent of the department, allowed and audited by the board of control, and the warrant of the state controller.

There shall be printed fifty thousand copies of the vehicle act, as amended by this act, which shall be distributed to the public on request, without charge by the department, and in addition thereto a synopsis of said act as amended shall be prepared and printed by the motor vehicle department, and distributed free of charge to each person who shall obtain a vehicle license, or who shall receive a transfer of a vehicle license under the provisions hereof. Such copies shall be transmitted together with the certificate of registration or transfer. [Amendment of May 2, 1919. In effect —see section 20, Stats. 1919, p. 229.]

This section was also amended May 10, 1917, Stats. 1917, p. 415.

“Vehicle Act.”

§ 38. This act shall be known and cited as the “Vehicle Act.” An act entitled, “An act to regulate the use and operation of vehicles upon the public highways and elsewhere; to provide for the registration and identification of motor vehicles and for the payment of registration fees therefor; to provide for the licensing of persons operating motor vehicles; to prohibit certain persons from operating vehicles upon the public highways; to prohibit the possession or use of a motor vehicle without the consent of the owner thereof, and to prohibit the offer to or acceptance by certain persons of any bonus or discount or other consideration for the purchase of supplies or parts for motor vehicles, or for work or repair done thereon; to provide penalties for violations of provisions of this act, and to provide for the disposition of fines and forfeitures imposed thereon; to provide for the disposition of registration and license fees, fines and forfeitures collected hereunder; to provide for carrying out the objects of this act and to make an appropriation and to create a revolving fund therefor; and to repeal all acts or parts of acts either in conformity or in conflict with this act,” approved May 31, 1913, and all acts or parts of acts inconsistent with this act are hereby expressly repealed; provided, however, that the said motor vehicle act approved May 31, 1913, shall remain in full force and effect until midnight of the thirty-first day of December, 1915.

This act continuation of existing acts.

§ 39. The provisions of this act, so far as they are the same as those of existing statutes, shall be construed as a continuation thereof, and not as new enactments; and a reference in a statute which has not been repealed to provisions of law which have been revised and re-enacted herein shall be construed as applying to such provisions as so incorporated in this act. The repeal of a law by this act shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action, suit or proceeding begun under any of the laws repealed before the repeal took effect; but the proceedings in such case shall, when necessary, conform to the provisions of this act.

Constitutionality.

§ 40. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

In effect.

§ 41. The provisions of section 37 of this act and such other provisions hereof as relate to the creation and conduct of the motor vehicle department, the preparation and purchase of forms, supplies, and other work incident to the registration of motor vehicles and to the licensing of the operators thereof shall go into effect ninety days after the final adjournment of this session of the legislature, and the remainder of this act shall go into effect at midnight on the thirty-first day of December, in the year one thousand nine hundred fifteen.

§ 42. [Repealed May 10, 1917. In effect—see section 29, Stats. 1917, p. 415.]

The amending act of May 10, 1917, Stats. 1917, p. 415, contains the following:

Printed copies of act.

§ 28. There shall be printed two hundred and fifty thousand copies of said vehicle act, as amended by this act, which shall be distributed to the public on request, without charge, by the department.

In effect, when.

§ 29. Excepting the provision of section eleven hereof requiring that the light displayed upon a trailer shall illuminate the number plate carried upon such trailer, each and all of the provisions of sections one, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, twenty-one, twenty-two, twenty-three, twenty-five, twenty-seven, twenty-eight and twenty-nine of this act, together with such provisions of section twenty-six of this act as relate to the salaries of the officers or employees of the department, and such other provisions³ of this act as relate to or require the preparation or purchase of forms and supplies, and other work incident to the registration of motor vehicles and trailers and the licensing of operators and chauffeurs, shall go into effect ninety days after the final adjournment of this session of the legislature, and the remainder of this act shall go into effect at midnight on the thirty-first day of December, in the year one thousand nine hundred seventeen.

The amending act of May 2, 1919, Stats. 1919, p. 230, contains the following:

When in effect.

§ 20. Each and all of the provisions of this act except sections one, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen and eighteen, together with such provisions

of section nineteen of this act as relate to the salaries of officers and employees of the department, and such other provisions of this act as relate to or require the preparation or purchase of forms and supplies and other work incident to the registration of motor vehicles and trailers and the licensing of operators and chauffeurs, shall go into effect at midnight on the thirty-first day of January in the year 1920.

Constitutionality.

§ 21. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Repealed.

§ 22. All acts or parts of acts in any ways in conflict herewith are hereby expressly repealed.

I. CONSTITUTIONALITY.

1. Constitutionality—Prohibition of local legislation.
2. Same—"Due process."
3. Same—Same—Tax based on horse-power.
4. Same—Local or special legislation.
5. Same—Section 24, article IV, of the constitution, not violated.
6. Same—Section 13, as amended in 1919—Not delegation of power in contravention of constitution.
- 7, 8. Same—Return of one-half fees to counties—Sections 7, 35, 42.
9. Same—Power of legislature to classify.
10. Same—Arbitrary classification.
11. Same—Exemption of public service corporations.
12. Same—Exemption of non-residents.
13. Same—Not illegally discriminatory—Motor vehicles alone affected.
- 13a. Ordinance—Discriminatory, when.
14. Same—Chauffeur's business proper subject of regulation.
15. Same—Effect of section 42.
- 16, 17. Same—Cases decided.
18. Same—Inclusion of San Francisco—Exclusion of other cities.
19. Same—Ad valorem tax added.
20. Same—Tax is in nature of charge of compensation for damages to public roads.
21. Tax provides a road fund.
- 21a. Same—License charge is a privilege tax for revenue and for use of highways.
- 21b. Same—Question of unreasonable speed left to jury.

II. CONSTRUCTION OF ACT.

- 21c, 22. Construction of act—Not a "municipal affair."
23. Same—Freeholder charter cities—City charter prevails.
24. Same—Same—No ordinance.
25. Same—Entire field of speed regulation covered.

- 26, 26a. Same—Additional police regulations not intended to be prohibited.
27. Same—Conflict with city ordinances—Los Angeles ordinance—Rules of road.
28. Same—Same—Traffic ordinance.
29. Same—Motor vehicle department, intention of legislature to transfer.
30. Same—Same—Irreconcilable conflict of acts.
31. Same—Same—Power of legislature.
32. Same—Driving while intoxicated—Not a mere traffic regulation.
33. Same—Emergency clause in traffic ordinance.
34. Same—Duty of driver after collision—Intention of act.
35. Same—Section 367c, Penal Code, not repealed.
36. Same—Rule of road as to driving on right side of highway—Purpose of act.

III. ACTIONS FOR DAMAGES.

37. Negligent driving by borrower from dealer—Estoppel of dealer.
38. Negligence of driver on meeting horse-drawn vehicle.
39. Same—Duty of driver.
40. Rule of road—Duty to keep to right.
41. Same—Violation of rule by passing to left.
42. Same—Cutting corners in turning to left.
43. Same—Failure to keep to the right until beyond intersection.
44. Same—Starting to turn—Intersection on right.
45. Same—Traveling in same direction and turning into intersecting street.
46. Same—Accident 145 feet before reaching intersection—Rule does not apply.
47. Same—Operation in violation of rule is negligence.
48. Same—View obstructed.
49. Same—Same—Instruction as to rate of speed.

- 49a. Same—Passing to right of vehicle going in same direction not negligence at law.
- 49b. Same—Pedestrian has a right to assume that motorist will obey requirements of act.
- 49c. Same—Driver of steam roller—Right to assume motorist will obey.
- 49d. Same—Paramount right of way of fire department.
- 50. Same—"Intersecting highway" defined.
- 51. Same—Misleading instruction as to "crossing of ways."
- 52. Same—"Intersecting highway" only can be properly applied.
- 53. Speed—Violation of act.
- 54. Same—Evidence insufficient to show violation of act.
- 55. Same—At intersections.
- 56. Same—Ten miles an hour not negligence at law.
- 57. Same—Approaching intersection at speed of fifteen miles—Not negligence.
- 58. Sounding horn—Duty when following another vehicle.
- 59. Same—Approaching pedestrian from rear.
- 60. Lens—"Diffusing type of lens" a trade name.
- 61. Same—Use of unlisted lens.
- 62. Duty of owner of motor vehicle.
- 63. Proof of ownership and use with owner's permission establishes prima facie case.
- 64. Operation for owner's benefit—Presumption.
- 65. Operation by minor son—Liability of owner.
- 66. Workmen's compensation—Liability of third party not dependent on award.
- 67. Same—Control of master over servant.
- 68, 69. Same—Independent contractor—Test.
- 70, 71. Duty of automobile driver, in general.
- 72. Same—Injured person not guilty of contributory negligence.
- 73. Same—Evidence sufficient to show driver negligent.
- 74. Same—Same—Unobstructed view.
- 75. "Business district"—Erroneous instruction not prejudicial.

I. CONSTITUTIONALITY.

1. Constitutionality—Prohibition of local legislation.—Mere prohibition by the legislature of local legislation upon the matter of motor vehicle traffic regulation, without any affirmative action occupying the field, would be unconstitutional and void, and in violation of the express authority granted by the state constitution to the municipality to enact local regulations.—*Ex parte Daniels*, (Cal.) 192 Pac. 442.

2. Same—"Due process."—In view of the fact that under section 3 the owner of a motor vehicle has the right to present his entire case to the department of engineering, it can not be said that the motor ve-

hicle act is unconstitutional as in violation of the due process of law clause of the federal constitution, in that the department of engineering is given the duty of determining the horsepower of each vehicle.—*In re Mitchell*, 167 Cal. 282, 292, 139 Pac. 635, Ann. Cas. 1915C, 706.

3. Same—Same—Tax based on horsepower.—The motor vehicle act of 1913 is not violative of the due process clause of the federal constitution, because the tax imposed is based upon horsepower.—*In re Mitchell*, 167 Cal. 282, 291, 139 Pac. 635, Ann. Cas. 1915C, 706.

4. Same—Local or special legislation.—The motor vehicle act of 1913 is not objectionable on constitutional grounds as local or special in its nature, because the greater portion of the funds derived from the licenses are expended outside of the cities of the state.—*In re Mitchell*, 167 Cal. 282, 291, 139 Pac. 635, Ann. Cas. 1915C, 706.

5. Same—Section 24, article IV, of the constitution not violated.—The motor vehicle act of 1913, is not obnoxious to section 24, article IV, of the constitution, because of the provisions of section 31, prohibiting chauffeurs from accepting gratuities, or because of the provisions of section 20 relating to rules of the road.—*In re Mitchell*, 167 Cal. 282, 293, 139 Pac. 635, Ann. Cas. 1915C, 706.

6. Same—Section 13 as amended in 1919—Not a delegation of power in contravention of the constitution.—Section 13 of the act, as amended in 1919, is not an unconstitutional delegation of power to a testing agency, and is valid.—*Ex parte Hinkelman*, (Cal.) 191 Pac. 682; *Ex parte Teatsen*, (Cal.) 191 Pac. 684.

7. Same—Return of one-half fees to counties—Sections 7, 35, 42.—In view of section 42 of the motor vehicle act of 1913, that act will not be held unconstitutional, even if it be conceded that the provisions of section 35, requiring the return of one-half the fees collected under the act to the counties for road purposes, are unconstitutional, since section 7, provides for the collection and application of fees, and the invalidity of section 35 would not therefore materially affect the operation of the act.—*In re Mitchell*, 167 Cal. 282, 285, 139 Pac. 635, Ann. Cas. 1915C, 706.

8. Same—Same—Same.—It is held that, in view of section 42 of the motor vehicle act of 1913, that the legislature intended to impose the tax provided in that act irrespective of the disposition of the proceeds; and that, therefore, general effect must be given to section 35, no matter whether the "net proceeds" therein mentioned are to be expended by the state authorities alone, or not, if it be not vulnerable to other constitutional objections.—*In re Mitchell*, 167 Cal. 282, 289, 139 Pac. 635, Ann. Cas. 1915C, 706.

9. Same—Power of legislature to classify.—The power of the legislature being plenary in the matter of imposing the privilege tax exacted under the motor vehicle act it may designate any class prop-

erly subject to such exaction, and it may exempt any class.—*In re Mitchell*, 167 Cal. 282, 293, 139 Pac. 685, Ann. Cas. 1915C, 706.

10. Same—Arbitrary classification.—The motor vehicle act of 1913 is not unconstitutional because of an arbitrary and unwarranted classification in requiring professional chauffeurs or drivers of motor vehicles for hire to pay an annual license, but exempts all others.—*In re Stork*, 167 Cal. 294, 296, 139 Pac. 684.

11. Same—Exemption of public service corporations.—The effect of section 14, article XIII, of the constitution, is to exempt public service corporations from the payment of the license required by the motor vehicle act upon the motor vehicles used by them in their public service business.—*Pacific, etc., Co. v. Roberts*, 168 Cal. 420, 421, 143 Pac. 700.

12. Same—Exemption of non-residents.—The exemption of non-residents from paying the tax under the motor vehicle act of 1913, for a period of three months, is not an unlawful one.—*In re Mitchell*, 167 Cal. 282, 294, 139 Pac. 685, Ann. Cas. 1915C, 706.

13. Same—Not illegally discriminatory—Motor vehicles alone affected.—The motor vehicle act is not illegally discriminatory either because it applies to motor vehicles and not to other kinds, or because it places dealers in a class by themselves and exacts from them a fee of fifty dollars if they operate not more than five vehicles and ten dollars for every motor vehicle in excess of five.—*In re Mitchell*, 167 Cal. 282, 293, 139 Pac. 685, Ann. Cas. 1915C, 706.

13a. Ordinance—Discriminatory, when.—An ordinance regulating the speed of motor vehicles and making the greatest punishment for a speed limit exceeding thirty miles an hour is not discriminatory; and whether it is reasonable or not depends upon the purpose and the condition requiring it to be made, and such an ordinance is held reasonable.—*Ex parte Snowden*, 12 Cal. App. 521.

14. Same—Chauffeur's business proper subject of regulation.—The occupation of a chauffeur is a profession or business attended with danger, and requiring a certain degree of scientific knowledge, and is, therefore, a proper subject of regulation.—*In re Stork*, 167 Cal. 294, 295, 139 Pac. 684.

15. Same—Effect of section 42.—Such legislative provisions as section 42 of the motor vehicle act of 1913 impose upon the courts the duty of supporting the legislative will as far as possible.—*In re Mitchell*, 167 Cal. 282, 289, 139 Pac. 685, Ann. Cas. 1915C, 706.

16. Same—Cases decided.—*In re Towne*, 167 Cal. 282. See *In re Mitchell*, 167 Cal. 282, 139 Pac. 685, Ann. Cas. 1915C, 706.

17. Same—Same.—*In re Schuler*, 167 Cal. 282. See *In re Mitchell*, 167 Cal. 282, 139 Pac. 685, Ann. Cas. 1915C, 706.

18. Same—Inclusion of San Francisco—Exclusion of other cities.—The motor vehicle act does not violate subdivision 10,

section 25, article IV, of the constitution by including San Francisco as a county for the purposes of the act and excluding all other cities.—*In re Mitchell*, 167 Cal. 282, 291, 139 Pac. 685, Ann. Cas. 1915C, 706.

19. Same—Ad valorem tax added.—The fact that besides the excise or privilege tax imposed by the motor vehicle act of 1913, an ad valorem tax is levied by the local authorities upon all automobiles as property does not make double taxation.—*In re Mitchell*, 167 Cal. 282, 290, 139 Pac. 685, Ann. Cas. 1915C, 706.

20. Same—Tax is in nature of a charge of compensation for damages to public roads.—The imposition of the license or privilege tax of the motor vehicle act of 1913 is in the nature of a charge of compensation for the damage done to the roads of the state by the driving of motor vehicles over them, and is properly based not upon the value of the machine, but upon the amount of destruction caused by it.—*In re Mitchell*, 167 Cal. 282, 290, 139 Pac. 685, Ann. Cas. 1915C, 706.

21. Same—Tax provides a road fund.—The motor vehicle act of 1913 imposes an excise or privilege tax for the purpose of providing a fund for roads under the dominion of the state authorities.—*In re Mitchell*, 167 Cal. 282, 289, 139 Pac. 685, Ann. Cas. 1915C, 706.

21a. Same—License charge is a privilege tax for revenue and for use of highways.—The license charge in the motor vehicle act is a privilege tax established for the purposes of revenue and forbidding automobiles to use the public highways until payment thereof.—*Pacific, etc., Co. v. Roberts*, 168 Cal. 420, 428, 143 Pac. 700.

21b. Same—Question of unreasonable speed left to jury.—The motor vehicle act leaves the question as to whether a motor car is operated in a given case at an unreasonable speed or not, to the jury, and is not for that reason invalid.—*Ex parte Daniels*, (Cal.) 192 Pac. 442.

II. CONSTRUCTION OF ACT.

21c. Construction of act—Not a "municipal affair."—The regulation of motor vehicle traffic is not a municipal affair, even as to the streets of a chartered city, and such city has no power to pass a traffic ordinance inconsistent with the motor vehicle act.—*Helmer v. Superior Court*, (Cal. App.) 191 Pac. 1001.

22. Same—Same.—Regulation of motor vehicle traffic is not a municipal affair, and municipal regulations by a chartered city, inconsistent with the motor vehicle act are void.—*Ex parte Daniels*, (Cal.) 192 Pac. 442.

23. Same—Freeholder charter cities—City charter prevails.—A city ordinance of a municipality having a freeholder's charter will prevail, in case of conflict, over the motor vehicle act.—*Muther v. Capps*, 38 Cal. App. 721, 177 Pac. 882.

24. Same—Same—No ordinance.—Where there is no city ordinance in a freeholder charter city, the motor vehicle act will

govern.—*Muther v. Capps*, 38 Cal. App. 721, 177 Pac. 882.

25. Same—Entire field of speed regulation covered.—The legislature intended by the enactment of section 22d to occupy the entire field of speed regulation.—*Ex parte Daniels*, (Cal.) 192 Pac. 442.

26. Same—Additional police regulations not intended to be prohibited.—The legislature did not intend by the extension of the motor vehicle act to city streets to prohibit the municipality from enacting additional police regulations upon the subject as might appear reasonable and proper in a given locality.—*Mann v. Scott*, 180 Cal. 550, 182 Pac. 281.

26a. Same—Same.—The mere fact that the legislature has made certain police regulations does not prohibit a municipality from securing additional requirements so long as there is no conflict and so long as the requirements of the municipal ordinance are reasonable and not discriminatory.—*Ex parte Snowden*, 12 Cal. App. 521.

27. Same—Conflict with city ordinances—Los Angeles ordinance—Rules of road.—There is no difference in effect between the terms of the Los Angeles ordinance requiring the driver of a motor vehicle to turn to the right when meeting other vehicles and to travel on the right-hand side of the street, or as near the right-hand curb as possible, and the provision of the motor vehicle act requiring such driver to travel on the right side of the highway wherever practicable.—*Humphrey v. United States, etc., Co.*, (Cal. App.) 193 Pac. 609.

28. Same—Same—Traffic ordinance.—The Los Angeles traffic ordinance is not in violation of the motor vehicle act.—*Mann v. Scott*, 180 Cal. 550, 182 Pac. 281. See, also, *Ex parte Snowden*, 12 Cal. App. 521, 107 Pac. 724.

29. Same—Motor vehicle department, intention of legislature to transfer.—By the enactment of the statute of 1913 the legislature intended to entirely disconnect the motor vehicle department as established by the acts of 1905 and 1913 from the office of secretary of state, and by such transfer, the secretary of state was relieved of all responsibility and duty in connection with that department.—*Mansfield v. Chambers*, 26 Cal. App. 499, 147 Pac. 595.

30. Same—Same—Irreconcilable conflict of acts.—The act of 1905 is in irreconcilable conflict with the act of 1913, in so far as the former statute established the motor vehicle department as a department of the office of secretary of state and vested in the secretary the authority and power to employ clerical assistance to carry out the provisions of the act.—*Mansfield v. Chambers*, 26 Cal. App. 499, 147 Pac. 595.

31. Same—Same—Power of legislature.—The effect of the act of 1913 was to abolish the office of superintendent and cashier of the motor vehicle department as a branch of the office of secretary of state, and the legislature had power to abolish said office.—*Mansfield v. Chambers*, 26 Cal. App. 499, 147 Pac. 595.

32. Same—Driving while intoxicated—Not a mere traffic regulation.—The provisions of the act making the act of driving an automobile while intoxicated a felony, is not a mere traffic regulation, and a person charged with such act may be prosecuted under the state law, although occurring in a chartered city having an ordinance making the same a misdemeanor.—*Helmer v. Superior Court*, (Cal. App.) 191 Cal. 1001.

33. Same—Emergency clause in traffic ordinance.—As to the meaning and effect of an emergency clause in a traffic ordinance.—*Collins v. Marsh*, 176 Cal. 639, 169 Pac. 389.

34. Same—Duty of driver after collision—Intention of act.—The purpose of section 21 of the motor vehicle act as to the requirement that persons driving motor vehicles who collide with another vehicle containing a person stop and render assistance was to prohibit negligent or wanton drivers of motor cars from seeking to evade civil or criminal prosecution by escape before their identity could be established, and to prohibit all drivers, whether negligent or not, from leaving persons injured in collisions with cars driven by them, in distress or danger for want of medical or surgical treatment.—*People v. Kaufman*, 33 Cal. App. Dec. 338.

35. Same—Section 367c, Penal Code, not repealed.—The motor vehicle act of 1913 did not have the effect of repealing the provisions of section 367c of the Penal Code as to requiring the driver of a motor vehicle to stop and render assistance to a person injured in a collision with the vehicle driven by him.—*People v. Finley*, 27 Cal. App. 291, 149 Pac. 779.

36. Same—Rule of road as to driving on right side of highway—Purpose of act.—It is the purpose of the motor vehicle act of 1905 to make it the duty of all persons using the public highways of the state for motor vehicle traffic to keep to the right side of the highway at all times when possible whether they were meeting persons traveling in the opposite direction or not.—*Stohman v. Martin*, 28 Cal. App. 338, 152 Pac. 319.

III. ACTIONS FOR DAMAGES.

37. Negligent driving by borrower from dealer—Estoppel of dealer.—In view of section 32 of the motor vehicle act an automobile dealer is not estopped from denying that an automobile, negligently driven by a borrower, was being used in its business by reason of having obtained a dealer's license therefor, under section 9, providing for cancellation in case of violation of its provisions.—*Brown v. Chevrolet, etc., Co.*, 39 Cal. App. 738, 179 Pac. 697.

38. Negligence of driver on meeting horse-drawn vehicle.—The question of what will amount to negligence of the operator of a motor vehicle when meeting a horse-drawn vehicle, in view of the requirements of the motor vehicle act, is a question for the jury, and can not be fixed, according to

a standard, as a matter of law.—Eddy v. Stowe, (Cal. App.) 185 Pac. 1024.

39. Same—Duty of driver.—Instruction as to duty of driver of motor vehicle in approaching horse-drawn vehicle, under section 20 of the motor vehicle act, approved.—Freiburg v. Israel, (Cal. App.) 187 Pac. 130.

40. Rule of road—Duty to keep to right.—Under the motor vehicle act the driver of a truck was required to keep to the left in passing a steam roller and to not turn to the right again until entirely clear thereof.—Moreno v. Los Angeles, etc., Co., (Cal. App.) 186 Pac. 800.

41. Same—Violation of rule by passing to left.—Plaintiff's violation of the provision of the motor vehicle act in passing to the left of the center of intersecting streets held not to have been the proximate cause of a collision, after he had passed into the intersecting street and was on the right side of the street.—Wilkinson v. Rohrer, (Cal. App.) 190 Pac. 650.

42. Same—Cutting corners in turning to left.—Where an automobile accident resulted from the cutting of corners in turning to the left at a street intersection in violation of the motor vehicle act, the driver is liable for injuries sustained by reason of such accident, notwithstanding the fact that the accident occurred at a point fifteen or twenty feet from the curb line of the street on which the automobile was traveling after entering the intersecting street.—Perez v. Hartman, 39 Cal. App. 601, 179 Pac. 706.

43. Same—Failure to keep to the right until beyond intersection.—The driver of an automobile who fails to keep to the right of and to run beyond the center of the intersection, in approaching and passing an intersection of a street or highway, is guilty of negligence.—Perez v. Hartman, 39 Cal. App. 601, 179 Pac. 706.

44. Same—Starting to turn—Intersection on right.—Where the driver of a vehicle in approaching an intersecting street, with intention to pass into the same, started to turn at such an angle as would bring the center of the intersection on his right, his act was a violation of the city ordinance from the moment he began to make the turn, inasmuch as it is not the mere passing of the intersection on the driver's right that constitutes the unlawful act.—Squier v. Davis, etc., Co., 181 Cal. 533, 185 Pac. 391.

See, also, as to rights of motor vehicles, meeting or passing at street intersections.—Lawrence v. Goodwill, (Cal. App.) 186 Pac. 781.

45. Same—Traveling in same direction and turning into intersecting street.—As to rights of way of vehicles traveling in the same direction and turning into intersecting streets, under the motor vehicle act.—Barton v. Studebaker Corporation, (Cal. App.) 189 Pac. 1025.

46. Same—Accident 145 feet before reaching intersection—Rule does not apply.—The provisions of section 20, subdv. (e)

of the motor vehicle act as to the right of way of drivers of motor vehicles approaching street intersections, does not apply where one of the vehicles was 145 feet from the intersection at the time the other reached it.—Ward v. Gildea, (Cal. App.) 186 Pac. 612.

47. Same—Operation in violation of rule is negligence.—One who operates his motor vehicle at a street crossing in violation of the right of way provisions of the motor vehicle act is negligent.—Mathes v. Aggeler & Musser Seed Co., 179 Cal. 697, 178 Pac. 713.

48. Same—View obstructed.—One who drives his automobile in approaching a street crossing, where the view is obstructed at more than ten miles an hour, is negligent.—Mathes v. Aggeler & Musser Seed Co., 179 Cal. 697, 178 Pac. 713.

49. Same—Same—Instruction as to rate of speed.—Where the chauffeur's view of road traffic is obstructed, an instruction as to the negligent rate of speed was unwarranted in an action for death.—Muther v. Capps, 38 Cal. App. 721, 177 Pac. 882.

49a. Same—Passing to right of vehicle going in same direction not negligence at law.—It is not negligence as matter of law to attempt to pass a vehicle going in the same direction, on the right, if a reasonably prudent man might well consider it the course to take to avoid or escape a situation of peril.—Squier v. Davis, etc., Co., 181 Cal. 533, 185 Pac. 391.

49b. Same—Pedestrian has a right to assume that motorist will obey requirements of act.—A pedestrian has a right to assume that drivers of motor vehicles will comply with the provisions of section 20b of the motor vehicle act.—Off v. Crump, 40 Cal. App. 173, 180 Pac. 360.

49c. Same—Driver of steam roller—Right to assume motorist will obey.—One sitting on a steam roller with his feet hanging down the right side, was not guilty of contributory negligence in failing to watch the rear, since he was justified in assuming that the driver of a truck would obey the motor vehicle act and pass to the left.—Moreno v. Los Angeles, etc., Co., (Cal. App.) 186 Pac. 800.

49d. Same—Paramount right of way of fire department.—As to plea of paramount right of way of fire department in an action for damages for negligent disregard of same.—King v. San Diego Electric Ry. Co., 176 Cal. 266.

50. Same—"Intersecting highway," defined.—Where two streets meet but do not cross, it is an "intersecting highway" within the meaning of the motor vehicle act.—Muther v. Capps, 38 Cal. App. 721, 177 Pac. 882.

51. Same—Misleading instruction as to "crossing of ways."—The words "regular crossing for pedestrians" does not occur in the motor vehicle act, and its use instead of "crossing of ways," which might refer to the same place, is misleading in an instruction in an action for negligent death in

a crossing accident.—*Muther v. Capps*, 38 Cal. App. 721, 177 Pac. 882.

52. Same—"Intersecting highway" only can be properly applied.—The definition of "intersecting highway" given by the motor vehicle act is the only one that can be properly applied to the facts in this case.—*Muther v. Capps*, 38 Cal. App. 721, 177 Pac. 882.

See same case, 27 Cal. App. Dec. 685.

53. Speed—Violation of act.—The violation of the requirement of the act as to the speed in approaching an intersecting crossing will not bar recovery of damages when such violation could not have contributed to the accident.—*Robinson v. Clemens*, (Cal. App.) 190 Pac. 203.

54. Same—Evidence insufficient to show violation of act.—Verdict of jury set aside, in view of the fact that the evidence demonstrates that the automobile was traveling ten miles an hour or less.—*Varcoe v. Lee*, 180 Cal. 338, 181 Pac. 223.

55. Same—At intersections.—Section 22 of the motor vehicle act is complied with if speed is reduced to ten miles an hour in the territory common to both intersecting streets at or within the lines of intersection.—*McPhee v. Lavin*, (Cal.) 191 Pac. 23.

56. Same—Ten miles an hour not negligence at law.—It is not negligence as matter of law to operate a motorcycle along a city street at a speed of ten miles an hour.—*Squier v. Davis, etc., Co.*, 181 Cal. 533, 185 Pac. 391.

57. Same—Approaching intersection at speed of fifteen miles—Not negligence.—Where a motor vehicle driver traveling fifteen miles an hour could stop in fifteen or twenty feet he could not be held guilty of contributory negligence in driving fifteen miles an hour at a point twenty-five or thirty feet from a street intersection.—*McPhee v. Lavin*, (Cal.) 191 Pac. 23.

58. Sounding horn—Duty when following another vehicle.—The failure of a motorcycle operator to sound his horn when following another vehicle and approaching from the rear was not negligence as matter of law, in the absence of an intention or immediate attempt to pass such vehicle.—*Squier v. Davis, etc., Co.*, 181 Cal. 533, 185 Pac. 391.

59. Same—Approaching pedestrian from rear.—Failure to sound horn when approaching from the rear a pedestrian walking near the paved portion of the state highway was not excused by the pedestrian's observation of the glare of the automobile headlights.—*Woodhead v. Wilkinson*, (Cal.) 185 Pac. 851.

60. Lens — "Diffusing type of lens" a trade name.—The phrase "diffusing type of lens" is a trade name of recent origin, the use of which has not become sufficiently general to enable the court to take judicial notice of its trade meaning and such meaning was matter of proof.—*Ex parte Hinkelman*, (Cal.) 191 Pac. 682; *Ex parte Teatsen*, (Cal.) 191 Pac. 684.

61. Same—Use of untested lens.—The use of a type of lens with a light bulb,

sold commercially that had not been tested and sanctioned by a testing agency, as reported by said agency to the superintendent of the motor vehicle department as substantially complying with section 13 of the act, is in violation of subdivisions (h) and (j) of the section, although the light did not produce a dangerous glare.—*Ex parte Hinkelman*, (Cal.) 191 Pac. 682; *Ex parte Teatsen*, (Cal.) 191 Pac. 684.

62. Duty of owner of motor vehicle.—It is the duty of the owner of an automobile, who lends it to another and rides therein as a passenger, to prevent the driver from operating it in a reckless manner.—*Randolph v. Hunt*, (Cal. App.) 183 Pac. 358.

63. Proof of ownership and use with owner's permission establishes prima facie case.—Proof of ownership at the time of the accident and the use of the automobile with the permission of such owner establishes a prima facie case against such owner of responsibility for injuries received.—*Brown v. Chevrolet Motor Co.*, 39 Cal. App. 738, 179 Pac. 697.

64. Operation for owner's benefit—Presumption.—The presumption is that an automobile is being operated for the owner's benefit and such presumption warrants a jury in finding in favor of such presumption against testimony.—*Randolph v. Hunt*, (Cal. App.) 183 Pac. 358.

See same case, 29 Cal. App. Dec. 65.

65. Operation by minor son—Liability of owner.—The parents of a minor son are liable for injuries sustained as a result of the negligent driving of their automobile by such son, in view of section 19 of the motor vehicle act of 1915.—*Crittenden v. Murphy*, 36 Cal. App. 803, 173 Pac. 595.

66. Workmen's compensation—Liability of third party not dependent on award.—The liability to pay compensation is created by the act and not by the award, and suit may be brought by the injured employee and insurance carrier without an award under the act.—*Moreno v. Los Angeles, etc., Co.*, (Cal. App.) 186 Pac. 800.

67. Same—Control of master over servant.—The control of a master over his servant which is a test of the relationship is "complete control" or the full and unqualified right to control and direct the details of or the means by which the work is accomplished.—*Barton v. Studebaker Corporation*, (Cal. App.) 189 Pac. 1025.

68. Same—Independent contractor—Test.—The real test as to whether a person is an independent contractor or a servant is whether the person alleged to be master, under his arrangement with the other party, has or has not any authoritative control of the latter with respect to the manner in which the details of the work are to be performed.—*Barton v. Studebaker Corporation*, (Cal. App.) 189 Pac. 1025.

69. Same—Same.—An independent contractor is one who, in rendering services, exercises an independent employment or occupation, and represents his employer only as to the results of his work and not

as to the means whereby it is accomplished.—*Barton v. Studebaker Corporation*, (Cal. App.) 189 Pac. 1025.

70. Duty of automobile driver, in general.—It is the duty of an automobile driver under sections 20 and 22 of the act of 1915 to drive his car in a careful and prudent manner, in relation to others using the highway, and at a rate of speed that may be reasonable and proper under the circumstances, and in no event, in excess of thirty miles an hour.—*Randolph v. Hunt*, (Cal. App.) 183 Pac. 358.

71. Same.—The driver of a motor vehicle is required under the motor vehicle act to use reasonable care to anticipate the presence on the streets of other persons having equal rights with himself to be there.—*Zarzana v. Neve Drug Co.*, 180 Cal. 32, 179 Pac. 203.

72. Same—Injured person not guilty of contributory negligence.—Plaintiff in action for damages for injuries sustained by being struck by an automobile while crossing a street held not to have been guilty

of contributory negligence.—*Lewis v. Tanner*, (Cal. App.) 193 Pac. 287.

73. Same—Evidence sufficient to show driver negligent.—In this case it is held that the evidence was sufficient to show driver of a motor truck, in collision with a bicycle to have been guilty of negligence.—*Konig v. Lyon*, (Cal. App.) 192 Pac. 875.

74. Same—Same—Unobstructed view.—Driver of truck held guilty of negligence in driving into an automobile and causing death of the owner, where he had a clear and unobstructed view for a hundred feet or more, before striking the automobile, and must have seen it and knew in ample time that he would have to turn to the left to avoid it.—*Depons v. Ariss*, 28 Cal. App. Dec. 1059.

75. "Business district"—Erroneous instruction not prejudicial.—Where it was an actual fact that the accident took place in the "business district" as defined by the Motor Vehicle Act, an instruction to that effect, though error, was not prejudicial.—*Varcoe v. Lee*, 180 Cal. 338, 181 Pac. 223.

REPAYMENT OF ILLEGALLY IMPOSED FEES UNDER "MOTOR VEHICLE ACT."

ACT 3013—An act to provide for the repayment to such persons as are or may become entitled thereto of moneys by them, or their assignors, paid to the state of California in consequence of illegally imposed charges for the registration of motor vehicles, or paid to the state by mistake or inadvertence in connection with the registration of such motor vehicles, and thereafter deposited in the state treasury to the credit of the motor vehicle fund pursuant to the provisions of chapter 326 of California Statutes of 1913, approved May 31, 1913, and known as the motor vehicle act; making an appropriation for such purpose; prescribing certain duties with respect thereto; and providing for the retention by the state of proportionate deductions from the moneys which would otherwise be apportioned to the several counties under the provisions of said motor vehicle act.

History: Approved May 18, 1915. In effect August 8, 1915. Stats. 1915, p. 513.

Appropriation: repayment motor vehicle tax paid by mistake.

§ 1. From the moneys in the state treasury to the credit of the motor vehicle fund there is hereby appropriated the sum of twenty-five thousand dollars, to be used exclusively for the purpose of repaying to such persons as are or may become entitled thereto any moneys by them, or their assignors, paid to the state of California in consequence of any illegally imposed charge for the registration of any motor vehicle, or paid to the state by mistake or inadvertence in connection with the registration of any such motor vehicle, and thereafter deposited in the state treasury to the credit of the motor vehicle fund.

Claims.

§ 2. All claims for the repayment of any such moneys shall be verified by the applicant, or some person in his behalf, and shall be presented to the motor vehicle department, upon forms to be prescribed by the department, and shall contain all data necessary to enable the department to identify the payment upon which such claim is based and to determine whether or not the averments set forth in such claim are correct as shown by the records of the office. If found to be incorrect the claim shall be rejected and returned to the applicant with a brief statement of the reason therefor

endorsed thereon. Such rejection shall be without prejudice to the presentation by such applicant of a corrected claim. If found to be correct, the claim shall be approved by the motor vehicle department and transmitted to the board of control with such approval endorsed thereon, and shall be by the latter audited and approved or rejected in the manner provided by law.

Controller's warrants.

§ 3. If such claim be approved by the board of control the same shall be transmitted to the state controller with such approval endorsed thereon, and the controller shall thereupon draw his warrant upon the motor vehicle fund in favor of said claimant for the amount of such claim and the state treasurer shall pay the same; provided, however, that the aggregate sum of all warrants so drawn and paid shall not exceed the amount by this act appropriated.

Report on repayments.

§ 4. At the time of rendering its semi-annual statements to the controller, as in said motor vehicle act provided, the motor vehicle department shall also submit a statement showing the aggregate amount, by counties, of all repayments made on account of registration fees collected from persons residing in such counties at the time of collection, and the controller shall thereupon deduct from the amounts which would otherwise be apportioned to each of such counties, in conformity with the provisions of said motor vehicle act, one half the amount of all such repayments so made, and draw his warrant in favor of the treasurer of each of such counties for the amount so apportioned, less such deduction.

Balance.

§ 5. Any balance of said appropriation remaining unexpended on the first day of September, A. D. 1917, shall, without further action, revert to and become a part of the motor vehicle fund.

AUTO-BUS TRANSPORTATION ACT.

ACT 3014—An act providing for the supervision and regulation of the transportation of persons and property for compensation over any public highway by automobiles, jitney busses, auto trucks, stages and auto stages; providing for the issue by incorporated cities and towns, cities and counties, and counties of permits for the operation of such automobiles, jitney busses, auto trucks, stages and auto stages; empowering incorporated cities and towns, cities and counties, and counties to enact ordinances for the supervision and regulation of automobiles, jitney busses, auto trucks, stages and auto stages and providing penalties for the violation of such ordinances; defining transportation companies and providing for the supervision and regulation thereof by the railroad commission; providing for the enforcement of the provisions of this act and for the punishment of violations thereof; and repealing all acts and parts of acts inconsistent with the provisions of this act.

History: Approved May 10, 1917. In effect July 27, 1917. Stats. 1917, p. 330. Amended May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 457.

Title.

An act providing for the supervision and regulation of the transportation of persons and property for compensation over any public highway by automobiles, jitney busses, auto trucks, stages and auto stages; defining transportation companies and providing for the supervision and regulation thereof by the railroad commission; providing for the enforcement of the provisions of this act and for the punishment of violations thereof; and repealing all acts inconsistent with the provisions of this act. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 458.]

Words and phrases defined.

§ 1. (a) The term "corporation" when used in this act, means a corporation, a company, an association or a joint stock association.

(b) The term "person," when used in this act, means an individual, a firm or copartnership.

(c) The term "transportation company," when used in this act, means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing, any automobile, jitney bus, auto truck, stage or auto stage used in the business of transportation of persons or property, or as a common carrier, for compensation, over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the limits of an incorporated city or town or of a city and county; provided, that the term "transportation company," as used in this act, shall not include corporations or persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever, in so far as they own, control, operate or manage taxicabs, hotel busses or sightseeing busses, or any other carrier which does not come within the term "transportation company" as herein defined.

(d) The term "public highway," when used in this act, means every public street, road or highway in this state.

(e) The words "between fixed termini or over a regular route," when used in this act, mean the termini or route between or over which any transportation company usually or ordinarily operates any automobile, jitney bus, auto truck, stage or auto stage, even though there may be departures from said termini or route, whether such departures be periodic or irregular. Whether or not any automobile, jitney bus, auto truck, stage or auto stage is operated by a transportation company "between fixed termini or over a regular route" within the meaning of this act shall be a question of fact and the finding of the railroad commission thereon shall be final and shall not be subject to review. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 458.]

Jitney bus, etc., must be operated according to law.

§ 2. No corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any automobile, jitney bus, auto truck, state or auto stage for the transportation of persons or property for compensation on any public highway in this state except in accordance with the provisions of this act.

§ 3. [Repealed May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 460.]

Power of railroad commission over transportation companies.

§ 4. The railroad commission of the state of California is hereby vested with power and authority to supervise and regulate every transportation company in this state; to fix the rates, fares, charges, classifications, rules and regulations of each such transportation company; to regulate the accounts, service and safety of operations of each such transportation company; to require the filing of annual and other reports and of other data by such transportation companies; and to supervise and regulate transportation companies in all other matters affecting the relationship between such companies and the traveling and shipping public. The railroad commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations applicable to any and all transportation companies. The railroad commission, in the exercise of the jurisdiction conferred upon it by the constitution of this state and by this act, shall have power and authority to make orders and to prescribe rules and regulations affecting transportation companies, notwithstanding the provisions of any ordinance or permit of any incorporated city or town, city and county, or county, and in case of

conflict between any such order, rule or regulation and any such ordinance or permit, the order, rule or regulation of the railroad commission shall in each instance prevail.

Certificate from railroad commission.

§ 5. No transportation company shall hereafter begin to operate any automobile, jitney bus, auto truck, stage or auto stage for the transportation of persons or property, for compensation, on any public highway in this state without first having obtained from the railroad commission a certificate declaring that public convenience and necessity require such operation, but no such certificate shall be required of any transportation company as to the fixed termini between which or the route over which it is actually operating in good faith at the time this act becomes effective, or for operations exclusively within the limits of an incorporated city, town, or city and county. Any right, privilege, franchise or permit held, owned or obtained by any transportation company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the railroad commission. The railroad commission shall have power, with or without hearing, to issue said certificate as prayed for, or to refuse to issue the same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

The railroad commission may at any time for a good cause suspend and upon notice to the grantee of any certificate and opportunity to be heard revoke, alter or amend any certificate issued under the provisions of this section. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 459.]

Order authorizing issue of stock and bonds. Application of public utilities act. Fees.

§ 6. No transportation company may issue any stock or stock certificate, or any bond, or any note or other evidence of indebtedness payable at a period of more than twelve months after the date thereof unless such transportation company, in addition to the other requirements of law, shall first have secured from the railroad commission an order authorizing such issue and stating the amount thereof and the purpose or purposes to which the issue or the proceeds thereof are to be applied and that, in the opinion of the railroad commission, the money, property or labor to be procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order and that, except as otherwise permitted in the order in the case of bonds, notes and other evidences of indebtedness, such purpose or purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. Such order may be made, in the discretion of the railroad commission, either with or without a public hearing. Except as in this section otherwise provided, the provisions of section fifty-two of the public utilities act referring to the purposes for which stocks and stock certificates, bonds, notes and other evidences of indebtedness, may be issued and the application of and accounting for the proceeds thereof, the powers and duties of the railroad commission and the rights and duties of public utilities with reference thereto, the legal status of stocks and stock certificates and of bonds, notes and other evidences of indebtedness, issued without an order of the railroad commission then in effect, and the relationship of the state of California to such stocks and stock certificates, and such bonds, notes and other evidences of indebtedness, shall apply to and govern the issue of stocks and stock certificates, and of bonds, notes and other evidences of indebtedness, of transportation companies with the same force and effect as though section fifty-two of the public utilities act were restated in this section with the substitution of the words "transportation company" for the words "public utility" and of the words "transportation companies" for the words "public utilities." The provisions of section fifty-seven of the public utilities act referring to fees to be charged and collected by the railroad commission for certificates authorizing the issue of bonds, notes or other evi-

dences of indebtedness of public utilities shall apply to and govern authorizations by the railroad commission of the issue by transportation companies of bonds, notes or other evidences of indebtedness. [Amendment of May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 459.]

Application of public utilities act.

§ 7. In all respects in which the railroad commission has power and authority under the constitution of this state or this act, applications and complaints may be made and filed with the railroad commission, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review or mandate filed with the supreme court of this state, considered and disposed of by said court, in the manner, under the conditions and subject to the limitations and with the effect specified in the public utilities act.

Violation

§ 8. Every officer, agent or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any provision of this act, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement or any part or provision thereof, of the railroad commission, or who procures, aids or abets any corporation or person in his failure to obey, observe or comply with any such order, decision, rule, direction, demand or regulation, or any part or provision thereof, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Foreign or interstate commerce.

§ 9. Neither this act nor any provision thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union, except in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

Constitutionality.

§ 10. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Repealed. Stats. 1905, p. 177, not to apply.

§ 11. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. The provisions of an act entitled "An act providing for the sale of street railroad and other franchises in counties and municipalities and providing conditions for the granting of such franchises by legislative or other governing bodies, and repealing conflicting acts (approved March 22, 1905, Stats. 1905, p. 777)," are declared not to apply to the use of highways for the kind of transportation herein regulated.

1. **Jitney bus franchises.**—Under the act of 1917 relating to the operation of auto stages, trucks, etc., as carriers on the public highways, vehicles operating wholly within the limits of municipalities are under the exclusive jurisdiction of such municipalities.—In re Transportation Companies, 14 R. C. D. 378.

2. **Same—Necessity of franchise from local bodies.**—Carriers operating over regular

routes between fixed termini must secure a permit from all public authorities through whose territory they operate, and must obtain a certificate of public convenience and necessity from the railroad commission, if they do not operate wholly within the limits of a municipality.—In re Transportation Companies, 14 R. C. D. 378.

3. **Same—Same—Issue of bonds.**—Before a carrier by auto stage or truck under the

act of 1917, can issue bonds or stock, note or other evidence of indebtedness, payable at a time more than twelve months from date, permission must be obtained from the commission.—In re Transportation Companies, 14 R. C. D. 378.

4. Same—Jurisdiction of railroad commission.—The railroad commission has jurisdiction to fix rates, classifications and rules and to regulate the accounts, service and safety of transportation companies, and

such jurisdiction supersedes the jurisdiction of municipal or county authorities.—In re Transportation companies, 14 R. C. D. 378.

5. Same—Same—Issue of certificate of convenience and necessity.—The commission can not issue to a public utility a certificate permitting the exercise of rights under a franchise unless the franchise is valid and conforms to the law governing the granting of franchises.—In re Winterhaven Imp. Co., 15 R. C. D. 334.

MOUNTAIN VIEW.

See Act 3094, note.

CHAPTER 236.

MUNICIPAL CORPORATIONS.

References: Government of, see Kerr's Cyc. Political Code, §§ 4354, et seq.

Liabilities of, for injuries by mobs, see Kerr's Cyc. Political Code, §§ 4452, et seq.
See, generally, tits. "Licenses"; "Officers."

CONTENTS OF CHAPTER.

- ACT 3016. CLASSIFICATION ACT.
- 3017. ABANDONMENT OF FREEHOLDER CHARTER.
- 3018. VALIDATION ACT OF 1919.
- 3027. REORGANIZATION VALIDATION ACT OF 1909.
- 3029. DISPOSITION OF PUBLIC LANDS IN TOWNSITES.
- 3030. DISPOSITION OF PUBLIC LANDS IN TOWNSITES.
- 3032. ACQUISITION OF LAND FOR CEMETERY PURPOSES.
- 3034. PRIVATE SPUR TRACKS.
- 3037. DISPOSITION OF RESIDUE OF PUBLIC IMPROVEMENT FUNDS.
- 3040. ACQUISITION OF PUBLIC UTILITIES ACT OF 1913.
- 3040a. "STREET LIGHTING ACT OF 1919."
- 3041. JOINT SYSTEM OF WATER SUPPLY ACT OF 1903.
- 3043. SALE OF EXCESS WATER ACT OF 1911.
- 3044. MUNICIPAL BUILDING ACT OF 1895.
- 3045. MUNICIPAL GRAVEL BEDS AND QUARRIES.
- 3046. DRAINAGE AND PROTECTION FROM OVERFLOW.
- 3048. ACQUISITION OF WATER RIGHTS, ETC.
- 3049. MUNICIPAL INDEBTEDNESS ACT OF 1889.
- 3050. ACQUISITION OF PROPERTY SOLD FOR DELINQUENT ASSESSMENTS.
- 3051. MUNICIPAL IMPROVEMENT ACT OF 1901.
- 3052. PUBLIC ASSEMBLY AND CONVENTION HALLS.
- 3054. ANNEXATION ACT OF 1889.
- 3055. "ANNEXATION ACT OF 1913."
- 3056. ANNEXATION OF UNINHABITED TERRITORY ACT OF 1899.
- 3057. ANNEXATION VALIDATION ACT OF 1915.
- 3059. EXCLUSION ACT OF 1889.
- 3060. EXCLUSION OF UNINHABITED TERRITORY ACT OF 1913.
- 3062. CENSUS.
- 3063. CONSOLIDATION ACT OF 1909.
- 3064. "MUNICIPAL ANNEXATION ACT OF 1913."
- 3065. RATIFICATION OF CONVEYANCE OF CERTAIN PROPERTY.
- 3066. CHANGE OF NAME OF FREEHOLDER CHARTER CITIES.
- 3067. CHANGE OF NAME FROM "TOWN" TO "CITY."
- 3067a. CHANGE OF NAME FROM "CITY" TO "TOWN."
- 3068. APPROVING LEASES OF TIDE LANDS.
- 3069. PERMIT FOR COUNTY HIGHWAYS.
- 3070. BOTANICAL GARDENS AND HISTORICAL MUSEUMS.
- 3071. WATER WORKS AND POWER PLANTS.
- 3072. JOINT SEWERS, WATER MAINS AND OTHER CONDUITS.
- 3073. TAX FOR PARK, MUSIC AND ADVERTISING.

- 3074. PUBLIC UTILITY CROSSINGS OF HIGHWAYS, ETC.
- 3075. FRANCHISES FOR STEAM-HEATING PIPES.
- 3076. PERMITS FOR PASSAGE WAYS OVER OR UNDER ALLEYS.
- 3076a. PUBLIC UTILITIES ACT OF 1907.
- 3077. PUBLIC UTILITIES ACT OF 1911.
- 3077a. MUNICIPAL IMPROVEMENT DISTRICT ACT OF 1915.
- 3077b. MUNICIPAL TAX DISTRICT ACT OF 1919.
- 3078. HARBOR IMPROVEMENT ACT OF 1911.
- 3079. ESTABLISHMENT OF HARBOR LINES.
- 3079a. WATERFRONT IMPROVEMENT ACT OF 1917.
- 3079b. THIRD CLASS CITIES—WATERFRONT IMPROVEMENT.
- 3080. GRANT OF TIDE LANDS TO UNITED STATES.
- 3081. MUNICIPAL HOSPITAL.
- 3087. NOXIOUS AND DANGEROUS WEEDS A NUISANCE.
- 3088. ORGANIZATION VALIDATION CITIES OF SIXTH CLASS.
- 3089. ELECTION OF OFFICERS—CITIES OF THE SIXTH CLASS.
- 3090. VALIDATING ELECTION OF OFFICERS—CITIES OF THE SIXTH CLASS.
- 3090a. MUNICIPAL ELECTIONS—FIFTH AND SIXTH CLASS CITIES.
- 3091. DISINCORPORATION OF SIXTH CLASS CITIES.
- 3092. REORGANIZATION ACT OF 1899.
- 3093. OWNERSHIP OF PROPERTY OF DISINCORPORATED MUNICIPALITY.
- 3093a. CITY PLANNING COMMISSIONS.
- 3093b. INITIATIVE AND REFERENDUM.
- 3093c. HOURS OF LABOR OF MUNICIPAL EMPLOYEES.
- 3093d. FISCAL YEAR OF FREEHOLDER CHARTER CITIES.
- 3093e. REFUNDING ACT OF 1897.
- 3093f. DESTRUCTION OF UNSOLD BONDS.
- 3093g. BONDS DECLARED DUE BEFORE MATURITY.
- 3093h. PAYMENT OF BONDS BEFORE MATURITY.
- 3093i. REGISTRATION OF BONDS.
- 3093j. INVESTMENT BOND ACT OF 1909.
- 3093k. INVESTMENT BOND ACT OF 1915.
- 3093l. LEGALIZATION ACT OF 1919.
- 3093m. VALIDATION ACT OF 1915.
- 3093n. VALIDATION OF IMPROVEMENT AND PUBLIC UTILITY BONDS.
- 3093o. SPECIAL TAX LEVY.
- 3093p. ORDINANCES.
- 3094. MUNICIPAL INCORPORATION ACT OF 1883.

CLASSIFICATION ACT.

ACT 3016—An act to provide for the classification of municipal corporations.

History: Approved March 2, 1883, Stats. 1883, p. 24. Amended (1) March 27, 1897, Stats. 1897, p. 218; (2) April 1, 1897, Stats. 1897, p. 421; (3) March 20, 1899, Stats. 1899, p. 141; (4) March 5, 1901, Stats. 1901, p. 94; (5 and 6) February 8, 1911, Stats. 1911, pp. 11, 12; (7) March 24, 1911, Stats. 1911, p. 476.

Classification of municipal corporations.

§ 1. All municipal corporations within the state are hereby classified as follows: Those having a population of more than 400,000 shall constitute the first class; those having a population of more than 250,000 and not exceeding 400,000 shall constitute the first and one-half class; those having a population of more than 100,000 and not exceeding 250,000 shall constitute the second class; those having a population of more than 35,000 and not exceeding 100,000 shall constitute the second and one-half class; those having a population of more than 23,000 and not exceeding 35,000 shall constitute the third class; those having a population of more than 20,000 and not exceeding 23,000 shall constitute the fourth class; those having a population of more than 6,000 and not exceeding 20,000 shall constitute the fifth class; those having a population of not exceeding 6,000 shall constitute the sixth class; provided, that nothing herein shall change the classification of existing cities organized under the municipal corporation act. [Amendment approved March 24, 1911. Stats. 1911, p. 476.] ●

There was another amendment of the same section at the same session as follows:

Classification of municipal corporations.

§ 1. All municipal corporations within the state are hereby classified as follows: Those having a population of more than 400,000 shall constitute the first class; those having a population of more than 250,000 and not exceeding 400,000 shall constitute the first and one-half class; those having a population of more than 100,000 and not exceeding 250,000 shall constitute the second class; those having a population of more than 23,000 and not exceeding 100,000 shall constitute the third class; those having a population of more than 20,000 and not exceeding 23,000 the fourth class; those having a population of more than 6000 and not exceeding 20,000 the fifth class; those having a population of not exceeding 6000 shall constitute the sixth class; provided, that nothing herein shall change the classification of existing cities organized under the municipal corporation act. [Amendment approved February 8, 1911. Stats. 1911. p. 11.]

This section was also amended April 1, 1897, Stats. 1897, p. 421; March 5, 1901, Stats. 1901, p. 94.

Municipal corporations. Population.

§ 2. For the purpose of classifying municipal corporations as in this act provided, the population of all municipal corporations within the state is hereby determined to be the population of such municipal corporations as shown by the federal census taken in the year A. D. nineteen hundred and ten; provided, however, that whenever a new federal census is taken, the municipal corporations within the state are not, by operation of law, reclassified under such census, but shall remain in the old classification until reclassified by the legislature, unless a direct enumeration of the inhabitants thereof be made, as in section 3 of this act provided. [Amendment approved February 9, 1911. Stats. 1911, p. 12.]

Question of reorganization.

§ 3. The council, board of trustees, or other legislative body of any municipal corporation, may at any time cause an enumeration of the inhabitants thereof to be made and in such manner and under such regulations as such body may, by ordinance, direct. If upon such enumeration it shall appear that such municipal corporation contains a sufficient number of inhabitants to entitle it to reorganize under a higher or lower class, the common council, trustees, or other legislative body, shall, upon receiving a petition therefor, signed by not less than one-fifth of the qualified electors thereof, submit to the electors of such city or town, at the next general election to be held therein, the question whether such city or town shall reorganize under the laws relating to municipal corporations of the class to which such city or town may belong. And thereupon such proceedings shall be had and election held, as provided in the general law for the reorganization, incorporation, and government of municipal corporations. If a majority of the votes cast at such election shall be in favor of such reorganization, thereafter such officers shall be elected as are, or may be, and at the time prescribed by law for municipal corporations of the class having the population under which such reorganization is had, and from and after the qualification of such officers, such corporation shall belong to such class. Whenever the result of such enumeration shall have been declared by the council, board of trustees, or other governing body, and entered in the minutes of such body, thereupon the number of such inhabitants so ascertained shall be deemed the number of the inhabitants of such city for all the purposes of this act, and for the purposes of legislation affecting municipalities. The clerk of the council, board of trustees, or other governing body of such city shall cause a certified copy of such minute order to be filed with the board of supervisors of the county wherein such city is situated. [Amendment approved March 20, 1899. Stats. 1899, p. 141.]

This section was also amended March 27, 1897, Stats. 1897, p. 218.

1. Power of legislature to classify municipalities.—The legislature is empowered under the constitution to pass a general law for the classification of municipalities according to population, and the manner of their classification is a subject within its control and the courts may not interfere with the discretion vested in a co-ordinate branch of the government.—*People v. Henshaw*, 76 Cal. 436, 18 Pac. 413.

2. Same—Classification subject of legislative control—No jurisdiction in courts.—The matter of the classification of municipal corporations is a subject for legislative control and the courts may not interfere with the discretion vested in a co-ordinate branch of the government.—*People ex rel. Daniels v. Henshaw*, 76 Cal. 436, 18 Pac. 413.

3. Classification must not be arbitrary.—The classification of a municipal corporation must not be arbitrary for the mere purpose of classification that legislation really local or special may seem to be done, but for the purpose of meeting different conditions requiring different legislation.—*Darcey v. Mayor, etc., of San Jose*, 104 Cal. 642, 38 Pac. 500.

4. Classification—Law not special legislation when applicable to all of a class.—To so classify municipal corporations that general laws applicable to the separate classes will meet the necessities of the case, was a wise provision, and a law which applies to one or more but not to all of these cases is not, for that reason, special legislation.—*People ex rel. Daniels v. Henshaw*, 76 Cal. 436, 18 Pac. 413.

See, also, *Darcey v. Mayor of San Jose*, 104 Cal. 642, 38 Pac. 500.

5. Same—Same.—A law which applies alike to all cities within the class is a general law.—*Darcey v. Mayor, etc., of San Jose*, 104 Cal. 642, 38 Pac. 500.

6. Classification must be founded upon natural differences.—A classification must be founded upon differences which are either defined by the constitution or natural, which will suggest a reason which might recently be held to justify the diversity in the legislation.—*Darcey v. Mayor of San Jose*, 104 Cal. 642, 38 Pac. 500.

See, also, *Pasadena v. Stimson*, 91 Cal. 238, 27 Pac. 604; *Daugherty v. Austin*, 94 Cal. 601.

7. Classification only for purposes of incorporation and organization.—It is intimated that the classification of municipalities is authorized only for the purpose of incorporation and organization.—*Daugherty v. Austin*, 94 Cal. 601, cited in *Darcey v. Mayor, etc., of San Jose*, 104 Cal. 642, 38 Pac. 500.

8. Same—Classification applicable to all of class not invalid.—Section 6 of article XII of the constitution, empowers the legislature to classify cities and towns in proportion to population for the purpose of incorporation and organization, and a law limited to these purposes is not unconstitutional because it makes different regulations for the different classes.—*Pasadena v. Stimson*, 91 Cal. 238, 27 Pac. 604.

9. Same—Rule distinguished.—While a law touching upon matters of incorporation and organization will not be held a special law because it operates only upon one or several of the classes though not all, it does not follow that there may not be legislation not affecting incorporation or organization which would be general without reference to the classification act of 1883.—*Rauer v. Williams*, 118 Cal. 401, 50 Pac. 691.

10. Same—Legislation not for incorporation or organization.—While the legislature can not pass laws touching the organization and incorporation of municipalities except by conforming to the requirements of the classification act, upon matters not affecting the incorporation or organization, it may pass laws which will be general if they operate uniformly and generally upon all cities of the class created by and designated in the act itself.—*Rauer v. Williams*, 118 Cal. 401, 50 Pac. 691.

11. Classification applicable to only one city—Salaries of policemen.—The legislature is not empowered to create a class of cities of a population of between ten thousand and twenty-five thousand inhabitants for the purpose of increasing the salaries of policemen in a particular city.—*Darcey v. Mayor, etc., of San Jose*, 104 Cal. 642, 38 Pac. 500.

12. Classification for special purpose—Act unconstitutional.—The act of March 28, 1895, adding a new article to the Political Code (article IV of chapter I title II part III) is unconstitutional so far as it provides in section 1075 for boards of election commissioners in cities and counties having 150,000 or more inhabitants, as an improper attempt to create a class of municipal corporations for a special purpose without reference to existing classifications by general law.—*Denman v. Broderick*, 111 Cal. 96, 43 Pac. 516.

13. Classification creating special class invalid.—A law in conformity with the special permission of the constitution in section 6 of article XI must be a law classifying all cities in the state or a law amendatory of such a law, and a law which creates a special class and does not leave all municipalities classified, is invalid.—*Darcey v. Mayor, etc., of San Jose*, 104 Cal. 642, 38 Pac. 500. See, also, *Denman v. Broderick*, 111 Cal. 96, 43 Pac. 516.

14. Act is general law.—The classification act is a general law within the meaning of section 6 of article II of the constitution.—*Pritchett v. Stanislaus County*, 73 Cal. 310, 14 Pac. 795.

15. Act of 1891, creating police courts in certain cities is invalid.—The act of 1891 assuming to create police courts in certain cities, does not conform to the provisions of the classification act and is not amendatory of that act.—*Ex parte Giambonini*, 117 Cal. 573, 49 Pac. 732.

16. Increase in population operates automatically to change class.—Under section 2 the census of 1910 operated, as of the 15th of April of that year, without action by the

legislature or the people of San Diego, to place that city which had been a city of the third class in the second class.—*Puterbaugh v. Wadham*, 162 Cal. 611, 123 Pac. 804.

17. Same—Salary of justice of the peace.—Under section 2 of the act of 1883 as to the classification of municipal corporations, the United States census of April 15, 1910, operated, without action of the legislature or of the people of San Diego, to change the city of San Diego from the third to the second class as of that date, and on that date the justice of the peace for that city

became entitled to the salary provided for by law for justices of the peace in cities of the second class.—*Puterbaugh v. Wadham*, 162 Cal. 611, 123 Pac. 804.

18. Same—Same.—Section 9, article XI, of the constitution, is an inhibition upon the legislature, and has no application to an automatic increase of an official salary due to the passing of a city from one class to another because of increase of population and not by act of the legislature.—*Puterbaugh v. Wadham*, 162 Cal. 611, 123 Pac. 804.

ABANDONMENT OF FREEHOLDER CHARTER.

ACT 3017—An act to enable cities incorporated and operating under a charter framed under section 8, article 11, of the constitution, to abandon and annul such charter, and organize under general laws.

History: Approved March 27, 1897, Stats. 1897, p. 200.

Annulment of charters framed under article XI of the constitution.

§ 1. The common council, or other legislative body of any city in this state, operating under a charter framed under section 8, article 11, of the constitution, shall have power, and it shall be their duty, whenever a petition is presented to them, signed by one-half of the qualified electors of such city, by ordinance, to submit to the qualified electors of such city at any general election, the question whether such city shall abandon such charter and reorganize under the general laws of the state providing for the organization, incorporation, and government of municipal corporations. Such election shall be called and held in accordance with the provisions of such charter for calling and holding elections, and if two-thirds of such qualified electors voting at such election shall vote to abandon such charter and reorganize under the general laws of the state providing for the organization, incorporation, and government of municipal corporations, such city shall, from and after the thirtieth day after such election, cease to be organized under such charter, and such charter shall be superseded by said general laws, and organized thereunder. In case such proposition shall fail to receive the vote of two-thirds of such electors, then the proposition for the abandonment of such charter and reorganization under the general laws shall not be again submitted for two years.

Continuation of incumbents in office.

§ 2. All officers of such city shall continue in office, and their powers under said charter shall not cease until officers shall have been elected and qualified under said general laws.

§ 3. This act shall take effect immediately.

VALIDATION ACT OF 1919.

ACT 3018—An act to validate the organization and incorporation of municipal corporations.

History: Approved April 18, 1919. In effect July 22, 1919. Stats. 1919, p. 118. Prior acts of the same tenor and effect: (1) acts of March 9, 1885, Stats. 1885, p. 31; (2) March 17, 1897, Stats. 1897, p. 168; (3) March 20, 1905, Stats. 1905, p. 400; (4) April 12, 1909, Stats. 1909, p. 826; (5) May 1, 1911, Stats. 1911, p. 1423; (6) June 4, 1913; in effect August 10, 1913; Stats. 1913, p. 382; (7) May 4, 1915; in effect August 8, 1915; Stats. 1915, p. 342.

Organization of municipal corporations validated. Exceptions.

§ 1. All municipal corporations, the organization and incorporation of which have been authenticated by the board of supervisors in this state declaring the same incor-

porated, as municipal corporations of the classes to which such corporations may respectively belong, and a certified copy of which order has been filed by such board of supervisors in the office of the secretary of state, and which corporations thereafter have acted in the form and manner of municipal corporations under the provisions of "An act to provide for the organization, incorporation and government of municipal corporations," approved March 13, 1883, and the amendments thereto, are hereby declared to be and to have been municipal corporations from the date of filing the certified copy of said order of the board of supervisors with the secretary of state; and all acts of the said municipal corporation heretofore performed according to the act aforesaid, are hereby validated, and declared to be legal; provided, however, that all municipal corporations shall be excepted from this act where the right to act as such is being contested or inquired into in legal proceedings brought within six months after a certified copy of the order of the board of supervisors was filed in the office of the secretary of state.

REORGANIZATION VALIDATION ACT OF 1909.

ACT 3027—An act to validate proceedings for the reorganization of municipal corporations taken since the passage of the act entitled "An act to provide for the organization, incorporation, and government of municipal corporations," approved March 13, 1883; and also, since the passage of the act entitled "An act to provide for the classification of municipal corporations," approved March 3, 1883.

History: Approved March 18, 1909, Stats. 1909, p. 403. Prior acts of the same tenor and effect: (1) Acts of March 15, 1887, Stats. 1887, p. 150; (2) March 16, 1889, Stats. 1889, p. 203; (3) March 11, 1891, Stats. 1891, p. 92.

Validating certain municipal corporations.

§ 1. All cities or towns, reorganized, or claiming to have been reorganized, since the passage of the acts the titles of which are recited in the title hereof, or which have attempted since said dates to reorganize or incorporate under the provisions of said acts, or either of them, and have acted as municipal corporations since such reorganization, are hereby declared to be and to have been from the date of such reorganization, or attempted reorganization, duly and legally incorporated and reorganized cities, and all proceedings for the reorganization of such municipal corporations are hereby validated and declared legal; provided, that this act shall not affect any municipal corporation where an action is pending to test the validity of such municipal corporation.

§ 2. This act shall take effect from and after its passage.

DISPOSITION OF PUBLIC LANDS IN TOWNSITES.

ACT 3029—An act to authorize and direct the municipal authorities of the several cities and incorporated towns of this state to execute certain trusts in relation to the town lands granted to the incorporated cities and towns in this state, by the act of congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March second, eighteen hundred and sixty-seven.

History: Approved March 24, 1868, Stats. 1867-68, p. 487. Amended March 4, 1872, Stats. 1871-72, p. 237. Continued in force by the Political Code. See Kerr's Cyc. Political Code, § 4442.

See, also, Act 3030.

This act authorized the supervisors to enter at the proper land office such quantity of land as the inhabitants were entitled to claim.

1. **Payment of fees by husband, conveyance to wife—Not wife's separate property.**—Where a husband enters into possession of public land under deeds from prior occu-

pants and thereafter the land is conveyed by the government to the corporate authorities of a town in trust for its inhabitants and such authorities convey the said lots to the wife on the application of the husband and the payment of the necessary fees therefor by such husband, the property is not the separate property of the wife.—*Morgan v. Lones*, 78 Cal. 58, 20 Pac. 248.

2. Enforcement of trust against co-heir of beneficiary.—A member of the class for whose benefit the townsite acts were passed may enforce a trust for his interest as the heir of a deceased person against a co-heir who obtains title under the townsite acts

and against the grantee of such person who purchases from such co-heir with notice of plaintiff's rights.—*Eversdon v. Mayhew*, 85 Cal. 1, 21 Pac. 431, 24 Pac. 382; see, also, *Coffey v. Greenfield*, 62 Cal. 602.

DISPOSITION OF PUBLIC LANDS IN TOWNSITES.

ACT 3030—An act to authorize and direct the county judges of the several counties of this state to execute certain trusts in relation to the town lands granted to the unincorporated towns in this state by the act of congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867.

History: Approved March 30, 1868, Stats. 1867-68, p. 692. Amended (1) January 26, 1874, Stats. 1873-74, p. 37; (2) March 12, 1885, Stats. 1885, p. 115; (3) March 9, 1897, Stats. 1897, p. 93. The amendatory act of 1885 was also supplemental, and it was amended March 23, 1907, Stats. 1907, p. 936.

This act authorized the county judges, as the previous act authorized the supervisors (see ante Act 3029), to enter at the proper land office such quantity of land as the inhabitants were entitled to claim. By the amending and supplemental act of 1885, the superior judge replaced the county judge whose office was abolished by the constitution of 1879.

1. Townsite deed does not carry title to mineral land.—A townsite and patent does not carry title to a mine known to be valuable for gold, silver, cinnabar or copper at the date of such entry or to any valid mining claim thereon held at that time under existing laws and it is immaterial whether the claim then known to contain minerals sufficient to justify exploration or not.—*Callahan v. James*, 141 Cal. 291, 74 Pac. 853. (*Callahan v. James*, 7 Cal. Unrep. 82, 71 Pac. 104.)

2. Deed to land reserved for a plaza or public square.—Land dedicated on a townsite map as a plaza or public square is not land which the judge as trustee is authorized to sell under the townsite acts unless by special order of the board of supervisors of the county and a deed to such land by such judge without the authority of the supervisors, is void.—*County of Amador v. Gilbert*, 133 Cal. 51, 65 Pac. 130.

3. Townsite title not acquired by adverse possession.—Title to property covered by the townsite acts could not be acquired by adverse possession while held by the government or by the judge in trust for a

school district.—*Howard v. Oroville School District*, 22 Cal. App. 544, 135 Pac. 689.

4. Land unsold at end of six months—Highest bidder for cash.—Under the act of congress supplemented by the state townsite acts a superior judge can execute his trust as to the lands remaining unsold at the end of six months after the filing of the town plat only by selling the unsold land at public auction to the highest bidder for cash and a deed by him not in compliance with these conditions, is void and conveys no title.—*County of Amador v. Gilbert*, 133 Cal. 51, 65 Pac. 130.

5. Action to quiet title—Deed not conclusive against defendant in possession.—A deed of the superior judge under the authority of this act to the plaintiff in an action to quiet title, is not conclusive against the defendant who was in the occupancy of the land at the time of the issuance of the patent and prior to the application therefor, and such defendant is entitled to prove his occupancy and his right thereto.—*Biddick v. Kobler*, 110 Cal. 191, 42 Pac. 578.

6. Mandate to compel county judge to convey land—Decree of court has same effect.—Mandate is the proper remedy to compel a judge of the superior court to convey land under townsite title act, but the decree of the court in a suit to quiet title has the same effect.—*Howard v. Oroville School District*, 22 Cal. App. 544, 135 Pac. 689.

ACQUISITION OF LAND FOR CEMETERY PURPOSES.

ACT 3032—An act authorizing municipalities of less than the first class to obtain, by purchase, donation, or devise, lands for cemetery purposes; and authorizing the board of trustees of said municipalities to make all necessary rules and regulations for the government and disposition of the same.

History: Approved February 21, 1899, Stats. 1899, p. 22.

Municipalities of less than first class may acquire property for cemetery purposes.

§ 1. Cities and towns of less than the first class are hereby authorized to purchase, or receive by donation or devise and dispose of, all and any necessary property for cemetery purposes.

§ 2. The board of trustees or other governing body of said municipalities shall make all necessary rules and regulations for the government, embellishment, and disposition of the same.

§ 3. The boards of trustees or other governing body of said municipalities shall, by ordinance, prescribe the method and conditions by which burial lots may be sold in said cemetery, and may authorize any officer of the municipality to execute conveyances in behalf of said municipality, subject to the restrictions that may be deemed proper.

§ 4. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

§ 5. This act shall take effect immediately.

PRIVATE SPUR TRACKS.

ACT 3034—An act to authorize the construction, maintenance and operation of private spur tracks in municipalities.

History: Approved March 21, 1905, Stats. 1905, p. 710.

Construction of spur tracks to connect with railroads in.

§ 1. The council or other legislative governing body of any city or town, or city and county, by a majority vote, may grant the right to property owners or to the proprietors of manufacturing or industrial enterprises to construct, maintain and operate spur tracks from their premises to a connection with any railroad. Such grant shall, nevertheless, be revocable at the pleasure of the granting authority.

DISPOSITION OF RESIDUE OF PUBLIC IMPROVEMENT FUNDS.

ACT 3037—An act to provide for the disposal of moneys raised by cities or towns for public improvement after the same have been completed and paid for.

History: Became a law under constitutional provision without the Governor's approval, March 16, 1899, Stats. 1899, p. 105.

Disposal of residue after completion of specific public work.

§ 1. Whenever any city or town hereafter raises, or has heretofore voted to raise, any sum of money for a specific public improvement, and after such improvement has been fully completed and paid for, a residue remains, for the disposition of which there is now no provision of law, such residue shall be paid into the general fund of such city or town and form part thereof.

ACQUISITION OF PUBLIC UTILITIES ACT OF 1913.

ACT 3040—An act to provide for the acquisition, installation, construction, reconstruction, extension, repair and maintenance by municipalities of water works, electric power works, gas works, lighting works, and other public works and utilities; for the assessment of the cost and expenses thereof upon the property benefited; and for the issuance of improvement bonds to represent such assessments, and to repeal an act entitled "an act to provide for the lighting of public streets, lanes, alleys, courts and places in municipalities and for the assessment of the costs and expenses thereof upon the property benefited thereby," approved March 21, 1905.

History: Approved June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 421. Amended May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 987. Prior act of March 26, 1895, Stats. 1895, p. 191, amended March 27, 1897, Stats. 1897, p. 210; repealed February 20, 1903, Stats. 1903, p. 32. Prior act of March 21, 1905, Stats. 1905, p. 564, amended (1) February 21, 1911, Stats. 1911, p. 69; (2) April 3, 1911, Stats. 1911, p. 583.

Cities may maintain public utilities.

§ 1. Whenever the public interest or convenience may require, the city council of any municipality in the state shall have full power and authority to order water mains,

pipes, conduits, tunnels, hydrants and other necessary works and appliances, for the purpose of providing water service; lines, conduits, and other necessary works and appliances, for the purpose of providing electric power service; mains, pipes and other necessary works and appliances, for the purpose of providing gas service; poles, posts, wires, pipes, conduits, lamps and other necessary works and appliances, for lighting purposes; or any of said improvements, or any works, utility or appliances necessary or convenient for providing any other public service, to be installed, constructed, reconstructed, extended, repaired or maintained in and along the whole or any part of any one or more of the public streets, alleys or other places in such municipality, or in and along any right of way owned or held by said municipality for the purpose; also to order any works or appliances already installed in or along the whole or any part of any one or more of the public streets, alleys, or other places in such municipality, and which are necessary or convenient for the purpose of supplying such municipality or its inhabitants with water, electricity, gas, or other means of heat, illumination or power or with any other public service, together with any plants, lands and rights of way, whether located within or without the city, necessary or convenient for the use and operation thereof, to be acquired, or to order the use of any such works, appliances and other property to be acquired; also to order electric current, gas, or other illuminating agent, to be furnished for such power or lighting service, in the manner and under the proceedings hereinafter described.

Resolution of intention. Kinds of work. Reference to officer for report.

§ 2. Before ordering any improvement to be made which is authorized by section one of this act, the city council shall adopt a resolution declaring its intention to do so, briefly describing the proposed improvement, and specifying the exterior boundaries of the district to be benefited by said improvement and to be assessed to pay the cost and expenses thereof, and to be known as the assessment district; provided, however, that the city council may, in its discretion, order, in said resolution of intention, that a certain portion or percentage of the cost and expenses of said improvement, the amount of which portion or percentage shall be specified in said resolution, shall be paid out of the treasury of the municipality, from such fund as the city council may designate. Said proposed improvement may include any or all of the different kinds of work mentioned in section one of this act; provided, however, that the maintenance of appliances or the furnishing of electric current, gas, or other illuminating agent, shall be for a period stated in the resolution of intention, but not exceeding two years. The city council shall also, in the same resolution, refer the proposed improvement to the board, commission or officer of the city having charge and control of the construction of public improvements of the kind described in such resolution, or to the city engineer, or to such other board or officer of the city, or competent person employed by the city for the purpose, as the council may name in said resolution, and direct such board, commission, officer or person to make and file with the clerk of the council a report in writing, presenting the following:

Plans and specifications.

1. Plans and specifications of the proposed improvement, excepting in so far as said improvement includes the acquisition of works or appliances already installed and any other property necessary or convenient for the operation thereof, or the acquisition of the use of any such works, appliances and property, as provided for in section one of this act, as to which works, appliances and property such report shall contain a general description thereof.

Estimate of cost.

2. An estimate of the cost of said improvement and of the incidental expenses in connection therewith.

Diagram of district.

3. A diagram showing the assessment district above referred to, and also the boundaries and dimensions of the respective subdivisions of land within said district as the same existed at the time of the passage of the resolution of intention, each of which subdivisions shall be given a separate number in red ink upon said diagram.

Assessment according to benefits. Amount paid out of treasury deducted.

4. A proposed assessment of the total amount of the cost and expenses of the proposed improvement upon the several subdivisions of land in said district in proportion to the estimated benefits to be received by such subdivisions, respectively, from said improvements; provided, that whenever any portion or percentage of the cost and expenses of such improvement is ordered to be paid out of the treasury of the municipality, as hereinbefore provided, the amount of such portion or percentage shall first be deducted from the total estimated cost and expenses of such improvement, and the assessment upon property, proposed in said report shall include only the remainder of said estimated cost and expenses. Said assessment shall refer to such subdivisions under said diagram by the respective red ink numbers thereof, and shall show the names of the owners, if known, otherwise designating them as unknown. No mistake in the name of the owner of any parcel of land shall affect the validity of the assessment thereon.

Consideration of report. Hearing of protests.

§ 3. Upon the filing of the report provided for in section two of this act, the said clerk shall present the same to the city council for consideration, and said council may modify the same in any respect, and, in case of any such modification, the report, as modified, shall stand as the report for the purpose of all subsequent proceedings. Thereafter, the council, by resolution, shall appoint a time and place for hearing protests in relation to the proposed improvement, which time shall not be less than twenty days from the date of the passage of said resolution, and shall direct the clerk of the city council to give notice of said hearing, and shall designate a daily or weekly newspaper published and circulated in said city in which such notice shall be published.

Notices of local improvement posted. Publication.

§ 4. After the passage of the resolution of intention, the clerk of said city council shall cause to be conspicuously posted along all streets and parts of streets or other public places and rights of way held or owned by the municipality, as aforesaid, where any work is to be done or improvement made or acquired, at not more than three hundred feet apart, but not less than three in all, notices of the passage of said resolution. Said notices shall be headed "Notice of Local Improvement," in letters of not less than one inch in length, and shall, in legible characters, state the fact and date of the passage of the resolution of intention and of the filing of said report and the date set for the hearing of said protests, and briefly describe the improvement proposed to be made as acquired, and refer to said resolution and report for further particulars. He shall also cause a notice similar in substance to be published by two successive insertions in a daily or weekly newspaper, published and circulated in said municipality, and designated by said council for that purpose. Said notices must be posted and published, as above provided, at least ten days before the date set for the hearing of said protests.

Written protest. Majority may bar resolution. Decision final. Order of improvement.

§ 5. Any person interested, objecting to said improvement, or to the extent of the assessment district, or to the proposed assessment provided for in section two of this act, may file a written protest with the clerk of the city council at or before the time

set for the hearing referred to in section three hereof. The clerk shall endorse on every such protest the date of its reception by him, and at the time appointed for the hearing above provided for, shall present to said council all protests so filed with him. If such protests be against said improvement and said city council find that the same are signed by the owners of a majority or more of the frontage of the property fronting on streets or parts of streets within said assessment district, all further proceedings under said resolution of intention shall be barred, and no new resolution of intention for the same improvement shall be passed within six months after the presentation of such protests in the city council, unless the owners of a majority or more of the frontage of the property fronting on streets or parts of streets within said assessment district shall be in the meantime petitioned therefor. If such protests are against the improvement, and the council find that they are not signed by the owners of a majority or more of the frontage of the property fronting on streets or parts of streets within the assessment district, or if such protests are against the extent of the assessment district, the council shall hear said protests at the time appointed therefor, as above provided, or at any time to which the hearing thereof may be adjourned, and pass upon the same and its decision shall be final and conclusive, and if such protests are sustained the proceedings shall be abandoned, but may be renewed at any time, and if such protests are denied the proposed assessment shall be confirmed. If such protests are against the proposed assessment, the council shall hear said protests at the time appointed therefor, as above provided, or at any time to which the hearing thereof may be adjourned, and may confirm, modify or correct said proposed assessment.

When, upon the hearing, said proposed assessment is confirmed, modified or corrected, or in case no protests are filed, the report provided for in section two hereof shall be adopted as a whole, with any modifications or corrections that have been made therein, and the city council shall, by resolution, order said proposed improvement to be made or acquired, and declare its action upon said report and assessment, which resolution shall be final and conclusive on all persons, and the assessment shall be thereby levied upon the respective subdivisions of land in the assessment district.

Contest of validity.

§ 6. The validity of an assessment levied under this act shall not be contested in any action or proceeding unless the same is commenced within thirty days after the time said assessment is levied, and any appeal from a final judgment in such an action or proceeding must be perfected within thirty days after the entry of such judgment.

Diagram to city collector.

§ 7. Upon the passage of the resolution provided for in section five hereof, the clerk of said city council shall transmit to the city tax collector the diagram and assessment provided for in subdivisions three and four of section two hereof, and any modifications or corrections thereof made by said city council.

Diagram recorded. Assessments delinquent.

§ 8. Upon receipt of the diagram and assessment referred to in the last preceding section, the tax collector shall record the same in a substantial book, to be kept for that purpose, in his office, and shall thereupon fix a day not less than twenty, nor more than thirty, days from the date of the receipt by him of said diagram and assessment after which all assessments unpaid shall become delinquent, and ten per cent shall be added to the amount thereof, and shall also fix a day for the sale of the various parcels of land upon which the assessments are unpaid, which said date shall not be less than fifty days, nor more than sixty days, from the date of the receipt by him of said diagram and assessment.

Notice of sale for delinquency. Payment prior to sale. Sale of land.

§ 9. The tax collector shall, within ten days after the date of such delinquency, begin the publication of a notice of sale of the property upon which the assessments have not been paid, which publication must be made by two insertions in a daily or weekly newspaper, published and circulated in the city. The description of the various parcels of land need not be set out at length, but they may only be designated in such notice by the respective numbers of the same as they appear upon the assessment and diagram, which shall be properly referred to therein. Opposite the description or designation of each parcel of land shall be set out in such notice the name of the owner as stated in the assessment, the amount assessed against the same, the penalty for delinquency, and its portion of the costs of the sale.

At any time after such delinquency, and prior to the sale of any parcels of land assessed and delinquent, any person may pay the assessment thereon, together with the penalties and costs due thereon, including the cost of advertising, if such payment is made after the first publication of the notice of sale.

At the time and place fixed therefor, the tax collector shall proceed with such sale, commencing at the head of the list of lands contained in such notice, and continuing in the numerical order thereof until all the property is sold; provided, that he may postpone or continue the sale from day to day until the sale is completed. The tax collector shall separately sell each parcel of land listed in such notice, or so much thereof as shall be necessary to realize the amount assessed against the same together with the penalties and costs as aforesaid, and fifty cents for a certificate of sale. In case there is no other purchaser, the same shall be struck off to the city as purchaser.

Certificate of sale.

§ 10. The tax collector shall issue for each sale an original and duplicate certificate of sale, referring to the proceedings, describing the parcels sold, and giving the name of the purchaser and the amount for which said parcel was sold. The original certificate he shall deliver to the purchaser, and the duplicate he shall keep on file in his office, in the form of a stub, in the certificate book.

Redemption of property sold.

§ 11. At any time before the expiration of one year from the date of the sale, any property sold under the provisions of the preceding sections may be redeemed by the payment to the tax collector of the amount for which the property was sold, with an additional penalty of twenty per cent of said amount. Said redemption money shall be paid by the tax collector to the person holding the original certificate of sale upon his delivering up the same and receipting for the amount received from the tax collector therefor. Upon redemption of any parcel of land the tax collector shall enter the fact and date of such redemption upon the duplicate certificate of sale thereof.

Deed to property.

§ 12. If the property is sold, and is not redeemed within said period of twelve months from the date of the sale, the tax collector shall execute to the person named in the original certificate, or to his assignee, a deed of the property described in said certificate, which said deed shall refer in general terms to the proceedings under which the same is issued, and shall contain a description of the property. Such deed shall convey title in fee to said property, and the grantee is immediately, upon the receipt thereof, entitled to possession of the property described therein.

Special improvement fund. Loan from general fund.

§ 13. The funds collected by the tax collector under the proceedings herein provided for, either upon voluntary payment or as the result of sales, shall be paid by said tax

collector, as fast as collected, to the treasurer of the city, who shall place the same in a special fund designated by the name of the improvement proceeding, and payment shall be made out of said special fund only for the purposes provided for in this act. To expedite the making of any such improvement, the city council may, at any time, transfer into said special fund, out of any money in the general fund, such sums as it may deem necessary, and the sums so transferred shall be deemed a loan to such special fund, and shall be repaid out of the proceeds of the assessments provided for in this act.

Letting contract for improvement. Certified check. Work done according to plans.

Abandonment by contractor. City may do work. City may not call for bids.

§ 14. At any time after the funds for the proposed improvement, or any part thereof, shall be in the hands of said treasurer, the city council may let the contract or contracts for such improvement, or the respective parts thereof, and, in so far as said improvement includes the acquisition of works or appliances already installed and any other property necessary or convenient for the operation thereof, or the acquisition of the use of any such works, appliances and property, as hereinabove provided, the council may authorize such acts and proceedings as may be necessary for the purpose of effecting such acquisition. Every such contract shall be let to the lowest responsible bidder after notice published by two insertions in some newspaper published in such municipality, and designated by the city council for that purpose, or if there be no such newspaper, then by such posting as the city council may provide. Every bid shall be accompanied by a certified check, amounting to ten per cent of the bid, payable to the order of the clerk of said city council, and the same shall be forfeited to the municipality in case the bidder depositing the same does not, within fifteen days after written notice that the contract has been awarded to him, enter into a contract with the municipality for the work, the faithful performance of which shall be secured by an undertaking in such penal sum as the city council shall require, with sureties satisfactory to said council. The contract must provide that the work shall be done, and the work must be done, strictly in accordance with the plans and specifications contained in the report provided for in sections two and three of this act. The work must be done under the supervision of the board, officer or person by whom the report provided for in section two of this act was made, and no work shall be paid for until it has been accepted by said board, officer or person. If the contractor abandons the work, or fails to proceed with the same as rapidly as required by his contract, the said city council may re-let the work in the same manner as in the case of the first letting thereof, and retain the amount of the cost of the same, and of any expense incidental to the re-letting out of any funds due or to become due, to the contractor, and also hold him and his sureties responsible for such cost and expense, and for any damages resulting from such abandonment or failure upon his bond; provided, however, that the city council, in its discretion, may, at any time within ten days after the award of any contract, as above provided, or at any time within ten days after the time fixed for the opening of bids, if no bids have been received, order by resolution adopted by a vote of two-thirds of all its members, that said proposed contract be not made, and that the municipality itself execute the work embraced therein, in accordance with the plans and specifications adopted for such work, and employ the labor, and provide the material, appliances, supplies and illuminating agent necessary therefor; and the cost and expenses of such work shall be paid out of the aforesaid funds; and provided, further, that the amount appropriated and used from said funds for said purpose shall not exceed the amount of the bid upon which the award of contract aforesaid was made, or, if no bids have been received and the work is to be executed by the municipality itself, as herein provided, such cost and expense shall not exceed the amount of the estimate thereof provided for in section two of this act; and if such cost and expense shall exceed the amount of said bid, or of said estimate in case no bids are received, then such excess

shall be met out of any moneys in the general fund in the treasury of said city; and provided, further, that at any time after the funds for the proposed improvement, or any part thereof, shall be in the hands of said treasurer, the city council, in its discretion, may, without calling for bids, order, by resolution adopted by a vote of two-thirds of all its members, that the municipality itself perform the work of such improvement, or the respective parts thereof, in accordance with the specifications and plans adopted for such work, and employ the labor, and provide the material, appliances, supplies, and illuminating agent necessary therefor; in which case the cost and expense of such work shall be paid out of the aforesaid funds and if such cost and expense shall exceed the amount of such estimates, then such excess shall be met out of the moneys in the general fund of the treasury of said city. [Amendment of May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 987.]

Supplemental assessment.

§ 15. In case the first assessment for any improvement provided for in this act proves insufficient, a supplemental assessment may be made to raise the deficit, in the same manner as nearly as may be, as the first assessment, except that protests may only be made against such supplemental assessment, and so on until sufficient money shall have been realized to pay for such improvement.

Refund of excess.

§ 16. If at any time an assessment for any such improvement shall realize a larger sum than is necessary therefor, the excess shall be refunded pro rata to the parties by whom it was paid.

Assessment lien on land.

§ 17. Every special assessment levied under this act shall, from the date of the levy thereof, be a lien upon the land upon which it is levied paramount to all other liens, except prior assessments and taxation, and such lien shall continue until such special assessment is paid, or until the property is sold and a deed is made therefor to the purchaser, as hereinbefore provided, and all parties shall have constructive notice of such lien from the date of the passage of the resolution referred to in section five hereof.

Improvement bonds. Bonds not sold.

§ 18. The city council may, in its discretion, at or before the time of levying an assessment in proceedings taken under the provisions of this act, determine, by resolution or ordinance, that improvement bonds may issue to represent assessments included in such levy, and amounting each to \$25 or over, and whenever such determination is made, the provisions of an act entitled "An act providing for the issuance of improvement bonds to represent certain special assessments for public improvements, and providing for the effect and enforcement of such bonds," approved April 27, 1911, or of any act or acts amendatory thereof or supplemental thereto, shall, except as to the minimum amount of any such bond, be applicable in respect to the issuance, effect and enforcement of such bonds; provided, that any bonds not sold after advertisement for bids, as provided in said act, shall be deposited in the fund of the improvement for which said assessments were levied, and be deemed and treated, at their par value, as so much money in said fund, and shall, upon final acceptance of the improvement by the city, be issued to and accepted by the contractor in payment, pro tanto, of the contract or purchase price, or shall, in case the city performs the work, be issued to and accepted by the city in payment, pro tanto, of the cost and expenses of said improvement; and provided further, that when said bonds, or any thereof, are so issued and accepted, the contractor, or city, or other person taking the same, shall have the same rights with reference thereto as other purchasers.

Definitions.

§ 19. The following words and phrases shall, where used in this act, have the following meanings:

(1) The term "improvement" includes all work and improvements mentioned in section one of this act.

(2) The terms "municipality" and "city" includes every incorporated city, city and county or other corporation organized for municipal purposes.

(3) The terms "city council" and "council" include any body or board in which by law is vested the legislative power of any city.

(4) The terms "treasurer" and "city treasurer" include any person or officer who has charge and makes payments of the city funds.

Repealed.

§ 20. That an act entitled "An act to provide for the lighting of public streets, lanes, alleys, courts and places in municipalities, and for the assessment of the costs and expenses thereof upon the property benefited thereby," approved March 21, 1905, and the amendments thereof, are hereby repealed; provided, that proceedings commenced thereunder prior to the taking effect of this act may be continued to completion in the same manner, and with the same force and effect, as if said act and the amendments thereof were not hereby repealed.

1. Constitutionality—Provision germane to subject of act.—A provision in section 6 of the act of 1905 with reference to the time to take appeals from judgments in actions to invalidate assessments under the act, is held to be germane to the general subject of the act, and that, therefore, such provision is not obnoxious to section 24, article IV, of the constitution.—Cohen v. Alameda, 168 Cal. 265, 269, 142 Pac. 885.

2. Appeal taken more than 30 days after entry of judgment is too late.—In view of the provision of section 6 of the act of 1905 requiring an appeal from a judgment in an action to invalidate an assessment under the act to be taken within 30 days after entry of judgment, an appeal from such a judgment, taken more than 30 and less than 60 days, after entry, will be dismissed, notwithstanding such appeal was in time under sections 939 and 941b of the Code of Civil Procedure.—Cohen v. City of Alameda, 168 Cal. 265, 269, 142 Pac. 885.

3. Same—Provision not unconstitutional.—The provision of section 6 of act of 1905 that an appeal from a judgment in an action to declare an assessment under the act void must be taken within 30 days after entry of judgment, is not unconstitutional as a special law.—Cohen v. City of Alameda, 168 Cal. 265, 267, 142 Pac. 885.

4. Constitutionality—Legislative discretion as to procedure provided.—The legislative discretion as to the different modes of procedure or rules of practice to be prescribed for the numerous and various actions and proceedings allowed in courts of justice is very wide, and its judgment on the question whether or not a particular provision shall be made for any class of cases, and as to the classification thereof,

is not to be interfered with except for very grave causes, and also where it is clear beyond reasonable doubt that no sound reason for the legislative classification and for the different provisions, exists.—Cohen v. City of Alameda, 168 Cal. 265, 267, 142 Pac. 885.

5. Act of 1911, authorized installation of street lighting plant.—A municipality is authorized under the improvement act of 1911 (Stats. 1911, p. 730) to install an electric lighting plant although that act provides for street work, inasmuch as section 2 of subdivision 79 was intended to include street lighting systems.—Park v. Pacific, etc., Co., 37 Cal. App. 112, 173 Pac. 615.

6. Act need not be embodied in demand to let contract—Board of trustees charged with notice.—Under the act of 1895 the city council or board of trustees of a municipality is charged with notice and it is not necessary under the act to embody in the formal demand for the letting of a contract for lighting the streets the provisions of the act or to point out specifically the steps required to be taken and it is sufficient so far as the demand is concerned to merely make the same upon the council.—Santa Rosa Lighting Co. v. Woodward, 119 Cal. 30, 50 Pac. 1025.

7. Mandamus will not lie to control discretion.—Mandamus will not lie to compel a city council or board of trustees to exercise its discretion as to whether the streets of its municipality should be lighted or not.—Santa Rosa Lighting Co. v. Woodward, 119 Cal. 30, 50 Pac. 1025.

8. Act of 1895—Mandamus to advertise for bids.—Mandamus will lie against the city council or board of trustees to compel it to advertise for bids as required by the act, where there is no binding contract standing in the way of proceeding under

the act of 1895, and where the past and present official conduct of such council or board unmistakably show that it has been determined to light the city by electricity, and it is not necessary for the petitioner to show actual pecuniary damage, but it will

be presumed that disregard of the requirements of the statute by the board or council is injurious in itself.—*Santa Rosa Lighting Co. v. Woodward*, 119 Cal. 30, 50 Pac. 1025.

“STREET LIGHTING ACT OF 1919.”

ACT 3040a—An act to provide for the maintenance by municipalities of lighting systems along public streets, alleys and other public places and for the lighting thereof by electric current, gas or other illuminating agent; and for the assessment of the cost and expense thereof upon the property benefited and the manner of collecting such assessments.

History: Approved May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 612.

Authority to order works for municipal lighting district.

§ 1. Whenever the public interest or convenience may require, the city council of any municipality in this state in which a district has been established for lighting streets, alleys and other public places, shall have full power and authority to order the poles, posts, wires, pipes, conduits, lamps and other necessary works and appliances already installed in or along the whole or any part of any one or more of the public streets, alleys, or other public places in such municipality, for lighting purposes, to be maintained, and to order electric current, gas or other illuminating agent to be furnished for such lighting service for a period to commence at a time to be stated in the contract hereinafter provided, but not to exceed five years, from the date thereof, in the manner and under proceedings hereinafter provided.

Resolution of intention. Report of board in charge of public improvements.

§ 2. Before ordering any improvement to be made which is authorized by section one of this act, the city council shall adopt a resolution declaring its intention so to do, briefly describing the proposed improvements and designating said district by describing the exterior boundaries thereof to be benefited by said improvements and to be assessed to pay the costs and expenses thereof, and to be known as the assessment district; provided, however, that the city council may, in its discretion, order in said resolution of intention that a certain portion or percentage of the costs and expenses of said improvement, the amount of which portion or percentage shall be specified in said resolution, shall be paid out of the treasury of such municipality from such fund as the city council may designate. The city council shall, in said resolution of intention, provide that the maintenance of said appliances and the furnishing of said electric current, gas or other illuminating agent shall be for a period stated in said resolution of intention, but not exceeding five years. The city council shall also in the same resolution refer the proposed improvement to the board, commission or officer of the city having charge and control of the construction of public improvements of the kind described in such resolution or to the city engineer or to such other board or officer of the city, or competent person employed by the city for such purpose, as the council may name in said resolution, and direct such board, commission, officer or person to make and file with the clerk of the council a report in writing, presenting the following:

What report shall contain.

- (a) Plans and specifications of the proposed improvement.
- (b) An estimate of the cost of said improvement, for the period of time specified in the resolution of intention.
- (c) A diagram showing the assessment district above referred to and also the boundaries and dimensions of the respective subdivisions of land within said district as the

same existed at the time of the passage of the resolution of intention, each of which subdivisions shall be given a separate number in red ink upon said diagram. The said diagram shall govern for all details as to the extent of said assessment district.

(d) A proposed assessment of the total amount of the costs and expenses of the proposed improvement upon the several subdivisions of land in said district in proportion to the estimated benefits to be received by such subdivisions, respectively, from said improvements; provided, that whenever any portion or percentage of the costs and expenses of such improvement is ordered to be paid out of the treasury of the municipality, as hereinbefore provided, the amount of such proportion or percentage shall first be deducted from the total estimated cost and expense of such improvement, and the assessment upon property, proposed in said report, shall include only the remainder of said estimated costs and expenses. Said assessment shall refer to such subdivisions upon said diagrams by the respective red ink numbers thereon and it shall show the names of the owners, if known, otherwise designating them as unknown. No mistakes in the name of the owner of any parcel of land shall affect the validity of the assessment thereon.

Consideration of report. Hearing of protests.

§ 3. Upon the filing of the report as provided in section two of this act, the said clerk shall present the same to the city council for consideration, and said council may modify the same in any respect and in case of any such modification, the report as modified shall stand as the report for the purpose of all subsequent proceedings. Thereafter, the council by resolution, shall appoint a time and place for hearing protests in relation to the proposed improvement, which time shall not be less than twenty days from the date of the passage of said resolution, and shall direct the clerk of the city council to give notice of said hearing in the manner hereinafter provided.

“Notice of local improvement” to be posted and published.

§ 4. After the passage of the resolution of intention, the clerk of said city shall cause to be conspicuously posted along all streets and parts of streets or other public places where said improvement is proposed to be made, at not more than three hundred feet apart, but not less than three in all, notices of the passage of said resolution. Said notice shall be headed: “Notice of local improvement,” in letters of not less than one inch in length and shall, in legible characters, state the fact and date of the passage of the resolution of intention, and of the filing of said report and the date fixed for the hearing of protests and briefly describe the improvement proposed to be made and refer to said resolution and report for further particulars. He shall also cause a notice similar in substance to be published by two successive insertions in a daily or weekly newspaper published and circulated in said municipality and designated by said council for that purpose. Said notices must be posted and published as above provided, at least ten days before the date set for the hearing of said protest.

Objections. Hearing. Adoption of report. Assessment levy. Report. Unexpended balance.

§ 5. Any person interested, objecting to the proposed improvement or to the assessment therefor, may file a written protest stating his objections thereto, with the clerk of the city council at or before the time set for the hearing provided in section three hereof. The clerk shall endorse on every such protest the date of its reception by him, and at the time appointed for the hearing as above provided, shall present to said council all protests so filed. The council shall hear and consider said protests, at the time appointed therefor, as above provided, or at any time to which the hearings thereof may be adjourned, and pass upon the same, and may confirm, modify or correct said proposed assessment, and its decision shall be final and conclusive and, if such protests

are sustained, the proceedings shall be abandoned but may be renewed at any time; and if such protests are denied, the proposed assessment shall be confirmed, and the city council shall be deemed to have acquired jurisdiction to further proceed in accordance with the provisions of this act. When, upon the hearing, said proposed assessment is confirmed, modified or corrected, or in case no protests are filed, the report provided for in section two hereof shall be adopted as a whole, with any modifications or corrections that have been made therein, and the city council shall, by resolution, declare its action upon said report and assessment, and order said proposed improvement to be made. And the city council shall thereupon levy the assessment for the proportion or percentage required to pay for said improvement for the period of time beginning with the date of such levy and ending with the close of the following fiscal year, upon the respective subdivisions of land in the assessment district, and thereafter during the period of time provided in the resolution of intention, the city council shall on or before the beginning of the following fiscal year, levy in like manner the assessment for the proportion or percentage required to pay for such improvement for such year, and said board, commission or officer of the city authorized therefor shall, on or before sixty days prior to the commencement of such fiscal year, make and file with the city council a report in writing, presenting the following:

1. An estimate of the cost of said improvement for the ensuing fiscal year.
2. A diagram showing the assessment district referred to in the resolution of intention, as provided by section two of this act, also the boundaries and dimensions of the respective subdivisions of land within said district as the same existed at the time of the making of said last-mentioned diagram, each of which subdivisions shall be given a separate number in red ink on said diagram.
3. A schedule showing the proportionate amount of said assessment to be charged in proportion to the benefits to be received by each subdivision shown on the last above mentioned diagram.

Any unexpended balance remaining in such fund at the expiration of any year shall be credited to the fund to be raised for the next ensuing fiscal year, and the assessment to be levied, as herein provided, for such ensuing year, shall be only for the amount required therefor after deducting from such estimated amount the amount of any such unexpended balance. Any unexpended balance remaining in such fund at the expiration of the period of time provided for in said resolution of intention shall, upon demands therefor made upon the city council of any such city, within one year from and after the expiration of the time specified in said ordinance of intention, be repaid pro rata to the persons by whom such assessments were paid; provided, however, that any such unexpended balance remaining in such fund and not demanded within said period of one year, as herein provided, shall be placed in such fund as the city council may order.

Contest of validity of assessment.

§ 6. The validity of any assessment levied under this act shall not be contested in any action or proceeding unless the same is commenced within thirty days after the time said assessment is levied, and any appeal from a final judgment in such an action or proceeding must be perfected within thirty days after the entry of such judgment.

Duty of clerk of council.

§ 7. Upon the levying of such assessment as provided in section five hereof, the clerk of said council shall transmit to the city tax collector the diagram and assessment upon which such levy is based.

Assessment roll. Assessments payable immediately. Lien. Publication of notice of record of assessment roll. Delinquent assessments.

§ 8. Upon the receipt of the diagram and assessment referred to in the last preceding section, the tax collector shall record the same in a suitable book to be kept for that purpose, and append thereto his certificate of the date of such recording, and such record shall be the assessment roll. From the date of such recording all persons shall be deemed to have notice of the contents of such assessment roll. Immediately upon such recording, the several assessments contained in such assessment roll shall become due and payable, and each of such assessments shall be a lien upon the property against which it is made, paramount to all other liens except liens for state, county and municipal taxes, and shall only be discharged by payment of the assessment or by redemption of the land after sale for delinquency. The tax collector shall, upon the recording of such assessment, give notice by publication for five days in a daily newspaper, published and circulated in said city, or by two insertions in a weekly newspaper so published and circulated, that said assessment has been recorded in his office and that all sums assessed therein are due and payable immediately, and that payment of said sums must be made to him within thirty days after the date of the first publication or posting, which date shall be stated in the notice. Said notice shall also contain the statement that all assessments not paid before the expiration of the said thirty days shall be delinquent, and thereupon ten per cent of the amount of each such assessment shall be added thereto. When payment of any assessment is made, the tax collector shall mark opposite such assessment the word, "paid," with the date of the payment thereof, and shall give a receipt therefor. Upon the expiration of said period of thirty days, all assessments then unpaid shall become delinquent, and the tax collector shall mark each such assessment "delinquent," and shall add ten per cent to the amount thereof.

Sale of property upon which assessments are delinquent.

§ 9. The tax collector shall, within thirty days after the date of such delinquency, begin the publication of a notice of sale of the property upon which the assessments have not been paid, which publication must be made by two insertions in a daily or weekly newspaper published and circulated in the city. The dates fixed for the sale of the property upon which assessments have not been paid shall be not less than five days, nor more than ten days, after the last publication of said list, or after the completion of posting—as the case may be. The list so published must contain a description of each lot or parcel of land delinquent, and opposite each description the name of the owner in the assessment roll, and the amount of the assessment and costs due, including the cost of advertisement, which cost of advertisement shall not exceed the sum of fifty cents for each parcel of land separately assessed. He shall append to and publish with said delinquent list a notice that unless each assessment delinquent, together with the penalty and cost thereon, is paid, the property upon which the assessment is a lien will be sold at public auction, at a time and place to be specified in said notice.

At any time after such delinquency and prior to the sale of any parcels of land assessed and delinquent any person may pay the assessment thereon, together with the penalties and costs due thereon, including the cost of advertising, if such payment is made after the first publication of notice of sale.

At the time and place fixed therein the tax collector shall proceed with such sale, commencing at the head of the list of lands contained in such notice and continuing in the numerical order thereof until all the property is sold; provided, that he may postpone, or continue, the sale from day to day until the sale is completed. The tax collector shall separately sell each parcel of land described in such notice, or so much thereof as shall be necessary to realize the amount assessed against the same, together

with the penalties and costs as aforesaid, and fifty cents for a certificate of sale. In case there is no other purchaser the same shall be struck off to the city as purchaser.

Certificate of sale.

§ 10. The tax collector shall issue for each sale an original and duplicate certificate of sale, referring to the proceedings, describing the parcel sold, and giving the name of the purchaser and the amount for which said parcel was sold. The original certificate he shall deliver to the purchaser, and the duplicate he shall keep on file in his office.

Redemption of property.

§ 11. At any time before the expiration of one year from the date of the sale, any property sold under the provisions of the preceding sections may be redeemed by the payment to the tax collector of the amount for which the property is sold, with an additional penalty of twenty per cent of said amount. Said redemption money shall be paid by the tax collector to the person holding the original certificate of sale upon his delivering up the same and receipting for the amount received from the tax collector therefor. Upon redemption of any parcel of land the tax collector shall enter the fact and date of such redemption upon the duplicate certificate of sale thereof.

Deed to property. Notice to owner. Owner to pay for service of notice.

§ 12. At any time after the expiration of twelve months from the date of sale, the tax collector must execute to the purchaser, or his assignee on his application, if such purchaser or assignee has complied with the provisions of this section, a deed of the property sold, in which shall be recited substantially the matters contained in the certificate, also any assignment thereof and the fact that no person has redeemed the property. The tax collector shall receive from the applicant for a deed, one dollar for making such deed, unless the municipality is the purchaser, in which case no charge shall be made therefor. The purchaser or his assignee must, at least thirty days before he applies for a deed, serve upon the owner of the property, and upon the occupant of such property, if the same is occupied, a written notice setting forth a description of the property, that said property has been sold for a delinquent assessment (specifying the improvement for which the same was made), the amount for which it was sold, the amount necessary to redeem at the time of giving notice, and the time when such purchaser or assignee will apply to the tax collector for a deed. If the said owner can not be found, after due diligence, said notice must be posted in a conspicuous place upon said property at least thirty days before the time stated therein, at which the application for a deed will be made. The person applying for a deed must file with the tax collector an affidavit or affidavits showing that notice of such application has been given, as herein required, and if the notice was not served on the owner of the property personally that due diligence was used to find said owner; which affidavit or affidavits must be filed by the tax collector in his office. If redemption of the property is made after such affidavits are filed, and more than eleven months from the date of sale, the person making such redemption must pay, in addition to the other amounts required, three dollars for the service of notice and the making of such affidavits, which amount shall be paid over to the purchaser or his assignee in the same manner as other sums paid for redemption. No deed for any property sold for delinquent assessment shall be made until the purchaser or his assignee has complied with all the provisions of this section, and filed the proper affidavits with the tax collector.

Deed prima facie evidence.

§ 13. The deed of the tax collector shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the execution thereof, and of title in the grantee.

Collection and disbursement of fund for improvement.

§ 14. The funds collected by the tax collector under the proceedings herein provided for, shall be paid by said tax collector, as fast as collected, to the treasurer of the city, who shall place the same in a special fund designated by the name of the improvement proceeding, and payment shall be made out of said special fund only for the purpose provided for in this act. To expedite the making of any such improvement, the city council may at any time, transfer into said special fund, out of any money in the general fund, such sums as it may deem necessary, and the sums so transferred shall be deemed a loan to such special fund, and shall be repaid out of the proceeds of the assessments provided for in this act.

Contracts to lowest bidder. Supervision of work. Work done without contract.

§ 15. At any time after the transmission of the diagram and assessment to the city tax collector, as in this act provided, the city council may let the contract or contracts for such improvement. Every such contract shall be let to the lowest responsible bidder after notice published by two insertions in some newspaper published in such municipality and designated by the city council for that purpose. Every bid shall be accompanied by a certified check amounting to ten per cent of the bid, payable to the order of said city clerk, and the same shall be forfeited to the municipality in case the bidder depositing the same does not, within fifteen days after the notice that the contract has been awarded to him, enter into a contract with the municipality for the work, the faithful performance of which shall be secured by an undertaking in such penal sums as the city council shall require, with sureties satisfactory to said council. The contract must provide that the work shall be done, and the work must be done, strictly in accordance with the plans and specifications contained in the report provided for in this act. The work must be done under the supervision of the board, officer or person designated by the city council, and no work shall be paid for until it has been accepted by said board, officer or person. If the contractor abandons the work, or fails to proceed with the same as rapidly as required by his contract, the said city council may relet the work in the same manner as in the case of the first letting thereof and retain the amount of the cost of the same, and of any expense incidental to the reletting out of any funds due or to become due to the contractor, and also hold him and his sureties responsible for such cost and expense, and for any damages resulting from such abandonment or failure upon his bond; provided, however, that the city council, in its discretion may, at any time within ten days after the award of any contract, as above provided, or at any time within ten days after the time fixed for the opening of bids, if no bids have been received, order by resolution adopted by a vote of two-thirds of all its members, that said proposed contract be not made, and that the municipality itself execute the work embraced therein, in accordance with the plans and specifications adopted for such work, and employ the labor, and provide the material, appliances, supplies and illuminating agent necessary therefor; and the cost and expenses of such work shall be paid out of the aforesaid funds; and provided, further, that the amount appropriated and used from said funds for said purpose shall not exceed the amount of the bid upon which the award of contract aforesaid was made, or, if no bids have been received and the work is to be executed by the municipality itself, as herein provided, such cost and expense shall not exceed the amount of the estimate thereof provided for in section two of this act; and if such cost and expense shall exceed the amount of said bid, or of said estimate in case no bids are received, then such excess shall be met out of any moneys in the general fund in the treasury of said city: and provided, further, that at any time after the funds for the proposed improvement, or any part thereof, shall be in the hands of said treasurer, the city council, in its discretion, may, without calling for bids, order, by resolution adopted by a vote of two-thirds of all

its members, that the municipality itself perform the work of such improvement, or the respective parts thereof, in accordance with the specifications and plans adopted for such work, and employ the labor, and provide the material, appliances, supplies, and illuminating agent necessary therefor; in which case the cost and expense of such work shall be paid out of the aforesaid funds and if such costs and expense shall exceed the amount of such estimates, then such excess shall be met out of the moneys in the general fund of the treasury of said city.

Abandonment of proceedings.

§ 16. The city council may, at any time prior to the awarding of the contract for the improvement herein provided, by resolution abandon such proceedings and upon such abandonment all money collected for such improvement shall be repaid to the several parties paying the same.

Application of act.

§ 17. This act shall in no wise affect an act entitled "An act to provide for the acquisition, installation, construction, reconstruction, extension, repair and maintenance by municipalities of water works, electric power works, gas works, lighting works, and other public works and utilities; for the assessment of the cost and expenses thereof upon the property benefited; and for the issuance of improvement bonds to represent such assessments, and to repeal an act entitled "An act to provide for the lighting of public streets, lanes, alleys, courts and places in municipalities, and for the assessment of the costs and expenses thereof upon the property benefited thereby," approved March 21, 1905, approved June 6, 1913, or amendments thereto, or any other acts on the same subject, or applied to proceedings had thereunder, but it is intended to and does provide an alternate system of proceedings for making the improvements provided for by this act; and it shall be within the discretion of the city council of any municipality to proceed in making such improvements either under the provisions of this act, or under the provisions of such other acts; but when any proceedings are commenced under this act, the provisions of this act, and of such amendments thereof as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts or any acts in conflict with the provisions hereof shall be void and of no effect as to the proceedings commenced under the provisions of this act. The election of the city council to proceed under the provisions of this act shall be expressed in its resolution of intention to order said improvement to be made.

In cities having no newspaper.

§ 18. Any notice required by this act to be published in a daily or weekly newspaper may be given in municipalities where there is no such daily or weekly newspaper published and circulated, by posting such notice for four days in three public places in such municipalities.

Definitions.

§ 19. The following words and phrases shall, where used in this act, have the following meanings:

1. The term "improvement" includes all of the improvements mentioned in section one of this act.
2. The terms "municipality" and "city" include all incorporated cities, cities and counties, and other corporations organized for municipal purposes.
3. The term "city council" and "council" include any body or board in which by law is vested the legislative power of any municipality.
4. The term "clerk" and "city clerk" include any person or officer who acts as clerk of said city council.

5. The term "treasurer" and "city treasurer" include any person or officer who has charge and makes payment of the city funds.

6. The term "tax collector" includes any person or officer who is charged with the duty of collecting municipal assessments.

Construction. Title.

§ 20. The provisions of this act shall be liberally construed to promote the objects thereof. This act may be designated and referred to as the "street lighting act of 1919."

JOINT SYSTEM OF WATER SUPPLY ACT OF 1903.

ACT 3041—An act to authorize cities to acquire and operate a joint system or systems of water supply.

History: Approved March 24, 1903, Stats. 1903, p. 405.

Joint city water supply.

§ 1. Any two or more cities incorporated under the constitution and laws of this state are hereby empowered to jointly acquire and develop a source or sources of water supply for municipal and domestic purposes, and to construct the works necessary for their joint and several purposes and needs.

Conference commission.

§ 2. Whenever the legislative body of a city deems it advisable to investigate the desirability of joint action with any other city, or cities, for acquiring and maintaining a water supply, such legislative body shall pass a resolution to that effect, and thereupon the mayor of said city shall, with the consent and advice of said legislative body, appoint three commissioners to confer with like commissioners from any other city. Said commissioners from the respective cities shall meet and consider the question of the desirability of their respective cities taking joint action to acquire and develop water supply for their respective cities, and the plans, terms and conditions they deem feasible, just and equitable, and if they agree upon such plans, terms and conditions they shall report the same to the legislative bodies of their respective cities.

Approval to be submitted to voters. Bond issue.

§ 3. If the legislative bodies of two or more cities approve the plans, terms and conditions of the joint action reported by the commissioners they shall, by resolution, declare such approval, and shall submit the same to the qualified voters of their respective cities for their approval or rejection at the next city election, or at a special election called for that purpose. If the terms, conditions and plans are approved by a majority of the voters voting thereon at such election the said cities may enter upon the work of developing or acquiring water supply for the said cities in accordance with such plans, terms and conditions. And any city may, in the manner required by law, issue bonds for the purpose of prosecuting and completing the work of acquiring a water supply jointly with other cities. All proceedings relating to the issue of such bonds shall be taken as now required by law for the issue of bonds to acquire a water supply.

Restrictions on joint ownership.

§ 4. Joint ownership and costs shall be restricted to those portions of the sources and works which shall be common to all the municipalities served, and each municipality shall exclusively own, construct and operate those sources and works which are for its exclusive use.

Application of costs.

§ 5. The apportionment of all costs of acquisition, construction, operation and maintenance of the joint properties shall be made upon the basis of the amount of water proposed to be apportioned to the several municipalities, unless a different apportionment of costs shall be agreed upon.

When not to be apportioned.

§ 6. The total costs of works which shall exclusively serve any municipality shall be borne by such municipality exclusively.

Conditions may be modified.

§ 7. The plans, terms, conditions, or other agreement for acquiring said water supply, may be modified from time to time by agreement between the respective cities, which agreement shall be declared by the action of their respective legislative bodies.

“City,” etc., defined.

§ 8. The term “city” and the term “municipality,” as used in this act shall include a consolidated city and county, and the same rights and privileges by this act given to an incorporated city shall pertain to a consolidated city and county.

Resolutions must be signed by mayor.

§ 9. Before any resolution or ordinance relating to the joint acquisition of a water supply becomes binding upon any city or municipality it shall be approved by the mayor of such city, or passed over his veto, in the manner provided by law or the charter of such city for the passage of ordinances.

§ 10. This act shall be in force from and after its passage.

SALES OF EXCESS WATER ACT OF 1911.

ACT 3043—An act to provide for the sale of an excess of water when owned by a municipality, and repealing an act entitled “An act to provide for the sale of an excess of water when owned by a municipality,” approved March 27, 1897.

History: Approved April 10, 1911, Stats. 1911, p. 854. Prior act of March 27, 1897, Stats. 1897, p. 182.

Cities supplying own water may sell excess.

§ 1. Whenever the water supply owned by any city, incorporated town, county, or city and county, is in excess of the amount required to supply the water required by the inhabitants thereof, it may be declared by ordinance that such excess exists, and such excess of water may be sold outside of the limits of the corporation; but in no case shall a contract be made for a supply of any excess of water sold by a city, incorporated town, county, or city and county, outside the corporate limits, for a period longer than one year; and in no case shall such a contract be made, unless the legislative authority of a city, incorporated town, county, or city and county, declare by ordinance that there exists an excess of water not required to supply the inhabitants of the city, incorporated town, county, or city and county, within the term of the contract, but water not required to supply the inhabitants of the city, incorporated town, county, or city and county, may be sold by the authorities thereof outside the corporate limits, from month to month, during the existence of such excess, and shall be sold only at the rates fixed for consumers inside the corporate limits; provided, however, that the terms of this act shall not apply to any city, or city and county having a charter framed and adopted under the authority of section 8 of article XI of the constitution of this state, and which charter contains provisions inconsistent herewith.

Repeal of act of 1897.

§ 2. An act entitled “An act to provide for the sale of an excess of water when owned by a municipality,” approved March 27, 1897, is hereby repealed.

1. Duty of municipality to supply as assignee of plant to another municipality.—Where a portion of the water of a water company was appropriated to the use of a city and the property, business, and franchises of such company were purchased by another city, the latter is required as trus-

tee to continue to supply water to the former city, and such water is not surplus water within the meaning of the act of 1897 and the purchasing city is not authorized to sell the same under said act.—*South Pasadena v. Pasadena Land, etc., Co.*, 152 Cal. 579, 93 Pac. 490.

MUNICIPAL BUILDING ACT OF 1895.

ACT 3044—An act conferring power upon the common council, board of supervisors, or other governing body of cities, or cities and counties, of over one hundred thousand inhabitants, to acquire or condemn land for a suitable site, and erect thereon a suitable building or buildings for municipal purposes.

History: Approved March 27, 1895, Stats. 1895, p. 242. Amended March 2, 1897, Stats. 1897, p. 50.

Governing body in certain cities may provide for municipal building.

§ 1. Power and authority is hereby conferred upon the common council, board of supervisors, or other governing body of every city, or city and county, in this state having a population of over one hundred thousand inhabitants, to provide for the erection and construction in such city, or city and county, and at the expense of the same, such additional or other municipal building or buildings as the common council, board of supervisors, or other governing body of such city, or city and county, may determine upon for the accommodation of the criminal department of the superior court, police courts, police stations, prisons, morgues, or coroner's offices of such city, or city and county, and for such other municipal uses as may be deemed necessary.

Powers of governing body and method of procedure. Ad valorem tax.

§ 2. In the event that the common council, board of supervisors, or other governing body of such city, or city and county, shall deem it expedient, and in their judgment that the public good requires the construction of such building or buildings, for the construction of which power is conferred upon them by section 1 of this act, in the manner and mode prescribed by this act, they are hereby authorized and empowered to express such judgment by resolution or order, in such manner as they may deem proper. And for the purpose of raising the money necessary to complete said building or buildings, the said common council, board of supervisors, or other governing body of such city, or city and county, is hereby authorized and empowered to levy and collect, in the same manner and at the same time as other taxes are levied and collected in such city, or city and county, for municipal purposes, an ad valorem property tax on real and personal property, which shall not in the aggregate exceed the sum of three hundred thousand dollars, which sum shall cover all the expense of the said building or buildings.

May condemn site.

§ 3. As a site for the erection and construction of said building or buildings, power is hereby conferred upon the common council, board of supervisors, or other governing body of such city, or city and county, to acquire by purchase, or to condemn and acquire under the laws of eminent domain, such land as may be necessary therefor.

Public building fund.

§ 4. The money arising from the tax hereby authorized to be levied and collected shall be kept by the city, city and county treasury of such city, or city and county in a fund to be known as the "Public Building Fund," and out of which said fund all claims for work, labor, and materials used in the construction of said building, and all other expenses authorized to be incurred under the provisions of this act, shall be paid. All claims against the said fund shall be allowed by the common council, board of supervisors, or other governing body of such city, or city and county, by resolution entered upon the minutes in the same manner and form as other expenditures are authorized, before the auditor shall be authorized to audit the same; and in no case shall any portion of said fund be used or expended for any other purpose than those

herein indicated, nor shall any part of the cost of the construction of said building be paid out of any other or different fund; nor shall any lien for work, labor, or material at any time attach to the said building or buildings, nor the land upon which the same is located in any manner whatever.

Advertising for proposals. Bids. Execution of contract. Changes of plans. Drawing of contract. Plans, etc., to be in triplicate.

§ 5. When work is to be done upon said building or buildings, or materials to be furnished, it shall be the duty of the common council, board of supervisors, or other governing body of such city, or city and county, to advertise for at least ten days in a daily newspaper published and circulated in such city, or city and county, for sealed proposals for doing both said work and furnishing said material. The said work and material shall be of the best quality. The advertisement shall contain a general description of the work to be done and the materials to be furnished, the time within which the same is to be done or furnished, and may refer to plans and specifications for such other details as may be necessary to give a correct understanding regarding the work or materials. The advertisement shall also state the day and an hour of said day within which bids will be received. At the hour and day stated in the advertisement, the said board or body shall proceed to open the bids in the presence of the bidders, and an abstract of each shall be recorded in the minutes by the clerk. A day and hour shall then be fixed for considering the bids and awarding the contract. An abstract of said bids, showing the name of each bidder, the price at which work, labor, and materials are offered to be done or furnished by each, and such other things as may be necessary to show or explain the offer, shall be made by the clerk and published for five days in a daily newspaper of general circulation published in such city, or city and county. At the expiration of five days after the first publication of the abstract, on the day and at the hour fixed by said board or body, said board or body shall proceed to consider the several bids and award the contract for doing the work and supplying the material for which proposals are invited, and for none other, to the lowest bidder who shall furnish sufficient sureties to guarantee the performance of the contract; provided, the advertisement hereinbefore provided for, shall invite proposals and bids, in one total sum or amount, for the performance of all the work and the furnishing of all the materials called for in the said advertisement for the erection of the entire building or buildings. Said board or body shall have the right to reject any or all bids, when in their judgment the public interests may be thereby promoted. Such contract shall be executed on behalf of such city, or city and county, by the mayor, or president of the common council, board of supervisors, or other governing body of such city, or city and county. No change in the plans or specifications shall be made after proposals for doing work and furnishing materials have been called for, nor shall any contractor be allowed a claim for work done or materials furnished in excess of his contract, except on the approval of said common council, board of supervisors, or other governing body of cities, or cities and counties; provided, that the aggregate cost of any change, or changes, shall not exceed the sum of three thousand dollars. All contracts shall be in writing, and shall be carefully drawn by the city attorney, city and county attorney, or other law officer of such city, or city and county, and shall contain detailed specifications of the work to be done, the manner in which the same shall be executed, the quality of the material, and the time within which the same shall be completed; and such penalty for the nonperformance of such contract as said board or body may deem just and reasonable. All contracts shall be signed in triplicate—one copy of which, with the plans and specifications of the work to be done, shall be filed with the clerk or secretary of said board or body, and shall at all times, in office hours, be open to the inspection of the public; one, with the plans and specifications, shall be

kept in the office of said board or body, and the other copy, with plans and specifications, shall be delivered to the contractor. [Amendment approved March 2, 1897. Stats. 1897, p. 50. In effect immediately.]

Payments on contract.

§ 6. The common council, board of supervisors, or other governing body of such city, or city and county, may make payments on such contract from time to time, as work progresses or materials are furnished; but until the contract is completed, at no time shall the payments exceed seventy-five per centum of the value of the labor or materials furnished.

Plans and specifications.

§ 7. The plans and specifications herein referred to shall be secured by said board or body after the publication for ten days in a daily newspaper of general circulation in such city, or city and county, of a resolution inviting the submission of competitive plans and specifications for said building or buildings. Said resolution shall contain a general statement of the purposes for which said building or buildings are to be used, the cost thereof, and the character of the design required. Said plans and specifications may be submitted to such board or body under such requirements and conditions, and at such time as said board or body may prescribe.

§ 8. This act shall take effect and be in force from and after its passage.

MUNICIPAL GRAVEL-BEDS AND QUARRIES.

ACT 3045—An act authorizing municipal corporations to lease, purchase, own, and operate gravel-beds and quarries, and to transport gravel and rock therefrom to such municipal corporations, for the purpose of making, improving, and repairing roads.

History: Approved March 27, 1897, Stats. 1897, p. 217.

Municipal corporations may acquire gravel-beds and quarries.

§ 1. Any incorporated city or town in this state may acquire, lease, purchase, and operate any gravel-bed or quarry within the county where such city or town is situated, and may equip and operate a plant at such gravel-bed or quarry, or within such town or city, for the purpose of breaking, crushing, or otherwise preparing gravel or rock to be used in making, paving, improving, or repairing its streets. Any such city or town may acquire, lease, or purchase and maintain all necessary roads, rights of way and tramways over which to transport gravel or rock from such gravel-bed or quarry to such city or town, and all necessary appliances for that purpose.

Two-thirds vote necessary.

§ 2. No money shall be expended or expense incurred for any of the purposes set forth in section 1, unless the same is authorized at a regular meeting of the legislative body of such city or town, and by a vote of two-thirds of the members thereof.

§ 3. This act shall not extend or enlarge any limitation upon municipal taxation or the expenditure of municipal funds, now existing by reason of state laws or city charters in any of the cities or towns of this state.

DRAINAGE AND PROTECTION FROM OVERFLOW.

ACT 3046—An act to promote the protection of cities, towns, and municipal corporations from overflow by water and the drainage of the same, and for such purposes authorizing the incurring of indebtedness and the issuance of bonds therefor by the same, and providing for the disposition of the proceeds of such bonds, and for the supervision of the protective and other works.

History: Approved March 26, 1895, Stats. 1895, p. 95.

Municipal corporations may incur debts to prevent overflow.

§ 1. Any city, town, or municipal corporation incorporated under the laws of this state may, by procedure hereinafter prescribed, incur indebtedness and liability, although in excess of the income and revenue by it provided for the current fiscal year, but not so that the aggregate funded indebtedness thereof shall exceed six per cent of the assessed value of all the real and personal property in the municipality, for the purpose of protecting such city, town, or municipal corporation from overflow by water, and for the purpose of draining such city, town, or municipal corporation, and for the purpose of securing an outlet for such overflow water and drainage, or for any part of said purposes, whether by means of canals, ditches, levees, dikes, embankments, dams, and any of the same, whether situated within or without the territorial limits of such city, town, or municipal corporation.

Manner of procedure. Duties of city council. Publication and election.

§ 2. The procedure mentioned in section 1 aforesaid shall be as follows, to wit: The city council or legislative body of such city, town, or municipal corporation shall, first, have made by some competent person general plans and estimates of the cost of such canals, ditches, levees, dikes, embankments, dams, machinery, and other means or works as may be contemplated, which general plans and estimates shall, after adoption, be filed in the office of the clerk of such municipality, and which general plans shall be substantially adhered to thereafter in proceedings under this act. Said city council or legislative body shall, secondly, after the filing of such general plans and estimates, and by resolution or ordinance passed at a regular meeting by a vote of two-thirds of all its members and approved by the executive of the municipality, determine, if so advised, that the public good demands the construction, acquisition, and completion, or either, of canals, ditches, levees, dikes, embankments, dams, machinery, and other like appropriate or ancillary means, or works, or any of the same, for any or all of the purposes mentioned in section 1 aforesaid; and shall further, by the same resolution or ordinance, determine, if so advised, that the cost of the same will be too great to be paid out of the ordinary income or revenue of the municipality; and such resolution or ordinance, shall, after its passage and approval, be published as hereinafter prescribed. Said city council or legislative body shall, within one month after the publication aforesaid, and by resolution or ordinance passed at a regular meeting by a vote of two-thirds of all its members, and approved by the executive of the municipality, call a special election, and submit to the qualified voters of such city, town, or municipal corporation the proposition to incur a debt for any or all of the purposes mentioned in section 1 aforesaid, and which have been as aforesaid determined to be demanded for the public good. The resolution or ordinance calling such special election shall specify the purpose for which the indebtedness is proposed to be incurred, the estimated cost of the things proposed, that bonds of the municipality will issue in the amount of such estimated cost, the number and character of such bonds, the rate of interest to be paid, and the amount of the tax levy for each year during the outstanding of such bonds to be made for their payment. Such last-named resolution or ordinance shall be published as hereinafter prescribed. Such city council or legislative body shall cause to be published, after the publication last named and prior to the day of holding such special election, a notice of the same, which notice shall set forth substantially all the matters contained in the aforesaid resolution or ordinance calling such special election.

Newspaper publication.

§ 3. Every publication hereinbefore mentioned or required shall be in some newspaper published in such city, town, or municipal corporation; if in a daily paper in at least ten issues thereof, and if in a weekly paper at least two issues thereof; and no

publication shall be deemed to have begun until any one required preceding the same shall have been completed.

Elections, how held.

§ 4. Such special election shall be held in the manner provided by law for holding elections in such city, town, or municipal corporation.

Two-thirds vote necessary.

§ 5. It shall require the votes of two-thirds of all the voters voting at such special election to authorize the incurring of any indebtedness or the issuance of any bonds under this act. If two-thirds of all the votes cast at such special election be in favor of the proposition submitted, the city council or legislative body may, by ordinance reciting the result of said election, provide for the issuance of the proposed bonds and any matter incidental thereto.

Bonds. How payable. Where payable.

§ 6. All municipal bonds issued under this act shall be of the kind known as serials, and of such denominations as the city council or legislative body may determine; provided, that no bond shall be for less than one hundred dollars nor for more than one thousand dollars, and that not less than one-fortieth part of the whole indebtedness evidenced by the whole of the issue of such bonds shall be, by the terms of such bonds, made payable each and every year. Each bond shall be made payable either in gold coin or other lawful money of the United States as may be expressed in such bond, on a day and at a place designated therein, with interest at the rate specified therein, which rate shall not exceed seven per cent per annum, to be fixed by such city council or legislative body. Said place of payment shall be either at the office of the treasurer of the municipality, or at some designated bank in San Francisco, Chicago, or New York. Said bonds shall be executed on the part of such municipality by the mayor or other executive thereof, and by the treasurer thereof, and countersigned by the clerk of the municipality. The interest coupons shall be numbered consecutively and signed by the treasurer.

Must not be sold at less than par. Proceeds.

§ 7. Any of such bonds may be issued by the city council or legislative body of such city, town, or municipal corporation, and by the same sold, at not less than their face value; and the proceeds of such sale shall be deposited in the municipal treasury to the credit of a designated fund and be applied exclusively to the purposes and objects for which, as aforesaid, the electors have voted to incur indebtedness or liability, until such purposes and objects shall have been accomplished, after which, the surplus, if any, may be transferred to the general fund of the municipality.

Sinking fund.

§ 8. Such city council or legislative body shall, at the time of fixing the general tax levy, and in the manner for such general tax levy provided, levy and collect annually, each year, for the term of forty years, a tax sufficient to pay the annual interest on such bonds and also one-fortieth part of the aggregate amount of such indebtedness so incurred. The taxes herein required to be levied and collected shall be in addition to all other taxes levied for municipal purposes, and shall be collected at the same time and in the same manner as other municipal taxes are collected.

Powers of city council.

§ 9. The city council or legislative body of every city, town or municipal corporation wherein or for which any public works or improvements are being had or constructed for the purposes hereinbefore specified, and for which indebtedness has been incurred

under the provisions of this act, shall have power to make all needful rules and regulations for acquisition, construction, and completion of such works and improvements; to appoint all needful agents, superintendents, and engineers to supervise and construct the same, and shall have power in all lawful ways to protect and preserve the rights and interests of the municipality in respect thereof.

Contracts, how let.

§ 10. All contracts as to said works and improvements shall be let, in such parcels as the city council or legislative body may determine, to the lowest responsible bidder, after notice given for at least ten days by publication in one or more newspapers published in the municipality, inviting sealed proposals. Security or bonds may be required in order to guarantee good faith in bidding and in the performance of contracts, or either, in such amount as such council or legislative body may determine, and such council or legislative body may reject any or all bids.

Additional bonds by treasurer.

§ 11. The city council or legislative body of the municipality may, by resolution, if it deem the same necessary, require the treasurer of the municipality to give additional bonds for the safe custody and care of public funds derived under this act.

Provisions of act paramount and controlling.

§ 12. The provisions of this act are intended to be paramount and controlling as to all matters provided for therein and as to all questions arising in or out of procedure thereunder.

§ 13. This act shall take effect from and after the time of its passage.

ACQUISITION OF WATER RIGHTS, ETC.

ACT 3048—An act authorizing incorporated cities to acquire by purchase, gift or condemnation, water, water rights, reservoir sites, etc.

History: Approved March 14, 1891, Stats. 1891, p. 102.

How to acquire water rights.

§ 1. Any incorporated city in this state may acquire by gift, purchase, or condemnation proceedings, under the power of eminent domain, water, water rights, reservoir sites, rights of way for pipes, aqueducts, flumes, or other conduits, and all other property and appliances suitable and proper for supplying such city and its inhabitants with water.

§ 2. This act shall go into effect immediately upon its passage.

1. Municipality may accept transfer of existing plant of water company.—The city of Pasadena is authorized by its charter and by the act of 1891 (Stats. 1891, p. 102) to accept the transfer of the property, business and franchises of a water company supplying water to a portion of itself and South Pasadena and may undertake and perform the public service imposed upon such property in the hands of the trans-

ferer.—*South Pasadena v. Pasadena Land, etc., Company*, 152 Cal. 579, 93 Pac. 490.

2. Municipality may condemn land for reservoir site.—Under the provisions of the act of 1891 the city of Los Angeles is authorized to condemn land as a reservoir for the purpose of the collection of subterranean waters, and the fact that the water does not rise to the surface is immaterial.—*City of Los Angeles v. Pomeroy*, 124 Cal. 597, 616, 57 Pac. 585.

MUNICIPAL INDEBTEDNESS ACT OF 1889.

ACT 3049—An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations, incorporated under the laws of this state, for the construction of waterworks, sewers, and all necessary public improvements, or for any purpose whatever, and to repeal the act approved March 9, 1885, entitled "An act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten thousand inhabitants, to obtain waterworks," also to repeal an act approved March 15, 1887, entitled "An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations, incorporated under the laws of this state."

History: Approved March 19, 1889, Stats. 1889, p. 399. Amended (1) March 11, 1891, Stats. 1891, p. 84; (2) March 11, 1891, Stats. 1891, p. 94; (3) March 19, 1891, Stats. 1891, p. 132; (4) March 1, 1893, Stats. 1893, p. 61. Of the last amendment, the code commissioners say: "This latter amendment attempted to be repealed by 1897, p. 76, but such repeal declared unconstitutional in *City of Los Angeles v. Hance*, 122 Cal. 78." Prior act of March 9, 1885, Stats. 1885, p. 42, and act of March 15, 1887, Stats. 1887, p. 120; amended February 16, 1889, Stats. 1889, p. 14, were repealed by the present act.

Municipal corporations may incur indebtedness.

§ 1. Any city, town, or municipal corporation, incorporated under the laws of this state, may, as hereinafter provided, incur indebtedness to pay the cost of any municipal improvement, or for any purpose whatever requiring an expenditure greater than the amount allowed for such improvement by the annual tax levy.

Manner of procedure.

§ 2. Whenever the legislative branch of any city, town, or municipal corporation shall, by ordinance passed by a vote of two-thirds of all its members, and approved by the executive of said city, town, or municipal corporation, determine that the public interest or necessity demands the acquisition, construction, or completion of any municipal buildings, bridges, waterworks, water rights, sewers, or other municipal improvements, the cost of which will be too great to be paid out of the ordinary annual income and revenue of the municipality, they may, after the publication of such ordinance for at least two weeks in some newspaper published in such municipality, and at their next regular meeting after such publication, or at an adjourned meeting, by ordinance passed by a vote of two-thirds of all its members, and also approved by the said executive, call a special election and submit to the qualified voters of said city, town, or municipal corporation, the proposition for the purpose set forth in the ordinance, and no question other than the incurring of indebtedness for said purpose shall be submitted. The ordinance calling such special election shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the proposed public improvement, the necessity for such improvement, and that the bonds of the municipality shall issue for the payment of the cost of such improvement, as in such ordinance set forth, if the proposition be accepted by the qualified voters, as hereinafter provided, and shall fix the day on which such special election shall be held, the manner of holding such election, and the voting for or against incurring such indebtedness; such election shall be held as provided by law for holding such elections in such city, town, or municipal corporation; provided, however, that where by the terms or provisions of the charter of any city, town, or municipal corporation, the cost of making the proposed improvements is to be or must be paid from a special fund created by such charter for that purpose, the proposition of incurring such an indebtedness may be submitted to the qualified voters at any general election for officers of the state of California or of such city, town, or municipal corporation. [Amendment approved March 11, 1891. Stats. 1891, p. 94.]

Publication of intention to incur indebtedness.

§ 3. Such ordinance shall be published once a day for at least ten days, or once a week for two weeks, before the publication of the notice of the special election, in some newspaper published in such municipality. After said publication, said legislative body shall cause to be published, for not less than two weeks, in at least one of the newspapers published in such municipality, a notice of such special election, the purpose for which the indebtedness is to be incurred, the number and character of the bonds to be issued, the rate of interest to be paid, and the amount of tax levy to be made for the payment thereof. It shall require the votes of two-thirds of all the voters voting at such special election to authorize the issuance of the bonds herein provided.

Plans and estimates of improvements.

§ 4. It shall be the duty of the legislative branch of any municipality contemplating permanent public improvements, to first have plans and estimates of the cost of such improvements, made by a competent engineer or architect who has had successful experience in such work, before the question of incurring an indebtedness for such improvement is submitted to vote.

Limit of indebtedness.

§ 5. No city, town, or municipal corporation shall incur an indebtedness for public improvements which shall, in the aggregate, exceed fifteen per cent of the assessed value of all the taxable real estate and personal property of such city, town, or municipal corporation. [Amendment approved March 11, 1891. Stats. 1891, p. 84.]

Character of bonds.

§ 6. All municipal bonds for public improvements issued under the provisions of this act shall be of the character of bonds known as serials, and shall be payable in gold coin or lawful money of the United States, in the manner following: One fortieth part of the whole amount of indebtedness shall be paid each and every year, on a day and at a place to be fixed by the legislative branch of the municipality issuing the bonds, together with the interest on all sums unpaid at such date. The bonds shall be issued in such denominations as the legislative branch of the municipality may determine, except that no bonds shall be of a less denomination than one hundred dollars nor of a greater denomination than one thousand dollars each, payable on the day and at the place fixed in such bond, and with interest at the rate specified in the bond, which rate shall not be in excess of the legal rate of the state of California, and may be payable annually or semi-annually. Such bonds may be issued and sold by the legislative branch of the city, town, or municipal corporation, as they may determine, at not less than their face value, in gold coin of the United States, and the proceeds of such sale shall be placed in the municipal treasury to the credit of the proper improvement fund, and shall be applied exclusively to the purposes and objects mentioned in the ordinance, until such objects are fully accomplished, after which, if any surplus remains, such surplus shall be transferred to the general fund of such municipality. [Amendment approved March 1, 1893. Stats. 1893, p. 61. In effect immediately. Repealed all conflicting acts.]

This section was in turn repealed by the act of March 9, 1897. Stats. 1897, p. 75. This repeal was declared unconstitutional.

See history note at head of this act.

Rate of interest.

§ 7. The legislative branch of any city, town, or municipal corporation, issuing bonds under authority of this act, shall have the right to determine the rate of interest such bonds shall bear; provided, that in no case shall it exceed seven per cent per annum, and to name the date and place where such bonds and interest shall be paid; provided, that

the place of payment shall be either at the office of the treasurer of the municipality, or at some designated bank in San Francisco, Chicago, New York, or Boston. The said bonds shall be signed by the executive of the municipality, and also by the treasurer thereof, and shall be countersigned by the clerk. The coupons of said bonds shall be numbered consecutively, and signed by the treasurer.

Tax levy.

§ 8. The legislative branch of said city, town, or municipal corporation shall, at the time of fixing the general tax levy, and in the manner for such general tax levy provided, levy and collect annually, each year, for the term of forty years, a tax sufficient to pay the annual interest on such bonds, and also one fortieth part of the aggregate amount of such indebtedness so incurred. The taxes herein required to be levied and collected shall be in addition to all other taxes levied for municipal purposes, and shall be collected at the same time and in the same manner as other municipal taxes are collected. [Amendment approved March 1, 1893. Stats. 1893, p. 61. In effect immediately. Repealed all conflicting acts.]

This section was in turn repealed by the act of March 9, 1897, Stats. 1897, p. 75. See history note at head of this act.

Duty of corporation.

§ 9. It shall be the duty of the legislative branch of every city, town, or municipal corporation wherein public improvements are being made under the provisions of this act, to make all needful rules and regulations for carrying out and maintaining such improvements; to appoint all needful agents, superintendents, and engineers to properly look after the construction and operation of such public works, and in all lawful ways to protect and preserve the rights and interests of the municipality; provided, however, that in cities, towns, or municipalities operating under a charter heretofore or hereafter framed under section 8 of article XI of the constitution, and having a board of public works, all the matters and things required in this section to be done and performed by the legislative branch of the municipality shall be done and performed by the board of public works of such city, town, or municipality. [Amendment approved March 19, 1891. Stats. 1891, p. 132.]

Letting of contracts.

§ 10. All contracts for the construction or completion of any public works or improvements, or for furnishing labor or materials therefor, as herein provided, shall be let to the lowest responsible bidder. The legislative branch of the municipality shall advertise for at least ten days, in one or more newspapers published in the municipality, inviting sealed proposals for furnishing the labor and materials for the proposed improvements, before any contract shall be made therefor. The said legislative branch shall have the right to require such bonds as they may deem best, from the successful bidder, to insure the faithful performance of the contract work. They shall also have the right to reject any or all bids; provided, however, that in cities, towns, or municipalities operating under a charter heretofore or hereafter framed under section 8 of article XI of the constitution, and having a board of public works, all the matters and things required in this section to be done and performed by the legislative branch of the municipality shall be done and performed by the board of public works of such city, town, or municipality. [Amendment approved March 19, 1891. Stats. 1891, p. 132.]

Additional bonds of treasurer.

§ 11. Whenever the legislative branch of any municipality shall, by resolution, deem it necessary, they may require the treasurer of such municipality to give additional bonds for the safe custody and care of the public funds.

Repealing acts of 1885, 1887.

§ 12. The act approved March ninth, eighteen hundred and eighty-five, entitled An act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten thousand inhabitants, to obtain public waterworks, and the act approved March fifteenth, eighteen hundred and eighty-seven, entitled An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations, incorporated under the laws of this state, and all general acts, or special acts, or parts of acts, conflicting with this act, are hereby repealed.

§ 13. This act shall take effect and be in force from and after its passage.

1. Section 6—Not repealed by later act.—Section 6 of the municipal indebtedness act of 1889 was not repealed by section 4 of the act of March 9, 1897 (Stats. 1897, p. 75).—*Los Angeles v. Hance*, 122 Cal. 77, 54 Pac. 387.

2. Section 865—Municipal corporation act has no application to proceedings.—Section 865 of the municipal corporation act has no application to a proceeding under the municipal indebtedness act of 1889, and the latter act is controlling in the cases therein provided for.—*Rice v. Board of Trustees*, 107 Cal. 398, 40 Pac. 551.

3. Ordinances passed under act governed thereby.—Ordinances passed under the authority of the act of 1889 are specially governed by the provisions of that act and may be passed on the day of their introduction without reference to the provisions of section 801 of the municipal government act.—*Derby v. City of Modesto*, 104 Cal. 515, 38 Pac. 892; see, also, *Santa Barbara v. Davis*, 6 Cal. App. 342, 92 Pac. 398.

4. Departure in ordinance from notice of election as to rate of interest fatal.—Where the notice of election under the municipal indebtedness act of 1889 contained a notification that the bonds proposed to be issued were to bear annual interest at 4 per cent and to be payable at the office of the city treasurer, an ordinance passed after the election changing the form of the bonds so as to make them payable semi-annually in gold coin of the United States, and in the city of New York, is a fatal departure from such notice of election, and the sale and delivery of the bonds will be enjoined.—*Skinner v. City of Santa Rosa*, 107 Cal. 464, 40 Pac. 742.

5. Place of payment—Kind of money—Not necessary to specify.—It is not necessary to submit to the voters the place of payment and the kind of money in which the bonds are to be paid, but if these matters are submitted, the vote authorizing the indebtedness imports the particulars named upon which the assent was given; and where the question arises prior to delivery of the bonds, the city has no power to issue the same otherwise than in substantial compliance with the terms of the ordinance of submission and the notice of election.—*Skinner v. Santa Rosa*, 107 Cal. 464, 40 Pac. 742.

6. Rate of interest specified in notice of election—No departure therefrom.—The

governing body of a municipality in issuing bonds under the municipal indebtedness act of 1889, can not depart at all from the rate of interest specified in the notice of election; and where the notice of election states that the interest was to be paid annually, the adoption of a provision in the final ordinance for the payment of interest semi-annually, is an unauthorized increase of the rate.—*Skinner v. City of Santa Rosa*, 107 Cal. 464, 40 Pac. 742.

7. Notice of election sufficient—Mandamus to issue bonds.—A notice of election stating the cost of each of certain municipal improvements, and its purpose, and specifying number and face value of the bonds to be issued for each purpose, and the rate of interest thereon and fixing the proportion of the indebtedness to be paid each year, sufficiently states the amount of tax levy required during the existence of the date, and mandamus will lie to compel the issuance of the bonds after the same have been favorably voted on by the voters.—*San Luis Obispo v. Haskin*, 91 Cal. 549, 27 Pac. 929.

8. Bond election ordinance has force of statute—Ballots containing improper notice.—An ordinance designating the manner of holding an election under the municipal indebtedness act of 1889 has the force of a statute and is to receive the same construction as if its terms had been prescribed by an act of the legislature and where the ordinance provides the manner of writing or causing to be written the words "yes" or "no," such requirement is mandatory and to disregard it renders the vote nugatory; and where the ballots contain an improper notice printed thereon and more than two-thirds of the voters followed the direction of such notice instead of following the direction of the ordinance, the election is invalid.—*Murphy v. City of San Luis Obispo*, 119 Cal. 624, 51 Pac. 1085 (5 Cal. Unrep. 665, 48 Pac. 974); *City of San Luis Obispo v. Fitzgerald*, 126 Cal. 279, 58 Pac. 699.

9. Indebtedness—Bonds and interest—Time of payment—Expression of voters' wishes.—It is only the amount of the bonds and the rate of interest, and not the time of payment of interest, which constitute the indebtedness proposed to be incurred and upon which the voters are to express their wishes.—*Murphy v. City of San Luis Obispo*, 119 Cal. 624, 51 Pac. 1085.

10. Same—Same — Same — Ordinance of submission.—In an election to authorize the issue of bonds under the municipal indebtedness act of 1889, it is not necessary to submit to the voters the alternative of making the interest upon the proposed bonds payable annually if semi-annually, and it is sufficient if the ordinance of submission states the times at which the interest shall be payable.—*Murphy v. City of San Luis Obispo*, 119 Cal. 624, 51 Pac. 1085.

11. Interested party—Taxpayer—Judge of superior court.—A judge of a superior court who is a taxpayer is "interested" in a litigation to declare a contract between a city and a water company involving the expenditure of a large sum of money obtained by the sale of the bonds of the city under the municipal indebtedness act of 1889, within the meaning of section 170 of the Code of Civil Procedure and is therefore disqualified from sitting in a judicial character as to such litigation.—*Meyer v. City of San Diego*, 121 Cal. 102, 53 Pac. 434.

11½. Bond election—Ballot—Expression of choice—Void election.—Where the ordinance provided that in an election to authorize the issue of bonds under the municipal indebtedness act of 1889 that the voter should indicate his wish in writing or printing upon his ballot the word "yes" or "no" opposite the proposition to be voted on, the voter had a right to express his choice without any suggestion and where the word "yes" was printed in one column of the ballots used in voting, the same was in effect a suggestion to the voter and was a substantial departure from the provisions of the ordinance in a material matter and rendered the election void.—*City of San Luis Obispo v. Fitzgerald*, 126 Cal. 279, 58 Pac. 699.

12. Ordinance mandatory—Clerical error.—The ordinance providing for the manner of voting upon an issue of bonds under the municipal indebtedness act of 1889 is mandatory and must control the voters, notwithstanding a misdirection caused by clerical error in draughting the ordinance.—*Los Angeles v. Hance*, 130 Cal. 278, 62 Pac. 484.

13. Proceeds of bonds must be devoted to purposes specified.—The municipal indebtedness act of 1889 does not authorize the issuance of bonds which must be paid out of the revenue derived from taxes from real and personal property unless the money raised upon the bonds is to be devoted to purposes to justify the expenditure of the ordinary revenues of the city.—*Redondo Beach v. Cate*, 136 Cal. 146, 68 Pac. 586; *San Diego v. Potter*, 153 Cal. 288, 99 Pac. 146.

14. Issue of bonds for sewer under the Vrooman act not authorized.—Under the Vrooman act the cost of grading and opening streets must be assessed against the lots fronting on such streets and can in no case become a charge against the ordinary revenues of the city; nor does the municipal indebtedness act of 1889 authorize the

incurring of a bonded indebtedness therefor.—*Redondo Beach v. Cate*, 136 Cal. 146, 68 Pac. 586; but see *Mill Valley v. House*, 142 Cal. 698, 76 Pac. 658.

15. Issue of bonds for sewer—Vrooman act—Discretion of governing body.—Under the Vrooman act it is entirely within the discretion of the governing body of a city to make the cost of a sewer a charge upon the lands of an assessment district or upon its ordinary revenue and the construction of sewers is one of the special enumerated objects under which the act of 1889 authorizes the issuance of municipal bonds.—*Redondo Beach v. Cate*, 136 Cal. 146, 68 Pac. 586; *Peckham v. Watsonville*, 138 Cal. 242, 71 Pac. 169; but see *Mill Valley v. House*, 142 Cal. 698, 76 Pac. 658.

16. Issue of bonds for school house, as a municipal affair, not exclusive.—The authority of a city under the municipal indebtedness act of 1889 to issue bonds for the erection of a school house within city limits as a "municipal affair," is not exclusive and does not and can not affect the power of the trustees of the school district as to the issuance of bonds under sections 1880 et seq., for the same purpose.—*Los Angeles City School District v. Longden*, 148 Cal. 380, 83 Pac. 246; see *In re Wetmore*, 99 Cal. 146, 33 Pac. 769.

17. Issue of bonds for street lighting authorized.—The municipal indebtedness act of 1889 authorizes a city of the sixth class to create a bonded indebtedness for supplying electric power upon the streets, parks, places and buildings of such city.—*Hammond v. San Leandro*, 135 Cal. 450, 67 Pac. 692.

18. Written plans and specifications not required.—The municipal indebtedness act of 1889 does not require written plans and specifications, and it is the purpose of the statute to inform the board of such facts merely as will enable the trustees to fix the cost of the improvement.—*Hammond v. San Leandro*, 135 Cal. 450, 67 Pac. 692.

19. Same—Presumption as to plans and specifications.—Proof that parts of the plans and estimates of a municipal improvement were made by different persons not shown to be disqualified and that no written or complete plan was made by any one person, does not overcome the presumptions in favor of the action of the board and the statutory qualifications of such persons where all the plans and specifications were made and were before the board and were adopted by it.—*Hammond v. San Leandro*, 135 Cal. 450, 67 Pac. 692.

20. Same — Presumption — Burden of proof.—Where the ordinances of the board of trustees relating to the issue of bonds for an electric light system under the municipal indebtedness act of 1889 declared that the public interest and necessity demanded the construction of an electric light plant at a cost specified and that the board of trustees had plans and estimates made which had been adopted and were then on file in the office of the city clerk, it is pre-

sumed that the board performed its duty and that the plans and estimates were made by a qualified person and the burden is upon one who assails such bond issue to overcome these presumptions.—*Hammond v. San Leandro*, 135 Cal. 450, 67 Pac. 692.

21. Act superseded by San Francisco charter.—The municipal indebtedness act of 1889 was superseded so far as San Francisco was concerned by the city charter of 1900.—*McHugh v. San Francisco*, 132 Cal. 381, 64 Pac. 570; see, also, *Fritz v. San Francisco*, 132 Cal. 373.

22. Acts in pari materia.—The municipal indebtedness act of 1889 and the municipal improvement act of 1901 are to be deemed in pari materia and may be considered in construing the other.—*Redondo Beach v. Barkley*, 151 Cal. 176, 90 Pac. 452.

23. Payment of bonds—Option as to kind of money.—Under the original act the municipality was not required to designate the kind of money in which the bonds should be payable and could elect at their maturity to pay them any lawful money in the absence of a designation of any particular money.—*Murphy v. City of San Luis Obispo*, 119 Cal. 624, 51 Pac. 1085.

24. Intention of legislature—Payment in gold coin.—The purpose of the legislature in enacting the amendment of 1893 providing that bonds issued under the act should be payable in gold coin or lawful money of the United States "shall be payable in gold coin or lawful money of the United States," was not to require that the bonds should

express that alternative but to confer upon the municipality power of election to pay the bonds in gold coin only.—*Murphy v. City of San Luis Obispo*, 119 Cal. 624, 51 Pac. 1085.

25. Publication of notice sufficient.—The publication, from October 6th to October 19th, both days inclusive, in a daily newspaper, of the preliminary ordinance determining that the public interests or necessity demands the construction and completion of a system of water works and sewers, is a sufficient compliance with the statute, and the final ordinance may be passed at a regular meeting held October 20th.—*Derby v. City of Modesto*, 104 Cal. 515, 33 Pac. 892; see, also, *Santa Barbara v. Davis*, 6 Cal. App. 342, 92 Pac. 308.

26. Municipality may issue bonds for construction of school house.—The city council of the city of Oakland was authorized under the provisions of the act of 1889 (Stats. 1889, p. 399) to determine the public interest and necessity of the city demanded the acquisition, construction and completion of certain designated school houses and that the cost thereof would be too great for payment out of the ordinary income and revenue of the municipality, and to submit the question of the issue of bonds therefor to the voters of the city at a special election, and to issue such bonds pursuant to the provisions of that act, if the same was authorized by a vote of two-thirds of such voters.—*In re Wetmore*, 99 Cal. 146, 33 Pac. 769.

ACQUISITION OF PROPERTY SOLD FOR DELINQUENT ASSESSMENTS.

ACT 3050—An act authorizing any city, city and county, county, town, municipality or other political subdivision to acquire certain liens or property offered for sale for the non-payment of certain assessments.

History: Approved June 4, 1915. In effect August 8, 1915. Stats. 1915, p. 1171.

Exclusive right of cities, etc., to acquire property sold for unpaid assessments.

§ 1. Whenever any city, city and county, county, town, municipality, or other political subdivision, shall have instituted any proceeding for the construction or maintenance of any public improvement or for the acquisition of land or property necessary therefor, and the cost or expense of the construction, acquisition or maintenance of any such improvement, or of such land or property, is required by law to be paid for in whole or in part by an assessment levied upon property benefited thereby in the manner provided by the law pursuant to which such improvement is constructed, acquired or maintained, and which law provides for the sale of the property upon which any such assessment is levied in case of the non-payment thereof, the city council or other legislative body of the city, city and county, county, town, municipality or other political subdivision instituting such proceedings, shall by one of its officers designated by the city council, or other legislative body for such purpose, have the right, to the exclusion of other bidders, to acquire, at the sale for delinquency authorized by the law appertaining to the proceedings so instituted, any lien which shall accrue, or any property which is required to be sold, for the non-payment of any such assessment or any delinquency incurred by the non-payment thereof.

Property may be assigned, etc.

§ 2. Any lien, or any property acquired by any city, city and county, county, town, municipality, or other political subdivision under the provisions of this act, may be released, assigned, sold or otherwise disposed of by such city, city and county, county, town, municipality, or other political subdivision in the manner prescribed by ordinance adopted by the city council or other legislative body thereof; provided, however, that no such release, assignment, sale or other disposition of any such lien or any such property shall be so made unless there shall be first paid to such city, city and county, county, town, municipality or other political subdivision, a sum of money equal to not less than the amount paid therefor, all accrued penalties and delinquencies and necessary expenses incurred, plus interest on said sum at the rate of two per cent per month from the date of the acquisition of such lien or property.

Fund for such purchase.

§ 3. Any city, city and county, county, town, municipality, or other political subdivision, is hereby authorized to provide a fund and to expend the same or to expend money from the general fund, for the purchase or acquisition, as herein provided, of any lien which shall accrue, or any property which is required to be sold, for the non-payment of any such assessment or any delinquency incurred by the non-payment thereof.

MUNICIPAL IMPROVEMENT ACT OF 1901.

ACT 3051—An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations for municipal improvements, and regulating the acquisition, construction, or completion thereof.

History: Became a law under constitutional provision without the Governor's approval February 25, 1901, Stats. 1901, p. 27. Amended (1) March 18, 1907, Stats. 1907, p. 570; (2) March 19, 1907, Stats. 1907, p. 609; (3) March 19, 1907, Stats. 1907, p. 634; (4) March 25, 1909, Stats. 1909, p. 720; (5) April 4, 1913; in effect August 10, 1913; Stats. 1913, p. 13; (6) April 15, 1913; in effect August 10, 1913; Stats. 1913, p. 29; (7) April 16, 1915; in effect August 8, 1915; Stats. 1915, p. 97; (8) June 11, 1915; in effect August 10, 1915; Stats. 1915, p. 1453; (9) April 6, 1917; in effect July 27, 1917; Stats. 1917, p. 79.

Incurring indebtedness by municipal corporations.

§ 1. Any city, town or municipal corporation incorporated under the laws of this state, may as hereinafter provided incur indebtedness to pay the cost of any municipal improvement requiring an expenditure greater than the amount allowed for such improvement by the annual tax levy.

Cities may submit question of issuing bonds for public improvements. Purpose. Interest.

§ 2. Whenever the legislative branch of any city, town or municipal corporation shall, by resolution passed by vote of two-thirds of all its members determine that the public interest or necessity demands the acquisition, construction or completion of any municipal improvement, including bridges, waterworks, water rights, sewers, light and power works or plants, buildings for municipal uses, wharves, breakwaters, jetties, seawalls, schoolhouses, fire apparatus, and street work, or other works, property or structures necessary or convenient to carry out the objects, purposes and powers of the municipality, the cost of which will be too great to be paid out of the ordinary annual income and revenue of the municipality, it may at any subsequent meeting of such legislative branch, by a vote of two-thirds of all its members, order the submission of the proposition of incurring a bonded debt for the purpose set forth in said resolution, to the qualified voters of said city, town or municipal corporation, at an election held for

that purpose; provided, that propositions of incurring indebtedness for more than one object or purpose may be submitted at the same election. The ordinance calling such election shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the proposed public improvements, the amount of the principal of the indebtedness to be incurred therefor, and the rate of interest to be paid on said indebtedness, and shall fix the date on which such election will be held, the manner of holding such election and the voting for or against incurring such indebtedness, and in all particulars not recited in such ordinance, such election shall be held as provided by law for holding municipal elections in such municipality; provided, however, that if the rate of interest to be paid on such indebtedness shall not exceed four and one-half per centum per annum payable semi-annually, the rate of interest need not be recited in such ordinance, but in its discretion the said legislative branch may recite in such ordinance a maximum rate of interest to be paid on such indebtedness, not exceeding six per centum per annum payable semi-annually, which rate when so recited, shall not be exceeded in the issuance of bonds for such indebtedness. [Amendment of June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1453.]

This section was also amended (1) March 19, 1907, Stats. 1907, p. 609; (2) April 4, 1913. In effect August 10, 1913. Stats. 1913, p. 13; (3) April 16, 1915. In effect August 8, 1915. Stats. 1915, p. 97. The amendment of 1915 (Stats. 1915, p. 97) was identical with the present amendment except for the omission of the words "breakwaters, jetties, seawalls," in the first sentence of the section.

Publication of ordinance. Vote necessary to carry.

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§ 3. Such ordinance shall be published once a day for at least seven days in some newspaper published at least six days a week in such municipality, or once a week for two weeks in some newspaper published less than six days a week in such municipality, and one insertion each week for two succeeding weeks shall be a sufficient publication in such newspaper published less than six days per week. In municipalities where no such newspaper is published, such ordinance shall be posted in three public places therein for two succeeding weeks. No other notice of such election need be given. It shall require the votes of two-thirds of all the voters voting at such election to authorize the issuance of the bonds herein provided; provided, however, should the proposition so submitted at such election fail to receive the requisite number of votes of the qualified voters, voting at such election to incur the indebtedness for the purpose specified, the legislative body of such municipality shall have no power or authority within six months after such election to call or order another election for incurring any indebtedness for improvements, substantially the same as voted upon at such prior election, unless a petition signed by fifteen per centum of the qualified electors of such municipality computed upon the total number of votes cast therein for all candidates for governor at the last preceding election at which a governor was elected be filed with the legislative body of such municipality, requesting that such proposition, or a proposition substantially the same, be submitted at an election to be called for the submission of such proposition and to be held in accordance with the provisions of this act. [Amendment of June 11, 1915. In effect August 8, 1915. Stats. 1915, p. 1454.]

This section was also amended April 15, 1913, Stats. 1913, p. 29; April 16, 1915, Stats. 1915, p. 98. The amendment of 1915 was identical with the present amendment.

Limit of indebtedness.

§ 4. No city, town or municipal corporation shall incur an indebtedness for public improvements which shall in the aggregate exceed fifteen per cent of the assessed value of all the real and personal property of such city, town or municipal corporation.

Payment of bonds. Denomination of bonds. Coupons.

§ 5. All municipal bonds issued under the provisions of this act shall be payable substantially in the following manner: A part to be determined by the legislative body

of the municipality, which shall be not less than one fortieth part of the whole amount of such indebtedness, shall be paid each and every year on a day and date, and at a place or places to be fixed by the legislative body of the municipality issuing the bonds and designated in such bonds, together with the interest on all sums unpaid at such date; provided, however, that, in case of bonds issued for the acquisition, construction or completion of water works or light or power works or plants, or any other authorized revenue-producing public works, plant, utility or property, the legislative body of the municipality may, in its discretion, determine and fix a date for the earliest maturity of the principal of such bonds not more than ten years from the date of the issue of such bonds, but, in this event, the whole amount of such indebtedness must be made payable in equal annual parts in not to exceed forty years from the time of contracting the same. The bonds shall be issued in such denominations as the legislative body of the municipality may determine, except that no bonds shall be of a less denomination than one hundred dollars, nor of a greater denomination than one thousand dollars, and shall be payable on the day and at the place or places fixed in such bonds, and with interest at the rate specified in the bonds, which rate shall not be in excess of six per cent per annum, and shall be payable semi-annually, and said bonds shall be signed by the executive of the municipality, or by such other officer thereof as the council, board of trustees, or other legislative body of the municipality shall, by resolution adopted by a two-thirds vote of all its members, authorize and designate for that purpose; and also signed by the treasurer thereof, and shall be countersigned by the clerk. The coupons of said bonds shall be numbered consecutively and signed by the treasurer. In case any of such officers whose signatures or countersignatures appear on the bonds or coupons shall cease to be such officer before the delivery of such bonds to the purchaser, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until the delivery of the bonds. [Amendment approved April 15, 1913. Stats. 1913, p. 30. In effect August 10, 1913.]

This section was also amended March 19, 1907, Stats. 1907, p. 610; March 25, 1909, Stats. 1909, p. 720.

Sale of bonds.

§ 6. Such bonds may be issued and sold by the legislative branch of the city, town or municipal corporation as they determine, but for not less than their par value, and the proceeds of such bonds shall be placed in the municipal treasury to the credit of the proper improvement fund, and shall be applied exclusively to the purposes and objects mentioned in the ordinance.

Cancellation of unsold bonds.

§ 6½. At any time after three years after the date of any election, heretofore or hereafter held, at which an issue of any of the bonds herein provided has or shall have been authorized, the legislative body of the municipality may, by ordinance duly adopted by a two-thirds vote of all of the members of such legislative body, determine that no part of such bond issue, or, if a portion of the bonds so authorized at such election shall have been sold, that no part of the remainder of such issue then remaining unsold, shall be thereafter issued or sold, and upon the taking effect of such ordinance the authority to issue the bonds authorized at such election and described in such ordinance shall cease, and the whole or that portion of the bonds issued pursuant thereto remaining unsold and described in such ordinance shall become void. [New section added April 6, 1917. In effect July 27, 1917. Stats. 1917, p. 79.]

Tax levy to pay bonds. Sinking fund.

§ 7. The legislative branch of said city, town or municipality shall at the time of fixing the general tax levy, and in the manner for such general tax levy provided, levy and collect annually each year until said bonds are paid, or until there shall be a sum

in the treasury of said city, town or municipality set apart for that purpose to meet all sums coming due for principal and interest on such bonds, a tax sufficient to pay the annual interest on such bonds, and also such part of the principal thereof as shall become due before the time for fixing the next general tax levy. Provided, however, that if the maturity of the indebtedness created by the issue of bonds be made to begin more than one year after the date of the issuance of such bonds, such tax shall be levied and collected at the time and in the manner aforesaid annually each year, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof on or before maturity. The taxes herein required to be levied and collected shall be in addition to all other taxes levied for municipal purposes, and shall be collected at the time and in the same manner as other municipal taxes are collected, and be used for no other purpose than the payment of said bonds and accruing interest. [Amendment approved March 19, 1907. Stats. 1907, p. 611. In effect immediately.]

Duty of governing authority. Municipalities under charter.

§ 8. It shall be the duty of the legislative branch of every city, town or municipal corporation, wherein public improvements are being made under the provisions of this act, to make all needful rules and regulations for carrying out and maintaining such improvements, to appoint all needful agents, superintendents and engineers to properly look after the construction and operation of such public works, and in all lawful ways to protect and preserve the rights and interests of the municipality; provided, however, that in cities, towns, or municipalities operating under a charter heretofore or hereafter framed under section 8 of article 11 of the constitution, and having a board of public works, all the matters and things required in this section to be done and performed by the legislative branch of the municipality shall be done and performed by the board of public works of such city, town or municipality.

Contracts. Bonds of contractors. Charters to govern.

✓ § 9. All contracts for the construction or completion of any public work or improvement or for furnishing labor or materials therefor, as herein provided, shall be let to the lowest responsible bidder. The legislative branch of the municipality shall advertise for at least ten days in one or more newspapers published in the municipality, inviting sealed proposals for furnishing the labor and materials for the proposed work or improvement before any contract shall be made therefor. The said legislative branch shall have the right to require such bonds as they may deem best from the successful bidder to insure the faithful performance of the contract work, and shall also have the right to reject any and all bids; provided, however, that nothing herein contained shall be construed as prohibiting the municipality itself from constructing or completing such works or improvements, and employing the labor necessary therefor; and provided further, that, in cities, towns or municipalities operating under a charter, heretofore or hereafter framed under section 8 of article 11 of the constitution and providing for a board of public works all the matters and things required in this section to be done and performed by the legislative branch of the municipality shall be done and performed by the board of public works of such city, town or municipality, and, in case such charter also prescribes the manner of letting and entering into contracts for the furnishing of labor, materials or supplies for the constructing or completion of public works or improvements, the contracts therefor shall be let and entered into in conformity with such charter. [Amendment approved March 19, 1907. Stats. 1907, p. 611. In effect immediately.]

* Approved March 19, 1907 p 611

Expenditure of money raised by sale of bonds; consent to use for other than original purpose, how given.

§ 9½. Whenever the legislative branch of any municipality shall by resolution deem the expenditure of money raised by the sale of bonds under the terms of this act for the purpose for which said bonds were voted impracticable or unwise, said legislative branch of said city, town, or municipal corporation may call a special election to obtain the consent of the people of said city, town, or municipal corporation to use said money for some other specified municipal purpose. The ordinance calling such special election shall recite the new object or purpose for which the said money is proposed to be expended, and shall fix the date on which such special election will be held, the manner of holding such election and the voting for or against the expenditure of said money for said purpose, and in all particulars not recited in said ordinance such election shall be held as provided by law for holding of such municipal elections in such municipality. Such ordinance shall be published once a day for at least seven days in some newspaper published at least six days a week in such municipality, or once a week for two weeks in some newspaper published less than six days a week in such municipality, and one insertion each week for two succeeding weeks shall be a sufficient publication in such newspaper published less than six days per week. In municipalities where no such newspaper is published, such ordinance shall be posted in three public places therein for two succeeding weeks. No other notice of such election need be given. It shall require the votes of two-thirds of all the voters at such special election to authorize the expenditure of the money for the purpose mentioned in the ordinance calling said special election. [New section approved March 19, 1907. Stats. 1907, p. 634. In effect immediately.]

Treasurer's bond.

§ 10. Whenever the legislative branch of any municipality shall by resolution deem it necessary, they may require the treasurer of such municipality to give additional bonds for the safe custody and care of the public funds.

Repeal of conflicting acts.

§ 11. All acts and parts of acts in conflict with this act are hereby repealed.

What acts not repealed.

§ 12. This act shall not be deemed to repeal, conflict with or modify any provision of any statute of this state concerning the levy of special taxes for specific public improvements when bond issues are not contemplated.

Proceedings prior to this act declared valid.

§ 12½. All proceedings which may have been prior to the passage of this act, taken by any city, town or municipal corporation, incorporated under the laws of this state, in the manner prescribed by the said act of which this act is amendatory, for the incurring of indebtedness for the purpose of acquiring, constructing, completing or repairing any wharf or wharves, shall be and the same are hereby declared to be valid as fully as though the incurring of indebtedness for such purpose had been expressly authorized by said act, and any and all indebtedness incurred, or which may hereafter be incurred, by any such city, town or municipal corporation, or any bonds which may have been or may hereafter be issued pursuant to any such proceedings so taken or had shall be and the same are hereby declared to be valid, as fully as though the creation of said indebtedness or the issuance of said bonds had been expressly authorized by said act. [New section added March 18, 1907. Stats. 1907, p. 570. In effect immediately.]

Consolidation of elections. [Separate or consolidated elections.]

§ 12¾. Any election submitting the proposition of incurring indebtedness and the issuance of bonds called pursuant to the provisions of this act, may be held separately, or may be consolidated with any other election authorized by law at which the qualified voters of such city, town or municipal corporation are entitled to vote; provided, however, that in the event any such election called pursuant to the provisions of this act is consolidated with any other election, the provisions of this act setting forth the procedure for the calling and holding of the election called pursuant to the provisions of this act, shall be complied with, except, that the ordinance calling such election need not set forth the election precincts, polling places and officers of election, but may provide that the precincts, polling places and officers of election shall be the same as those set forth in the ordinance, notice or other proceedings calling the election with which the election called pursuant to the provisions of this act, is consolidated, and shall refer to such ordinance, notice or other proceeding by number and title, or by other definite description. [New section added April 16, 1915. In effect August 8, 1915. Stats. 1915, p. 98.]

This section was again added by the act of June 11, 1915, Stats. 1915, p. 1454.

§ 13. This act shall take effect immediately.

The amendatory act of March 19, 1907, Stats. 1907, p. 609, contained the following section:

“§ 5. That nothing in this act contained shall be construed as affecting the issue or sale of bonds in pursuance of proceedings begun prior to the taking effect of this act and under the provisions of the act amended hereby.”

1. Code commissioner's note.—“This act was not repealed by ‘local improvement act’ 1901, p. 34 (Town of Mill Valley v. House, 142 Cal. 698), [76 Pac. 658]. The provisions of the San Francisco charter for a bonded indebtedness for municipal improvements, including school houses, prevail on that subject over the provisions of this act, so far as there may be any conflict between them (Law v. San Francisco, 144 Cal. 384), [77 Pac. 1014]. See, also, 1889, p. 361, and Oakland v. Thompson, 34 Cal. Dec. 91, [151 Cal. 572, 91 Pac. 387].”

2. Superseded by San Francisco charter.—Wherever a conflict is found to exist between the charter of San Francisco and the municipal improvement act of 1901, the charter provisions supersede the requirements of the act.—Law v. San Francisco, 144 Cal. 384, 77 Pac. 1014; see, also, Santa Barbara, 6 Cal. App. 342, 92 Pac. 308.

3. “Local improvement act” not repugnant to present act.—The “local improvement act” of 1901 is not necessarily repugnant to the municipal improvement act of 1901, does not cover the same ground as the latter act, and the latter act was not repealed by the former.—Mill Valley v. House, 142 Cal. 698, 76 Pac. 658.

4. Construed as standing together.—The municipal improvement act of 1901 and the local improvement act of 1901 should be construed as standing together and as affording different schemes for similar ends.—Mill Valley v. House, 142 Cal. 698, 76 Pac. 658.

5. Park and boulevard act—Municipal improvement act of 1901—Independent

schemes.—Conceding that no repugnancy exists between the park and boulevard act of 1889 and the municipal improvement act of 1901, it does not necessarily follow that the act of 1889 provides the only and exclusive method by which a municipal corporation may acquire lands for park purposes; and inasmuch as the act of 1901 is sufficiently general and broad enough to include the acquisition of lands for park and boulevard purposes, and that there is no constitutional inhibition forbidding the legislature from providing independent schemes, to either of which a municipality may resort as it shall deem expedient, it must be held that a municipality may consider it more to its advantage to adopt the provisions of the act of 1901 allowing the issue of forty-year bonds rather than the act of 1889 authorizing the issue of twenty-year bonds.—Oakland v. Thompson, 151 Cal. 572, 91 Pac. 387.

6. Section 866—Municipal corporation act—Repeal of by present act not decided.—The question as to whether section 866 of the general municipal corporation act of 1883 was repealed by the present act in so far as authority to create a bonded indebtedness for the sole purpose of permanent improvements, the cost of which could not be paid out of the ordinary annual income of the city, is concerned, raised, but not decided.—Redlands v. Brook, 151 Cal. 474, 91 Pac. 150.

7. Amendment of 1907, purpose.—The 1907 amendment to the municipal improvement act of 1901 does not authorize a municipality to construct a sewer system with-

* Form new section numbered 14

out letting the same to the lowest bidder, but was intended merely to preserve to municipal corporations the power given the municipal corporation act to construct various public works of small cost without contract or the taking of bids.—*Matthews v. Livermore*, 156 Cal. 294, 104 Pac. 303.

8. Purpose of act—Work authorized under existing law.—This act does not purport to give a municipality the power to engage in the carrying on of the public utilities therein mentioned, but its purpose and object is to give the power to issue the bonds necessary for the construction and maintenance of such public utilities in any case where, under the provisions of existing law, the power to build works and operate such enterprises may have been conferred.—*Hyatt v. Williams*, 148 Cal. 585, 84 Pac. 41.

9. Act authorizes construction and completion of public works without contract—Authorized by charter.—There is nothing in the municipal improvement act of 1901 which prevents the city of Los Angeles from constructing and completing public works or improvements without contract where authorized so to do by its charter.—*Perry v. Los Angeles*, 157 Cal. 146, 106 Pac. 410.

10. San Diego charter—Expenditure of money must be in compliance with act.—Inasmuch as the charter of San Diego does not contain any provision for the expenditure of money arising from the issue of bonds under the municipal improvement act of 1901, the act must be followed and the work done according to contract.—*Clouse v. San Diego*, 159 Cal. 434, 114 Pac. 573.

11. Bonds can not be issued except for purpose for which ordinary revenues may be expended.—Municipal bonds can not be issued under the municipal improvement act of 1901 except for a purpose for which the ordinary revenues of the city might be lawfully expended.—*San Diego v. Potter*, 153 Cal. 288, 95 Pac. 146.

12. Act requires annual payment of one-fortieth of bond principal.—The act requires payments of not less than one-fortieth part of the whole amount of the indebtedness incurred thereunder and does not require annual payments in equal amounts.—*Calistoga v. Adams*, 36 Cal. App. 486, 172 Pac. 624.

13. Bonds issued under act—Expending of proceeds without advertising and letting of contract.—After bonds have been authorized and issued under the municipal improvement act of 1901, the city of San Diego has no authority under its charter to pass an ordinance authorizing the board of public works to expend the proceeds of such bonds in employing teams and men for the construction of the improvements without advertisement and letting of contracts therefor to the lowest bidder.—*Clouse v. San Diego*, 159 Cal. 434, 114 Pac. 573.

14. Los Angeles charter authorizes issue of bonds under act.—Under subdivision 51,

section 2, article 1 of its charter, city of Los Angeles was empowered to issue bonds under the provisions of the improvement act of 1901.—*Morgan v. Los Angeles (Cal.)*, 187 Pac. 1050.

15. Acquiring land for public park authorized.—A municipality has the power under the municipal improvement act of 1901 to incur a bonded indebtedness for the purpose of acquiring land for a public park.—*San Diego v. Potter*, 153 Cal. 288, 95 Pac. 146.

16. Bond validation act of 1913—Irregularities cured—Legislative authorization in advance.—The bond validation act of 1913 had the effect to cure all irregularities in the proceedings leading up to the issue of bonds under the municipal improvement act of 1901, where such irregularity might have been validated by legislative provision in advance.—*Venice v. Lawrence*, 24 Cal. App. 350, 141 Pac. 406.

17. "Executive officer"—Cities without mayors.—It was intended by the municipal improvement act of 1901 to authorize any city, town or municipal corporation incorporated under the laws of this state, to issue bonds for the purposes stated in the act, and it was not intended that cities of the sixth class or otherwise which have no mayor or other "executive" officer should be denied this power, and as to such cities the word "executive" must be taken to refer to the officer whose duties proximate most closely to those of the mayor.—*Redondo Beach v. Barkley*, 151 Cal. 176, 90 Pac. 452.

18. "Completion" defined.—If the words "acquisition" and "construction" in the bond act are given an effect as broad as their ordinary meaning the word "completion" would seem to be unnecessary, and it serves no purpose, other than to prevent doubts from arising where an issue of bonds was proposed to finish an uncompleted improvement, and it adds nothing to the effect that would be given the other words.—*Hartigan v. Los Angeles*, 170 Cal. 313, 320, 149 Pac. 590.

19. Calling bond election at "subsequent meeting"—Requirement complied with.—The requirement of the act that a special election for the authorization of improvement bonds under this act may be called at a "subsequent meeting" after the adoption of the resolution of public interest and necessity, is substantially complied with and the purpose of the statute fully accomplished where such election was called at and adjourned as well as at a new meeting.—*Redondo Beach v. Barkley*, 151 Cal. 176, 90 Pac. 452.

20. Ordinance has force and effect of statute—Manner of voting.—Where authority is conferred upon a municipality to specify the manner of voting upon a bond issue, an ordinance providing therefor has the force and effect of a statute and is mandatory and a disregard therefor by the voters renders their vote nugatory.—*Inglewood v. Kew*, 21 Cal. App. 611, 132 Pac. 780.

21. Ordinance—Designation of act not required—Notice under act of 1901.—The mu-

nicipal improvement act of 1901 does not require that the ordinance calling the bond election or some order or record prior to such election designate whether the bonds proposed to be issued were to be issued under the park and boulevard act of 1889 or the act of 1901, where the provisions of the latter act as to notice, etc., were literally complied with in the proceedings leading up to the issuance of the bonds.—*San Diego v. Potter*, 153 Cal. 288, 95 Pac. 146.

22. Discretion of trustees—Notice to electors.—The duty of determining the necessity for the expenditure and the propriety of submitting it to the electors and the particular phraseology in which it shall be expressed, is cast upon the trustees subject to a reasonable and practicable regard for the right and privilege of the electors to be informed as to the purposes and cost of the proposed improvement that they may exercise at the polls an intelligent and discriminating judgment as to their own interests and the public welfare.—*Cary v. Blodgett*, 10 Cal. App. 463, 102 Pac. 668.

23. Notice of election held published in compliance with act.—Publication of notice of an election to be held on June 26, 1911, in a weekly newspaper in its issue of June 14 and June 21, 1911, is a sufficient compliance with the requirements of the act, two weeks' notice of such election being required only in the case where by reason of the fact that there is no newspaper published in the municipality the notice is given by posting.—*Lindsay v. Mack*, 160 Cal. 647, 117 Pac. 924.

24. Section 5 complied with.—It is held in the present case that the provisions of section 5 of the act as to the number, denomination and order of payment of the bonds provided for by ordinance subsequent to the election authorizing the same, was complied with.—*San Diego v. Potter*, 153 Cal. 288, 95 Pac. 146.

25. Election board—Employees of city within ninety days of election.—A municipal bond election was not rendered invalid because two members of the election board had been employed by the city within ninety days prior to the election, there being no fraudulent conduct shown.—*Clark v. City of Manhattan Beach*, 175 Cal. 637, 638, 166 Pac. 806; 1 A. L. R. 1632.

26. Application for positions on election board—Code provisions do not apply.—Section 1142, Political Code, as amended (Stats. 1915, p. 1851), as to notice inviting applications for positions as election officers has no application to municipal improvement bond elections.—*Clark v. City of Manhattan Beach*, 175 Cal. 637, 638, 166 Pac. 806, 1 A. L. R. 1632.

27. Slight delay in opening polls, a trivial matter.—A slight delay in opening the polls at a municipal improvement bond election was a trivial matter, such delay not being shown to have worked the slightest injury to any voter.—*Clark v. City of Man-*

hattan Beach, 175 Cal. 637, 639, 166 Pac. 806; 1 A. L. R. 1632.

27. Single proposition separately stated.—A proposition to incur indebtedness by the city of Los Angeles for "works for supplying said city and its inhabitants with electricity," etc., held to be a single proposition, not requiring to be separately stated, within the meaning of the act of 1901 as amended in 1913, so as to show one purpose to acquire an electric generating system and another purpose to acquire a distributing plant, for the electricity so supplied.—*Hartigan v. Los Angeles*, 170 Cal. 313, 315, 149 Pac. 590.

28. Municipal waterworks—Electric light plant—Separate estimates not required.—Where the proposition for the construction of a municipal water and electric light plant contemplated a definite sum for a single definite plant, it is not essential that separate estimates should be made of the cost of each separate unit prior to the election.—*Cary v. Blodgett*, 10 Cal. App. 463, 102 Pac. 668.

29. Combined water and electric light plant—Vote on units separately not essential.—Where the proposition is for the construction and acquisition of a combined water and electric light plant and the same is valid, the voters can not complain that they are not afforded an opportunity to vote for one unit or proposition and against the other.—*Cary v. Blodgett*, 10 Cal. App. 463, 102 Pac. 668.

30. Wharves at foot of different streets—Not separate and distinct propositions.—In a municipal improvement bond election a proposition to construct one wharf at the foot of one street and a proposition to construct another wharf at the foot of another street, being parts of a general scheme of municipal improvement, need not be submitted to the voters as distinct and independent propositions.—*Clark v. City of Manhattan Beach*, 175 Cal. 637, 640, 166 Pac. 806, 1 A. L. R. 1632.

31. Four different propositions—Issuance of separate bonds.—Where four different propositions for the issue of bonds under the municipal improvement act of 1901 for four different purposes were presented to the voters and favorably passed upon by them at an election held for the purpose, there is nothing in the act, nothing in principle, and nothing in the interests of the taxpayers, requiring the issuance of separate bonds for each of the indicated purposes.—*Mill Valley v. House*, 142 Cal. 698, 76 Pac. 658.

32. Same—Question determined solely on facts.—In determining whether a certain proposition to incur indebtedness is really two propositions required to be separately stated under the act of 1901 as amended in 1913, the court must determine the question solely upon the facts set forth in the complaint and such other facts as are susceptible of judicial notice.—*Hartigan v. Los Angeles*, 170 Cal. 313, 317, 149 Pac. 590.

33. Submission of unauthorized bond issue at same election—Authorized bond issue not invalidated.—An election for the issue of bonds for improvements authorized by the municipal improvement act of 1901

is not invalidated because of the mere submission at the same election of a proposition to incur a bonded indebtedness for an unauthorized purpose.—*San Diego v. Potter*, 153 Cal. 288, 95 Pac. 146.

PUBLIC ASSEMBLY AND CONVENTION HALLS.

ACT 3052—An act authorizing cities, towns, and municipal corporations to establish and maintain public assembly or convention halls, and to incur indebtedness for such improvements.

History: Approved March 25, 1903, Stats. 1903, p. 412.

Public assembly hall.

§ 1. Any city, town, or municipal corporation in this state may acquire, by purchase, condemnation, or otherwise, all necessary land whereon to construct, and may construct and maintain thereon, a public assembly or convention hall, and may incur indebtedness, as hereinafter provided, to pay the cost of such improvement.

Resolution of intention. Special bond election may be called. Publication.

§ 2. Whenever the legislative body of any city, town or municipal corporation, shall, by resolution passed by a vote of a majority of its members, determine that the public interest or necessity demands the acquisition of the necessary land whereon to construct, and the construction or completion thereon, of a public assembly or convention hall, the cost of which will be too great to be paid out of the ordinary annual income and revenue of the municipality it may at any subsequent meeting of such body, by an ordinance, passed by a vote of two-thirds of all its members, call a special election, and submit to the qualified voters of said municipality, the proposition of incurring a debt for the purpose set forth in said resolution. The ordinance calling such special election shall recite the object and purpose for which the indebtedness is proposed to be incurred, the estimated cost of the proposed improvement, the amount of the principal of the indebtedness to be incurred therefor, and the rate of interest to be paid on said indebtedness; and shall fix the date on which such special election will be held, the manner of holding such election, and of voting for or against such proposition; and in all other particulars not recited in said ordinance, such election shall be held as provided by law for holding municipal elections in such municipality. Such ordinance shall be published once a day for a period of five days in a daily newspaper published in said municipality, or once a week for three successive weeks in a weekly newspaper published in said municipality. No other notice of such election need be given.

Two-thirds vote prevails.

§ 3. It shall require the votes of two-thirds of all the voters voting at such special election to authorize the issuance of the bonds herein provided for.

Limitation of indebtedness.

§ 4. No city, town, or municipal corporation shall incur an indebtedness under the provisions of this act, which together with all other indebtedness of said city, town, or municipal corporation, shall, in the aggregate, exceed fifteen per cent of the assessed value of all the real and personal property in said city, town or municipal corporation.

Issue and sale of bonds.

§ 5. All bonds issued under the provisions of this act shall be issued, sold, and made payable, in the manner and form prescribed for the issue, sale, and payment of municipal bonds, by an act entitled, "An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations for municipal improvements, and regulating the acquisition, construction, or completion thereof," which became a law, under the provisions of the constitution, without the governor's approval, February 25, 1901.

Proceeds.

§ 6. The proceeds of the sale of bonds issued under the provisions of this act shall be placed in the municipal treasury to the credit of a fund to be known as the public hall fund, and shall be applied, exclusively, to the purpose and object mentioned in the ordinance.

Tax levy.

§ 7. The legislative body of said municipality shall, at the time of fixing the general tax levy, and in the manner for such general tax levy provided, levy and collect, annually, each year until said bonds are paid, a tax sufficient to pay the annual interest and the part of the principal of such bonds, that shall become due before the time for fixing the next general tax levy, and is not at the time of fixing such annual tax levy, otherwise provided for by funds then in the treasury and set apart for that purpose. The taxes herein required to be levied and collected shall be in addition to all other taxes levied for municipal purposes, and shall be collected at the same time, and in the same manner as other municipal taxes are collected, and be used for no other purpose than the payment of said bonds and accruing interest.

Application of moneys derived from use of hall.

§ 8. All moneys derived from the use or hire of such assembly or convention hall shall be deposited in the treasury of the municipality to the credit of said public hall fund, and shall be applied, exclusively, to the following purposes, to wit:

First—For the necessary expenses of conducting, maintaining, and insuring such hall, and of making all improvements and repairs thereof.

Second—For the payment of installments of interest or principal becoming due on said bonds until the whole of said bonded indebtedness shall have been paid.

Third—Any surplus remaining after providing for the purposes, first and second above specified, may be appropriated and used for general municipal purposes.

Employment of architects, etc. Contracts.

§ 9. The legislative body of any city, town, or municipal corporation wherein bonds have been issued for the construction or completion of a public assembly or convention hall, under the provisions of this act, shall have the power to appoint and employ all needful architects, engineers, superintendents, and agents, to prepare plans for the construction or completion of such public assembly or convention hall, and to superintend such work. All contracts for the construction or completion of such public assembly or convention hall, or for the furnishing of labor or materials therefor, shall be let to the lowest responsible bidder. The legislative body of the municipality shall advertise for at least ten days in one or more newspapers published in such municipality, inviting sealed proposals for the construction or completion of said improvement, or for the furnishing of labor and materials therefor before any contracts shall be made. The said legislative body shall have the right to acquire from the successful bidder, such bonds as they may deem best to insure the faithful performance of his contract. They shall also have the right to reject any and all bids. Said legislative body shall have power to appoint such officers, or agents, and to make and enforce such rules and regulations as may be necessary for the management, control, letting, and use of such public assembly or convention hall; provided, however, that in cities, towns, or municipal corporations, operating under a charter, heretofore or hereafter framed under section 8 of article 11 of the constitution, and providing for a board of public works, all matters and things required in this section to be done and performed by the legislative body of the municipality, shall be done and performed by said board of public works; provided, further, that in cities, towns, or municipal corporations not having such board of public works, the legislative body may, by ordinance, appoint a

commission to select the site for said hall, to have charge and supervision of its construction, and to manage and control the letting and use thereof, and may, by ordinance, prescribe and regulate the powers and duties of said commission.

§ 10. This act shall take effect immediately.

1. Construction of auditorium.—City acts in proprietary capacity.—Where a municipal corporation constructs and maintains an auditorium in pursuance of the permissive authorization given by the act of 1903, it acts in its private and proprietary as distinguished from its governmental capacity. —*Chafor v. Long Beach*, 174 Cal. 478; Ann. Cas. 1918D, 106, L. R. A. 1917E, 685, 163 Pac. 670.

2. Same.—Constructed on tidelands.—Ultra vires.—A municipal corporation acts in its proprietary and not in its governmental capacity in constructing and maintaining an auditorium under the authority of this act, and this is unaffected by the

fact that the municipality reaps no pecuniary benefit from the structure, nor by the fact that it is erected in part upon state tidelands, and to that extent its construction and maintenance is *ultra vires*.—*Chafor v. Long Beach*, 174 Cal. 478, 481, 163 Pac. 670, Ann. Cas. 1918D, 106, L. R. A. 1917E, 685.

3. Same.—A municipal corporation is liable for personal injuries to one lawfully on premises constructed and maintained by it in its proprietary capacity under the authority of this act, who incurs personal injuries resulting from its negligence while there.—*Chafor v. Long Beach*, 174 Cal. 478, 481, 163 Pac. 670, Ann. Cas. 1918D, 106, L. R. A. 1917E, 685.

ANNEXATION ACT OF 1889.

ACT 3054—An act to provide for the alteration of the boundaries of and for the annexation of territory to incorporated towns and cities, and for the incorporation of such annexed territory in and as a part of such municipalities, and for the districting, government, and municipal control of annexed territory.

History: Approved March 19, 1889, Stats. 1889, p. 358. Amended (1) March 20, 1905, Stats. 1905, p. 551; (2) April 10, 1911, Stats. 1911, p. 857; May 1, 1911, Stats. 1911, p. 1459; (3) May 11, 1917; in effect July 27, 1917; Stats. 1917, p. 419.

Procedure for annexing new territory to cities. Election on question. Notice. Voting precincts. Officers. Ballots. Canvass of returns. Annexation completed.

§ 1. The boundaries of any incorporated town or city, whether heretofore or hereafter formed, incorporated, reincorporated, organized, or reorganized, may be altered and new territory annexed thereto, incorporated and included therein, and made a part thereof, upon proceedings being had and taken as in this act provided. The council, board of trustees, or other legislative body of any such municipal corporation, upon receiving a written petition therefor containing a description of the new territory asked to be annexed to such corporation, and signed by not less than one-fifth in number of the qualified electors of such municipal corporation, computed upon the number of votes cast at the last general municipal election held therein, must, without delay, submit to the electors of such municipal corporation and to the electors residing in the territory proposed by such petition to be annexed to such corporation, the question whether such new territory shall be annexed to, incorporated in, and made a part of said municipal corporation. Such question may be so submitted at the next general municipal election to be held in such municipal incorporation, or it may be so submitted prior to such general election either at a special election called therein for that purpose, or at any other municipal election therein, except an election at which the submission of such question is prohibited by law; and such legislative body is hereby empowered to and it shall be its duty to cause notice to be given of such election by the publication of a notice thereof in a newspaper printed and published in such municipal corporation, and also in a newspaper, if any such there be, printed and published outside of such corporation, but in the county in which the territory so proposed to be annexed is situated, in each case at least once a week for a period of four successive weeks next preceding the date of such election. Such notice shall distinctly state the proposition to be sub-

mitted, i. e., that it is proposed to annex to, incorporate in, and make a part of such municipal corporation the territory sought to be annexed, specifically describing the boundaries thereof; and in said notice the qualified electors of said municipal corporation, and the qualified electors residing in said territory so proposed to be annexed, shall be invited to vote upon such proposition by placing upon their ballots the words "For annexation" or "Against annexation," or words equivalent thereto. Such legislative body is hereby empowered, and it shall be its duty, to establish, and in such notice of election designate the voting precinct or precincts, and the place or places at which the polls will be opened in such territory so proposed to be annexed, and also in such municipal corporation. And such place or places shall be that or those commonly used as voting places within such municipal corporation, and also that or those commonly used within such new territory, if any such there be. Such legislative body is empowered to, and it shall, appoint the officers of such election, who shall be, for each voting place in such municipal corporation, and for each voting place in said new territory, two judges and one inspector, each of whom shall be a qualified elector of the voting precinct in which he is appointed to act as an officer of such election. The ballots used at such election, the opening and closing of the polls, and the holding and conducting of such election, shall be in conformity, as far as may be, with the general laws of this state concerning elections; and the judges and inspectors of such election shall immediately on the closing of the polls, count the ballots, make up and certify the tally sheets of the ballots cast at their respective polling places, seal, and then immediately return the same as below provided, doing so, as nearly as practicable, in the manner provided in the election laws of this state; but the ballots, tally sheets, and returns shall be so returned to and deposited with the clerk of such legislative body. Such legislative body shall, at the time provided for its regular meeting next after the expiration of three days from and after the date of said election, meet and proceed to canvass said returns; and such canvass shall be completed at such meeting, if practicable, and in any event, as soon as practicable, avoiding adjournment or adjournments, if possible, until said canvass is completed. Said canvass by such legislative body shall be conducted and completed as follows: The returns of the votes cast in said outside territory, so proposed to be annexed shall be canvassed separately; and the returns of the votes cast inside of said municipal corporation shall be canvassed separately. Immediately upon the completion of such canvass, said legislative body shall cause a record thereof to be made and entered upon its minutes, showing the whole number of votes cast in such outside territory, the whole number of votes cast in such municipal corporation, the number thereof cast in each in favor of annexation, and the number thereof cast in each against annexation; and if it shall appear from such canvass that a majority of all the votes cast in such outside territory, and a majority of all the votes cast inside of said municipal corporation, are in favor of annexation, the clerk, or other officer performing the duties of clerk, of such legislative body, shall promptly make and certify, under the seal of said municipal corporation, and transmit to the secretary of state, a copy of said record, so entered upon said minutes, together with a statement showing the date of said election and the time and result of said canvass, which document shall be filed by the secretary of state immediately upon the receipt thereof. From and after the date of the filing of said document in the office of the secretary of state, the annexation of such territory so proposed to be annexed shall be deemed and shall be complete, and thenceforth such annexed territory shall be, to all intents and purposes, a part of such municipal corporation, except only that no property within such annexed territory shall ever be taxed to pay any portion of any indebtedness or liability of such municipal corporation contracted prior to or existing at the time of such annexation, excepting as provided in section one of this act. No territory which, at the time such petition for such proposed annexation is presented to such legislative

body, forms any part of any incorporated town or city, shall be annexed under the provision of this act. [Amendment of May 11, 1917. In effect July 27, 1917. Stats. 1917, p. 419.]

This section was also amended April 11, 1911, Stats. 1911, p. 857.

Question of making annexed territory liable for share of indebtedness may be submitted.

§ 1a. Whenever any municipal corporation to which it is proposed to annex territory under the provisions of this act shall have incurred, or authorized the incurring of, any bonded indebtedness for the acquisition, construction or completion of any municipal improvement or improvements, the petition presented to the legislative body of such municipal corporation, as hereinabove provided, may contain a request that the question to be submitted to the electors of such municipal corporation and to the electors residing in the territory proposed by such petition to be annexed to such corporation, shall be, whether such new territory shall be annexed to, incorporated in, and made a part of, said municipal corporation, and the property therein be, after such annexation, subject to taxation, equally with the property within such municipal corporation, to pay any such bonded indebtedness of such corporation, outstanding at the date of such annexation, or theretofore authorized. If such request shall be made in said petition proceedings shall be had thereon the same in all respects as upon a petition presented under the provisions of the preceding section, excepting that the notice of election shall distinctly state the proposition to be submitted, i. e., that it is proposed to annex to, incorporate in, and make a part of, such municipal corporation, the territory sought to be annexed, specifically describing the boundaries thereof, and that the property therein, shall, after such annexation, be subject to taxation equally with the property within such municipal corporation, to pay such bonded indebtedness of such municipal corporation, outstanding at the date of the said annexation, or theretofore authorized, and to be represented by bonds thereafter to be issued. The said notice shall, in addition, distinctly specify the improvement or improvements for which such indebtedness was so incurred or authorized, and state the amount or amounts of such indebtedness already incurred, outstanding at the date of the first publication of such notice, and the amount or amounts of such indebtedness theretofore authorized, and to be represented by bonds thereafter to be issued, and the maximum rate of interest payable, or to be payable on such indebtedness; and upon the canvass of the returns of the votes cast at any election held under the provisions of this section, if it shall appear that two-thirds of all the votes cast in such outside territory, and a majority of all the votes cast inside of said municipal corporation, are in favor of annexation, and not otherwise, a copy of the record of such canvass shall be transmitted to the secretary of state in the same manner as provided in the preceding section. From and after the date of the filing of said document in the office of the secretary of state, the annexation of such territory so proposed to be annexed, shall be deemed, and shall be, complete, and thenceforth such annexed territory shall be, to all intents and purposes a part of such municipal corporation, and the property within such annexed territory shall be taxed to pay the bonded indebtedness or liability of such corporation, specified in said notice, equally with the property within such municipal corporation as it existed prior to such annexation. [New section approved April 11, 1911. Stats. 1911, p. 859.]

Altering boundaries of wards.

§ 2. The legislative body of any incorporated town or city which is or shall be divided into wards, and to which territory has been heretofore or shall be hereafter annexed, must by ordinance either so alter the boundaries of the wards of such municipal corporation as to include such annexed territory in one or more wards adjoining such annexed territory, or make of such annexed territory one or more additional wards; provided, that the number of wards shall not be so increased as to exceed the number

which such municipal corporation may according to law have. In altering the boundaries of wards, or creating new wards, regard must be had to the number of inhabitants, so that each ward shall contain, as near as may be, an equal number of inhabitants, exclusive of persons incapable of citizenship in this state.

§ 3. Nothing in this act provided for shall alter or affect the boundaries of any senatorial or assembly district.

Expenses, how paid.

§ 4. All proper expenses of proceedings for annexation of territory under this act, whether such annexation shall be made and completed or not, shall be paid by the municipal corporation so annexing or attempting to annex such territory. In the event that a tax for road purposes has been levied by the board of supervisors of any county against property situate in territory which, subsequent to such levy, is annexed by any town or city under the provisions of this act, but which, at the time of such annexation has not been collected, then all such taxes so uncollected shall be and become the property of the town or city to which such territory is annexed, and same shall, with other county taxes, be collected by the county tax collector, and by him paid into the county treasury of said county, after which the same shall, by the county treasurer, be paid to such town or city, upon proper warrant therefor. The town or city clerk, or other officer performing the duties of clerk of such town or city, shall, at any regular meeting of the board of supervisors of said county, present, and file a verified claim for any money thus due such town or city, setting forth the fact, and the date of such annexation, and the amount in the hands of said county treasurer so due such town or city. Said claim shall be audited by the board of supervisors in the manner in which other claims against the county are audited, and if the amount thereof is correct, the same shall be allowed, and the county auditor instructed to draw his warrant for said amount against the road fund of the district in which such annexed territory is situated. The law shall apply to all such taxes not paid into the county treasury prior to the passage of this act. [Amended 1905, p. 551, took effect immediately.]

Taxes of annexed territory becomes property of city. City clerk to file claim. Claim audited by supervisors. Claims against annexed territory. City clerk to act as redemption officer.

§ 4½. All taxes levied by the board of supervisors of any county, or by the legislative body of any sanitary or other political district other than school districts, for the purpose or purposes of such sanitary or other political district, against property situated in territory which subsequent to such levy is annexed by any town or city under the provisions of this act, but which, at the time of such annexation, has not been collected, shall be and become the property of the town or city to which that territory is annexed, and the same shall, with other county taxes, be collected by the county tax collector, and by him paid into the county treasury of said county, after which the same shall, by the county treasurer, be paid to such town or city, upon proper warrant therefor, and all such taxes which are at the time of such annexation in the county treasury, shall be and become the property of the town or city to which such territory is annexed, and shall be by said county treasurer paid to such town or city, upon the proper warrant therefor, as hereinafter provided. The town or city clerk or other officer performing the duties of clerk of such town or city shall, at any regular meeting of the board of supervisors of said county, present and file a verified claim for any money thus due said town or city, setting forth the fact and the date of such annexation, and the amount in the hands of said county treasurer so due such town or city. Said claim shall be audited by the board of supervisors in the manner in which other claims against the county are audited, and if the amount thereof is correct, the same shall be allowed and the county auditor instructed to draw his warrant for said amount against the several

funds of the several districts herein referred to, in which such annexed territory is situated, said funds upon such transfer shall not be used for any purpose other than that for which it was originally intended. The city or town to which such territory is annexed, shall have the power, and it is hereby authorized to adjust, settle and pay any and all lawful claim or claims outstanding against any part of the territory so annexed contracted for before said territory became annexed, of any such sanitary or other political district or districts within the territory so annexed. Provided, however, if any such taxes shall have been illegally collected within the meaning of section 3804 of the Political Code of the state of California, such illegally collected taxes shall remain in the county treasury until after the time for the repayment of such taxes as provided by section 3804 of the Political Code of the state of California shall have expired, after which time such taxes, if any remaining, shall be and become the property of the town or city to which said territory is annexed, as in this act provided. The city or town clerk of the city or town to which such territory is annexed shall be and he is hereby authorized to act as the redemption officer for the purpose of effecting redemption of property sold for delinquent sanitary taxes prior to such annexation in any such sanitary districts within the territory so annexed, in accordance with the provisions of section 12, Act 3349, approved March 20, 1909. [New section approved May 1, 1911. Stats. 1911, p. 1459.]

§ 5. This act shall take effect and be in force from and after its approval.

See, post, Act 3055.

1. Code commissioners' note: "See 1889, pp. 356, 433; 1899, p. 37.—Constitutional (People v. Town of Ontario, 148 Cal. 625, 84 Pac. 205)."

2. Constitutionality—Sufficiency of notice.—The annexation act of 1889 is not unconstitutional because the notice of election is not a sufficient provision of notice nor because it does not require notice of hearing as to the sufficiency of the petition or as to the sufficiency of the description of the boundaries of the territory proposed to be annexed.—People v. Ontario, 148 Cal. 625, 84 Pac. 205.

3. Same—Not special legislation.—The act of 1889 is not special legislation in conferring the privilege of petitioning for a proposed annexation upon the electors of the municipality to the exclusion of the electors of the annexed territory and is constitutional.—Vernon School District v. Board of Education of Los Angeles, 125 Cal. 593, 58 Pac. 175.

4. Same—Title sufficiently broad.—The title of the annexation act of 1889 is sufficiently broad to include the provision of the act that the annexed territory shall not be taxed to pay any prior indebtedness or liability of the municipality.—Vernon School District v. Board of Education of Los Angeles, 125 Cal. 593, 58 Pac. 175.

5. Same—Delegation of legislative power.—The annexation act of 1889 is not unconstitutional as comprising an unwarranted delegation of legislative power.—People v. Ontario, 148 Cal. 625, 84 Pac. 205.

6. Alteration of boundaries—Power of legislature—Section 3, article XI, constitution.—The legislature may in the absence of any other constitutional limitation, except that contained in section 3 of article XI of the constitution, adopt any

method of altering the boundaries of municipalities it sees fit.—People v. Ontario, 148 Cal. 625, 84 Pac. 205.

7. Annexation of territory not a "municipal function."—The fixing of the proposed boundaries of territory to be annexed to a municipal corporation is not a "municipal function" within the meaning of section 13, article XI, of the constitution; and the question as to whether the power to fix such proposed boundaries shall be given to a legislative body or to the electors of the locality affected, is purely one of policy upon which determination of the legislature is conclusive.—People v. Ontario, 148 Cal. 625, 84 Pac. 205.

8. Same.—Annexation of territory to a municipality is not a "municipal affair," as that term is used in the constitution, and the subject is controlled entirely by the general act of 1889 and not by conflicting provisions of the charter of the municipality to which the annexation is made.—People ex rel. Peck v. Los Angeles, 154 Cal. 220, 97 Pac. 311.

9. Same.—The annexation of territory to a city is not a municipal affair but is a matter pertaining to the state at large and within its general powers and functions, and the general law controls.—People ex rel. Scholler v. Long Beach, 155 Cal. 604, 102 Pac. 664.

10. Derivation of legislative power to provide for annexation—Section 6, article XI, constitution.—The legislative power to provide for the annexation of territory to existing municipalities is derived from the provisions of section 6, article XI, of the constitution and the mode of such annexation is left to the wisdom of the legislature to determine by general laws.—People ex rel. Peck v. Los Angeles, 154 Cal. 220, 97 Pac. 311.

11. Annexation of territory—Legislative power absolute—Question as to effect of.—The power of the legislature over the organization, dissolution, extent, powers and liabilities of municipal and other public corporations is, in the absence of constitutional restriction, absolute and the question as to what shall be the effect of the enlargement or diminution of the boundaries of such corporation or of their consolidation or of the annexation of one territory to another, is one for the determination of the legislative intent.—*In re East Fruitvale Sanitary District*, 158 Cal. 453, 111 Pac. 368.

12. Same—Purely political.—The question whether any particular territory of the shape, extent and character fixed should be annexed to a municipality, is purely political for the exclusive determination of the voters of the municipality and of the territory in question, and with the wisdom of that determination, the courts have no power to interfere.—*People ex rel. Peck v. Los Angeles*, 154 Cal. 220, 97 Pac. 311.

13. Municipalities not consolidated without consent.—Under the act municipalities can not be consolidated without their consent; and if they do consent no one else can complain.—*People ex rel. Peck*, 154 Cal. 220, 97 Pac. 311.

14. Same—Annexation of territory without consulting inhabitants—Freeholders' charters.—Freeholder charter cities have no power under the constitution to provide by their charter for annexation of adjacent territory without consulting the inhabitants of that territory.—*People ex rel. Scholler v. Long Beach*, 155 Cal. 604, 102 Pac. 664.

15. Same—Same—Same—Legislative approval, effect of.—The approval by the legislature of a freeholders' charter adopted by a municipality and describing its boundaries as including adjacent territory previously attempted but not legally annexed thereto, does not have the legal effect of fixing the city's boundaries so as to include the territories illegally annexed.—*People ex rel. Scholler v. Long Beach*, 155 Cal. 604, 102 Pac. 664.

16. Annexation of one municipality by another—Effect.—When one municipality is annexed to another the latter takes over the functions of the former and the former is extinguished and its property, powers and duties are vested in the corporation of which it has become a part.—*In re East Fruitvale Sanitary District*, 158 Cal. 453, 111 Pac. 368.

17. Sanitary district—"Consolidation" not required—May be annexed.—A sanitary district, although a public corporation, is not organized under the municipal corporation act, and it may be annexed to an incorporated city under the provisions of the act of 1889 without the necessity of the "consolidation" provided for in section 8 of the municipal corporation act of 1883.—*People ex rel. Cuff v. Oakland*, 123 Cal. 598, 56 Pac. 445.

18. Annexation of sanitary district—Extinction.—The annexation of a sani-

tary district to an adjacent municipality which has every power conferred by the sanitary district, operates to extinguish and dissolve the district, and such district had no power to issue bonds after the completion of the annexation although authorized by an election held prior thereto.—*In re East Fruitvale Sanitary District*, 158 Cal. 453, 111 Pac. 368.

19. Same—Issue of previously voted bonds.—After the annexation to a municipality of a sanitary district the municipality is not authorized to assume the validity of a bond election of the district held prior to the completion of such annexation, or to take the further steps necessary to the issuance of the bonds and the construction of the work initiated by the district.—*In re East Fruitvale Sanitary District*, 158 Cal. 453, 111 Pac. 368.

20. Annexed school property belongs to city.—Where school property forms a part of annexed territory it belongs to the city to which the territory is annexed and is under the control of the city's board of education; and the fact that the school district still maintains the organization and name of the original school district and that the property still forms a part of the district, is immaterial.—*Vernon School District v. Board of Education of Los Angeles*, 125 Cal. 593, 58 Pac. 175.

21. Jurisdiction of courts to interfere.—The courts can interfere only where some substantial provision of the annexation act has been violated or where fraud has been perpetrated in the matter of the boundaries or the extent of the annexed territory.—*People ex rel. Peck v. Los Angeles*, 154 Cal. 220, 97 Pac. 311.

22. Quo warranto—State not estopped by lapse of nineteen months.—The state is not estopped by allowing a mere lapse of nineteen months after annexation proceedings had culminated to commence quo warranto to test the validity of the attempted annexation, when it appears that during that time the validity of the annexation was being tested by a private person and that during that time portions of the territory had been annexed to another municipality.—*People ex rel. Scholler*, 155 Cal. 604, 102 Pac. 664.

23. Scope of act—Annexation and consolidation—Contiguous territory.—The annexation act of 1889 provides for the consolidation of municipalities only when they are contiguous and contemplates an annexation of territory so as to make them contiguous.—*People ex rel. Peck v. Los Angeles*, 154 Cal. 220, 97 Pac. 311.

24. Sufficient signatures to petition—Power and duty of board.—The annexation act of 1889 contains no provision requiring the determination as to whether the petition for annexation is signed by a sufficient number of electors, nor does it require any record of such determination to be made, but the duty of the board to determine the question is entirely implied from the fact that the board has no power to order an election except upon a petition signed by

the requisite number, such petition alone giving the power and creating the duty to order the election and not the determination as to the sufficiency of the petition.—*People v. Ontario*, 148 Cal. 625, 84 Pac. 205.

25. Same—Character of proof—Record.—The act makes no provision as to the character of the proof necessary to a determination as to whether the petition is signed by the requisite number of electors or not, and the minutes of the board need not show that sworn evidence as to the genuineness of the signatures or that it made any other investigation than such as may be reasonably employed from the words "taken up and discussed."—*People v. Ontario*, 148 Cal. 625, 84 Pac. 205.

26. Action of trustees as to sufficiency of petition is judicial, and subject to review.—The initial action of the board of trustees of a municipality in determining whether a petition for annexation is sufficient, is judicial in its nature and subject to review by certiorari.—*Capuchino Land Co. v. Board of Trustees*, 34 Cal. App. 239, 167 Pac. 178.

27. Annexation of inhabited territory—Portions uninhabited.—Where the territory proposed to be annexed, as a whole, may be fairly said to be inhabited, the fact that portions are uninhabited does not require that proceedings for the annexation of such uninhabited portions should be taken under the act of 1899, particularly in view of the fact that the act of 1899 expressly provides that nothing in that act shall be deemed to repeal the provisions of any act providing for the annexation of inhabited territory.—*People v. Ontario*, 148 Cal. 625, 84 Pac. 205.

28. Inhabited and uninhabited territory—Different proceedings should be followed.—Where a part of a body of land to be annexed to a municipality is inhabited and another part uninhabited, the procedure of the act of 1913 should have been followed as to the inhabited portions, and the procedure laid down in the act of 1899 as to the uninhabited portions.—*People v. Lemoore*, 37 Cal. App. 79, 174 Pac. 93.

29. Territory held to be uninhabited.—A compact rectangular body of land embracing one thousand eight hundred and ninety acres, which has apparently never been subdivided or intersected with streets, has not a house upon it and consists entirely of grazing, marsh and tidelands, is not "inhabited territory" within the meaning of the annexation act.—*Capuchino Land Co. v. Board of Trustees*, 34 Cal. App. 239, 167 Pac. 178.

30. Inhabited or uninhabited territory—Review of question.—The question as to whether territory is inhabited or not within the meaning of the annexation statute of 1889 is in many cases a difficult one, and its determination should be rightly left to the electors occupying such territory to decide; but where the particular tract of land sought to be annexed is of such size, area, location, isolation and state of unoccupancy as to render it perfectly appar-

ent that it falls clearly without and beyond the scope and intent of the act, the determination of the governing officials of the adjacent municipality to bring such area within its territory should be the subject of review.—*Capuchino Land Co. v. Board of Trustees*, 34 Cal. App. 239, 167 Pac. 178.

31. Size and shape of annexed territory not limited.—The annexation act of 1889 contains no limitation upon the size or the shape of the territory proposed to be annexed or its adaptability for municipal purposes or its contiguity to another municipality.—*People ex rel. Peck v. Los Angeles*, 154 Cal. 220, 97 Pac. 311.

32. Registration—Section 1094, Political Code, has no application.—The provisions of section 1094 of the Political Code requiring registration to cease for a period of forty days prior to the election and that notice of a special election should be given long enough prior to such period of forty days as to afford every qualified elector a reasonable opportunity to register in the interim, have no application to an election under the annexation act, and a notice of the special election to determine the question of annexation published for four weeks prior to the election is a sufficient compliance with the provisions of the act.—*People ex rel. Peck v. Los Angeles*, 154 Cal. 220, 97 Pac. 311.

33. Qualifications of voters—Residence.—No one is entitled to vote in the territory proposed to be annexed unless he was at the time a permanent resident therein, in the sense that he would be a qualified elector therein at a general election, if prior thereto his residence therein had continued for the required time; and a mere summer residence without intent to remain in the territory is not a qualified elector.—*People ex rel. Scholler v. Long Beach*, 155 Cal. 604, 102 Pac. 664.

34. Election may be ordered by ordinance or by resolution—Charter provision.—The annexation act does not make any provision for the method of ordering the election, and the legislative body of the city may order it either by ordinance or by resolution and charter provisions as to the manner of holding elections; and ordering the same have no relation to elections for annexation of outside territory.—*People ex rel. Peck v. Los Angeles*, 154 Cal. 220, 97 Pac. 311.

35. Annexation election—Error in establishing ward precincts—Election not vitiated.—An honest error of a city council in establishing ward precincts for a special election for the annexation of territory to the city, instead of the usual voting places where the statutory provisions as to special municipal elections are conflicting, in the absence of fraud or any showing that any one who desired to vote was unable to do so, does not vitiate the election.—*People ex rel. Skelton v. Los Angeles*, 133 Cal. 338, 65 Pac. 749.

36. Number of votes in favor of annexation held sufficient.—Two hundred and

thirteen votes cast in favor of annexation, in the annexed territory, is held sufficient to be a sufficiently fair and competent body to determine the matter, inasmuch as the determination of question of annexation is left to the voters of the territory to be annexed together with the voters of the municipality.—*People ex rel. Peck*, 154 Cal. 220, 97 Pac. 311.

37. Ballots—Substantial compliance with act.—The fact that the ballots used at an election held under the annexation act of 1889 contained the words "for annexation—yes" and "for annexation—no," could not make them misleading, and such ballots constituted a substantial compliance with the provisions of the act.—*People v. Ontario*, 148 Cal. 625, 84 Pac. 205.

38. Same—Marking—Intention of act.—The provisions of the annexation act of 1889 as amended in 1905 making the provisions of the general election laws as to the ballots, opening and closing polls, etc., was not intended to make the general law applicable to the mode of marking the ballots and the voters may express their intention by marking the ballot in any man-

ner which will indicate such intention.—*Haskell v. Long Beach*, 153 Cal. 543, 96 Pac. 92.

39. Same—Direction to voter — Other mode of stamping to express intention.—A direction "to vote, stamp the cross in the voting square," in the notice of election is territorial merely and a failure to comply therewith will not invalidate a ballot where the voter has indicated his intention by any other mode of stamping his ballot.—*Haskell v. Long Beach*, 153 Cal. 543, 96 Pac. 92.

40. Same—"Distinguishing mark."—The stamping of the ballot anywhere between the parallel lines indicating "for annexation" or "against annexation," instead of in the voting square, does not make the cross a "distinguishing mark."—*Haskell v. Long Beach*, 153 Cal. 543, 96 Pac. 92.

41. Same—Same—Any method showing intent allowable.—The annexation act of 1889 is quite liberal in its terms and allows the voter to adopt any method of stamping a cross on his ballot which will show the intent to which he voted on the proposition submitted. — *Haskell v. Long Beach*, 153 Cal. 543, 96 Pac. 92.

"ANNEXATION ACT OF 1913."

ACT 3055—An act to provide for the alteration of the boundaries of and for the annexation of territory to municipal corporations, for the incorporation of such annexed territory in and as a part thereof, and for the districting, government and municipal control of such annexed territory.

History: Approved June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 587. Amended (1) April 29, 1915; in effect August 8, 1915; Stats. 1915, p. 305; (2) April 2, 1917; in effect July 27, 1917; Stats. 1917, p. 26.

Municipal corporations may annex contiguous territory.

§ 1. The boundaries of any municipal corporation may be altered and new territory annexed thereto, incorporated and included therein, and made a part thereof, upon proceedings being had and taken as in this act provided. Any such new territory so proposed to be annexed to a municipal corporation must be contiguous thereto, or contiguous to territory that is contiguous to said municipal corporation, and which the voters of the territory have voted in favor of annexation to said municipal corporation but the proceedings upon the annexation of said last named territory have not yet been determined by the vote thereon of said municipal corporation. [Amendment of April 29, 1915. In effect August 8, 1915. Stats. 1915, p. 305.]

City council to call election. Petition. Notice of election. Date and proposition.

Voting precincts. Election officers. Ballots. Count of ballots. Canvass of returns.

§ 2. The legislative body of any municipal corporation, upon receiving a written petition therefor, signed as hereinafter provided, containing a description of the new territory proposed to be annexed to such municipal corporation, and asking that such territory be annexed thereto, must, without delay, call a special election, and submit to the electors residing in the territory proposed by such petition to be annexed to such municipal corporation the question whether such territory shall be annexed to, incorporated in and made a part of such municipal corporation. Such petition shall be signed by not less than one fourth in number of the qualified electors residing within the territory described therein, as shown by the registration of voters of the county in

which such territory is situated. Such legislative body is hereby empowered to, and it shall be its duty to cause notice to be given of such election by the publication of a notice thereof in a newspaper of general circulation, if any such there be, printed and published outside of such municipal corporation, but in the county in which the territory so proposed to be annexed is situated, at least once a week for a period of four successive weeks next preceding the date of such election. If there be no such newspaper, then such legislative body shall cause such notice of such election to be given by the posting thereof in three public places within the territory so proposed to be annexed at least four weeks next preceding the date of such election. Such notice shall distinctly state the date of such election, and the proposition to be submitted, to wit, that it is proposed to annex to, incorporate in, and make a part of such municipal corporation the territory sought to be annexed, specifically describing the boundaries thereof. In addition to said description, such territory shall also be designated in such notice by some appropriate name or other words of identification, by which such territory may be referred to and indicated upon the ballots to be used at any election at which the question of such annexation is submitted as in this act provided. The electors in such territory shall be directed by such notice to vote upon such question in the manner hereinafter set forth in this section. Such legislative body is hereby empowered, and it shall be its duty to establish, and in such notice of election to designate, the voting precinct or precincts and the place or places at which the polls will be open for such election in such territory so proposed to be annexed, which said place or places shall be that or those commonly used as voting places within such territory, if any such there be. The legislative body of such municipal corporation is empowered to, and it shall, appoint the officers of such election, who shall be, for each voting place in such territory, two judges and one inspector, each of whom shall be a qualified elector of the voting precinct in which he is appointed to act as an officer of such election. Upon the ballots to be used at such election, there shall be printed the words "shall (giving the name or other designation of the territory proposed to be annexed, as stated in the notice of election) be annexed to the city of (stating name of city)?—Yes," and "shall (giving the name or other designation of the territory proposed to be annexed, as stated in the notice of election) be annexed to the city of (stating name of city)?—No," and there shall be a voting square to the right of and opposite each such proposition. If an elector shall stamp a cross (X) in the voting square after the printed word "Yes," the vote of such elector shall be counted in favor of the annexation of the territory referred to in such proposition to the municipal corporation named therein; and if an elector shall stamp a cross (X) in the voting square after the printed word "No," the vote of such elector shall be counted against such annexation. The ballots used at such election, the opening and closing of the polls, and the holding and conducting of such election, shall be in conformity, as near as may be, with the laws of this state concerning general elections, except as herein otherwise provided. The judges and inspector of such election for each polling place shall immediately on the closing of the polls, count the ballots, make up, certify and seal the ballots and tally sheets of the ballots cast at their respective polling places, doing so, as nearly as practicable, in the manner provided in the laws of this state relating to general elections, and they shall thereupon deliver the ballots, tally sheets, and returns to and deposit the same with the clerk of the legislative body of such municipal corporation. Such legislative body shall, at the time provided for its regular meeting next after the expiration of three days from and after the date of said election, meet and proceed to canvass said returns; and such canvass shall be completed at such meeting, if practicable, and in any event, as soon as practicable, avoiding adjournment or adjournments, until said canvass is completed. Immediately upon the completion of such canvass, said legislative body shall cause a record thereof to be made and entered upon its min-

utes, stating the proposition submitted and showing the whole number of votes cast thereon in the territory proposed to be annexed, the number of votes cast therein in favor of annexation, and the number of votes cast therein against annexation.

Should majority in outside territory favor. Question submitted in city.

§ 3. If it shall appear from the canvass of the returns of the election held in the territory proposed to be annexed to any municipal corporation, as provided in section two of this act, that a majority of all the votes cast in such outside territory on the question of such annexation are in favor of annexation, such legislative body may, by ordinance, approve such annexation, or, in case of failure to so approve, by ordinance, such annexation, shall then submit to the electors of such municipal corporation the question whether such territory shall be annexed to, incorporated in and made a part of such municipal corporation. Such question may be so submitted at the next general municipal election to be held in such municipal corporation, or it may be so submitted prior to such general election, either at a special election called therein for that purpose, or at any other special municipal election therein, except an election at which the submission of such question is prohibited by law. Whenever such question is submitted at any election in such municipal corporation, such question shall be stated in the notice of such election and on the ballots to be used at such election, and the electors shall vote thereon, in the same manner as hereinbefore provided in the case of the election in the territory proposed to be annexed. And whenever such question is submitted at any such municipal election, general or special, as above provided, it shall be submitted and voted upon as other questions are required by law to be submitted and voted upon at such elections, except in particulars otherwise in this act set forth; and the laws applicable to and governing the time and manner of giving notice, conducting, holding, canvassing the returns, and declaring the result of any such election shall apply to and govern the submission of such question to the electors of such municipal corporation at any such election. [Amendment of April 2, 1917. In effect July 27, 1917. Stats. 1917, p. 26.]

Record of votes cast. Should majority favor. Annexation complete. Territory of a city may not be annexed.

§ 4. Immediately upon the completion of the canvass of the returns of any election in any municipal corporation at which the question of annexation of new territory thereto was submitted, as in this act provided, the legislative body of such municipal corporation shall cause a record to be made, and entered upon its minutes, showing the total number of votes cast in such municipal corporation upon such question at such election, the number thereof cast in favor of annexation, and the number thereof cast against annexation. If it shall appear from the canvass of the returns of such election, that a majority of the qualified electors of such municipal corporation voting on the question of such annexation are in favor thereof, the clerk or other officer performing the duties of clerk of the legislative body of such municipal corporation shall make and certify, under the seal thereof, and transmit to the secretary of state, a copy of the record of the canvass of the returns of the election in such new territory and of the election in such municipal corporation at which the question of the annexation of the said new territory was submitted and entered upon its minutes as aforesaid, together with a statement showing the dates of such elections in said new territory and in said municipal corporation, and the time and the result of the canvass of the returns of such elections, and containing a description of such territory. If such annexation has been approved by ordinance of such legislative body, as herein authorized, a certified copy of such ordinance, giving the date of its passage, shall be substituted in said document in place of the copy of the record of the canvass of the returns of the election in such municipal corporation provided for in case such annexa-

tion was not approved by ordinance. Said document, in either case, shall be filed by the secretary of state immediately upon the receipt thereof. From and after the date of the filing of said document in the office of the secretary of state, the annexation of such territory so proposed to be annexed and described therein, shall be deemed to be and shall be complete, and thenceforth such annexed territory shall be, to all intents and purposes, a part of such municipal corporation, except only that no property within such annexed territory shall ever be taxed to pay any portion of any indebtedness or liability of such municipal corporation contracted prior to or existing at the time of such annexation, excepting as hereinafter provided. No territory which, at the time of the presentation of a petition to the legislative body of any municipal corporation for the annexation of such territory thereto forms any part of any municipal corporation, shall be annexed under the provisions of this act. [Amendment of April 2, 1917. In effect July 27, 1917. Stats. 1917, p. 27.]

Question of taxing annexed territory to pay indebtedness of city. Proposition submitted. Notice to specify improvements, etc. Should majority favor. Annexation complete. When property subject to taxation.

§ 5. Whenever any municipal corporation to which it is proposed to annex territory under the provisions of this act shall have incurred, or authorized the incurring of, any bonded indebtedness for the acquisition, construction or completion of any municipal improvement or improvements, the petition presented to the legislative body of such municipal corporation, as provided in section two of this act, may contain a request that the question to be submitted to the electors residing in the territory proposed by such petition to be annexed to such municipal corporation, shall be, whether such new territory shall be annexed to, incorporated in, and made a part of, said municipal corporation, and the property therein be, after such annexation, subject to taxation, equally with the property within such municipal corporation, to pay any specified portion of such bonded indebtedness of such municipal corporation, outstanding at the date of the filing of such petition or theretofore authorized. If such request shall be made in said petition, proceedings shall be had thereon, and an election shall be called and held in the territory proposed to be annexed, the same in all respects as upon a petition presented under the provisions of section two of this act, excepting that the notice of election shall distinctly state the proposition to be submitted to wit: that it is proposed to annex to, incorporate in, and make a part of, such municipal corporation, the territory sought to be annexed, specifically describing the boundaries thereof, and that the property therein, shall, after such annexation, be subject to taxation, equally with the property within such municipal corporation, to pay such specified bonded indebtedness of such municipal corporation, outstanding at the date of the said annexation, or indebtedness theretofore authorized and to be represented by bonds of such municipal corporation thereafter to be issued. The said notice shall, in general terms, specify the improvement or improvements for which such indebtedness was so incurred or authorized, and state the amount or amounts of such indebtedness already incurred, outstanding at the date of the first publication of such notice, and the amount or amounts of such indebtedness theretofore authorized, and to be represented by bonds thereafter to be issued, and the maximum rate of interest payable, or to be payable on such indebtedness; and upon the canvass of the returns of the votes cast in any territory proposed to be annexed at any election held therein under the provisions of this section, if it shall appear that a majority of all the votes cast in such outside territory are in favor of annexation, the legislative body of such municipal corporation may, by ordinance, approve such annexation; or, in case of failure to so approve, by ordinance, such annexation, shall submit to the electors thereof the question whether such territory shall be annexed to, incorporated in and made a part of such municipal corporation. Such question may be so submitted to the electors of such municipal corporation

in the same manner as provided in section three of this act, and if it shall appear from the canvass of the returns of the election in such municipal corporation at which such question shall have been submitted, that a majority of the qualified electors thereof voting upon the question of such annexation are in favor thereof, like proceedings shall thereupon be taken, and with the same force and effect as provided in sections three and four of this act. The provisions of sections two, three and four of this act, so far as applicable, shall apply to annexation under the provisions of this section. From and after the date of the filing in the office of the secretary of state of the document containing a copy of the record of the proceedings for the annexation of such new territory to such municipal corporation, as provided in section four of this act, the annexation of such territory so proposed to be annexed, and described therein, shall be deemed, and shall be, complete, and thenceforth such annexed territory shall be, to all intents and purposes a part of such municipal corporation, and the property within such annexed territory shall be taxed to pay the bonded indebtedness or liability of such corporation, specified in said notice, equally with the property within such municipal corporation as it existed prior to the filing of such petition.

The property in any such new territory annexed to any municipal corporation, under the provisions of this act, after twelve o'clock meridian of the first Monday in March, and before the completion of the assessment roll of such municipal corporation, shall be subject to taxation for municipal purposes for the fiscal year following said first Monday in March. [Amendment of April 2, 1917. In effect July 27, 1917. Stats. 1917, p. 28.]

This section was also amended April 29, 1915. In effect August 8, 1915. Stats. 1915, p. 305.

Propositions to annex two or more bodies of territory may be voted on at one time.

Failure of one proposition does not affect others. Case of territory not contiguous; exception.

§ 6. Nothing in this act contained shall be construed to prevent the submission to the electors of any municipal corporation as separate propositions to be voted upon separately at one and the same election therein, of the questions of the annexation to any such municipal corporation of two or more bodies of outside territory, each of which is contiguous to such municipal corporation, or to one such body of outside territory that is contiguous. Whenever, upon proceedings had and taken and at elections called and held in accordance with the provisions of this act, the electors of each of two or more such bodies of outside territory have voted in favor of the annexation thereof to the same municipal corporation, the legislative body of such municipal corporation must submit to the electors thereof, as separate propositions, each to be voted upon separately and without regard to the others, the question whether each such bodies of new territory shall be annexed to, incorporated in and made a part of such municipal corporation. Such questions may be so submitted at the next general municipal election to be held in such municipal corporation, or they may be so submitted prior to such general election, either at a special election called therein for that purpose, or at any other special election at which the submission of such questions is not prohibited by law. The notice of such election shall state, as separate propositions to be submitted at such election, the question of the annexation of each body of new territory, in the same manner as hereinbefore provided in the case of the notice of an election in such municipal corporation at which the question of the annexation of only one body of new territory thereto is submitted; and the question as to each such body of new territory, shall be printed upon the ballots to be used at such election and the same shall be voted upon, separately, in like manner as hereinbefore provided in the case of the submission of the question of the annexation of one body of such new territory. The provisions of section three of this act shall apply to such election in all respects the same as in the case of an election where only one such question is submitted; provided, however, that the annexation of any such body or bodies of new territory, upon the question or

questions of the annexation of which a majority of the votes cast thereon at such election shall have been cast in favor thereof, shall not be affected or prejudiced in any manner, in the event that a majority of the votes cast at such election upon the question or questions of the annexation of any other body or bodies of new territory, shall have been cast against the annexation thereof, except that in the case of any such body of new territory which is not contiguous to said municipal corporation, but which is contiguous to one of said bodies of new territory that is contiguous to said municipal corporation, no majority vote in favor of such annexation of such body of new territory not contiguous to said municipal corporation shall be effective for any of the purposes of this act, unless also there shall have been cast at said election a majority vote in favor of the annexation of the said intervening body of new territory which is contiguous to said municipal corporation, and through which last named body of new territory contiguity with said municipal corporation is established by said body of new territory theretofore not contiguous with said municipal corporation.

Questions deemed adopted. Record of canvass of returns. Records not to include propositions that failed.

If it shall appear from the canvass of the returns of such election, that a majority of the qualified electors of such municipal corporation voting separately upon the question or questions of the annexation of any one or more bodies of new territory, except as last above provided in this section, are in favor thereof, such question or questions shall be deemed adopted, and the clerk or other officer performing the duties of clerk of the legislative body of such municipal corporation, shall forthwith make and certify, under the seal thereof, and transmit to the secretary of state, a copy of the record of the canvass of the returns of the election in each such body of new territory, at which the electors residing therein shall have voted in favor of the annexation thereof to such municipal corporation, as hereinbefore provided, and of the canvass of the returns of the election in such municipal corporation at which the questions of the annexation of each such bodies of new territory were submitted, and entered upon its minutes as aforesaid, together with a statement showing the date of the elections in each such body of new territory, and in such municipal corporation, and the time and result of the canvass of the returns of such elections; provided, however, that the aforesaid record and statement as to any number of such annexations may be included in one document; and provided, further, that said clerk, or other officer, shall not include in said copy or statement any record of the votes cast or the elections held upon the proposition of the annexation of any such body of new territory, which proposition shall have failed of adoption under the provisions of this section. From and after the date of the filing of said document in the office of the secretary of state, the annexation of each body of new territory described therein, and so proposed to be annexed shall be deemed to be, and shall be complete, and thereafter each such body of annexed territory shall be, to all intents and purposes, a part of such municipal corporation, with the same force and effect as in the case of other annexations under this act. [Amendment of April 29, 1915. In effect August 8, 1915. Stats. 1915, p. 307.]

Petition for annexation to be made to only one municipality.

§ 7. Whenever a petition for the annexation of any new territory to any municipal corporation has been received by the legislative body thereof, as in this act provided, no petition, filed under this or any other act, asking for the annexation, in whole or in part, of the territory described in such petition, to any other municipal corporation, shall be presented to the legislative body of such other municipal corporation, and the last mentioned legislative body shall not submit the question of the annexation of such territory or any part thereof to the electors of such other municipal corporation, until the question of the annexation thereof to the municipal corporation whose legislative

body received the petition first in this section mentioned shall have been submitted to the electors residing in such territory, and a majority of electors voting upon such question in such territory, shall have voted against the annexation thereof to such municipal corporation, or, in the event that a majority of the electors in such territory voting therein shall have voted in favor of the annexation thereof to such municipal corporation, until the question of such annexation shall have been submitted to the electors of such municipal corporation, and a majority of the electors thereof voting upon such question, shall have voted against the annexation thereof to such municipal corporation. In the event any election authorized by this act is not called or held in the manner or within the time specified in this act, all proceedings relating to such consolidation shall be and become null and void.

Five electors may file notice of intention to circulate petition for annexation. Resolution acknowledging notice of intention. Adverse result of election; no new petition within fifteen days.

Any five electors of a district in which it is proposed to circulate a petition asking for annexation of the territory included in such district as herein provided, may file with the legislative body of the municipal corporation to which such territory is sought to be annexed, a notice declaring their intention to circulate and file a petition asking for the annexation of the territory included in such district and described in said notice. Upon the receipt of any such notice of intention, such legislative body may, within five days thereafter, adopt a resolution acknowledging the receipt thereof and approving the intention of the petitioners to circulate such petition. Within thirty days after the adoption of such resolution no petition filed under this or any other act, asking for the annexation of all or any portion of the territory described in said notice of intention shall be filed with any other municipal corporation. If, upon the holding of the election in the territory sought to be annexed to said municipal corporation in the manner herein provided, the result of such election is adverse to such annexation, no new petition embracing the same territory, or any portion thereof, shall be filed with said municipal corporation within fifteen days after the result of such election has been canvassed and declared. [Amendment of April 29, 1915. In effect August 8, 1915. Stats. 1915, p. 309.]

Adding territory to wards of city.

§ 8. The legislative body of any municipal corporation which is or shall be divided into wards, and to which territory has been heretofore or shall be hereafter annexed, under the provisions of this act, must by ordinance either so alter the boundaries of the wards of such municipal corporation as to include such annexed territory in one or more wards adjoining such annexed territory, or make of such annexed territory one or more additional wards; provided, that the number of wards shall not be so increased as to exceed the number which such municipal corporation may have according to law. In altering the boundaries of wards, or creating new wards, regard must be had to the number of inhabitants, so that each ward shall contain, as near as may be, an equal number of inhabitants, exclusive of persons ineligible to citizenship in this state.

Legislative districts not affected.

§ 9. Nothing in this act contained shall alter or affect the boundaries of any senatorial or assembly district.

Expenses. Road tax uncollected to belong to city. Applies to all taxes.

§ 10. All proper expenses of proceedings for annexation of territory under this act, whether such annexation shall be made and completed or not, shall be paid by the municipal corporation so annexing or attempting to annex such territory. In the event that a tax for road purposes has been levied by the board of supervisors of any county

against property situated in territory which, subsequent to such levy, is annexed to any municipal corporation under the provisions of this act, but which, at the time of such annexation has not been collected, then all such taxes so uncollected shall be and become the property of the municipal corporation to which such territory is annexed, and the same shall, with other county taxes, be collected by the county tax collector, and by him paid into the county treasury of said county, after which the same shall, by the county treasurer, be paid to such municipal corporation, upon proper warrant therefor. The town or city clerk, or other officer performing the duties of clerk of such municipal corporation, shall, at any regular meeting of the board of supervisors of said county, present, and file a verified claim for any money thus due such municipal corporation, setting forth the facts, and the date of such annexation, and the amount in the hands of said county treasurer so due such municipal corporation. Such claim shall be audited by the board of supervisors in the manner in which other claims against the county are audited, and if the amount thereof is correct, the same shall be allowed, and the county auditor instructed to draw his warrant for said amount against the road fund of the district in which such annexed territory is situated. This section shall apply to all such taxes not paid into the county treasury prior to the taking effect of this act.

Act of 1889 not repealed. Alternative method provided. Title of act.

§ 11. This act shall not repeal an act entitled "An act to provide for the alteration of the boundaries of and for the annexation of territory to incorporated towns and cities, and for the incorporation of such annexed territory in and as a part of such municipalities, and for the districting, government, and municipal control of annexed territory," approved March 19, 1889, or acts amendatory to said act, but is intended and does provide an alternative method for the annexation of territory to municipal corporations. When any proceedings for the annexation of territory to any municipal corporation are commenced under this act, the provisions of this act, and of such amendments thereof as may hereafter be adopted, and no other, shall apply to such proceedings. This act may be designated and referred to as the "annexation act of 1913." [Amendment of April 29, 1915. In effect August 8, 1915. Stats. 1915, p. 310.]

See, ante, Act 3054.

1. Jurisdiction to annex—School district.

—It is immaterial, so far as the jurisdiction of a board of trustees of a municipality is concerned, to annex contiguous territory, that the territory proposed to be annexed lies in a school district separate from that in which the city is located.—*Mitchell v. Henry*, 31 Cal. App. Dec. 597.

2. School district—Annexation of part—Becomes a part of city school district.

—Upon the annexation by a city of the sixth class of part of a school district of which the city is not a part, thus bringing about a division of the territory of the city between two school districts, the annexed territory is ipso facto taken out of the school district of which it was formerly a part and made a part of the district of which the city is either the whole or a part.—*Mitchell v. Henry*, 60 Cal. Dec. 532.

3. Territory part inhabited and part uninhabited—Procedure.

—Where a part of a body of land to be annexed to a municipality is inhabited and another part uninhabited, the procedure of the act of 1913 should have been followed as to the inhabited portions, and the procedure laid down in the act of 1899 as to the uninhabited

portions.—*People v. Lemoore*, 37 Cal. App. 79, 174 Pac. 93.

4. Sources of information as to sufficiency of petition not limited to registration lists.

—The city council is not limited as to the method to be pursued in informing its members as to the sufficiency of a petition for annexation of territory under the municipal corporations annexation act (Stats. 1913, p. 587, as amended, Stats. 1915, p. 305); but they are limited as to the source of their information to the records of the last registration of voters in the designated territory to be annexed.—*Wolfskill v. City Council of Los Angeles*, 178 Cal. 610, 614, 174 Pac. 45.

5. Signatures to petition—Report of city clerk—Determination of sufficiency.

—Where the city clerk, under instructions from the city council, performs the ministerial duty of examining the last registration of electors within the designated territory to be annexed under the municipal corporations annexation act, and reports the result to the city council, the latter is sufficiently informed to enable them to determine as to the sufficiency of the petition for annexation.—*Wolfskill v. City Council of Los Angeles*, 178 Cal. 610, 614, 174 Pac. 45.

6. Pending annexation proceeding—Organization of city including territory.—

Where valid annexation proceedings were pending the board of supervisors had no jurisdiction to entertain or act upon a proceeding to organize a city including the territory sought to be annexed, since the annexation act of 1913 as amended in 1915, in effect provided for the exclusiveness of annexation proceedings.—*People ex rel. Pasadena v. Monterey Park*, 40 Cal. App. 715, 181 Pac. 825.

7. Mandamus to compel calling special election.—

Under the municipal annexation act of 1913 a petition signed by one-fourth of the qualified electors of a city filed with the legislative body thereof, gave to such body the power and imposed the duty to call a special election for the consolidation of such municipality with an adjacent and contiguous one, and a certificate of sufficiency by the city clerk is not necessary.—*Hirons v. Clare*, 38 Cal. App. 608, 177 Pac. 291.

ANNEXATION OF UNINHABITED TERRITORY ACT OF 1899.

ACT 3056—An act to provide for the alteration of the boundaries of incorporated towns and cities by the annexation of uninhabited territory thereto, and for the incorporation of such annexed territory in and as a part of such municipality, and for the districting, government and municipal control of annexed territory.

History: Became a law under constitutional provision without the governor's approval March 2, 1899, Stats. 1899, p. 37.

Petition, notice, hearing, protest. Election. Annexation, when complete. Indebtedness.

§ 1. The boundaries of any incorporated town or city may be altered and new uninhabited territory annexed thereto, incorporated, and included therein, upon proceedings being taken as in this act provided. The legislative body of any such municipal corporation, upon receiving a written petition therefor, containing a description of the new uninhabited territory asked to be included in such corporation, and signed by not less than one-tenth in number of the qualified electors of such municipal corporation, computed upon the number of votes cast at the last general municipal election held therein, must, without delay, notify the board of supervisors of the county in which said town or city is located of the fact of the filing of such petition. Upon the receipt of such notification, it shall be the duty of said board of supervisors to cause notice to be published for a period of five days, setting forth by general description the land sought to be annexed to the said municipality, and announcing the time and place when and where objections to said annexation will be heard. Any person owning any land so sought to be annexed, may object to said annexation by filing a written remonstrance with the said board of supervisors. At the time specified in said notice, or at such other time as may be fixed by postponement, the said board of supervisors shall hear the said protestations, and unless the remonstrances are filed by the owners of any single tract of land exceeding five acres in area, or by the owners of more than one-half of the land sought to be annexed, the decision of said board of supervisors upon said protestations shall be final and conclusive. In the event that the owners of more than one half of the land so sought to be annexed, or the owners of any single tract of land exceeding five acres in area, file remonstrances against such annexation, said protestations shall be sustained by said board of supervisors, and shall be a bar to any further proceedings under the provisions of this act for the period of one year. In the event that there are no protestations filed, or, if filed, if the same are overruled by said board of supervisors, and the said board shall, by resolution, consent to the annexation of said new uninhabited territory by the municipality, it shall then be the duty of the legislative branch of said municipality to submit to the electors of such municipality the question whether or not said new territory shall be annexed to, and incorporated in, and made a part of, such municipal corporation. Such question shall be submitted at a special election to be held for that purpose, or at any municipal election. Notice of said election shall be published in a newspaper, printed in such city or town, at least once a week for a period of two weeks next preceding such election. Said notice shall state that it is proposed to incorporate the territory sought to be annexed as a part of such municipal

corporation, and invite the electors of said city or town to vote upon such proposition, by marking their ballots "For annexation," or "Against annexation." In said notice, the territory sought to be annexed may be generally described in such manner as to apprise the voters of the particular land sought to be annexed. Said legislative body is hereby empowered, and it shall be its duty to establish, and in such notice of election designate the voting precinct or precincts, and the place or places at which the polls will be opened in said city or town, and said elective body is empowered to appoint the officers of such election, who shall be for each voting place at least two judges and one inspector, each of whom shall be qualified elector of said city. The judges and inspectors of such election shall, immediately upon the closing of the polls, count the ballots, make up and certify the returns of the ballots cast at their respective polling places as quickly as practicable, in the manner provided in the laws of this state, and deposit all said returns with the clerk of said city or town. Said legislative body shall, at the time provided for its regular meeting next after the said returns are filed with the said clerk of said city or town, meet and proceed to open and canvass said returns, and immediately upon the completion of such canvass cause a report thereof to be made and entered upon its minutes, showing the whole number of votes cast, and the number cast in favor of annexation, and the number cast against annexation; and if it shall appear from such canvass that a majority of all the votes cast is in favor of annexation, the clerk or other officer performing the duties of the clerk of such legislative body shall make and certify, under the seal of said municipal corporation, and transmit to the secretary of state, and to the board of supervisors of the county in which said city or town is located, a copy of said report so entered upon its minutes, together with a statement showing the date of said election, and the time and result of said canvass, which document shall be filed by the secretary of state and the clerk of said board of supervisors. From and after the date of the filing of said document in the office of the secretary of state, the annexation of such territory so proposed to be annexed shall be deemed and shall be complete, and thenceforth such annexed territory shall be a part of such municipal corporation for all intents and purposes, except only that no part of such annexed territory shall ever be taxed to pay any portion of any indebtedness or liability of such municipal corporation contracted prior to or existing at the time of such annexation. No territory which at the time the said petition for proposed annexation is presented to said legislative body forms any part of any incorporated city or town shall be included under the provisions of this act.

Altering boundaries of wards on annexation.

§ 2. The legislative body of any incorporated city or town which is or shall be divided into wards, and which territory has been heretofore or shall be hereafter annexed, must by ordinance so alter the boundaries of the wards of said municipal corporation as to include such annexed territory, in one or more wards adjoining such annexed territory, or may form such annexed territory into one or more additional wards; provided, that the number of wards shall not be so increased as to exceed the number which said municipal corporation may, according to law, have.

Senatorial and assembly districts not affected.

§ 3. Nothing in this act provided for shall alter or affect the boundaries of any senatorial or assembly district.

Expenses, city annexing territory to pay.

§ 4. All proper expenses of proceedings for annexation of territory under this act, whether such annexation shall be made and completed or not, shall be paid by the municipal corporation so annexing or attempting to annex such territory.

Effect on prior laws.

§ 5. Nothing in this act shall be deemed to repeal the provisions of any act now providing for the annexation of inhabited territory, but territory shall be deemed uninhabited, for the purposes of this act, unless the occupants are bona fide residents thereof.

Time of taking effect.

§ 6. This act shall take effect and be in force from and after its approval.

See Act 3054 and notes.

1. Territory part inhabited and part uninhabited.—Procedure.—Where a part of a body of land to be annexed to a municipality is inhabited and another part uninhabited, the procedure of the act of 1913

should have been followed as to the inhabited portions, and the procedure laid down in the act of 1899 as to the inhabited portions.—*People v. Lemoore*, 37 Cal. App. 79, 174 Pac. 93.

ANNEXATION VALIDATION ACT OF 1915.

ACT 3057—An act to validate proceedings for the annexation of territory to, incorporation in, and inclusion thereof, within municipal corporations.

History: Approved May 25, 1915. In effect August 8, 1915. Stats. 1915, p. 835. Prior act, having the same tenor and effect, of May 1, 1911, Stats. 1911, p. 1424.

Annexation of territory to cities validated.

§ 1. Any territory which purports to have been heretofore annexed to, incorporated in, and included within a municipal corporation under "An act to provide for the alteration of the boundaries of and for the annexation of territory to incorporated towns and cities, and for the incorporation of such annexed territory, in and as a part of such municipalities, and for the districting, government and municipal control of annexed territory," approved March 19, 1889, and the acts amendatory thereof, the certified record whereof, showing the facts required in said act, shall have heretofore been filed by the secretary of state as required in said act, is hereby declared to be and to have been since the filing of said record, duly annexed to, incorporated in, and included within such municipal corporation; and all proceedings for the annexation of such territory are hereby validated and declared legal.

EXCLUSION ACT OF 1889.

ACT 3059—An act to provide for changing the boundaries of cities and municipal corporations, and to exclude territory therefrom.

History: Approved March 20, 1889, Stats. 1889, p. 433. Amended March 21, 1905, Stats. 1905, p. 715. Prior act of March 19, 1889, Stats. 1889, p. 356, was probably superseded in part by the present act, and entirely by the amending act of 1905. See notes.

Exclusion of territory and changing boundaries of municipal corporations.

§ 1. The boundaries of any city or municipal corporation may be altered, and territory excluded therefrom after proceeding had, as required in this section. The council, board of trustees, or other legislative body of such corporation, shall upon receiving a petition therefor, signed by not less than a majority of the qualified electors thereof, as shown by the vote cast at the last municipal election held therein, submit to the electors of such corporation the question whether such territory as is proposed by such petition shall be excluded from such municipal corporation and cease to be a part thereof. Such question shall be submitted at a special election to be held for that purpose, and such legislative body shall give notice thereof by publication in a newspaper printed and published in such corporation for a period of four weeks prior to such election. Such notice shall distinctly state the proposition to be so submitted, and shall designate specifically the boundaries of the territory so proposed to be excluded. And the electors shall be invited thereby to vote upon such proposition by placing upon

their ballots the words "For exclusion" or "Against exclusion," or words equivalent thereto; such legislative body shall also designate the place or places at which the polls will be opened in such territory so proposed to be excluded, which place or places shall be that or those usually used for that purpose within such territory, if any such there be, and for the purposes of this act, the qualified electors residing in the territory proposed to be excluded shall be entitled to vote at the polls in such territory, and not elsewhere. Such legislative body shall also appoint and designate in such notice the names of the officers of election. Such legislative body shall meet on the Monday next succeeding the day of such election, and proceed to canvass the votes cast thereat. The votes cast in such territory so proposed to be excluded shall be canvassed separately, and if it shall appear on such canvass that a majority of all the votes cast in such territory, and a majority of all the votes in such corporation, shall be for exclusion, such legislative body shall, by an order entered upon their minutes, cause their clerk, or other officer performing the duties of clerk, to make and transmit to the secretary of state a certified abstract of such vote, which abstract shall show the whole number of electors voting in such territory, the whole number of electors voting in such corporation, exclusive of such territory, the number of votes cast in each for exclusion, and the whole number of votes cast in each against exclusion. From and after the date of filing such abstract, such exclusion of territory from such municipal corporation shall be deemed complete, and thereafter such territory shall cease to be a part of such municipal corporation; provided, that nothing contained in this act shall be held to relieve in any manner whatsoever any part of such territory from any liability for any debt contracted by such municipal corporation prior to such exclusion; and provided further, that such municipal corporation is hereby authorized to levy and collect from any territory so excluded, from time to time, such sums of money as shall be found due from it on account of its just proportion of liability for any payment on the principal or interest of such debts. Such assessment and collection shall be made in the same manner and at the same time that such assessment and collection is levied and made upon the property of such municipal corporation for any payment on account of such debts; and provided further, that any such territory so excluded from any municipal corporation may at any time tender to the legislative body of such municipal corporation the amount for which such territory is liable on account of such debts, and after such tender is made, such authority as is herein given such municipal corporation to levy and assess taxes on such excluded territory shall cease; provided, however, that after an election shall have been held for the exclusion of any portion of a municipal corporation, if the vote shall be against exclusion, no election for the exclusion of the same territory shall again be held within three years from the date of such former election. [Amended 1905, p. 715.]

§ 2. This act shall take effect and be in force from and after its passage.

The amending act of 1905, contained the following:

Repeal of conflicting acts.

§ 2. All acts and parts of acts in conflict herewith are hereby repealed.

Editor's note: The code commissioners say the act of March 19, 1889, was superseded, in part at least, by the present act. They give no reasons. With trifling exceptions the only difference between the two acts is the omission from the later act of section 2 of the former, which made certain provisions for rights and remedies in case exclusion was voted down. This section was certainly not superseded, either by the present act or by the amending act of 1905, and it is probably still in force.

A doubt may be said to exist upon the point, to which attention is called. As to the remainder of the earlier act, it was undoubtedly superseded, if not repealed, by the amending act of 1905.

1. Constitutionality.—Act is general law.—The act is a general law and constitutional.—*People ex rel. Connolly v. Coronado*, 100 Cal. 571, 572, 35 Pac. 162.

2. Comparison between acts.—For a comparison between the two acts approved March 19th and March 20th, respectively,

1889, both dealing with the exclusion of territory from municipalities.—See *People ex rel. Miller v. Common Council*, 85 Cal. 369, 24 Pac. 727.

3. Purpose of act—Right of elector and property owner—Mandamus denied.—The exclusion act of 1889 (Stats. 1889, p. 356) was intended to provide for ordinary reasonable changes of the boundaries of cities and not as a means for the practical disincorporation of cities; and where it appears that the extent and proportion of the population sought to be excluded from a city would leave less than one-half the population necessary to form a municipal corporation, the right of an elector and property owner to a writ of mandate to compel the trustees to call an election for the purpose of submitting the question of exclusion to the electors will be denied.—*Wiedwald v. Dodson*, 95 Cal. 450, 30 Pac. 580.

4. Applies to San Diego.—The act ap-

plies to the city of San Diego, and empowered that city to exclude the territory known as Coronado Beach thereof.—*People ex rel. Connolly v. San Diego*, 100 Cal. 571, 35 Pac. 162.

5. Adjustment of corporate debts.—In case of exclusion of territory from a municipality the legislature is empowered to adjust the burden as to existing corporate debts, and may change such adjustment at will where constitutional rights are not involved.—*Johnson v. San Diego*, 109 Cal. 468, 42 Pac. 468.

6. Equitable imposition of burden.—Where the existing corporate debt was for moneys expended within the territory remaining after exclusion, and none invested in the excluded territory, it is not inequitable to impose the whole burden on the former.—*Johnson v. San Diego*, 109 Pac. 468, 42 Pac. 468.

EXCLUSION OF UNINHABITED TERRITORY ACT OF 1913.

ACT 3060—An act to provide for changing the boundaries of cities and municipal corporations, and to exclude uninhabited territory therefrom.

History: Approved June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 703.

Excluding uninhabited territory from cities. Notice to be published. Objection to exclusion. When more than half of owners remonstrate. Election. Voting places, etc. Election returns. Exclusion deemed complete.

§ 1. The boundaries of any city or municipal corporation may be altered, and uninhabited territory excluded therefrom, after proceedings had, as required in this section. The legislative body of any municipal corporation, upon receiving a written petition therefor, containing a description of the uninhabited territory proposed to be excluded from said corporation, and signed by not less than one tenth in number of the qualified electors of such municipal corporation, computed on the number of votes cast at the last general municipal election held therein, must, without delay, notify the board of supervisors of the county in which said town or city is located of the fact of filing such petition. Upon receipt of such notification it shall be the duty of said board of supervisors to cause a notice to be published in said county for a period of five successive days in case there is a daily newspaper therein, or in case where there is only a weekly or semi-weekly newspaper published therein then, for two successive weekly or semi-weekly publications, setting forth by general description the land sought to be excluded from the said municipality and announcing the time and place when and where objections to said exclusion will be heard. Any person owning any land so sought to be excluded may object to said exclusion by filing a written remonstrance with the said board of supervisors. At the time specified in said notice, or at such other time as may be fixed by postponement, the said board of supervisors shall hear the said protestations, and unless the remonstrances are filed by the owners of more than one half of the land sought to be excluded, the decision of said board of supervisors upon said protestations shall be final and conclusive. In the event that the owners of more than one half of the land sought to be excluded, or the owners of any single tract of land exceeding five acres in area, file remonstrances against such exclusion, said protestations shall be sustained by the board of supervisors and shall be a bar to any further proceedings under the provisions of this act for the period of one year. In the event that there are no protestations filed or if filed, if the same are overruled by said board of supervisors, and the said board shall by resolution consent to the exclu-

sion of said uninhabited territory by the municipality, it shall then be the duty of the legislative branch of said municipality to submit to the electors of such municipality the question whether or not said territory proposed to be excluded shall be excluded from said municipal corporation. Such question shall be submitted at a special election to be held for that purpose, or at any municipal election. Notice of said election shall be published in a newspaper, printed in such city or town, at least once a week for a period of two weeks next preceeding such election. Said notices shall state that it is proposed to exclude the territory sought to be excluded from said municipal corporation and invite the electors of said city or town to vote upon such proposition by placing a cross (X) opposite the words "For exclusion" or the words "Against exclusion" to indicate whether they vote for or against the exclusion of such territory. In said notice the territory sought to be excluded may be generally described in such manner as to apprise the voters of the particular land or territory sought to be excluded. Said legislative body is hereby empowered and it shall be its duty to establish and in such notice of election designate the voting precinct or precincts, or places at which the polls will be opened in said city or town, and said elective body is empowered to appoint the officers of such election, who shall be for each voting place at least two judges and one inspector, each of whom shall be a qualified elector of said city or town. The judges and inspectors of such election shall immediately upon the closing of the polls, count the ballots, make up and certify the returns of the ballots cast at their respective polling places, as quickly as possible, in the manner provided in the laws of this state, and deposit all said returns with the clerk of said city or town. Said legislative body shall, at the time provided for its regular meeting next after said returns are filed with the clerk of said city or town, meet and proceed to open and canvass said returns, and immediately upon the completion of such canvass cause a report thereof to be made and entered upon its minutes, showing the whole number of votes cast and the number cast in favor of exclusion and the number cast against exclusion; and if it shall appear from such canvass that a majority of votes cast is in favor of exclusion, the clerk or other officer performing the duties of the clerk of such legislative body shall make and certify, under the seal of such municipal corporation, and transmit to the secretary of state and to the board of supervisors of the county in which said city or town is located, a copy of said report so entered upon its minutes, together with a statement showing the date of said election and the time and result of said canvass, which document shall be filed by the secretary of state and the clerk of said board of supervisors. From and after the date of filing of said document in the office of the secretary of state, the exclusion of such territory so proposed to be excluded shall be deemed and shall be complete and thenceforth such extended territory shall cease to be a part of such municipal corporation, for all intents and purposes; provided, that nothing contained in this act shall be held to relieve in any manner whatsoever any part of said territory from any liability for any debt contracted by such municipal corporation prior to such exclusion; and provided, further, that such municipal corporation is hereby authorized to levy and collect from any territory so excluded from time to time such sums of money as shall be found due from it on account of its just proportion of liability for any payment on the principal or interest of such debts.

Legislative district not affected.

§ 2. Nothing in this act shall alter or affect the boundaries of any senatorial or assembly district.

Expenses.

§ 3. All proper expenses of proceedings for exclusion of uninhabited territory under this act, whether such exclusion shall be made and completed or not, shall be paid by the municipal corporation so excluding or attempting to exclude such territory.

CENSUS.

ACT 3062—An act to authorize any city, or city and county of this state to take its census.

History: Approved February 25, 1897, Stats. 1897, p. 28.

Legislative body may take census.

§ 1. The council, or other legislative body of any city in this state, and the board of supervisors, or other legislative body of any city and county of this state, is hereby authorized, whenever said council, board of supervisors, or other legislative body, may deem it necessary, between the years of taking the federal census, to take the census of such city, city and county, in the manner prescribed by section 2 of this act.

Manner of taking census.

§ 2. Said council, board of supervisors, or other legislative body of any city, or city and county of this state electing to take a census, as in this act provided for, shall pass a resolution of intention declaring its intention to cause such census to be taken by one or more suitable persons appointed therefor by such council, board of supervisors, or other legislative body, at the expense of said city or cities desiring such census taken, and such census shall, by such persons so appointed, be taken of all the inhabitants of such city, or city and county, and in said census the full name of each person shall be plainly written and the names alphabetically arranged and regularly numbered in one complete series, and when completed shall be verified before any officer authorized to administer oaths, and be filed with the clerk of such city, or city and county.

Certified copy.

§ 3. A certified copy of such census shall be prepared by said clerk after being so filed, and shall be filed by him with the secretary of state for this state, and thereupon the same shall be known and be the official state census of said city, or city and county.

§ 4. This act shall take effect and be in force from and after its passage.

Taking of census: See Political Code, § 4055.

Citations.—In re Mitchell, 120 Cal. 384, 385, 387, 390, 391, 394, 52 Pac. 799.

CONSOLIDATION ACT OF 1909.

ACT 3063—An act to provide for the consolidation of municipal corporations.

History: Approved March 11, 1909, Stats. 1909, p. 282. Amended April 27, 1911, Stats. 1911, p. 1199.

Consolidation of municipalities, proceedings for.

§ 1. Two or more municipal corporations, each one of which is contiguous to the other, or to one of the others of said municipal corporations, either one or more of which shall be incorporated under general laws, or operating under a freeholders' charter, may become consolidated into one municipal corporation, to be thereafter governed in the name and under the general municipal incorporation law, or freeholders' charter, as the case may be, under which the greater or greatest in population of such municipal corporations, as shown by the last federal census, may be governed, pursuant to proceedings had and taken in accordance with the provisions of this act. If any one or more of said municipal corporations shall have been incorporated subsequent to the taking of the last federal census, the greater or greatest in population of such municipal corporations shall, for the purposes of this act, be deemed to be the municipal corporation in which the larger or largest vote was cast at the last preceding general state election.

Submission of question to electors. Special election.

§ 2. The council, board of trustees, or other legislative body of the one of said municipal corporations having the greater or greatest population, ascertained as hereinbefore provided, shall, upon receiving a petition therefor, signed by not less than one-

fifth of the qualified voters of each of said municipal corporations designated in said petition and proposed to be consolidated, as shown by the total number of votes cast at the last preceding general state election in each of said municipal corporations respectively, forthwith submit to the qualified electors of each of such corporations the question whether such municipal corporations shall become consolidated into one municipal corporation, to be governed in the name, and under the freeholders' charter, or as a city of the class under the general municipal incorporation law, as the case may be, under which the greater or greatest in population of such municipal corporations, ascertained as hereinbefore provided, may be governed at the time such petition is so received. Such legislative body shall designate a day upon which a special election shall be held in each of such municipal corporations so proposed to be consolidated for the purpose of submitting to the qualified electors of each of said municipal corporations the question whether such consolidation shall be effected, and shall cause written notice that such petition has been received, and of the date of such election, to be given by the clerk thereof to the council, board of trustees, or other legislative body of each of the other of such municipal corporations.

It shall thereupon be the duty of the legislative body of each of the municipal corporations so proposed to be consolidated to forthwith give notice of such election by publication in a newspaper printed, published and circulated in such municipal corporation, and designated for that purpose, by such legislative body, if any such newspaper be printed and published therein, at least once a week for four successive weeks prior to such election. If there be no newspaper printed, published and circulated in any one or more of such municipal corporations, the legislative body thereof shall cause such notice to be posted in three of the most public places in such municipal corporation in which there is no such newspaper for at least four weeks prior to such election. Such notice shall distinctly state the proposition so to be submitted, the names of the municipal corporations so proposed to be consolidated, the date of such election, which date shall be within twenty days after the expiration of the publication or posting of such notice, and shall be the same for all such municipal corporations so proposed to be consolidated. The legislative body of each of such municipal corporation shall establish, and in such notice of election shall designate the election precinct or precincts for said special election and the place or places at which the polls therefor will be opened in each municipal corporation proposed to be consolidated respectively; and in establishing such election precincts, such legislative body may consolidate the precincts which existed in such municipal corporation for the holding of the last preceding general state election, into special election precincts and to a number not exceeding three for each such special election precinct, and shall number such special election precincts so established consecutively, and each such special election precinct so established shall, for the purpose of such election, be known by the number so designated. Such notice shall direct the electors of each municipal corporation so proposed to be consolidated to vote upon the proposition of such proposed consolidation in the manner hereinafter provided. The legislative body of each such municipal corporation shall appoint officers of election from the registered electors of each precinct, or special election precinct, so established, as aforesaid, whose names appear upon the last assessment-roll of such municipal corporation, to serve as election officers only in the election precinct in which they are registered and actually reside, to constitute the election board for such precinct, which shall consist of two judges and one inspector. Upon the ballots to be used at such election there shall be printed the words "for consolidation," and "against consolidation," in separate lines, and there shall be a voting square at the right of and opposite to each such proposition. If an elector shall stamp a cross (X), in the voting square after and opposite to the printed words "for consolidation," his vote shall be counted in favor of consolidation; if he shall stamp a cross

(X) in the voting square after and opposite to the printed words against consolidation, his vote shall be counted against consolidation. The ballots used at such election, the opening and closing of the polls, and the holding and conducting of such election shall be in conformity, as near as may be, with the general laws of this state concerning general elections, except as herein provided.

The judges and inspectors of each such election precinct shall immediately on the closing of the polls canvass the ballots, make up and certify the tally-sheets of the ballots cast at their respective polling-places, seal up, and immediately return the ballots and tally-sheets as hereinafter provided. As soon as all the ballots are counted and sealed up, a statement must be attached to the tally-sheets showing the total number of votes cast, the number of votes cast in favor of consolidation, the number of votes cast against consolidation in each such election precincts and such statement must be signed by the members of the election board. The ballots and tally-sheets and returns shall be delivered to and deposited with the clerk of the legislative body of the municipal corporation, which received the petition hereinbefore mentioned, and submitted the question of such consolidation. In all particulars except as hereinbefore provided said canvass shall be conducted and said ballots and tally-sheets shall be returned as provided by law for general elections. The legislative bodies of each of such municipal corporations so proposed to be consolidated shall meet in joint convention at the regular place of meeting of the legislative body of the one of such municipal corporations that received the petition hereinbefore mentioned and submitted such question of consolidation as hereinbefore provided, on the Monday next succeeding the day of such election at the hour of ten o'clock a. m. of said day, for the purpose of canvassing the returns of said election and certifying the result thereof; provided, however, that the presence of a majority of the members of each of such legislative bodies at such joint convention shall constitute a quorum thereof, and shall be sufficient to enable such joint convention to perform the duties herein prescribed. The president of the council, board of trustees, or other legislative body of the municipal corporation in which such joint convention is held, shall be ex-officio president of such joint convention, and the city clerk of such municipal corporation shall be ex-officio the clerk thereof. Such joint convention shall at the time hereinbefore appointed, meet and proceed to canvass said returns, and such canvass shall be completed at such meeting if practicable, and in any event, within three days thereafter. Such canvass by such joint convention shall be conducted and completed as follows: The returns of the votes cast in each such municipal corporations shall be canvassed separately, and in such order as said joint convention, by a majority vote, shall direct. Immediately upon the completion of such canvass said joint convention shall cause a record thereof to be made and entered upon its minutes, showing the total number of votes cast in each such municipal corporation, the number thereof cast in each in favor of consolidation, and the number thereof cast in each against consolidation. If it shall appear from such canvass that a majority of the votes cast in each such municipal corporation shall be in favor of such consolidation, such joint convention, by an order entered upon its minutes shall declare the result and cause the clerk thereof to make an original abstract of the result of such election in each such municipal corporation, which abstract shall show the total number of votes cast at such election in each such municipal corporation, the number of votes cast in each for consolidation, and the number of votes cast in each against consolidation. Said abstract shall be signed by the president of such joint convention, and attested by the clerk thereof, under the seal of the municipal corporation in which such joint convention shall be held. Said clerk shall also make certified copies of such abstract equal in number to the number of municipal corporations in which such election was held; one of which he shall file in his office, as city clerk of the municipal corporation in which such joint convention was held, and the other

certified copies of such abstract shall be delivered one to each of the clerks of the other municipal corporations in which such election was held, within three days after the completion of such canvass by such joint convention; and the same shall be presented to the legislative body of each such municipal corporations by the clerk thereof at its next regular meeting after the delivery thereof to him, as aforesaid, and recorded upon the minutes of such legislative body. The clerk of such joint convention shall keep a record of its proceedings, and upon the completion of such canvass shall file such record in his office, as clerk of the municipal corporation in which such joint convention shall be held. Upon the recording of such abstracts in the minutes of the legislative body of each municipal corporation, the clerk thereof shall certify that fact to the city clerk of the municipal corporation in which such joint convention was held, who shall transmit to the secretary of state the said original abstract of the result of said election, made and signed as hereinbefore provided, and said original abstract shall be filed by the secretary of state in his office immediately upon receiving the same, and a certificate of the filing of such original abstract in his office shall be by the secretary of state transmitted forthwith to the clerk of the municipal corporation in which such joint convention was held.

In the event that the one of such municipal corporations so proposed to be consolidated, having the greater or greatest population ascertained as hereinbefore provided, shall be operating under a freeholders' charter, such consolidation shall be deemed to be completed, and such municipal corporations shall be deemed to be consolidated into a new municipal corporation upon the filing of such original abstract in the office of the secretary of state, as aforesaid; and thereupon, said freeholders' charter shall ipso facto be and become the charter of such consolidated municipal corporation, which shall operate and be governed as a new municipal corporation in the name of and under such freeholders' charter of the one of such municipal corporations so consolidated having the greater or greatest population, and the other or others of the municipal corporations so consolidated shall be ipso facto dissolved, and disincorporated, and any freeholders' charter thereof shall be deemed to be surrendered and annulled. And upon the completion of such consolidation, such other or others of the municipal corporations so consolidated shall be deemed to be annexed to and joined to and merged into the one of said municipal corporation so operating under a freeholders' charter and having the greater or greatest population, as aforesaid.

In the event that the one of such municipal corporations so proposed to be consolidated, having the greater or greatest population, ascertained as hereinbefore provided, shall not be operating under a freeholders' charter, and the electors of all such municipal corporations proposed to be consolidated shall vote in favor of consolidation, and all other acts and proceedings for the consolidation of such municipal corporations into one municipal corporation shall have been severally, duly and regularly done and performed as hereinbefore provided, and the original abstract mentioned in this section of this act shall have been filed in the office of the secretary of state as aforesaid, thereupon the legislative body of the one of such municipal corporations so proposed to be consolidated having the greater or greatest population, shall proceed to call a special election to be held in all the municipal corporations so proposed to be consolidated, for the election of the officers required by law to be elected in corporations of the class to which the consolidated municipal corporation shall belong when such consolidation is completed. Such election shall be held within ninety days after the filing of such original abstract in the office of the secretary of state, as hereinbefore provided, and shall be called and conducted in all respects in the manner prescribed, or that may hereafter be prescribed by law for municipal elections in municipal corporations of such class.

The returns of such election shall be canvassed by the legislative body calling the

same at its next regular meeting after such election, in the manner provided by law, and upon the completion of such canvass shall declare the result thereof, and cause the same to be entered upon its minutes. From and after the date of such entry, such consolidation shall be deemed to be completed, and such municipal corporation shall be deemed to be consolidated into a new municipal corporation; and thereupon such new corporation shall be governed in the name of and under the general law applicable to municipal corporations of the class to which such new corporation shall belong, with the powers conferred, or that may be hereafter conferred upon municipal corporations of such class. The officers elected at such election shall be entitled immediately to enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold said offices respectively only until the next general municipal election to be held in such municipal corporation, and until their successors are elected and qualified.

Submitting question of payment of bonds at elections proposing the consolidation of municipalities. Two-thirds vote necessary to carry.

§ 2a. Whenever any one or more, or all of the municipal corporations proposed to be consolidated under the provisions of this act shall have incurred, or authorized the incurring of, any bonded indebtedness for the acquisition, construction or completion of any municipal improvement or improvements, the petition provided for in section 2 of this act may contain a request that the question to be submitted to the electors of such municipal corporations shall be whether such municipal corporations shall become consolidated as hereinbefore provided, and the property in any one or more, specified in said petition, of such municipal corporations, be, after such consolidation, subject to taxation, equally with the property in any other one or more, specified in said petition, of said municipal corporations, to pay any such bonded indebtedness, specified in said petition, of said other municipal corporation or corporations, outstanding at the date of such consolidation, or theretofore authorized. If such request shall be made in said petition, proceedings shall be had thereon, the same in all respects as upon a petition presented under the provisions of the preceding section, excepting that the notice of election shall, in addition to the matters required by the preceding section, distinctly state that it is proposed that such property as it may be proposed in said petition shall be taxed to pay such bonded indebtedness of any one or more of such municipal corporations proposed to be consolidated, as specified in said petition, other than that in which such property is situated, shall, after the date of such consolidation, be taxed equally with the property within the municipal corporation or corporations originally incurring, or authorizing the incurring of, such indebtedness, to pay the same. The said notice shall, in addition, distinctly specify the improvement or improvements for which such indebtedness was so incurred or authorized, and state the amount or amounts of such indebtedness already incurred outstanding at the date of the first publication or posting of such notice, and the amount or amounts of such indebtedness theretofore authorized, and to be represented by bonds thereafter to be issued, and the maximum rate of interest payable or to be payable on such indebtedness; and upon the canvass of the returns of the election held in pursuance of such notice, if it shall appear that two-thirds of all the ballots cast in each municipal corporation the property in which it is proposed, as aforesaid, shall, after consolidation, be subject to taxation to pay any bonded indebtedness of any other of the said municipal corporations proposed to be consolidated shall be in favor of such consolidation, and that a majority of the votes cast in each of the other municipal corporations so proposed to be consolidated shall be in favor of consolidation, and not otherwise, the same proceedings shall be had as in the preceding section it is provided shall be taken when a majority of the votes cast in each such municipal corporation shall be in favor of such consolidation, and such consolidation shall be deemed to be completed in the same man-

ner, and with the same effect, as in said section provided. After the completion of the consolidation of such municipal corporations as hereinabove provided, the property in each of said municipal corporations which, in said petition and notice, it was proposed should be taxed to pay any specified bonded indebtedness of any other of said municipal corporations so consolidated, shall thereafter be taxed equally with the property within the municipal corporation originally incurring, or authorizing the incurring of, such bonded indebtedness for the payment of such specified indebtedness. [New section approved April 27, 1911. Stats. 1911, p. 1199.]

Titles to municipal property. Vested rights. Officers. Debts. Ordinances.

§ 3. Any municipal corporation created by the consolidation of municipal corporations under the provisions of this act, shall for all purposes be deemed and taken to be the successor of the several municipal corporations so consolidated therein; and the title to any property owned or held by any such municipal corporations or in trust therefor, or by any officer or board of any such municipal corporations, in trust or otherwise for public use, shall, upon such consolidation being completed, as hereinbefore provided, ipso facto be vested in such new municipal corporation, or any officer or board thereof which has the power to hold, or control such property under the freeholders' charter, or other law under which the greater or greatest in population of the municipal corporations so consolidated was theretofore governed.

That upon the completion of such consolidation, if the greater or greatest population of such municipal corporations so consolidated be operated under a freeholders' charter, all persons then in possession or occupancy of the several offices in each of the other municipal corporations so consolidated, shall immediately quit and surrender the possession of such offices, which shall thereupon cease and determine, and they shall forthwith deliver all moneys, funds, books, papers, archives, and records in their official custody, and all other property of such municipal corporations in their hands, or under their control to the proper officers under the freeholders' charter of such greater or greatest municipal corporation; and if the greater or greatest in population of such municipal corporations so consolidated be theretofore organized and existing under the general municipal incorporation laws of this state, all persons then in possession or occupancy of the several offices and in each of the municipal corporations so consolidated, shall, upon the completion of such consolidation, immediately upon the entry of the officers of the new municipal corporation created by such consolidation, upon the duties of their respective offices as hereinbefore provided, deliver all moneys, funds, books, papers, archives, and records in their official custody, and all other property of such municipal corporations in their hands, or under their control, to the proper officers of such new municipal corporation.

That any consolidation of municipal corporations effected under the provisions of this act shall not affect any debts, demands, liabilities or obligations of any kind existing in favor of or against any such municipal corporations so consolidated, at the time of such consolidation or any action or proceeding then pending in any court in which any such debt, demand, liability or obligation of any kind may be involved, or any action or proceeding brought by or against any such municipal corporation prior to such consolidation; but all such proceedings shall be continued and concluded, by final judgment or otherwise, in all respects the same as if such consolidation had not been effected. All ordinances of any municipal corporations consolidated under the provisions of this act, except those of the one having the greater or greatest population shall immediately, upon such consolidation being effected, be deemed to be repealed and of no further force and effect; provided, however, that such repeal shall not operate to discharge any person, from any liability, civil or criminal, then existing, nor to affect any prosecution then pending for any violation of any such ordinances; and all cases then pending in any justices' court, police court or court of any recorder, or other judicial municipal

magistrate or officer of any of the municipal corporations so consolidated, except of the one having the greater or greatest population shall, upon such consolidation being effected be deemed ipso facto to be transferred to justices' court, police court or court of any recorder, or other judicial municipal magistrate or officer of the one of such municipal corporations of the greater or greatest population having jurisdiction of proceedings or misdemeanors or of other actions civil or criminal of the character so transferred; provided further, that such repeal shall not apply to ordinances under which vested rights have accrued, or to ordinances relating to proceedings for street or other public improvements, or to proceedings for opening, extending, widening or straightening streets or other public places, or to proceedings for changing the grade thereof, all of which proceedings shall be continued and conducted by and under the authority of the new consolidated municipal corporation, with the same force and effect as if continued and conducted by and under the authority of the municipal corporation by which they were commenced. And all ordinances of the one of the municipal corporations consolidated under the provisions of this act having the greater or greatest population, shall, upon the completion of such consolidation, ipso facto have full force and effect in and throughout the new consolidated municipal corporation.

No property to be taxed for prior indebtedness except in accordance with section 2a.

§ 4. That no property in any of the municipal corporations consolidated under the provisions of this act shall ever be taxed to pay any portion of any indebtedness or liability of any of the other such municipal corporations, contracted or incurred prior to or existing at the time of such consolidation, unless the proceedings for such consolidation shall have been had in accordance with the provisions of section 2a of this act, in which event the property in such municipal corporations shall be taxed as provided in said section. The legislative body of any consolidated municipal corporation, consolidated under the provisions of this act, shall provide for the payment of the indebtedness or liability of each of the municipal corporations consolidated therein, and shall levy and collect the necessary taxes therefor, and for that purpose, and for all other purposes, such consolidated municipal corporation and its officers, shall be deemed the successor and successors of such municipal corporations so consolidated and their respective officers. [Amendment approved April 27, 1911. Stats. 1911, p. 1201.]

Boroughs, right to establish.

§ 5. In the event that the greater or greatest in population of any municipal corporations, consolidated under the provisions of this act, shall be operating under a freeholders' charter, which charter shall at any time provide that a borough or boroughs may be established in any territory, or incorporated city or town, annexed to or joined to such municipal corporation, such borough or boroughs to be governed as in such charter provided; nothing in this act contained shall prevent or be construed to prevent any other municipal corporation, or any portion thereof so consolidated with the municipal corporation so operating under such freeholders' charter, from becoming a borough under such freeholders' charter, to be established and governed as therein provided.

Expenses of consolidation.

§ 6. All proper expenses of proceedings for the consolidation of municipal corporations under this act, shall, if such consolidation be made and completed, be paid by the consolidated municipal corporation; and if such consolidation be not completed, each municipal corporation shall pay the expenses of calling and holding said election within such corporation.

§ 7. All acts and parts of acts in conflict with this act are hereby repealed.

1. Constitutionality—Act is general law.—The consolidation act is not in conflict with the provisions of the constitution restricting the formation of municipal corporations by general laws, and the act is not a "special" law within the meaning of section 6, article XII of the constitution.—*Williams v. Board of Trustees*, 157 Cal. 711, 109 Pac. 482.

2. Same—Requirement as to government of consolidated city.—The requirement of the consolidation act that the consolidated city shall be governed by the laws and ordinances, and shall have the name, of the city having the largest population, is natural and reasonable.—*Williams v. Board of Trustees*, 157 Cal. 711, 109 Pac. 482.

3. Same—School district destroyed or dissolved—Legislative discretion—Not special legislation.—If the result of the consolidation of two cities is to destroy or dissolve a school district, it is sufficient to say that the matter is entirely within the control of the legislature subject to the constitutional restrictions relative to special legislation.—*Allen v. Board of Trustees*, 157 Cal. 720, 109 Pac. 486.

4. Petition—Finding as to sufficiency, conclusive.—A finding in a city council that a petition for the consolidation of two municipal corporations was signed by sufficient number of qualified voters of one of the corporations, is conclusive upon the courts in an action to compel the city clerk of that city to give notice of a consolidation election under the consolidation act of 1909, at least in the absence of a showing of conduct amounting to fraud on the part of the council.—*Teague v. Board of Trustees*, 156 Cal. 351, 104 Pac. 581.

5. Time of election—Provisions of act directory.—The provisions of the consolidation act as to the time for holding an election to complete the consolidation is directory and an election may be held for that purpose upon a proper notice even though statutory time has elapsed without an election being held.—*Williams v. Board of Trustees*, 157 Cal. 711, 109 Pac. 482.

6. Calling election—Trustees of larger city act as agents of state.—The trustees of the city having the larger population, after consolidation, act as agents of the state in calling an election of officers to complete the consolidation, and not as the legislative body thereof.—*Allen v. Board of Trustees*, 157 Cal. 720, 109 Pac. 486.

7. Same—Same—Mandamus.—Mandamus will lie to compel the trustees of the larger in population of two consolidated cities, neither of which have wards, to pass an ordinance calling an election to complete consolidation by directing the election of trustees at large instead of by wards.—*Allen v. Board of Trustees*, 157 Cal. 720, 109 Pac. 486.

8. Same—Same—Same—Exercise of authority under act.—The act of the board of trustees of the larger of two consolidated cities in calling an election for officers to complete the consolidation are merely taking one of the steps required by the con-

solidation act; and in doing so, they exercise only the authority specially delegated to them by that act; and the fact that they are the legislative body of the larger municipality, is a mere mandatory circumstance and adds nothing to the powers conferred by the act.—*Allen v. Board of Trustees*, 157 Cal. 720, 109 Pac. 486.

9. Class of consolidated city—Is not automatically changed on consolidation.—The mere fact that the consolidated city will have an aggregate population to justify reorganization as a city of a larger class is immaterial in an election of officers to complete the consolidation as required by the consolidation act of 1909, and such officers must be officers of the municipality of the class of the city having the larger population, and a taxpayer of the municipality having the lesser population is not entitled to a writ of mandate to compel the particular election of officers of the class which may be justified by the aggregate population of the future consolidated city.—*Williams v. Board of Trustees*, 157 Cal. 711, 109 Pac. 482.

10. Same—Same—Population of consolidated city as shown by federal census immaterial.—In a proceeding to consolidate two municipalities where it appeared that, by either method of enumeration, the municipality having the larger population would become a municipal corporation of the fifth class if it were incorporated for the first time, it is immaterial whether the federal census or a special enumeration is accepted.—*Williams v. Board of Trustees*, 157 Cal. 711, 109 Pac. 482.

11. Power of legislature absolute—Consolidated city governed by class of larger.—In the absence of a prohibition in the constitution the power of the legislature in reference to the consolidation of municipalities, is absolute, and the consolidation act is not affected by the provision that the consolidated municipality shall be governed by the class of the larger in population, without regard to the aggregate population of the consolidated cities.—*Williams v. Board of Trustees*, 157 Cal. 711, 109 Pac. 482.

12. Same—Intent of act—Smaller city ceases.—The intent of the consolidation act is that the municipality having the least population shall cease upon consolidation; that all its ordinances shall be deemed repealed and that the consolidated corporation shall be governed and exist in accordance with the law in force in the municipality having the largest population.—*Williams v. Board of Trustees*, 157 Cal. 711, 109 Pac. 482.

13. Same—Consolidation does not automatically create city of higher class.—The consolidation of a city of the fifth class and a city of the sixth class does not ipso facto result in the creation of a city of a fourth class although the consolidated city may thereupon be entitled to a classification as a city of the fourth class, and the consolidated city must retain the organization and laws of a city of the fifth class until or-

ganization into a city of the fourth class results in the manner prescribed by the classification act.—*Williams v. Board of Trustees*, 157 Cal. 711, 109 Pac. 482.

14. Change of class after consolidation.—Where under the provisions of the consolidation act a consolidated city becomes a city of the fifth class, the election held to complete the consolidation must provide for the election of officers of a city of that class including a board of education of five members; and this entirely independent of what school district a city of the lesser class belonged to, the consolidated city will constitute one school district composed of the consolidated territory and governed as prescribed as a city of the sixth class.—*Allen v. Board of Education*, 157 Cal. 720, 109 Pac. 486.

15. Division of consolidated territory into wards, not provided for.—The consolidation act contains no authority for the division of the combined territory to the

consolidated cities into wards, and the election of trustees of the consolidated city must be at large; and if the trustees of the consolidated city after the consolidation has been completed see fit, in the case of a city of the fifth class, to divide the consolidated city into wards, they may do so under the power conferred upon them by the municipal corporation act.—*Allen v. Board of Trustees*, 157 Cal. 720, 109 Pac. 486.

16. Consolidation substantially an annexation.—A consolidation of two municipalities under the provisions of the present act is practically and substantially an "annexation" of the smaller city to the larger, and the same reasons exist for the continuation of the name, laws and organic act of the municipality having the greater population as in the case of the annexation of enumerated territory.—*Williams v. Board of Trustees*, 157 Cal. 711, 109 Pac. 482.

MUNICIPAL ANNEXATION ACT OF 1913.

ACT 3064—An act to provide for the consolidation of municipal corporations.

History: Approved June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 577. Amended (1) April 29, 1915; in effect August 8, 1915; Stats. 1915, p. 311; (2) April 2, 1917; in effect July 27, 1917; Stats. 1917, p. 30.

Consolidation of municipal corporations.

§ 1. Municipal corporations situated in the same county may be consolidated in accordance with proceedings had and taken under the provisions of this act. Whenever municipal corporations are proposed to be consolidated under the provisions of this act, the one of such municipal corporations which has the greatest population as shown by the last federal census, or, in the event that any of said municipal corporations shall have been incorporated subsequent to the taking of the last federal census, the one of such municipal corporations which has the largest number of electors, as shown by the registration of electors of the county in which such municipal corporations are situated, shall, for the purpose of this act, be deemed to have the greatest population.

Petition. Election. Notice by publication. Voting precincts. Election officers. Ballot. Count of ballots. Canvass of returns. Declaration of result.

§ 2. Whenever a petition, signed by not less than one-fourth in number of the qualified electors of any municipal corporation, as shown by the registration of electors of the county in which such municipal corporation is situated, is filed with the legislative body thereof, asking that such municipal corporation and any other municipal corporation contiguous thereto, designated in such petition, and having a greater population, be consolidated, such legislative body must, without delay call a special election and submit to the electors of such municipal corporation the question whether such municipal corporations shall be consolidated. Such legislative body shall cause notice to be given of such election by the publication of a notice thereof, in a newspaper of general circulation, if any such there be, printed and published in such municipal corporation so proposed to be consolidated with such other municipal corporation, at least once a week for a period of four successive weeks next preceding the date of such election. If there be no such newspaper, then such legislative body shall cause notice of such election to be given by the publication thereof in a newspaper of general circulation, printed and published in the county in which such municipal corporation is situated, and by posting such notice in three public places in such municipal corporation, at least

four weeks prior to such election. Such notice shall distinctly state the proposition to be submitted, the names of the municipal corporations proposed to be consolidated, and the date of such election, which date shall be within twenty days after the expiration of the publication of such notice. Such notice shall direct the electors to vote upon the question of such proposed consolidation in the manner hereinafter provided. Such legislative body is hereby empowered to, and it shall be its duty, to establish, and in such notice to designate, the voting precinct or precincts and the place or places at which the polls will be open for such election, which place or places shall be that or those commonly used as voting places in the municipal corporation in which such election is held, if any such there be. The legislative body of such municipal corporation is hereby empowered to, and it shall appoint the officers of such election, who shall be, for each voting place, two judges and one inspector, each of whom shall be a qualified elector of the voting precinct in which he or she is appointed to act as an officer of such election. Upon the ballot to be used at such election, there shall be printed the words, "Shall the cities of (giving names of municipal corporations proposed to be consolidated) be consolidated?" And opposite such proposition to be voted upon, and to the right thereof, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If an elector shall stamp a cross (X) in the voting square after the printed word "Yes" the vote of such elector shall be counted in favor of such consolidation; and if an elector shall stamp a cross (X) in the voting square after the printed word "No," the vote of such elector shall be counted against such consolidation. The ballots used at such election, the opening and closing of the polls, and the holding and conducting of such election, shall be in conformity, as near as may be, with the general laws of this state concerning municipal elections, except as herein otherwise provided. The judges and inspector of such election for each polling place shall, immediately on the closing of the polls, count the ballots, make up, certify and seal the ballots and tally sheets of the ballots cast at their respective polling places, doing so, as nearly as practicable, in the manner provided in the laws of this state relating to general elections, and they shall thereupon deliver the ballots, tally sheets, and returns to, and deposit the same with the clerk of the legislative body of the municipal corporation in which such election was held. Such legislative body shall, at the time provided for its regular meeting next after the expiration of three days from and after the date of said election, meet and proceed to canvass said returns; and such canvass shall be completed at such meeting, if practicable, and in any event, as soon as practicable, avoiding adjournment or adjournments, until said canvass is completed. Immediately upon the completion of such canvass, said legislative body shall declare the result of such election and shall cause a record thereof to be made and entered upon its minutes, stating the proposition submitted, and showing the whole number of votes cast thereon in such municipal corporation, the number of votes cast therein in favor of consolidation, and the number of votes cast therein against consolidation.

Should majority favor. Question submitted to larger city.

§ 3. If it shall appear from the canvass of the returns of the election mentioned in section two of this act, that a majority of all the votes cast in the municipal corporation in which such election was held, upon the question of consolidation submitted at such election, are in favor of such consolidation, the clerk of the legislative body of such municipal corporation, shall forthwith make, under the seal thereof, and deliver to the clerk of the legislative body of the other of the municipal corporations proposed to be so consolidated, to wit, the municipal corporation having the greater population, a copy in duplicate of the record of such canvass, together with a statement of the proposition submitted at such election. The clerk of the legislative body of such municipal corporation so having the greatest population shall present one such copy of said record and said statement to such legislative body without delay, and retain the other

to be filed as hereinafter provided. Upon receiving the copy of such record so presented such legislative body may, by ordinance, approve such consolidation, or, in case of failure to so approve, by ordinance, such consolidation, shall then submit to the electors of such other of the municipal corporations so proposed to be consolidated and having the greatest population, the question whether such consolidation shall be effected. Such question may be so submitted at the next general municipal election to be held in such municipal corporation, or it may be so submitted prior to such general election, either at a special election called therein for that purpose, or at any other special municipal election therein, except an election at which the submission of such question is prohibited by law. Whenever such question is submitted at any election in such municipal corporation, such question shall be stated in the notice of such election and on the ballots to be used at such election, and the electors shall vote thereon, in the same manner as hereinbefore provided in the case of the election mentioned in section two of this act. And whenever such question is submitted at any such municipal election, general or special, as provided in this section, it shall be submitted and voted upon as other questions are required by law to be submitted and voted upon at such elections, except in particulars otherwise in this act set forth; and the laws applicable to and governing the time and manner of giving notice, conducting, holding, canvassing the returns, and declaring the result of any such election shall apply to and govern the submission of such question to the electors of such municipal corporation at any such election. [Amendment of April 2, 1917. In effect July 27, 1917. Stats. 1917, p. 30.]

Declaration of result. Should majority favor. Consolidation complete.

§ 4. Immediately upon the completion of the canvass of the returns of any election in the municipal corporation having the greater population of two municipal corporations proposed to be consolidated, at which the question of such consolidation was submitted, as provided in section three of this act, the legislative body of such municipal corporation having the greater population shall declare the result of such election, and shall cause a record to be made and entered upon its minutes, stating the proposition submitted, and showing the total number of votes cast in such municipal corporation upon the question of such consolidation at such election, the number thereof cast in favor of consolidation, and the number thereof cast against consolidation. If it shall appear from the canvass of the returns of such election, that a majority of the qualified electors of such municipal corporation, voting on the question of such consolidation, are in favor thereof, the clerk or other officer performing the duties of clerk of the legislative body of such municipal corporation shall promptly make and certify, under the seal thereof, and transmit to the secretary of state, a copy of the record of the canvass of the returns of the election in such municipal corporation having the greater population, at which the question of such consolidation was submitted, and entered upon its minutes as aforesaid, and one copy theretofore delivered to him as aforesaid, of the record of the canvass of the returns of the election in the other of the municipal corporations proposed to be consolidated, together with a statement showing the date of each such election in each such municipal corporation, and the time and the result of the canvass of the returns of each such election. If such consolidation has been approved by ordinance of such legislative body, as herein authorized, a certified copy of such ordinance, giving the date of its passage, shall be substituted in said document in place of the copy of the record of the canvass of the returns of the election in such municipality provided for in case such consolidation was not approved by ordinance. Said document, in either case, shall be filed in his office by the secretary of state immediately upon receipt thereof. Upon the filing of said document in the office of secretary of state, such consolidation shall be deemed to be complete and such municipal corporations shall be deemed to be consolidated and the one of such municipal corporations not having the greatest population, shall be deemed to be, and shall be, annexed and joined

to and merged into the one of said municipal corporations having the greatest population. [Amendment of April 2, 1917. In effect July 27, 1917. Stats. 1917, p. 31.]

Question of taxation to pay bonded indebtedness. Notice to specify improvements.

Canvass of returns. Should majority favor. Question submitted to larger city.

When property subject to taxation.

§ 5. Whenever any two municipal corporations are proposed to be consolidated, under the provisions of this act, and either or both of such municipal corporations shall have theretofore incurred, or authorized the incurring of, any bonded indebtedness for the acquisition, construction or completion of any municipal improvement or improvements, the petition provided for in section two of this act may contain a request that the question to be submitted to the electors of the municipal corporation proposed to be consolidated shall be, whether such municipal corporation shall be consolidated, as hereinbefore in this act provided, and the property in such municipal corporations, shall after such consolidation, be subject to taxation at the same rate, to pay any of such bonded indebtedness specified in said petition; provided, however, that if such petition contains a request that the property in such municipal corporations be, after such consolidation, subject to taxation to pay all of the bonded indebtedness incurred or authorized of such municipal corporations, such bonded indebtedness and improvements for which such bonded indebtedness was incurred or authorized may be described in such petition and in all other proceedings hereunder as "the bonded indebtedness of (insert the names of the municipal corporations)," without specifying the improvements. If such request be made in such petition, proceedings shall be had thereon and the question of such consolidation shall be submitted to the electors in such municipal corporation not having the greatest population, the same in all respects as upon a petition presented under the provisions of section two, excepting that the notice of election shall, in addition to the matters required by said section, distinctly state that it is proposed that the property in such municipal corporations shall be taxed at the same rate to pay such bonded indebtedness set forth in said petition. Except as hereinabove provided, the said notice shall, in addition, in general terms specify the improvement or improvements for which such indebtedness was so incurred or authorized, and state the amount or amounts of such indebtedness already incurred, outstanding at the date of the first publication of such notice, and the amount or amounts of such indebtedness theretofore authorized, and to be represented by bonds thereafter to be issued, and the maximum rate of interest payable, or to be payable on such indebtedness.

The returns of such election held in pursuance of such notice shall be canvassed, as provided in section two of this act, by the legislative body of the municipal corporation in which such election was held, and immediately upon the completion of such canvass, such legislative body shall declare the result of such election and shall cause a record of such canvass to be made and entered upon its minutes, as provided in said section two, and there shall be included in such record a statement of such bonded indebtedness incurred and outstanding, or authorized, as set forth in the notice of such election, for the payment of which the property in said municipal corporations shall be subject to taxation as set forth in the notice of such election. If it shall appear from such canvass that a majority of all votes cast at such election upon the question of such consolidation, are in favor thereof, the clerk of such legislative body in which such election was held shall forthwith deliver a copy in duplicate of such record and statement to the clerk of the legislative body of the other of the municipal corporations so proposed to be consolidated, and having the greatest population. Thereupon the legislative body of such other municipal corporation having the greatest population may, by ordinance, approve such consolidation; or, in case of failure to so approve, by ordinance, such consolidation, shall submit the question of such consolidation to the electors of such

other municipal corporation at an election therein in the same manner in all respects as provided in this section for submitting to the electors in such municipal corporation not having the greatest population, and, in other respects, in the same manner as provided in section three of this act. After the passage of said ordinance approving such consolidation, or, if such consolidation was not approved by ordinance if, upon the canvass of the returns of such election it shall appear therefrom, that a majority of the votes cast at such election in such other municipal corporation having the greatest population, upon the question of such consolidation, are in favor thereof, the same proceeding shall be had as provided in section four of this act, and such consolidation shall be deemed to be, and shall be, completed in the same manner, and with the same effect as in said section provided. After the completion of the consolidation of such municipal corporations, as hereinbefore provided, the property in said municipal corporations, so consolidated shall thereafter be taxed at the same rate, to pay such bonded indebtedness set forth in said petition. [Amendment of April 2, 1917. In effect July 27, 1917. Stats. 1917, p. 32.]

This section was also amended April 29, 1915. In effect August 8, 1915. Stats. 1915, p. 311.

Questions of consolidation with more than one city may be separately submitted in larger city. When submitted. Notice. Consolidation with one not affected by rejection of another. Should majority favor. Consolidation completed on filing document.

§ 6. Nothing in this act contained shall be construed to prevent the submission to the electors of any municipal corporation having a greater population than either of the other municipal corporations proposed to be consolidated therewith, as separate propositions to be voted upon separately at one and the same election in the municipal corporation so having the greater population, of the questions of the consolidation therewith of two or more such other municipal corporations, each of which is contiguous to such municipal corporation having the greatest population. Whenever, upon proceedings had and taken, and at elections called and held in accordance with the provisions of this act, the electors of each of two or more such other municipal corporations have voted in favor of the consolidation thereof with the same municipal corporation, having the greatest population, the legislative body of such municipal corporation must submit to the electors thereof, as separate propositions, each to be voted upon separately and without regard to any of the others, the question whether each such other municipal corporation shall be consolidated with such municipal corporation so having the greatest population. Such questions may be so submitted at the next general municipal election to be held in such municipal corporation, or they may be so submitted prior to such general election, either at a special election called therein for that purpose, or at any other special election therein, except an election at which the submission of such questions is prohibited by law. The notice of such election shall state, as separate propositions to be submitted at such election, the question of the consolidation of each such other municipal corporation, in the same manner as hereinbefore provided in the case of the notice of an election in such municipal corporation at which the question of the consolidation of only one other municipal corporation therewith is submitted; and the question, as to each such other municipal corporation, shall be printed upon the ballots to be used at such election and the same shall be voted upon, separately, in like manner as hereinbefore provided in the case of the submission of the question of the consolidation therewith of one such other municipal corporation. The provisions of this act shall apply to the holding and conducting of such election in all respects the same as in the case of an election when only one such question is submitted; provided, however, that the consolidation of such municipal corporation having the greatest population and any other municipal corporation or corporations, upon the question or questions of which consolidation a majority of votes cast thereon at such election shall have been cast in favor thereof, shall not be affected or prejudiced in

any manner, in the event that a majority of the votes cast at such election upon the question or questions of the consolidation of such municipal corporation having the greatest population and any other municipal corporation or corporations shall have been cast against such consolidation. If it shall appear from a canvass of the returns of such election, that a majority of the qualified electors of such municipal corporation having the greatest population, voting separately upon the question of the consolidation of the same and any one or more other municipal corporations are in favor thereof, the clerk or other officer performing the duties of clerk of the legislative body of such municipal corporation having the greatest population shall promptly make and certify, under the seal thereof, and transmit to the secretary of state, a copy of the record of the canvass of the returns of the election in such municipal corporation having the greatest population at which the questions of such consolidations were submitted, and entered upon its minutes as aforesaid, and one of the copies, delivered to him as aforesaid, of the record of the canvass of the returns in each of the other municipal corporations proposed to be consolidated, together with a statement showing the date of the elections in such municipal corporations and in each such other municipal corporation proposed to be consolidated therewith, and the time and result of the canvass of the returns of such elections; provided, however, that the aforesaid record and statement as to any number of such consolidations may be included in one document. Upon the filing of said document in the office of the secretary of state, each such consolidation shall be deemed to be, and shall be complete, and each municipal corporation so consolidated with the municipal corporation having the greatest population, shall be deemed to be, and shall be consolidated with, annexed and joined to and merged into the one of such municipal corporations having the greatest population.

Municipalities to petition for only one consolidation at a time. Five electors may file notice of intention to circulate petition for annexation. Resolution acknowledging notice of intention. Adverse result of election; no new petition within fifteen days.

§ 7. Whenever a petition for the consolidation of any two municipal corporations has been received by the legislative body of one of them as in section two of this act provided, no other petition, filed under this or any other act, asking for the consolidation of the municipal corporation, whose legislative body received such petition, to any other municipal corporation shall be presented to the legislative body of such municipal corporation, and such legislative body shall not submit the question of the consolidation of such municipal corporation to any other municipal corporation, until the question of the consolidation of the municipal corporation whose legislative body received the petition first in this section mentioned, shall have been submitted to the electors residing therein, and a majority of electors voting upon such question in such municipal corporation, shall have voted against such consolidation; or, in the event that a majority of the electors of such municipal corporation shall have voted in favor of such consolidation, until the question of such consolidation shall have been submitted to the electors of the one of such municipal corporations having the greater population and a majority of the electors of such last mentioned municipal corporation voting upon such question, shall have voted against such consolidation. In the event any election authorized by this act is not called or held in the manner or within the time specified in this act, all proceedings relating to such consolidation shall be and become null and void. Any five electors of a municipal corporation in which it is proposed to circulate a petition asking for the consolidation of said municipal corporation with another municipal corporation having a greater population as herein provided, may file with the legislative body of the municipal corporation having the greater population a notice declaring their intention to circulate and file a petition asking for the consolidation of the said municipal corporation having the lesser population described in said notice. Upon the receipt of any such notice of intention, such legislative body may, within ten days

thereafter, adopt a resolution acknowledging the receipt thereof and approving the intention of the petitioners to circulate such petition. Within thirty days after the adoption of such resolution no petition filed under this or any other act, asking for the consolidation of the municipal corporation described in said notice of intention shall be filed with the legislative body thereof. If, upon the holding of the election in the municipal corporation having the lesser population in the manner herein provided, the result of such election is adverse to such consolidation, no new petition or notice of intention to circulate such petition for the consolidation of the same municipalities, shall be filed within fifteen days after the result of such election has been canvassed and declared. [Amendment of April 29, 1915. In effect August 8, 1915. Stats. 1915, p. 312.]

Smaller municipal corporations consolidated deemed dissolved. New charter may be framed.

§ 8. Upon the completion of the consolidation, under the provisions of this act, of one or more municipal corporations with another municipal corporation having a greater population than any of the municipal corporations so consolidated therewith, each such municipal corporation so consolidated, other than the municipal corporation having the greatest population shall ipso facto be deemed to be and shall be dissolved and discontinued, and any freeholders' charter thereof shall be deemed to be, and shall be surrendered and annulled. In the event that the one of any municipal corporations consolidated under the provisions of this act, having the greatest population, is governed under a freeholders' charter framed and adopted under the authority of the constitution of this state, and the other municipal corporation or corporations so consolidated therewith, shall be deemed to be, and shall be merged therein and shall be thereafter governed in the name of, and under the freeholders' charter of, and as a part of, such municipal corporation having the largest population; and in the event that the one of any municipal corporations, consolidated under the provisions of this act, having the greatest population, shall be incorporated and organized as a municipal corporation under the general laws of the state providing for the organization, incorporation and government of municipal corporations, the other municipal corporation or corporations so consolidated therewith shall be deemed to be, and shall be, merged therein and shall be thereafter governed in the name of, and as a part of the municipal corporation having the greatest population, which shall continue as a municipal corporation of the class, under such laws, to which such municipal corporation so having such greatest population belonged at the time of such consolidation; provided, however, that nothing herein contained shall be construed to prevent any such consolidated municipal corporation, so governed under a freeholders' charter from framing and adopting a new charter, after such consolidation, or to prevent any such consolidated municipal corporation so governed as a municipal corporation under said general laws, from changing its class under such laws or from framing or adopting a freeholders' charter for its government, after such consolidation.

Larger city successor of others. Officers of smaller cities to surrender offices.

§ 9. Whenever municipal corporations are consolidated under the provisions of this act, the one of such municipal corporations having the greatest population shall be deemed and taken to be, and shall be the successor of each of the other municipal corporations consolidated therewith; and the title to any property owned or held by each such other municipal corporation, or in trust therefor, or by any officer or board thereof, in trust or otherwise for public use, shall upon such consolidation being completed, as hereinbefore provided, ipso facto be vested in the one of such municipal corporations so consolidated having the greatest population, or in such officer or board thereof as has the power to hold, or control, such property under the freeholders' charter or other

law under which the one of such municipal corporations so consolidated having the greatest population was theretofore governed. Upon the completion of such consolidation, all persons then occupying or possessing the several offices of, or under the government of, each of the several municipal corporations so consolidated, other than that of the municipal corporation having the greatest population, shall immediately quit and surrender the occupancy or possession of such offices, which shall thereupon cease and terminate, and they shall severally forthwith deliver all moneys, funds, books, papers, archives and records in their custody, and all other property of such municipal corporations respectively, in their hands, or under their control, to the proper officers of such municipal corporation so consolidated having the greatest population.

Debts, etc., not specified to remain debt of city incurring. Ordinances of municipalities having smaller populations deemed repealed. Exceptions.

§ 10. Except as in this act provided, any consolidation of municipal corporations effected under the provisions of this act shall not affect any debts, demands, liabilities or obligations of any kind existing in favor of or against any such municipal corporations so consolidated, at the time of such consolidation, or any action or proceeding then pending in any court in which any such debt, demand, liability or obligation of any kind may be involved, or any action or proceeding brought by or against any such municipal corporation prior to such consolidation; but all such proceedings shall be continued and concluded, by final judgment or otherwise, in all respects the same as if such consolidation had not been effected. All such rights or liabilities shall be and become the rights and liabilities of the consolidated city. All ordinances of any municipal corporations consolidated under the provisions of this act, except those of the one having the greater or greatest population, shall immediately, upon such consolidation being effected, be deemed to be repealed and of no further force and effect; provided, however, that such repeal shall not operate to discharge any person from any liability, civil or criminal, then existing, nor to affect any prosecution then pending for any violation of any such ordinances; and all cases then pending in any justice's court, police court or court of any recorder, or other judicial municipal magistrate or officer of any of the municipal corporations so consolidated, except of the one having the greater or greatest population, shall, upon such consolidation being effected, ipso facto be deemed to be and be transferred to the justice's court, police court or court of any recorder, or other judicial municipal magistrate or officer of the one of such municipal corporations having the greater or greatest population which has jurisdiction of proceedings or misdemeanors or of other actions, civil or criminal, of the character so transferred; provided, further, that such repeal shall not apply to ordinances under which vested rights have accrued, or to ordinances relating to proceedings for street or other public improvements, or to proceedings for opening, extending, widening or straightening streets or other public places, or to proceedings for changing the grade thereof, all of which proceedings shall be continued and conducted by and under the authority of the municipal corporation so consolidated having the greater or greatest population, with the same force and effect as if continued and conducted by and under the authority of the municipal corporation by which they were commenced. And all ordinances of the one of the municipal corporations consolidated under the provisions of this act having the greater or greatest population shall, upon the completion of such consolidation, ipso facto have full force and effect in and throughout the consolidated municipal corporations. [Amendment of April 29, 1915. In effect August 8, 1915. Stats. of 1915, p. 313.]

No property to be taxed for outstanding indebtedness except that acted upon.

§ 11. That no property in any of the municipal corporations consolidated under the provisions of this act shall ever be taxed to pay any portion of any indebtedness or lia-

bility of any of the other such municipal corporations, contracted or incurred prior to or existing at the time of such consolidation, unless the proceedings for such consolidation shall have been had in accordance with the provisions of section five of this act, in which event the property in such municipal corporations shall be taxed as provided in said section. The legislative body of the one of the municipal corporations consolidated under the provisions of this act, having the greater or greatest population, shall provide for the payment of the indebtedness or liability, not otherwise in this act provided for, of each of the municipal corporations consolidated therewith in the following manner, to wit: Said city shall levy and collect the necessary taxes therefor, in each such city respectively, and for that purpose, and for all other purposes, such greater or greatest in population of any municipal corporations consolidated under the provisions of this act, and its officers, shall be deemed the successor and successors of such other municipal corporations so consolidated therewith and their respective officers. [Amendment of April 29, 1915. In effect August 8, 1915. Stats. 1915, p. 314.]

Borough government.

§ 12. In the event that the greater or greatest in population of any municipal corporations, consolidated under the provisions of this act, shall be operating under a freeholders' charter, which charter shall at any time provide that a borough or boroughs may be established in any territory, or incorporated city or town, annexed to or joined to or consolidated with such municipal corporation, nothing in this act contained shall prevent or be construed to prevent any other municipal corporation, or any portion thereof so consolidated with the municipal corporation so operating under such freeholders' charter, from becoming a borough under such freeholders' charter, to be established and governed as therein provided.

Expenses of proceedings.

§ 13. All proper expenses of proceedings for the consolidation of municipal corporations under this act, shall, if such consolidation be made and completed, be paid by the consolidated municipal corporation; and if such consolidation be not completed, each municipal corporation shall pay the expenses of calling and holding any election within such corporation at which the question of such consolidation was submitted.

Municipal corporations not contiguous may consolidate.

§ 13½. Two municipal corporations not contiguous to each other, may vote upon the question of consolidation and may consolidate in the manner and under the conditions set forth in this section, and not otherwise. Whenever unincorporated territory contiguous to two municipal corporations not contiguous to each other, has voted in favor of annexation to the one of said municipal corporations having the larger population, but the proceedings upon such annexation have not yet been determined by the vote thereon of said municipal corporation having the larger population, then said municipal corporations may vote upon the question of consolidation, and may consolidate as elsewhere in this act provided for voting upon the consolidation of municipal corporations and the consolidation thereof; but no affirmative vote given upon the question of the consolidation of such municipal corporations shall be effective for any purpose whatever, unless at or before the time of the voting upon the question of such consolidation by the said municipal corporation having the larger population, said last named municipal corporation shall vote or shall have voted in favor of the annexation of said unincorporated territory contiguous to both said municipal corporations. [New section added April 25, 1915. In effect August 8, 1915. Stats. 1915, p. 315.]

Act of 1909 not repealed. Alternative method provided. Title of act.

§ 14. This act shall not repeal an act entitled "An act to provide for the consolidation of municipal corporations," approved March 11, 1909, or acts amendatory to said

act, but is intended to and does provide an alternative method for the consolidation of municipal corporations. When any proceedings for the consolidation of municipal corporations are commenced under this act, the provisions of this act, and of such amendments thereof as may hereafter be adopted, and none other, shall apply to such proceedings. This act may be designated and referred to as the "municipal consolidation act of 1913." [Amendment of April 29, 1915. In effect August 8, 1915. Stats. 1915, p. 315.]

1. Quo warranto proper proceeding—Validity contested by taxpayer.—Quo warranto is the proper proceeding to determine whether a consolidation of two municipalities is valid where such validity is contested by taxpayer of the smaller corporation and the larger corporation is attempting to assume jurisdiction over its territory.—*Coe v. Los Angeles*, (Cal. App.) 183 Pac. 822.

2. Canvass of returns of election—Taxpayer interested.—A taxpayer is beneficially interested in a proceeding to require the trustees of a municipality to canvass the returns of an election held to consolidate such municipality with another, such con-

solidation bearing a particular relation to the question of the amount of taxes to be paid in the future by such taxpayer.—*Taft v. Haas*, 34 Cal. App. 309, 167 Pac. 306.

3. Same—Throwing out entire vote of precinct not justified.—A board of city trustees in canvassing the returns of a consolidation election are not justified in throwing out the entire vote of a precinct on the ground that the number of names on the precinct roster fell short of the number of names on the polling list and number of ballots cast, and mandamus will lie at the suit of a taxpayer to compel the counting of the vote of such precinct.—*Taft v. Haas*, 34 Cal. App. 309, 167 Pac. 306.

RATIFICATION OF CONVEYANCE OF CERTAIN PROPERTY.

ACT 3065—An act to ratify and confirm the conveyance of certain property to trustees for charitable or educational purposes by the city council or trustees of any city of less than fifty thousand inhabitants, or of any incorporated town.

History: Approved March 8, 1889, Stats. 1889, p. 94.

Confirming conveyance of property for charitable or educational purposes.

§ 1. Wherever the city council or trustees of any city of less than fifty thousand inhabitants, or of any incorporated town, has by deed of trust conveyed property, or any portion thereof, that has been set apart for a public park, to trustees, for charitable or educational uses, such conveyance is hereby ratified and confirmed; provided, that no institution now existing or to be established on such property shall be private in its benefits, or sectarian in its work or teachings, or be to any extent under the management or control of or in any way tributary to any religious creed or order, church, or sectarian denomination whatsoever; provided further, that land so conveyed shall be kept open as public grounds by the trustees of such institutions as are or may be placed thereon, and that the public visitation of such grounds shall not be restricted, excepting by such reasonable regulations as park property and the proper maintenance of such institutions may require; provided, further, that property so conveyed shall revert to the grantors, whenever and so far as the grantees do not use the same in accordance with the stipulations of the deed of trust and with the requirements of this statute.

§ 2. This act shall take effect immediately.

CHANGE OF NAME OF FREEHOLDER CHARTER CITIES.

ACT 3066—An act authorizing municipal corporations, other than freeholder charter cities, to change their names, and providing the procedure therefor.

History: Approved March 3, 1909, Stats. 1909, p. 138.

City, change of name, how accomplished. Statement of election. Where filed.

§ 1. The name of any city or municipal corporation within this state, except a freeholder charter city, may be changed upon proceedings taken as in this act provided. The council board of trustees or other legislative body of such corporation, shall, upon receiving a petition asking that the name of the city be changed, and stating the name

to which it is proposed to change it, signed by not less than fifty per cent of the qualified electors thereof, as shown by the vote cast at the last municipal election held therein, submit to the electors of such corporation the question whether the name shall be changed as proposed in such petition. Such questions shall be submitted at a special election to be held for that purpose, and such legislative body shall give notice thereof by publication at least once a week for a period of four weeks, prior to such election, in a newspaper printed and published in such corporation.

Such notice shall distinctly state the proposed name, and the electors shall be invited thereby to vote for or against such proposed change of name. If upon canvassing the votes cast at such election it is found that two-thirds of the total number of votes so cast are in favor of the proposed change of name, the board of trustees shall file a statement of the holding of such election and the result thereof, with the secretary of state, and also the board of supervisors of the county in which the city or municipal corporation is situated, and from thenceforth and thereon the name shall be changed to that proposed at the said election.

Failure to carry, no further proceedings for ten years.

§ 2. If upon canvassing the votes cast at such election it is found that two-thirds of the total number of votes so cast are not in favor of such change of name, no further proceedings shall be had for a term of ten years thereafter.

§ 3. In all other respects not recited herein, the election herein mentioned, shall be held as provided by law for holding municipal elections in such municipality.

§ 4. This act shall take effect and be in force from and after its passage.

CHANGE OF NAME FROM "TOWN" TO "CITY."

ACT 3067—An act authorizing any municipal corporation, using the word "town" in its corporate name, to change such word to "city" and providing the procedure therefor.

History: Approved March 1, 1911, Stats. 1911, p. 93.

Changing "town" to "city," procedure.

§ 1. Any municipal corporation within this state, except freeholder charter city, may eliminate the word "town" in its corporate name and insert in place thereof, the word "city," as in this act provided. The council, board of trustees or other legislative body of such municipal corporation may, by ordinance, upon receiving a petition asking that the word "town" be eliminated or dropped from the corporate name of such municipality and the word "city" be substituted therefor, signed by not less than twenty-five per cent of the qualified electors thereof, as shown by the vote cast at the last municipal general election held therein, eliminate the word "town" from the corporate name of such municipality and substitute in place thereof, the word "city." Upon the adoption of such ordinance, the clerk of such municipality must file a statement with the secretary of state and also with the board of supervisors of the county within which the municipal corporation is situate, stating the filing of such petition and the adoption of such ordinance and from thenceforth and thereon, the name "city" shall take the place of and be deemed substituted for the word "town" in such corporate name.

CHANGE OF NAME FROM "CITY" TO "TOWN."

ACT 3067a—An act authorizing any municipal corporation, using the word "city" in its corporate name, to change such word to "town" and providing the procedure therefor.

History: Approved April 2, 1915. In effect August 8, 1915. Stats. 1915, p. 25.

"City" may be changed to "town."

§ 1. Any municipal corporation within this state, except freeholder charter cities, may eliminate the word "city" in its corporate name and insert in place thereof, the word "town," as in this act provided. The council, board of trustees or other legislative body of such municipal corporation may, by ordinance, upon receiving a petition asking that the word "city" be eliminated or dropped from the corporate name of such municipality and the word "town" be substituted therefor, signed by not less than twenty-five per cent of the qualified electors thereof, as shown by the vote cast at the last municipal general election held therein, eliminate the word "city" from the corporate name of such municipality and substitute in place thereof, the word "town." Upon the adoption of such ordinance, the clerk of such municipality must file a statement with the secretary of state and also with the board of supervisors of the county within which the municipal corporation is situate, stating the filing of such petition and the adoption of such ordinance and from thenceforth and thereon, the name "town" shall take the place of and be deemed substituted for the word "city" in such corporate name.

APPROVING LEASES OF TIDE LANDS.

ACT 3068—An act approving leases heretofore made by counties or municipalities of certain lands belonging to the state.

History: Approved March 23, 1907, Stats. 1907, p. 987.

Leases of tide lands by counties confirmed—Improvement of premises.

§ 1. In all cases in which any county or municipality in the state of California has, prior to the first day of January, 1907, and subsequent to the first day of January, 1901, leased to any person or persons any tide or submerged lands belonging to the state, within the municipal boundaries of such county or municipality, or within boundaries over which it was at the time of any such lease, acting in the exercise of de facto authority, the exclusive right to the use and possession of such lands from the date of such lease, for the full term thereof, not exceeding fifty (50) years in any case, is hereby confirmed in the lessee or lessees thereof and their successors in interest; and priority in date of any such leases shall give priority in right; provided, that nothing in this act contained shall be deemed or taken to confirm any such leases, unless the property therein described shall at all times during the continuance of such leases be applied by the lessees, or their successors in interest, to public or quasi-public uses; and provided, further, that within one (1) year from the date this act shall take effect said lessee or lessees, or their successors in interest, shall commence in good faith the improvement of said premises for the purposes aforesaid and shall prosecute the same to completion with reasonable diligence; and provided, further, that nothing herein contained shall be deemed to extend or revive any lease which by its terms has expired, nor to apply to any interest or claim of interest other than under a lease.

§ 2. This act shall take effect and be in force upon its passage.

1. Constitutionality — Legislature may ratify tideland leases.—The legislature is not precluded by the provisions of section 3 of article XV of the constitution, from ratifying a lease of tidelands made by the

city of San Pedro, that section forbidding the grant but not the lease of tidelands within two miles of an incorporated city or town.—San Pedro, etc., Co. v. Hamilton, 161 Cal. 610, 119 Pac. 1073.

2. Same—"Tidelands"—Grant or sale forbidden.—The phrase "tidelands" as used in the constitution, are to be construed more broadly than as merely including lands covered by the daily efflux and influx of the tide, and such lands embrace those which in their natural condition may be properly described as submerged lands and the phrase will be interpreted so as to prevent such submerged lands from falling into the hands of private monopolistic ownership by grant or sale thereof.—*San Pedro, etc., Co. v. Hamilton*, 161 Cal. 610.

3. Same—Not special legislation.—The validating act is general in its terms, applicable to all leases of tidelands by cities of a certain class and is not invalid on the ground that it is special legislation.—*San Pedro, etc., Co. v. Hamilton*, 161 Cal. 610.

4. Same—Alienation of tidelands against public policy as well as fundamental law.—It is inconsistent with public policy as well as fundamental law to alienate the tidelands of the state, but it is also in accordance with a wise public policy to lease such lands in the interest of commercial enterprise and in view of the fact that the possession of such lands returns to the state at the expiration of the lease, no apprehension need be felt as to monopolistic control thereof.—*San Pedro, etc., Co. v. Hamilton*, 161 Cal. 610.

5. Same—"Grant"—"Lease"—The word "grant" as used in the constitution is to

be taken in its ordinary and accepted sense, particularly where used in connection with the word "sale" and it does not embrace the concept of a "lease."—*San Pedro, etc., Co. v. Hamilton*, 161 Cal. 610.

6. Lease of tideland by San Pedro confirmed by act.—The lease of its reclaimed tidelands made by the city of San Pedro on February 14, 1906, was confirmed and validated by the act of March 23, 1907, and a subsequent lease thereof to the same lessee was made to correct the former lease.—*Koyer v. Miner*, 172 Cal. 448, 454, 156 Pac. 1023.

7. Lease subsequent to act not confirmed.—A lease of submerged and tide lands within two miles of an incorporated town made subsequent to the enactment of the present act was not confirmed by that act.—*People v. Banning Co.*, 166 Cal. 630, 138 Pac. 100; *People v. Southern Pacific Co.*, 166 Cal. 630, 138 Pac. 100.

8. Lease by municipality—Attempted annexation—Void.—An attempted lease of tide and submerged land owned by the state in virtue of its sovereignty by a municipality which has undertaken to incorporate it within its territorial limits, is void; and where such land is attempted to be annexed by two neighboring municipalities and both attempt to lease it, the lease that is prior in time is validated under the curative act of 1907.—*Wheatley v. Consolidated Lumber Co.*, 167 Cal. 441, 139 Pac. 1057.

PERMIT FOR COUNTY HIGHWAYS.

ACT 3069—An act authorizing any incorporated town, city or municipal corporation to permit the construction and maintenance of any state or county highway or boulevard over highways or streets in its incorporated limits, or any portion thereof, by the supervisors or highway commissioners of the county.

History: Approved March 19, 1909, Stats. 1909, p. 429. Amended June 4, 1913. In effect August 10, 1913. Stats. 1913, p. 386.

Use of streets as part of highway system permitted.

§ 1. Any incorporated city, town or municipal corporation in this state, is hereby authorized and empowered to permit by ordinance the use of its streets and highways by the board of supervisors or highway commissioners of the county, for the purpose of constructing and maintaining thereon any highway or boulevard, as part of a state or county system of roads in such incorporated limits, or any portion thereof; and the board of supervisors shall have power to construct and maintain such bridge or bridges on such highway or boulevard in such incorporated town or city as such board may deem necessary; and the board of supervisors shall have power to macadamize, or pave, curb or gutter, such highway or boulevard in such manner as it may determine, and the cost or expense thereof shall be paid out of the general fund of the county treasury. [Amendment approved June 4, 1913. Stats. 1913, p. 386. In effect August 10, 1913.]

BOTANICAL GARDENS AND HISTORICAL MUSEUMS.

ACT 3070—An act authorizing municipal corporations, counties, and cities and counties to acquire and hold lands by purchase or otherwise, or by lease for a term of years, for the purpose of developing and encouraging agricultural, horticultural, or botanical products and exhibiting the same, or for the purpose of erecting, rebuilding or furnishing historical museums or art galleries thereon.

History: Approved March 22, 1909, Stats. 1909, p. 655.

Exhibition of farm products.

§ 1. Any municipal corporation, county, or city and county in this state is hereby authorized and empowered to acquire and hold by purchase or otherwise, or by lease, lands situated within the limits thereof, for a term not exceeding fifty years, for the purpose of developing and encouraging agricultural, horticultural, or botanical products and for exhibiting the same, or for the purpose of erecting, rebuilding or furnishing historical museums or art galleries thereon under such terms and conditions as may be approved by the city council, board of trustees, or other legislative body of such municipal corporation, or by the board of supervisors of such county or city and county.

Repeal of conflicting acts.

§ 2. All acts and parts of acts in conflict with this act, are hereby repealed.

§ 3. This act shall take effect immediately.

WATERWORKS AND POWER PLANTS.

ACT 3071—An act granting to municipal corporations of the state of California, rights of way over public lands of the state for the location, construction and maintenance of waterworks and power plants; and the right to take material from such lands for the construction of such works and to take any water belonging to the state for the purpose of supplying any such municipality and its inhabitants with water.

History: Approved March 9, 1909, Stats. 1909, p. 581.

Grant of rights of way over state lands. Right to take waters.

§ 1. That there is granted to every municipal corporation of the state of California, and right of way for the location, construction and maintenance of waterworks and works for the generation and distribution of electrical power, and for every necessary adjunct thereto, over any swamp, overflowed, or other public lands of the state, not otherwise disposed of or in use, not in any case exceeding in length or width that which is necessary for the construction of such works or adjuncts, or for the protection thereof, and not, in any case, exceeding one hundred feet in width along each side of the marginal limits of such works or adjuncts; also the right to take from any of the lands belonging to the state adjacent to the works of such corporation, all materials, such as wood, stone and earth, naturally appurtenant thereto, which may be necessary and convenient for the original construction of such works and adjuncts; and also the right to take any waters belonging to the state, not otherwise disposed of, now or hereafter flowing or existing in any stream or lake intersected, crossed, or trapped by said waterworks, so far as may be necessary to give such municipality and its inhabitants an ample supply of water for all municipal, domestic, irrigation and manufacturing purposes. Whenever any municipal corporation shall desire to take any of the said waters so belonging to the state, for the purposes mentioned in this act, the legislative authority thereof shall cause a notice that said municipal corporation intends to take such waters, to be posted and recorded in the manner provided in section 1415 of the Civil Code of California. Said notice shall be signed in the corporate name of such municipal corporation by its mayor, or other officer, authorized so to do by the legislative authority thereof. In taking any of said waters, under this act, such municipal corporation shall comply with and be subject to all the provisions of title VIII, sections 1410 to 1422, inclusive, of said Civil Code; provided however, that for the purpose of the taking of any of said waters by such municipal corporation, under the provisions of this act, the words "waterworks," as used herein, shall be construed to be the works by which such municipal corporation proposes to convey said waters, so taken from such stream or lake, to the place of intended use and store the same; and provided further, that the construction of said waterworks shall be deemed to be

included in, and to be a part of, the construction of the works in which said municipal corporation intends to divert said waters, within the meaning of section 1416 of the said Civil Code.

Change of route, reversion of lands.

§ 2. If the route or location of any such works or adjuncts is changed so as not to cover or cross the lands selected, or the use of the land selected is abandoned, such selected lands revert, and the title thereto is reinvested in the state of its grantees free from all such uses.

Plat of lands to be furnished certain officers.

§ 3. When any selection of the right of way or land for such waterworks or adjuncts thereto is made by any municipal corporation, the legislative authority thereof must transmit to the surveyor general, controller of state and recorder of the county, in which the selected lands are situated, a plat of the lands so selected, giving the extent thereof and the uses for which the same is claimed or desired, duly verified to be correct, and if approved, the surveyor general must so indorse the plat and issue to the corporation a permit to use such right of way and lands, unless on petition properly presented to a court of competent jurisdiction, a review is had and such use prohibited.

§ 4. This act shall take effect immediately.

JOINT SEWERS, WATER MAINS AND OTHER CONDUITS.

ACT 3072—An act authorizing municipal corporations to permit other municipal corporations to construct and maintain sewers, water mains, and other conduits therein, also to construct and maintain sewers, water mains, and other conduits for their joint benefit, and at their joint expense, and to make and enter into contracts for said purposes.

History: Approved March 22, 1909, Stats. 1909, p. 677. Amended (1) as to entire act except the title, March 7, 1911, Stats. 1911, p. 300; (2) April 16, 1915; in effect August 8, 1915; Stats. 1915, p. 93; (3) May 3, 1919; in effect July 22, 1919; Stats. 1919, p. 153.

One city may construct sewers, etc., for another.

§ 1. Any municipal corporation or sanitary district, under such terms and conditions as may be prescribed by the city council, or other legislative body thereof, is hereby authorized and empowered to permit any other municipal corporation or sanitary district to construct and maintain sewers, water-mains or other conduits in, across, or along the streets and other public places of such municipal corporation or sanitary district, and to use the same for such purposes, under the provisions of this act, and not otherwise. [Amendment approved March 7, 1911. Stats. 1911, p. 300.]

Resolution to construct.

§ 2. Whenever the city council, a sanitary board or other legislative body of any municipal corporation or sanitary district shall find, and by resolution shall declare, that the location of such municipal corporation or sanitary district, or any portion of the territory included therein, is such that the same can not be adequately or conveniently provided with sewers, water-mains or other conduits, without the construction and maintenance by such municipal corporation or sanitary district of certain sewers, water-mains, or other conduits connecting therewith, in, across, or along certain streets, or other public places of any other municipal corporation or corporations, or sanitary district or districts, such city council, sanitary board or other legislative body, may cause a copy of such resolution to be submitted to the council, sanitary board or other legislative body of such other municipal corporation or corporations or sanitary district or districts, in which such streets or other public places are situated. Said reso-

lution shall contain a description of the sewers, water-mains, or other conduits proposed to be constructed and maintained in such other municipal corporation or corporations or sanitary district or districts, and shall designate the streets, or other public places thereof, in, across or along which such sewers, water-mains or other conduits are so proposed to be constructed and maintained. Said resolution shall be accompanied by a request in writing, that the municipal corporation or sanitary district, on behalf of which the same is made, signed by the clerk thereof, be granted permission to construct and maintain the sewers, water-mains or other conduits described in said resolution. The city council, sanitary board or other legislative body of any municipal corporation or sanitary district receiving such request and a copy of such resolution may by ordinance (or by resolution in case of a sanitary district) grant such permission at its discretion, and under such terms and conditions as it shall therein prescribe. If the permission granted under the provisions of this section shall be for the construction and maintenance of sewers, the city council, sanitary board or other legislative body by any municipal corporation or sanitary district granting the same, may, as a condition to the exercising of such permission, require that said municipal corporation or sanitary district shall have the right to connect its sewers with the sewers to be constructed under such permission, and to use the same in connection with its sewer system, upon the payment by it of such proportionate part of the cost of construction and maintenance of such sewers to the municipal corporation or sanitary district by which the same shall be constructed, as may be determined by resolutions of the city councils, sanitary boards, or other legislative bodies, or both municipal corporations or sanitary districts; such payment to be made at such times and in such amounts as may be so determined. [Amendment approved March 7, 1911. Stats. 1911, p. 301.]

Contract to lowest bidder. City may construct.

§ 3. All contracts for the construction or completion of any sewers, water-mains or other conduits, or for furnishing labor or materials therefor, to be constructed by any municipal corporation or sanitary district in, across or along the streets of any other municipal corporation or corporations or sanitary district or districts, as herein provided, shall be let to the lowest responsible bidder. The city council, sanitary board, or other legislative body of the municipal corporation or sanitary district so constructing such sewers, water-mains or other conduits, under permission granted as in this act provided, shall advertise for at least ten days in one or more newspapers published in such municipal corporation or sanitary district (or in one or more newspapers published in the county in which said municipal corporation or sanitary district is situated, if there be no newspaper published in such municipal corporation or sanitary district), inviting sealed proposals for furnishing the labor and materials for the proposed work before any contract shall be made therefor. The said city council or sanitary board or other legislative body, shall require such bonds as it may deem best from the successful bidder to insure the faithful performance of the contract work, and shall also have the right to reject any and all bids; provided, however, that nothing herein contained shall be construed as prohibiting such municipal corporation or sanitary district itself from constructing or completing such works, and employing the labor necessary therefor, without such advertisement for proposals or letting of a contract; and provided, further, that in any municipal corporation operating under a freeholders' charter, heretofore or hereafter framed under section 8 of article XI of the constitution, and providing for a board of public works, all the matters and things required in this section to be done and performed by the city council, or other legislative body of such municipal corporation, shall be done and performed by the board of public works thereof; and provided, further, that in case such charter or general law under which such municipal corporation or sanitary district is operating or existing, prescribes the manner of letting and entering into contracts for the furnishing of labor, materials or sup-

plies, for the construction or completion of public works or improvements, the contracts, for such sewers, water-mains, or other conduits shall be let and entered into in conformity with such charter or general law. [Amendment approved March 7, 1911. Stats. 1911, p. 302.]

Sewers, water-mains, etc., constructed by municipalities for joint use. Use of streets authorized.

§ 4. Whenever the city councils, sanitary boards or other legislative bodies of two or more municipal corporations, two or more sanitary districts, or one or more municipal corporations, and one or more sanitary districts, shall by resolutions adopted by them determine and declare that it will be for the interest or advantage of such municipal corporations or sanitary districts to do so, such municipal corporations or sanitary districts, by their respective councils, sanitary boards, or other legislative bodies, may enter into a joint agreement authorizing and providing for the joint construction and maintenance of sewers, water mains, or other conduits situated in the streets or other public places of either or any of such municipal corporations or sanitary districts, including the joint construction and maintenance of all necessary outfall sewers, whether constructed within or outside of the exterior boundaries of such municipal corporations or sanitary districts, and by such joint agreement shall provide for the joint payment of the cost and expense of and for the joint use, benefit and maintenance of all such sewers, outfall sewers, water mains and other conduits, upon such terms and conditions, and under such regulations, as may be approved by the city councils, sanitary boards or other legislative bodies of all such municipal corporations or sanitary districts; and the city council, sanitary board or other legislative body of each such municipal corporation or sanitary district may, and are hereby vested with power to, bind and obligate such municipal corporations or sanitary districts to pay such proportionate part of the cost of the construction of such sewer, outfall sewer, water mains, or other conduits, at such times and in such installments as may be provided for in such joint agreement. All contracts for the construction of sewers, outfall sewers, water mains, or other conduits, under the provisions of this section shall be made and entered into by the one of such municipal corporations or sanitary districts designated by the city councils, sanitary boards or other legislative bodies of all such municipal corporations or sanitary districts, and in the manner provided in section three of this act. Two or more municipal corporations, two or more sanitary districts, or one or more municipal corporations, and one or more sanitary districts, may also, by their city councils, sanitary boards, or other legislative bodies, enter into an agreement or agreements with each other for the joint use by such municipal corporations or sanitary districts, of any sewers, outfall sewers, water mains, or other conduits therefore, constructed in whole or in part in the streets or other public places of either or any such municipal corporations or sanitary districts, upon such terms and conditions as they by mutual agreement may by their respective city councils, sanitary boards or other legislative bodies, determine to be proper. Authority is hereby specifically granted to use the streets within the public corporations entering into such an agreement, for the construction and maintenance of sewers provided for by this section, and whenever it is necessary to extend such sewers without the limits of the public corporations entering into such joint or mutual agreement then authority is hereby granted to use public highways without the limits of an incorporated city for the construction and maintenance of such sewers subject only to the right of the board of supervisors to make reasonable police regulations for the protection of the highways so used. [Amendment of May 3, 1919. In effect July 22, 1919. Stats. 1919, p. 153.]

This section was also amended March 7, 1911, Stats. 1911, p. 302; April 16, 1915. In effect August 8, 1915. Stats. 1915, p. 93.

Payment for joint construction.

§ 5. Whenever any municipal corporation or sanitary district shall enter into a joint agreement for the joint construction and maintenance of sewers, outfall sewers, water mains or other conduits, as provided for in section four of this act, then the proportionate part of the cost and expense of the construction and maintenance of such sewers, outfall sewers, water mains or other conduits required to be paid by such municipal corporation or sanitary district, as provided for in the joint agreement entered into by any such municipal corporation or sanitary district, may be raised by any means provided by law including the issuance and sale of the bonds of such municipal corporation or sanitary district. [New section added May 3, 1919. In effect July 22, 1919. Stats. 1919, p. 154.]

Right of eminent domain.

§ 6. Whenever, in the construction of any sewer, outfall sewer, water main or other conduit authorized or provided for by this act it shall become necessary to take or damage private property, all such property necessary may be condemned and taken by appropriate action under the right of eminent domain. Such action shall in all respects be subject to and governed by the Code of Civil Procedure relating to eminent domain; provided, that all such actions may be brought by and in the name of the one of the municipal corporations or sanitary districts designated by all of the municipal corporations or sanitary districts which have entered into such joint agreement for the construction thereof. [New section added May 3, 1919. In effect July 22, 1919. Stats. 1919, p. 154.]

Original. [§ 5. This act shall take effect immediately.]

In numbering the added sections the concluding section of the original act appears to have been overlooked.

TAX FOR PARK, MUSIC AND ADVERTISING.

ACT 3073—An act authorizing municipal corporations, other than freeholder charter cities, to levy and collect a tax for park, music and advertising purposes.

History: Approved April 10, 1911, Stats. 1911, p. 846.

City trustees may levy tax for parks, music and advertising purposes.

§ 1. The council, board of trustees, or other legislative body of any city or municipal corporation within this state, except freeholder charter cities, may levy and collect a tax, not exceeding fifteen cents on each one hundred dollars, for the purpose of providing and maintaining parks and music, and for advertising purposes, and use and expend the money realized from such tax in any manner that may be deemed best by such council, board of trustees, or other legislative body. Such tax shall be in addition to all other taxes now authorized by law to be levied, and may be levied and collected for each fiscal year. The manner of using such tax and the time of collecting the same shall be provided by the ordinance levying such tax; provided, however, that such ordinance shall not become effective until the same shall have been submitted to the electors of such municipal corporation at a special election to be held for that purpose; and such legislative body shall give notice of such election by publication at least once a week for a period of four weeks prior to such election in a newspaper printed and published in such municipal corporation. Such notice shall contain a copy of said ordinance and the electors shall be invited thereby to vote for or against the same. If upon canvassing the votes at such an election, it is found that a majority of the votes so cast are in favor of said ordinance, the same shall become effective and said tax shall be levied and collected and used in the manner provided therein.

Election.

§ 2. Except as otherwise provided herein, the election herein mentioned shall be held as provided by law for holding municipal elections in such municipality, and the mode and manner of levying and collecting the tax herein provided shall be the same as apply to and govern in the assessment and collection of other municipal taxes.

PUBLIC UTILITY CROSSINGS OF HIGHWAYS, ETC.

ACT 3074—An act granting to municipal corporations of the state of California the right to construct, operate and maintain water and gas pipes, mains or conduits, electric light and electric power lines, and telephone and telegraph lines, along or upon any road, street, alley, avenue or highway, or across any railway, canal, ditch or flume.

History: Approved April 10, 1911, Stats. 1911, p. 852. Amended May 4, 1915. In effect August 8, 1915. Stats. 1915, p. 345.

Municipalities may construct water mains, etc., on roads, etc., of other city, etc. Right granted by other city, etc.

§ 1. That there is granted to every municipal corporation of the state of California, the right to construct, operate and maintain water and gas pipes, mains or conduits, electric light and electric power lines, and telephone and telegraph lines, along or upon any road, street, alley, avenue or highway, or across any railway, canal, ditch, or flume which the route of such works intersects, crosses or runs along, in such manner as to afford security for life and property; but the municipality shall restore the road, street, alley, avenue, highway, railway, canal, ditch or flume thus intersected to its former state of usefulness, as near as may be; provided, however, that such municipality may not use any street, alley, avenue or highway within any other city and county or incorporated city or town, for such purpose, unless the right so to use the same is granted by a two-thirds vote of the governing body of such other city and county, or incorporated city or town; provided, also, that such grant of authority shall not be necessary in any case where the street, alley, avenue or highway, or portion thereof, proposed to be used for the purpose of constructing, operating or maintaining any such works, or any part thereof, is a necessary or convenient part of the route of such works, and, at the time construction thereof was commenced, or the plans adopted therefor, was located in unincorporated territory. [Amendment of May 4, 1915. In effect August 8, 1915, Stats. 1915, p. 345.]

§ 2. This act shall take effect immediately.

1. Grant of right to construct pipe line—Subsequently incorporated city.—The acceptance by the city of Los Angeles of the grant made by the present act of the right to construct a pipe line across the public roads situated in unincorporated territory, manifested by a survey and location of the general route of such pipe line and by its request to the board of supervisors of Los Angeles county to pass an ordinance granting it such right for such pipe line, amounted to a contract or property right protected by the federal constitution, and such right was measured by the purpose for which the grant was made and accepted, and the city of Beverly Hills incorporated subsequent to the acceptance of such grant, became bound by the same and could not revoke it.—*Beverly Hills v. Los Angeles*, 175 Cal. 311, 165 Pac. 924.

2. Same—Grant depends on acceptance—Question of acceptance.—The legislative grant under the act of 1911, to construct certain utilities along and upon public highways, under certain conditions, applies to every municipality in the state, but contains no provision for formal acceptance of such grant by any city desiring to avail itself of the grant; hence, in the absence of such requirement, the question as to whether a city has accepted the grant or not must be determined from the action taken by it.—*City of Beverly Hills v. Los Angeles*, 175 Cal. 311, 165 Pac. 924.

3. Same—Grant accepted.—Where the intention of a city to accept the grant under the act is clearly indicated by the extent and nature of the work prosecuted by it, and has spent hundreds of thousands of dollars in reliance upon the grant in the

prosecution of a large water supply project, and has received from county supervisors a grant of the use of the highways for the project, the fact that the offer of the grant made by the state in the act in question was accepted by the city admits of no doubt.—City of Beverly Hills v. Los Angeles, 175 Cal. 311, 314, 165 Pac. 924.

4. Same—Acceptance constitutes a contract.—Where a city accepted the offer of the state contained in the act, for the purpose of constructing a pipe line for a water supply, a grant resulted, constituting a contract, the property right in which is protected by the constitution, and the extent of this right is measured by the purpose for

which the grant was made and accepted.—City of Beverly Hills v. Los Angeles, 175 Cal. 311, 314, 165 Pac. 924.

5. Same—Grant became complete on acceptance—Right not dependent on actual laying of pipe line.—The grant under the act having been accepted for the construction of a pipe line in an entirety, between two termini, and the right to use the intervening highways for that purpose, the right to use the same attached and became effective as completely as though the pipe line had been actually laid.—City of Beverly Hills v. Los Angeles, 175 Cal. 311, 314, 165 Pac. 924.

FRANCHISES FOR STEAM-HEATING PIPES.

ACT 3075—An act authorizing any city and county or municipality within this state, power to grant franchises, to lay steam-heating pipes in the streets, roads, avenues, alleys and public highways, for the purpose of carrying steam to be used for heating purposes.

History: Approved April 12, 1911, Stats. 1911, p. 895.

Franchises to lay steam-heating pipes.

§ 1. Power is hereby given to all cities and counties and municipalities within this state to grant franchises for the purpose of laying pipes in the streets, roads, avenues, alleys and public highways therein, for the purpose of carrying steam heat under high pressure; to be used, distributed and sold to the inhabitants therefor, for heating purposes.

The granting of such franchises shall be subject to the provisions of the act entitled "An act providing for the sale of street railroad and other franchises in counties and municipalities, and providing conditions for the granting of such franchises by legislative or other governing bodies, and repealing conflicting acts," and any act or acts amendatory thereof.

PERMITS FOR PASSAGEWAYS OVER OR UNDER ALLEYS.

ACT 3076—An act authorizing municipalities to grant permits for the construction and maintenance of passageways or other structures under or over public alleys for the purpose of connecting buildings located on abutting property.

History: Approved June 4, 1913. In effect August 10, 1913. Stats. 1913, p. 446.

Passageways over alleys permitted.

§ 1. Whenever the legislative body of any municipality in this state shall determine that the public interest or convenience require the construction and the maintenance of passageways or other structures under or over any public alley or alleys in such municipality, for the purpose of connecting buildings located on abutting property and facilitating the public use of the street or streets with which such alley or alleys connect, such legislative body shall have power to grant permits for the construction and maintenance of such passageways or other structures. Such passageways or other structures shall be so constructed and maintained as not to interfere with public traffic on the surface of the alley, and the use of such passageways or other structures shall at all times be subject to the regulation and control of the municipality. Each such permit shall be revocable at the pleasure of the legislative body.

PUBLIC UTILITIES ACT OF 1907.

ACT 3076a—An act authorizing any incorporated city, town or municipal corporation, to construct, equip, use, maintain and operate any works, road, railroad, tramway, power plant, telephone or telegraph line, or other necessary works or structures, for the preparation, manufacturing, handling or transporting of materials or supplies required in the construction or completion of any public work, improvement or utility, and to lease, acquire, by purchase, condemnation or otherwise, and hold and use lands and other necessary property for said purposes.

History: Approved March 18, 1907. Stats. 1907, p. 597.

Cities may acquire and operate works, etc., for construction of public utilities.

§ 1. Any incorporated city, town or municipal corporation in this state is hereby authorized to construct, equip, use, maintain and operate any works, road, railroad, tramway, power plant, telephone or telegraph line, or other necessary works or structures, within or without such city, town or municipal corporation, or the county wherein such city, town or municipal corporation is located, for the preparation, manufacture, handling or transporting of any materials or supplies required in the construction or completion by such city, town or municipal corporation of any public work, improvement or utility, and, for the purpose of constructing, equipping, using, maintaining or operating any such works, road, railroad, tramway, power plant, telephone or telegraph line, or other necessary works or structures, such city, town or municipal corporation is hereby authorized to lease or acquire, by purchase, condemnation or otherwise, and hold and use any land, rights of way, water, water rights, quarry, gravel-bed or other mineral deposits, or any other necessary property, within or without such city, town or municipal corporation, or the county wherein such city, town or municipal corporation is located.

Limitation of act.

§ 2. Nothing in this act contained shall be construed as extending or enlarging any limitation prescribed by law or municipal charter upon taxation, expenditure of public funds, or the incurring of indebtedness, by any city, town or municipal corporation.

§ 3. This act shall take effect immediately.

PUBLIC UTILITIES ACT OF 1911.

ACT 3077—An act relating to the acquisition, construction and operation of public utilities by municipal corporations.

History: Approved May 1, 1911, Stats. 1911, p. 1394.

Municipalities may acquire public utilities.

§ 1. Any municipal corporation of the state of California may acquire, construct, own, operate, or lease any public utility. A public utility, as the term is used herein, is defined to mean the supply of a municipal corporation alone, or together with the inhabitants thereof, or any portion thereof, with water, light, heat, power, transportation of persons or property, means of communication, or promoting the convenience of the public. The power to acquire and operate any public utility shall include the power to complete, reconstruct, extend, change, enlarge and repair any such public utility acquired, constructed, owned or operated by a municipality.

May acquire, etc., land easements.

§ 2. For such purpose any such municipal corporation may acquire, own, control, sell or exchange lands, easements, licenses and rights of every nature within or without its municipal limits, and may operate any such public utility within or without the

municipal limits when necessary to supply such municipality, or the inhabitants, or any portion thereof, with the service desired.

May sell excessive water, etc.

§ 3. Whenever, in the operation of any such utility, any such municipality shall develop an excess of water, light, heat or power, over and above the amount thereof which is necessary for the use of such municipality and its inhabitants, or of such portion thereof as the legislative body of such municipality may determine shall be supplied therewith, then such municipality may sell, lease or distribute such excess of water, light, heat or power, outside of the corporate limits of such municipality.

Term of lease.

§ 4. No lease of any public utility shall be valid for a period of more than fifteen years and all such leases shall be let to the highest bidder at public auction.

§ 5. This act shall take effect and be in force from and after its passage.

MUNICIPAL IMPROVEMENT DISTRICT ACT OF 1915.

ACT 3077a—An act to provide for the formation of districts within municipalities for the acquisition or construction of public improvements, works and public utilities therein; for the issuance, sale and payment of bonds of such districts to meet the cost of such improvements; and for the acquisition or construction of such improvements.

Title as amended: An act to provide for the formation of districts within municipalities for the acquisition or construction of public improvements, works and public utilities; for the issuance, sale and payment of bonds of such districts to meet the cost of such improvements; and for the acquisition or construction of such improvements.

History: Approved April 20, 1915. In effect August 8, 1915. Stats. 1915, p. 99. Amended May 6, 1919. In effect July 22, 1919. Stats. 1919, p. 670.

Municipal improvement district.

§ 1. Any portion of a municipality incorporated under the laws of this state may be formed into a municipal improvement district for the purpose of creating an indebtedness, to be represented by bonds of said district, the proceeds from the sale of which shall be used for the acquisition or construction of any public improvement work or public utility which such municipality is authorized by law to acquire or construct. Such districts shall be formed and such bonds shall be issued and sold in the manner and under the proceedings hereinafter set forth. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. of 1919, p. 670.]

Petition for election. Ordinance of intention. What ordinance shall contain.

§ 2. Whenever a petition signed by not less than ten per cent of the qualified electors residing in the territory which is proposed to be formed into a municipal improvement district, setting forth a general description of the improvement work or public utility to be acquired or constructed and a general description of the exterior boundaries of such proposed district, shall have been filed in the office of the clerk of the legislative body of said city, said legislative body may adopt an ordinance declaring its intention to call an election in said proposed district, or as the same may have been modified as herein provided, for the purpose of submitting to the qualified electors of said district the proposition of authorizing the issuance and sale of bonds of such district in the manner and for the purpose set forth in said ordinance of intention. Said legislative body shall have power to change or modify the boundaries of said

district and the nature, character or extent of such proposed public improvement work or public utility. Said ordinance of intention shall also contain:

1. An accurate description of the exterior boundaries of the proposed municipal improvement district;

2. A general description of the improvement work or public utility proposed to be acquired or constructed therein;

3. An estimate of the cost of the proposed improvement work or public utility and of the incidental expense in connection therewith;

4. That upon a certain date fixed therein an election will be called in said district for the purpose of submitting to the qualified voters thereof the proposition of incurring indebtedness by the issuance of bonds of such district to pay the cost and expenses of the proposed improvement work or public utility, and that a map showing the exterior boundaries of said district with relation to the territory immediately contiguous thereto and a general description of the proposed improvement are on file in the office of the clerk of the legislative body of such city; which said map shall govern for all details as to the extent of the said district.

5. A date, hour and place fixed for the hearing of protests. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 670.]

Publication of ordinance.

§ 3. Said ordinance shall be published once a day for at least six days in some newspaper of general circulation published at least six days a week in said city, or once a week for two weeks in some newspaper published less than six days per week in such municipality, and one insertion each week for two succeeding weeks shall be sufficient publication in such newspaper published less than six days per week. Such ordinance, unless otherwise provided by law, shall take effect upon the completion of said publication. In municipalities where no such newspaper is published such ordinance shall be posted in three public places therein, and in case of posting notice such ordinance shall take effect two weeks after date of such posting of notice.

Protests.

§ 4. Any person interested, objecting to the formation of said district, or to the extent of said district, or to the proposed improvement, or work, or to the acquiring or construction of the proposed public utility, or to the inclusion of his property in said district, may file a written protest, setting forth such objection, with the clerk of the legislative body at or before the time set for the hearing of said petition. The clerk of said legislative body shall endorse on each such protest the date of its reception by him, and, at the time appointed for the hearing above provided for, shall present to said board all protests so filed with him. Said legislative body shall hear said protests at the time appointed or at any time to which the hearing thereof may be adjourned, and pass upon the same, and its decision thereon shall be final and conclusive. If any of such protests against the proposed improvement or work, or against the acquisition or construction of the public utility be sustained, no further proceedings shall be had or taken pursuant to the petition, but a new petition for the same or a similar purpose may be filed at any time after the expiration of six months from the date such protest was sustained. If any of such protests be against the extent of said district, or against the inclusion of property in said district, then the legislative body shall have power to make such changes in the boundaries of the proposed district as it shall find to be proper and advisable, and shall define and establish such boundaries, but said legislative body shall not modify such boundaries so as to include any territory which will not in its judgment, be benefited by said improvement work or public utility.

Modification of boundaries.

Said legislative body shall not modify such boundaries except after notice of its intention so to do, given by one insertion in said newspaper, describing the proposed modification, and specifying a time for hearing objections to such modification, which time shall be at least ten days after the publication of said notice. Written objections to said proposed modification may be filed with the clerk of said legislative body by any interested person at or before the time set for hearing the same. Said legislative body shall hear and pass upon such objections at the time appointed, or at any time to which the hearing thereof may be adjourned, and its decision thereon shall be final and conclusive. If such objections, or any of them, be sustained, no further proceedings pursuant to such objection shall be taken, but a new petition for the same or a similar purpose may be filed at any time after the expiration of six months from the date such protest was sustained.

Jurisdiction deemed acquired.

At the expiration of the time within which protests may be filed, if none be filed, or if protests be filed and after hearing be denied, or at the expiration of the time within which objections to the modification of the boundaries of the district, in case such modification be proposed, may be filed, if none be filed, or if such objections be filed, and, after hearing, be overruled, as above provided, then said legislative body shall be deemed to have acquired jurisdiction to proceed further in accordance with the provisions of this act.

Bond question submitted. Rate of interest.

§ 5. At any time after said legislative body shall have so acquired jurisdiction, it may call an election to be held within the district described in said ordinance, and provide for the submission to the qualified voters thereof, the proposition of incurring a debt by the issuance of bonds of such district, for the purposes set forth in said ordinance. The ordinance or resolution calling such election, shall also recite the objects and purposes for which the proposed indebtedness is to be incurred, the nature of the improvement work or public utility, contemplated thereby, the estimated cost thereof, the amount of the principal of the indebtedness to be incurred therefor and the rate of interest to be paid on said indebtedness; and shall fix the date on which such election shall be held, the manner of holding the same and the manner of voting for or against said proposition. The maximum rate of interest to be paid on such indebtedness shall be six per centum per annum, payable semi-annually.

Election.

§ 6. For the purposes of said election said legislative body shall in said ordinance, or resolution, establish one or more precincts within the boundaries of said district, designate a polling place and appoint one inspector, one judge and one clerk for each such precinct. In all particulars not recited in such ordinance, or resolution, such election shall be held as provided by law for the holding of general municipal elections in such city. Said ordinance, or resolution, ordering the holding of said election shall, prior to the date fixed for such election be published five times in a daily, or twice in a weekly or semi-weekly newspaper of general circulation, printed and published in said city and designated by said legislative body for said purpose. In cities where no such newspaper is published, such ordinance, or resolution, shall be posted in three public places therein two weeks preceding the date fixed for the holding of such election. No other notice of such election need be given. If at such election two-thirds of all the voters voting at said election, shall vote in favor of incurring such bonded indebtedness, then such legislative body shall thereupon be authorized and empowered to issue the bonds of said

district for the amount provided for in such proceedings, payable out of funds of such district, to be provided as in this act prescribed.

Bonds. How payable.

§ 7. Said legislative body shall, subject to the provisions of this act, prescribe the form of said bonds, and of the interest coupons attached thereto. Said bonds shall be payable in the following manner:

A part, to be determined by said legislative body, and which shall not be less than one-fortieth part of the whole amount of such indebtedness, shall be payable each and every year, on a day and date, and at a place to be fixed by said legislative body and designated in such bonds, together with the interest on all sums unpaid on such date, until the whole of said indebtedness shall have been paid; provided, however, that said legislative body may in its discretion determine and fix a date for the earliest maturity of the principal of such bonds, not more than ten (10) years from the date of the issue of such bonds, but in this event the whole amount of such indebtedness must be made payable in equal annual parts in not to exceed forty years from the time of contracting the same.

Denomination. Interest coupons.

The bonds shall be issued in such denomination as said legislative body may determine, except that no bonds shall be of a less denomination than one hundred dollars, nor of a greater denomination than one thousand dollars, and shall be payable on the day and at the place fixed in such bonds, and with interest at the rate specified in such bonds, which rate shall not be in excess of six per centum per annum, and shall be paid semi-annually; and said bonds shall be signed by the chief executive of the municipality, or by such other officer thereof as the legislative body of the municipality shall, by resolution adopted by a two-thirds vote of all its members, authorize and designate for that purpose, and also signed by the treasurer thereof, and shall be countersigned by the clerk. The interest coupons on said bonds shall be numbered consecutively and signed by the treasurer of such municipality by his engraved or lithographed signature. In case any such officers whose signatures or counter-signatures appear on the bonds or coupons shall cease to be such officer before the delivery of such bonds to the purchaser, such signature or counter-signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until the delivery of the bonds.

Sale of bonds.

§ 8. Said legislative body may issue and sell the bonds of such district, authorized as herein above provided, at not less than par value, and the proceeds of the sale of such bonds shall be placed in the treasury of such municipality to the credit of the proper district fund and shall be applied exclusively to the purposes and objects mentioned in the ordinance or resolution ordering the holding of the bond election as aforesaid.

Tax levy to pay interest, etc.

§ 9. The legislative body of such city shall, at the time of fixing the general tax levy, and in the manner for such general tax levy provided, levy and collect a tax each year upon the taxable property in such district sufficient to pay the interest on such bonds for that year, and such portion of the principal thereof as is to become due before the time for making the next general tax levy; provided, however, that if the maturity of the indebtedness created by the issue of such bonds be made to begin more than one year after the date of such issue, such tax shall be levied and collected, at the time and in the manner aforesaid, each year sufficient to pay the interest on such indebtedness

as it falls due, and also to constitute a sinking fund for the payment of the principal thereof on or before maturity. Such tax shall be in addition to all other taxes levied for municipal purposes and when collected shall be paid into the treasury of such city and be used for the payment of the principal and interest on such bonds, and for no other purpose. The principal and interest on such bonds shall be paid by the treasurer of such city in the manner provided by law for the payment of principal and interest on bonds of such city.

Letting of contracts. City may do work.

§ 10. All contracts for the construction or completion of any public work, or improvement or public utility, or for furnishing labor, materials or supplies therefor as herein provided, shall be let to the lowest responsible bidder. The legislative body of such city shall advertise for two or more days in a newspaper of general circulation printed and published in such city, inviting sealed proposals for furnishing labor, materials and supplies for the proposed improvement before any contract shall be made therefor. The said legislative body shall have the right to require such bonds as it may deem best from the successful bidder to insure the faithful performance of the contract, and shall also have the right to reject any and all bids; provided, however, that nothing herein contained shall be construed as prohibiting the municipality itself from constructing or completing such works improvements or public utilities and employing the labor necessary therefor, without a contractor; and provided, further, that in municipalities operating under a charter heretofore or hereafter framed under the provisions of the constitution of the state of California, all acts required to be performed subsequent to the sale of such bonds by this act, shall be done and performed by the proper body, board, officer or commission of such municipality, as is required or authorized by such charter to perform such acts, and in case such charter also prescribes the manner of letting and entering into contracts for the furnishing of labor, materials or supplies for the constructing or completion of public works or improvements, the contracts therefor shall be let and entered into in conformity with such charter.

Expenditure of proceeds.

§ 11. Said municipality shall, by and through its proper officers, have full power and authority to expend the proceeds acquired from the sale of such bonds for the acquisition or construction of the improvement work or public utility set forth in the ordinance calling said election, and shall also have full power and authority to acquire or construct such improvements, works or public utilities, and such improvements, works or public utilities so acquired or constructed shall be the property of such municipality.

Name of district.

§ 12. Any district formed under the provisions of this act shall be known as Municipal Improvement District No. (inserting number) of city of (inserting the name of the municipality in which such district is located).

§ 13. This act shall not affect any other act or acts relating to the same, or a similar subject, but it is intended to provide an alternative method of procedure governing the subject to which it relates. When proceeding under the provisions of this act, its provisions and none other shall apply.

Construction.

§ 14. The provisions of this act shall be liberally construed to effect the purpose thereof and no provision hereof shall be deemed or construed to prohibit the inclusion within the boundaries of any district formed under the provisions of this act, of any territory which has heretofore or which may be hereafter included within any other district formed under the provisions of this act. [Amendment of May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 671.]

1. Bonds authorized at maximum rate not invalidated where bonds are issued at less rate.—Where the ordinance calling a special bond election under this act specified the maximum rate of interest at six per cent and the voters authorized the bonds at the maximum rate, the bonds are not invalidated by reason of the fact that the counsel fixed a less rate of interest.—*Cole v. Los Angeles*, (Cal.) 182 Pac. 436.

2. District is taxing district—Strict construction.—A municipal improvement dis-

trict formed under this act is nothing more than a taxing district; and as statutes conferring the power of special taxation must be restricted to the plain language thereof, the present act must be strictly construed.—*Mulville v. San Diego*, (Cal.) 192 Pac. 702.

3. Improvements beyond boundaries not authorized.—Municipalities have no power under this act to construct or acquire improvements beyond their boundaries.—*Mulville v. San Diego*, (Cal.) 192 Pac. 702.

MUNICIPAL TAX DISTRICT ACT OF 1919.

ACT 3077b—An act to provide for the formation of special municipal tax districts within municipalities for the acquisition, construction or operation of public improvements, works or utilities of local necessity or convenience, or for the furnishing of special local service; and for the acquisition, construction or operation of such improvements, works or utilities, or the furnishing of such service by or for such districts.

History: Approved May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 546.

Special municipal tax districts for constructing improvements, etc.

§ 1. Any portion of a municipality incorporated under the laws of the state may be formed into a special municipal tax district for the purpose of levying upon the taxable property in such district a special tax not to exceed fifteen cents per annum on each one hundred dollars of assessed valuation, the proceeds from which shall be used for the acquisition, construction or operation of any public improvement or work or utility of local necessity or convenience, or for the furnishing, performing or doing of any special local service, which such municipality is authorized by law to acquire, construct, operate, furnish, perform or do, including music, recreation or advertising. Such districts shall be formed and such tax levied in the manner and under the proceedings hereinafter set forth. Such districts may be formed to continue one, two, three, four or five years, and such special tax may be levied each year for such period of time.

Petition to form district. Resolution of intention. What ordinances shall contain.

§ 2. Whenever a petition signed by not less than ten per cent of the qualified electors residing in the territory which is proposed to be formed into a special municipal tax district, setting forth a general description of the improvement, work or utility to be acquired, constructed or operated, or the special local service to be furnished, performed or done, a general description of the exterior boundaries of such proposed district, and a statement of the duration of such district and the maximum annual special tax proposed to be levied, shall have been filed in the office of the clerk of the legislative body of said city, said legislative body may adopt an ordinance or resolution declaring its intention to call an election in said proposed district, or as the same shall have been modified as hereinafter provided, for the purpose of submitting to the qualified electors of said district the proposition of authorizing the formation of such special municipal tax district and the levying therein of a special tax in the manner and for the purpose set forth in said ordinance or resolution of intention. In said ordinance or resolution of intention said legislative body shall have power to change or modify the boundaries of said district and the nature, character or extent of such proposed public improvement, work, utility, or local service. Said ordinance or resolution of intention shall also contain:

1. A description of the exterior boundaries of the proposed special municipal tax district;

2. A general description of the improvement, work, utility or local service proposed to be acquired, constructed, operated, furnished, performed or done;

3. The maximum annual special tax proposed to be levied, and the number of years, not exceeding five years, that it is proposed said special tax shall be levied, and said proposed district shall remain in existence;

4. A statement that an election will be called in said district for the purpose of submitting to the qualified electors thereof the proposition of the formation of such special municipal tax district and the levying therein of said special tax to pay the cost and expenses of the proposed improvement, work, utility or local service, and that a map showing the exterior boundaries of said district with relation to the territory immediately contiguous thereto, and a general description of the proposed improvement are on file in the office of the clerk of the legislative body of such city;

5. A date, hour and place fixed for the hearing of protests.

Publication of ordinance.

§ 3. Said ordinance or resolution shall be published once a day for at least six days in some newspaper of general circulation published at least six days a week in said city, or once a week for two weeks in some newspaper published less than six days per week in such municipality, and one insertion each week for two succeeding weeks shall be a sufficient publication in such newspaper published less than six days per week. Such ordinance or resolution shall take effect upon the completion of said publication. In municipalities where no such newspaper is published, such ordinance or resolution shall be posted in three public places therein, and shall take effect two weeks after the date of such posting of notice.

Objections to formation of district.

§ 4. Any person interested, objecting to the formation of said district, or to the extent of said district, or to the proposed improvement or work, or to the acquisition, construction, or operation of the proposed utility, or to the special local service, to be furnished, performed or done, or to the inclusion of his property in said district, may file a written protest, setting forth such objection, with the clerk of said legislative body at or before the time set for the hearing of said protests. The clerk of said legislative body shall indorse on each such protest the date of its reception by him, and, at the time appointed for the hearing above provided for, shall present to said body all protests so filed with him. Said legislative body shall hear said protests at the time appointed, or at any time to which the hearing thereof may be adjourned, and pass upon the same, and its decision thereon shall be final and conclusive. If any of such protests against the proposed improvement or work, or against the acquisition, construction, or operation of the utility, or against the special local service to be furnished, performed or done, be sustained, no further proceedings shall be had or taken pursuant to such petition, but a new petition for the same or a similar purpose may be filed at any time after the expiration of six months from the date such protest was sustained. If any of such protests be against the extent of said district, or against the inclusion of property in said district, then the legislative body shall have power to make such changes in the boundaries of the proposed district as it shall find to be proper and advisable, and shall define and establish such boundaries, but said legislative body shall not notify such boundaries so as to include any territory which will not, in its judgment, be benefited by said improvement, work, utility, or special local service.

Notice of intention to change boundaries. Objections.

Said legislative body shall not modify such boundaries except after notice of its intention so to do, given by one insertion in said newspaper or by posting in three public places in municipalities where no such newspaper is published, describing the proposed

modification, and specifying a time for hearing objections to such modification, which time shall be at least ten days after the publication of said notice. Written objections to said proposed modification may be filed with the clerk of said legislative body by any interested person at or before the time set for hearing the same. Said legislative body shall hear and pass upon such objections at the time appointed, or at any time to which the hearing thereof may be adjourned, and its decision thereon shall be final and conclusive. If such objections, or any of them, be sustained, no further proceedings pursuant to such petition shall be taken, but a new petition for the same or a similar purpose may be filed at any time after the expiration of six months from the date such protest was sustained.

At the expiration of the time within which protests may be filed, if none be filed, or if protests be filed and after hearing be denied, or at the expiration of the time within which objections to the modifications of the boundaries of the district, in case such modification be proposed, may be filed, if none be filed, or if such objections be filed, and, after hearing, be overruled, as above provided, then said legislative body shall be deemed to have acquired jurisdiction to proceed further in accordance with the provisions of this act.

Election for formation of district. Ordinance calling election.

§ 5. At any time after said legislative body shall have so acquired jurisdiction, it may call an election to be held within the district described in said ordinance or resolution of intention, or as the same may have been modified as above provided, and provide for the submission to the qualified electors thereof, the proposition of the formation of such special municipal tax district and the levying therein of a special tax for the purposes set forth in said ordinance or resolution of intention. The ordinance or resolution calling such election shall recite the objects and purposes for which the proposed special tax is to be incurred, the nature of the improvement, work, utility, or local service contemplated thereby, the estimated cost thereof, the maximum amount of the special tax annually to be levied therefor, and whether such tax shall be levied for one, two, three, four or five years; and shall fix the date on which such election shall be held, the manner of holding the same and the manner of voting for or against said proposition.

Publication of ordinance. Majority vote shall establish district.

§ 6. For the purposes of said election said legislative body shall in said ordinance or resolution establish one or more voting precincts within the boundaries of said district, designate a polling place and appoint one inspector, one judge and one clerk for each such precinct. Said ordinance, or resolution, ordering the holding of said election shall, prior to the date fixed for such election, be published five times in a daily, or twice in a weekly or semiweekly newspaper of general circulation, printed and published in said city, and designated by said legislative body for such purpose. In cities where no such newspaper is published, such ordinance, or resolution, shall be posted in three public places therein, two weeks preceding the date fixed for the holding of such election. No other notice of such election need be given. In all particulars not otherwise provided in this act, such election shall be held as near as may be in conformity with the law for the holding of municipal elections in such city. If at such election a majority of all the voters voting upon such proposition at said election shall vote in favor of the formation of such special municipal tax district and the levying therein of such special tax, then such legislative body shall thereupon be authorized and empowered to declare such special municipal tax district formed and to levy such special tax. After an election based upon any such petition, the sufficiency of such petition or any proceedings had prior to such election, in any respect, shall not be subject to judicial review or be otherwise questioned, nor shall any defect or irregularity in any proceedings prior to

such election affect the validity of the formation of such district or any proceedings or acts had or done subsequent thereto in carrying out the objects or purposes of this act.

Tax levy.

§ 7. The legislative body of such city shall, at the time of fixing the general tax levy, and in the manner for such general tax levy provided, levy and collect a special tax not exceeding said maximum rate, upon the taxable property in such district as set forth in the ordinance calling said election. Such tax shall be in addition to all taxes levied for municipal purposes and when collected shall be paid into the treasury of such city and be used for the purposes set forth in the ordinance calling said election.

Municipality to act on behalf of district.

§ 8. Said municipality shall, by and through its proper officers, have full power and authority on behalf of such district, to expend the proceeds acquired from such special tax for the purposes or objects set forth in the ordinance or resolution calling said election, and shall also have full power and authority to acquire, construct or operate such improvements, works or utilities, or to furnish, perform or do such special local service, and such improvements, works or utilities, or special local service, so acquired, constructed or furnished shall be the property of such municipality for the benefit of such district.

Municipal officers to be district officers.

The legislative body and all other officers, boards or commissions of such municipality, their assistants, deputies, clerks and employees, shall be ex officio the legislative body, officers, boards, commissions, assistants, deputies, clerks and employees, respectively, of such special municipal tax district, and shall respectively perform, unless otherwise provided by said legislative body, the same various duties for said district as they are lawfully required to perform for said municipality, without additional compensation, in order to carry out the provisions of this act.

Appointment of other officers and employees.

Said legislative body may in its discretion provide for the appointment of such other officers and employees for said district as in its judgment may be deemed necessary, and prescribe their duties and fix their compensation, which said officers and employees shall hold office during the pleasure of said legislative body and shall not be subject, in their appointment and removal, to the civil service provisions, if any, of such municipality.

Name of district.

§ 9. Any district formed under the provisions of this act shall be known as special municipal tax district number (inserting number) of the city of
(inserting the name of the municipality in which such district is located).

Intent of act.

§ 10. This act shall not affect any other act or acts relating to the same, or a similar subject, but it is intended to provide an alternative method of procedure governing the subject to which it relates.

Construction.

§ 11. The provisions of this act shall be liberally construed to effect the purpose thereof.

HARBOR IMPROVEMENT ACT OF 1911.

ACT 3078—An act to authorize certain cities and cities and counties to levy and collect taxes for the purpose of providing a fund for the improvement, repair and maintenance of their harbors, and for the construction of wharves and piers, seawall, state or municipal railroad and spurs therealong, betterments, appurtenances, dredging and filling necessary in connection therewith, and to authorize such cities and cities and counties to issue and sell their bonds to create a fund for such repair, maintenance, improvement or construction, or any part thereof, or for the redemption, retirement and cancellation of any state bonds now or hereafter issued and sold to create a fund for any such purposes.

History: Approved May 1, 1911, Stats. 1911, p. 1462.

Cities may levy taxes or sell bonds to improve harbors.

§ 1. Any city or city and county whose corporate limits include or front upon any harbor, bay or estuary, or other navigable water, whether the tide lands or water-front thereof is owned or controlled by it or by the state, either in whole or in part, is hereby authorized to incur an indebtedness for the improvement, repair and maintenance of its harbor, and for the erection of wharves, piers, seawall, state or municipal railroad and spurs therealong, betterments, appurtenances and dredging and filling necessary in connection therewith, and for each, any or all of said purposes, and such city or city and county for the purpose of providing a fund or funds for the payment of such indebtedness, is hereby authorized to levy and collect taxes therefor or to issue and sell its bonds therefor, or to levy and collect taxes and to issue and sell its bonds therefor, whether the fund so provided is now or hereafter by law or by the charter of such city or city and county, under the management and control of a state board of harbor commissioners or under the management and control of such city or city and county, or any officer, board or department thereof, and such city or city and county is also authorized to issue and sell its bonds for the purpose of providing a fund for the redemption, cancellation and retirement of any state bonds now or hereafter issued and sold for the purpose of providing a fund for any improvement or construction in its harbor as aforesaid.

Law applicable.

§ 2. All provisions of law or of the charter of such city or city and county relative to the issuance and sale of the other municipal bonds of such city or city and county, and to the mode and manner of calling, holding and canvassing an election authorizing the same, shall with equal force apply to the issue and sale of the bonds hereby authorized and to the mode and manner of calling, holding and canvassing any election with reference thereto.

City may turn over funds to harbor commissioners.

§ 3. Where by law or by the charter of such city or city and county the management and control and improvement of its harbor or tide lands is vested in whole or in part in a state board of harbor commissioners, such city or city and county is authorized to turn over to such state board of harbor commissioners any fund or funds which it may provide as aforesaid, to be by said state board of harbor commissioners used, managed and controlled for such work of improvement, repair, maintenance and construction aforesaid as said city or city and county may lawfully designate.

Fund for redemption of bonds.

§ 4. Whenever any city or city and county provides any fund under authority of this act for the redemption, cancellation or retirement of any state bonds hereinabove mentioned, such city or city and county through its appropriate officer or officers may transfer the money in such fund to the state treasurer who must upon its receipt place

the same in the appropriate sinking fund and apply the same to the redemption, cancellation and retirement of said state bonds.

§ 5. This act shall take effect immediately.

1. Long Beach authorized to issue bonds for harbor improvement.—The city of Long Beach is empowered under the harbor improvement act of 1911 (Stats. 1911,

p. 1462), to improve its harbor and incur a bonded indebtedness therefor.—Long Beach v. Lisenby, 175 Cal. 575, 166 Pac. 333.

ESTABLISHMENT OF HARBOR LINES.

ACT 3079—An act to authorize and empower municipal corporations which own or possess, or which may hereafter own or possess, tidal lands, or the title thereto, of any harbor or other navigable waters therein to establish harbor lines for such waters; to validate harbor lines heretofore established by such municipal corporations; to provide for the free and unobstructed navigation of such waters, and to authorize and empower such municipal corporations to provide access to such waters by public streets, highways and other public rights of way to such navigable waters and to prevent the exclusion or obstruction thereof; and to authorize and validate the filling in and improving of tidal lands between the mainland and harbor lines fixed by municipal or other authority.

History: Approved June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 497.

Cities may establish harbor lines.

§ 1. Any municipal corporation that, by grant from the state of California, or otherwise, owns, holds or possesses, or may hereafter own, hold or possess tide lands and submerged lands, or the title to such lands, situated within the boundaries of such municipal corporation and fronting on the waters of any harbor, bay, inlet, estuary or other navigable water within the boundaries of such municipal corporation, is hereby granted power and authority, to be exercised by ordinance, to fix and establish harbor lines, both pier-head and bulk-head lines, in and for such harbor, bay, inlet, estuary or other navigable water, and to change or abolish such harbor lines as the public interest or the needs of commerce and navigation may require. That the aforesaid power and authority is hereby granted and shall be exercised by any municipal corporation to the same extent to which the state of California might itself exercise the same, or to which it can grant such power to any such municipal corporation; provided, that no such harbor lines shall be fixed or established beyond or outside of any harbor lines established by the United States.

Ordinances confirmed.

§ 2. All ordinances of any municipal corporation of this state, holding and possessing tide lands and submerged lands or the title thereto, fronting on the waters of any harbor, bay, inlet, estuary or other navigable water situated within the boundaries of such municipal corporation, which ordinances may have been adopted prior to the passage of this act, in the manner prescribed by law for the adoption of ordinances by such municipal corporation, and which ordinances fix or establish harbor lines upon or adjacent to such tide lands and submerged lands, are hereby confirmed, legalized and validated, in so far as the same purport to fix or establish harbor lines, and, except in so far as the harbor lines so established may be located or extend beyond or outside of harbor lines established under the authority of the United States; and all such harbor lines so established, by any such municipal corporation, except as aforesaid, are hereby recognized as and declared to be harbor lines of the harbor, bay, inlet, estuary or other navigable water for which they were so established; provided, however, that such harbor lines may be hereafter altered, modified or abolished by such municipal corporation as the public interest and the needs of commerce and navigation may require.

Waters to remain open to public. Streets to waters. May fill in tide lands. Power over water frontage. Individuals may not obstruct right of way to waters.

§ 3. That all navigable waters of any harbor, bay, inlet, estuary or other navigable water situated within or adjacent to any municipal corporation, shall be and remain open to the free and unobstructed navigation of the public, and such waters and the water front thereof shall also be and remain open to free and unobstructed access thereto by the people from the public streets and highways within such municipal corporation, and public streets and highways and other public rights of way shall likewise be and remain open to the free and unobstructed use of the public from such waters and the water front thereof to such public streets and highways; and in order to secure to any such municipal corporation, and to the people generally, the benefits of this act and the benefits of the provisions of article XV of the constitution of the state of California, every municipal corporation in which there is situated any harbor, bay, inlet, estuary or other navigable water, shall have, and is hereby granted power and authority to establish by ordinance, such public streets, highways and other public rights of way to such waters as are or may be required for any public purpose over, upon or along the tide lands or submerged lands in such municipal corporation, fronting on the waters of such harbor, bay, inlet, estuary or other navigable water, for the purpose of connecting such navigable waters with public streets and other highways of such municipal corporation, or for any other public purpose, and to lay out, open, widen, narrow, close up, construct, maintain, and improve such streets, highways and other public rights of way; and to fill in or authorize to be filled in all or any part of tide lands and submerged lands lying between said streets and lying between the mainland and harbor lines established by said municipal or other authority; provided, that when any such lands are so filled in, sufficient streets shall be opened and maintained open through or adjacent to such lands so filled in to enable the public to have convenient and adequate access to and along the water front of such lands and to such navigable waters. That the power and authority hereby granted shall apply to, and be exercisable by any such municipal corporation, over, along or upon the water frontage or tide lands or submerged lands of any such harbor, bay, inlet, estuary or other navigable water that is owned or possessed, or that may hereafter be owned or possessed, or the title to which is now or may hereafter be held by any such municipal corporation, and to any such water frontage or tide land or submerged land that is, or may be, claimed or possessed by any individual, partnership or corporation; and the ordinances of any such municipal corporation that may have heretofore been adopted, in the manner prescribed by law for the adoption of ordinances by said municipal corporation, for the laying out, establishing, opening, constructing, maintaining or otherwise improving of public streets, highways and other public rights of way of the character mentioned in this section, are hereby confirmed, legalized and validated.

Individuals not to obstruct right of way to waters.

§ 4. Whenever any municipal corporation, shall, by ordinance regularly adopted, declare, or shall have heretofore declared, that any right of way to the navigable water of any harbor, bay, inlet, estuary or other navigable water in such municipality is required for any public purpose, over, upon or along the frontage of tide or submerged lands thereof, no individual, partnership or private corporation claiming or possessing such frontage or tide or submerged lands shall obstruct, hinder or impede such municipal corporation, or the officers thereof in any manner, in laying out, establishing, opening, constructing or otherwise improving, or maintaining such right of way, or exclude such right of way, or obstruct or prevent the free use thereof by such municipal corporation or the public generally.

WATER FRONT IMPROVEMENT ACT OF 1917.

ACT 3079a—An act granting to any city of the state whose corporate limits include or bound upon any harbor, bay, estuary, or other navigable body of water, the power to improve the same and to establish, acquire, construct, improve and maintain in, upon and along the waters thereof works for use in connection therewith.

History: Approved April 6, 1917. In effect July 27, 1917. Stats. 1917, p. 72.

Cities authorized to maintain piers, etc. Property rights not affected.

§ 1. Any city of this state whose corporate limits include or bound upon any harbor, bay, estuary, or other navigable body of water, is hereby granted power to establish, acquire, construct, improve and maintain in, upon and along the waters of any such harbor, bay, estuary, or other navigable body of water, piers, docks, wharves, bulkheads, quays, and other necessary works for use in connection therewith, and power to construct, improve, dredge, deepen or straighten, channels, turning basins, canals, slips and waterways to, from and along any of the aforesaid works, and connecting with any other navigable water either within or without the limits of such city, and to do any and all other things necessary or convenient to the establishment, improvement, conduct and maintenance of a harbor, and in furtherance of commerce and navigation. Nothing herein, however, shall be deemed or construed to affect or limit the use and enjoyment by persons, firms or corporations of their property or property rights; nor shall anything in this act be construed or deemed to grant to any city the right to destroy, injure, impair or interfere with any private or quasi-public property or property rights, leasehold or otherwise, or to the use and enjoyment thereof.

THIRD CLASS CITIES, WATER FRONT IMPROVEMENT.

ACT 3079b—An act authorizing cities of the third class whose corporate limits include or front upon any harbor, channel, estuary or other navigable body of water, to do certain acts necessary or convenient to the establishment, improvement, conduct and maintenance of a harbor; to do certain acts, either within or without the corporate limits of such cities, in furtherance of commerce and navigation; to incur indebtedness to carry out the purposes defined herein and to issue and sell bonds for the purpose of securing funds for the payment thereof.

History: Approved May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 712.

Harbor improvements in cities of third class.

§ 1. Any city of the third class of this state, whose corporate limits include or front upon any harbor, channel, estuary, or other navigable body of water is hereby granted power to establish, acquire, construct, improve and maintain, in, upon or along the waters of any such harbor, channel, estuary or other navigable body of water, piers, docks, bulkheads, quays, railroads, bridges and other necessary works in connection therewith on property owned by said city. Any such city is further granted power to construct, improve, dredge, deepen or straighten channels, turning basins, canals, slips and waterways to, from and along any of the aforesaid works, and connecting with any other navigable water, either within or without the corporate limits of such city, and to do any and all other things necessary or convenient, either within or without said corporate limits, to the establishment, improvement, conduct and maintenance of a harbor and in furtherance of commerce and navigation.

Authority to incur indebtedness.

§ 2. Any such city is hereby authorized to incur an indebtedness for any or all of said purposes hereinabove specified and for the purpose of providing a fund or funds for the payment of such indebtedness, is hereby authorized to issue and sell its bonds therefor.

GRANT OF TIDE LANDS TO UNITED STATES.

ACT 3080—An act authorizing and empowering any municipal corporation to which tide lands and submerged lands, situated within the limits thereof, have been granted by the state of California, to grant portions of such lands to the United States for public purposes and validating and confirming grants of such lands made by such municipal corporations to the United States.

History: Approved May 28, 1913. In effect August 10, 1913. Stats. 1913, p. 437.

Tide lands may be granted to United States by cities.

§ 1. Any municipal corporation to which tide lands and submerged lands situated within the boundaries thereof have been granted by the state of California, is hereby authorized and empowered to grant portions of such lands to the United States, for public purposes of the United States; provided, however, that no such grant shall be made unless authorized and approved by a vote of a majority of the electors of such municipal corporation voting upon the proposition of making such grant at an election therein, at which such proposition shall have been submitted.

Former grants validated.

§ 2. Any grant heretofore made by any municipal corporation to the United States, of any portion of the tide lands or submerged lands, situated within the boundaries of such municipal corporation, which grant was authorized by a vote of the majority of the electors of such municipal corporation, voting upon the question of authorizing such grant, at an election held therein, is hereby confirmed, legalized and declared to be valid; and in any case where a proposed grant of such lands to the United States by a municipal corporation has heretofore been authorized by such vote, but such grant has not been made or completed, such municipal corporation is hereby authorized and empowered to make and complete such grant.

MUNICIPAL HOSPITAL.

ACT 3081—An act conferring power upon the governing body of municipal corporations of the first class to provide for the erection of a municipal hospital, and to levy a tax therefor.

History: Approved February 16, 1897, Stats. 1897, p. 9.

Governing body in corporations of the first class may provide for erection of hospital.

§ 1. Power is hereby conferred upon the common council or other governing body of municipal corporations of the first class to provide for the erection and construction in such municipal corporations, and at the expense of the same, of a building to be used for the purposes of a municipal hospital.

Cost to be raised by property tax.

§ 2. In the event that the common council or other governing body of any such municipal corporation shall deem it expedient, and in their judgment shall determine that the public good requires the construction of a building such as is provided for in section one of this act, they are hereby authorized and empowered to express such judgment by resolution or order in such manner as they may deem proper, and for the purpose of raising the money necessary to construct and furnish such building, the said common council or other governing body of any such municipal corporation is hereby authorized and empowered to levy and collect, in the same manner and at the same time as other taxes are levied and collected in such for municipal purposes, an ad valorem property tax on real and personal property, which shall not in the aggregate exceed the sum of three hundred thousand dollars, which sum shall cover all the expense of constructing and furnishing said building; provided, that such tax must be levied in the forty-ninth fiscal year, and not otherwise.

Site.

§ 3. Such building may be constructed upon such site as the common council or other governing body of such municipal corporation may determine.

“Municipal hospital fund.”

§ 4. The money raised from the tax hereby authorized to be levied and collected shall be kept by the treasurer of such municipal corporation in a fund to be known as the “municipal hospital fund,” and out of said fund all claims for work, labor, and materials used in the construction and furnishing of such building, and all other expenses authorized to be incurred under the provisions of this act, shall be paid. All claims against the said fund shall be allowed by the common council or other governing body of such municipal corporation by resolution entered upon the minutes in the same manner and form as other expenses are authorized, before the auditor shall be authorized to audit the same; and in no case shall any portion of said fund be used and expended for any other purpose than such as is herein indicated, nor shall any part of the cost of construction and furnishing of such building be paid out of any other or different fund, nor shall any lien for work, labor, or material at any time attach to such building, or to the land on which the same is located, in any manner whatever.

Bids for work must be advertised for. Advertisement to contain description. Rejecting bids. Mayor to execute contract. No change in plans. Contracts, how drawn.

§ 5. When work is to be done upon such building, or materials be furnished, it shall be the duty of the common council or other governing body of such municipal corporation to advertise for at least ten days in a daily newspaper published and circulated in such municipal corporation for sealed proposals for doing both said work and furnishing said materials. Said work shall be of the best quality. The advertisement shall contain a general description of the work to be done and of the materials to be furnished, the time within which the same is to be done or furnished, and may refer to plans and specifications for such other details as may be necessary to give a correct understanding regarding such work or materials. The advertisement shall also state the day, and an hour of said day, within which bids will be received. At the hour and day stated in the advertisement the said common council or other governing body shall proceed to open the bids in the presence of the bidders, and an abstract of which shall be recorded in the minutes of the clerk. A day and an hour shall then be fixed for considering the bids and awarding the contract. An abstract of said bids, showing the name of each bidder, the price at which work, labor, and materials are offered to be done or furnished by each, and such other things as may be necessary to show or explain the offer, shall be made by the clerk of said common council or other governing body and published for five days in a daily newspaper of general circulation in such municipal corporation. At the expiration of five days after the first publication of the abstract, on the day and at the hour fixed by such common council or other governing body, the said common council or other governing body shall proceed to consider the several bids and award the contract for the work and supplying materials for which proposals were invited, and for none other, to the lowest bidder who shall furnish sufficient sureties to guarantee the performance of the contract; provided, that the advertisement hereinbefore provided for shall invite proposals and bids for the performance of all the work, and the furnishing of all the materials that may be required for the erection and completion of the entire building, and the contract herein provided for shall cover the erection and completion of the entire building, and the whole thereof shall be erected and completed and made ready for occupancy under and by a single contract. Said common council or other governing body shall have the right to reject any or all bids when in their judgment the public interests may be thereby promoted.

Such contract shall be executed on behalf of such municipal corporation by the mayor or president of the common council or other governing body of such municipal corporation. No change in the plans or specifications shall be made after proposals for doing the work and furnishing materials have been called for, nor shall any contractor be allowed a claim for work done or materials furnished not embraced in his contract. All contracts shall be in writing, and shall be carefully drawn by the city attorney or other law officer of such municipal corporation, and shall contain detailed specifications of the work to be done, the manner in which the same shall be executed, the quality of the materials, and the time within which the same shall be completed, and such penalty for the non-performance of such work as such common council or other governing body may deem just and reasonable. All contracts shall be signed in triplicate, one copy of which, with the plans and specifications of the work to be done, shall be filed with the clerk or secretary of said common council or other governing body, and shall at all times, in the office hours, be open to the inspection of the public; one, with the plans and specifications, shall be kept in the office of said common council or other governing body, and the other copy, with the plans and specifications, shall be delivered to the contractor.

§ 6. The common council, or other governing body of such municipal corporation, may make payments on such contract from time to time as the work progresses, or the materials are furnished; but until the contract is completed, at no time shall the payments exceed seventy-five per cent of the value of the labor or materials furnished.

Plans and specifications. Board of health.

§ 7. The plans and specifications herein referred to shall be secured by said common council or other governing body after the publication for ten days in a newspaper of general circulation in such municipal corporation of a resolution inviting a submission of competitive plans and specifications of such buildings. Said resolution shall contain a general statement of the purpose for which such building is to be used, the cost thereof, and the character of the design required. Said plans and specifications may be submitted to such common council or other governing body under such requirements and conditions and at such times as such common council or other governing body may prescribe; provided, that such plan and specifications shall be submitted to the board of health of such municipal corporation for their approval, and shall not be adopted until approved by the board of health, or a committee thereof appointed for that purpose.

§ 8. All acts and parts of acts in conflict with this act are hereby repealed.

§ 9. This act shall take effect and be in force from and after its passage.

NOXIOUS AND DANGEROUS WEEDS A NUISANCE.

ACT 3087—An act authorizing municipalities to declare noxious or dangerous weeds growing upon the streets or sidewalks, or upon private property within municipalities, to be a public nuisance, creating a lien upon the property fronting upon such streets or sidewalks or upon which such nuisance exists for the cost of abating the same.

History: Approved May 26, 1915. In effect August 8, 1915. Stats. 1915, p. 841. Prior act of June 6, 1913; in effect immediately; Stats. 1913, p. 398, relating to cities of the fifth and sixth classes, was probably superseded by the present act which applies to all municipalities of every class.

Weeds may be declared public nuisance.

§ 1. All weeds growing upon the streets or sidewalks or upon private property within municipalities, which bear seeds of a wingy or downy nature or attain such a large growth as to become a fire menace when dry, or which are otherwise noxious or dangerous may be declared to be a public nuisance by the legislative body of any municipality, and thereafter abated as in this act provided.

Resolution.

§ 2. Whenever any such weeds are growing upon any street or sidewalk or private property the legislative body of any municipality may, by resolution, declare the same to be a public nuisance. Said resolution shall refer to the street by the name under which it is commonly known, and describe the property upon which or in front of which said nuisance exists by giving the lot and block number of the same according to the official map, or the assessment map of such municipality used for describing property on tax bills; and no other description of said property shall be required. Any number of streets, sidewalks or parcels of private property, may be included in one and the same resolution.

Notice posted.

§ 3. After the passage of said resolution, the street superintendent shall cause to be conspicuously posted in front of the property on which or in front of which such nuisance exists, at not more than one hundred feet in distance apart, but not less than three in all, notices headed "Notice to Destroy Weeds," such heading to be in words not less than one inch in height and substantially in the following form:

NOTICE TO DESTROY WEEDS.

Notice is hereby given that on the day of, 19...., the (name of the legislative body) passed a resolution declaring that noxious or dangerous weeds were growing upon or in front of the property on.....street, in said, and more particularly described in said resolution, and that the same constitute a public nuisance which must be abated by the removal of said noxious or dangerous weeds, otherwise they will be removed and the nuisance will be abated by the municipal authorities, in which case the cost of such removal shall be assessed upon the lots and lands from which or in front of which such weeds are removed, and such cost will constitute a lien upon such lots or lands until paid. Reference is hereby made to said resolution for further particulars.

All property owners having any objections to the proposed removal of such weeds are hereby notified to attend a meeting of the (name of the legislative body) of said (city or town) to be held (give date), when their objections will be heard and given due consideration.

Dated this day of, 19.....

.....

Street Superintendent (city or town of.....).

Said notices shall be posted at least five days prior to the time for hearing objections by the legislative body of the municipality.

Hearing.

§ 4. At the time stated in the notices, the legislative body of the municipality shall hear and consider all objections or protests, if any, to the proposed removal of weeds, and may continue the hearing from time to time. Upon the conclusion of said hearing the legislative body, by motion or resolution shall allow or overrule any or all objections, whereupon the legislative body shall be deemed to have acquired jurisdiction to proceed and perform the work of removal, and the decision of the legislative body on the matter shall be deemed final and conclusive.

Order to abate nuisance.

§ 5. After final action has been taken by the legislative body on the disposition of any protests or objections, or in case no protests or objections have been received, the legislative body of the municipality, by motion or resolution, shall order the street superintendent to abate said nuisance by having the weeds referred to removed, and

he and his assistants or deputies are hereby expressly authorized to enter upon private property for that purpose. Any property owner shall have the right to have any such weeds removed at his own expense providing the same is done prior to the arrival of the street superintendent or his representatives to do the same.

Report of street superintendent.

§ 6. The street superintendent shall keep an account of the cost of abating such nuisance in front of or on each separate lot or parcel of land where the work is done by him or his deputies, and shall render an itemized report in writing to the legislative body of the municipality showing the cost of removing such weeds on each separate lot, or in front thereof, or both; provided, that before said report is submitted to said legislative body, copy of the same shall be posted for at least three days prior thereto on or near the chamber door of said legislative body, together with a notice of the time when said report shall be submitted to the legislative body for confirmation.

Costs to constitute special assessments.

§ 7. At the time fixed for receiving and considering said report, the legislative body shall hear the same, together with any objections which may be raised by any of the property owners liable to be assessed for the work of abating said nuisance and thereupon make such modifications in the report as they deem necessary, after which by motion or resolution said report shall be confirmed. The amounts of the cost for abating such nuisance in front of or upon the various parcels of land mentioned in said report shall constitute special assessments against the respective parcels of land and as thus made and confirmed shall constitute a lien on said property for the amount of such assessments, respectively. After confirmation of said report, a copy shall be turned over to the assessor and the tax collector of such municipality, whereupon it shall be the duty of said officers to add the amounts of the respective assessments to the next regular bills for taxes levied against the said respective lots and parcels of land for municipal purposes, and thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided for ordinary municipal taxes.

ORGANIZATION VALIDATION—CITIES OF SIXTH CLASS.

ACT 3088—An act to validate the organization and incorporation of municipal corporations of the sixth class.

History: Approved February 14, 1903, Stats. 1903, p. 29.

§ 1. All municipal corporations of the sixth class, the organization and incorporation of which have been authenticated by an order of a board of supervisors in this state, declaring the same incorporated as municipal corporations of the sixth class, and a certified copy of which order has been filed by such board of supervisors in the office of the secretary of state, showing such copy of said order to have been filed in said office, and which corporations thereafter have acted in the form and manner of municipal corporations under the provisions of "An act to provide for the organization, incorporation, and government of municipal corporations," approved March thirteenth, eighteen hundred and eighty-three, and the amendments thereto, are hereby declared to be and to have been municipal corporations of the sixth class from the date of filing the certified copy of said order of the board of supervisors with the secretary of state; and all the acts of the said municipal corporations heretofore exercised according to the act aforesaid, are hereby validated and declared as legal.

§ 2. This act shall take effect from and after its passage and approval.

ELECTION OF OFFICERS—CITIES OF THE SIXTH CLASS.

ACT 3089—An act entitled “An act to enable municipal corporations of the sixth class to elect officers.”

History: Approved March 14, 1885, Stats. 1885, p. 136. Amended March 20, 1911, Stats. 1911, p. 414.

Appointment of election commissioners in municipalities of sixth class.

§ 1. Whenever a corporation of the sixth class shall have failed, from any cause, to elect officers in accordance with its charter, and there are no officers to carry on the city government, or call an election for officers, in any such case citizens of such corporation may present a petition to the governor for the appointment of three commissioners of election. Such petition shall set forth: First, the name of the corporation, and when and how organized; second, when the last election for officers took place, and whether any of such officers are performing their duties, and if not, how long since they ceased to perform their duties; third, the provision of the charter as to the qualifications of voters; fourth, that the persons signing the petition possess the qualifications provided by the charter for voters, and that each of said signers is a householder and freeholder in said corporation. The petition shall be signed by not less than a majority of all persons in said corporation possessing all the qualifications mentioned in the body of the petition, and shall be verified by at least two of the signers, that, of their own knowledge, the petition is true, and that all the signers possess all the qualifications set forth in the petition. Upon the presentation of the petition to the governor, he may either act upon the petition or require additional evidence of the matters set forth in the petition. Upon being satisfied of the truth of the matters set forth in the petition, the governor is authorized and empowered to appoint three persons as commissioners of election for such corporation. Such commission shall be known and styled board of election commissioners for (here give name of corporation). [Amendment approved March 20, 1911. Stats. 1911, p. 414.]

Appointment of commissioners.

§ 2. The governor shall cause a commission to be issued to the commissioners, and the issuance of such commission shall be conclusive evidence of the regularity of all the proceedings to and including the appointment of such commissioner. Within ten days after their appointment, the commissioners shall take the oath of office before some judge or clerk, which oath shall be indorsed upon the commission, and a copy filed in the office of the secretary of state, and shall organize by the election of a president and secretary from their own members. The board shall cause to be kept minutes of all their proceedings, which minutes shall be signed at the close of each meeting by the president and secretary.

Powers of commissioners.

§ 3. The board of election commissioners shall have power: First, by an order entered in their minutes, to call an election for such officers as are declared in the charter of such corporation to be elected only by the voters in said corporation. Such orders shall specify the names of the offices to be filled, and, when any office is to be filled by an election in any ward or subdivision of said corporation, the order shall so state, and the date fixed for the election. Previous to the election, the board shall appoint officers of election, and fix the places of holding the election, as required in the charter of such corporation. The board shall cause notice of such election to be published in one or more newspapers published in said corporation; or if none be published therein, then by posting notices, for at least twenty days before such election. Such election shall be conducted as required by the charter of said corporation for election of officers, except that it shall not be necessary to use printed registers, but

should any voter be challenged on the ground that his name does not appear on the great register of the county, it shall be sufficient for him to state, under oath, that he believes his name is upon the great register, and if no other evidence is offered, the board of election shall accept his statement as true.

Election returns.

§ 4. The boards of election shall make return of the election as required in the charter, except that the returns shall be returned and delivered to the board of election commissioners, of all officers voted for at such election, without reference to whether any of such officers were voted for in the whole, or only a ward or subdivision of the corporation, and no officer of election shall issue a certificate of election.

Canvassing returns.

§ 5. Within five days after the election the board of election commissioners shall proceed to canvass said returns and declare what persons were elected. Said board shall thereupon issue certificates of election to the persons so declared to be elected; such certificate shall be signed by all the commissioners, and shall be conclusive evidence of the regularity of all the proceedings taken in said election and by said board, except as against any suit or proceeding that may be commenced to oust from office any of said persons holding a certificate.

Officer qualifying.

§ 6. Within ten days after issuance of the certificates, the officers shall be qualified and enter upon the discharge of their duties, in accordance with the charter. If any person chosen at said election shall fail to take the oath of office and enter upon the discharge of the duties within the time above specified, then the office to which he shall have been elected shall be deemed and held to be vacant, the same as if he had never been elected. At the first meeting of the legislative department of the corporation after the election, the board of election commissioners shall deliver to said legislative department all books and papers in their possession, relating to their office of election commissioners, and said legislative department shall cause the same to be filed by their clerk, and shall cause the commission issued by the governor of said commissioners, and the minutes of said commissioners, and notice of the election, to be entered in the book of minutes of said legislative department, and such entries, when so made, shall be evidence of all the matters therein stated, and as conclusive evidence as the original.

Effect of elections.

§ 7. Whenever the officers elected at said election, and the officers authorized by the charter to be elected or appointed by the legislative or executive department of said corporation, shall have qualified and entered upon the discharge of their duties, then said corporation shall be deemed and held to be fully organized and in operation, as if said election had been held at the time and in all respects in the manner required by the charter.

Resolution as to organization.

§ 8. Whenever the government of the corporation is in full operation, as set forth in section seven, the legislative department shall cause a resolution to be entered in their minutes declaring the same; and such resolution shall be conclusive evidence of the same, except as against a direct action or proceeding to set aside or annul said government.

§ 9. This act shall take effect from and after its passage.

1. Mandamus to compel appointment of election commissioners.—Where a municipal corporation of the sixth class exists and fails to elect officers, the electors have the right under the act of 1885 (Stats. 1885, p. 136) to petition the governor to appoint election commissioners to provide for an election; and if the governor finds such petition to have been signed by the requisite number of electors and its recitals are true,

it is his ministerial duty to appoint commissioners as required by the act and upon his refusal to pass upon the petition and perform such duty, he may be compelled by mandamus to do so; and the doctrine of laches and limitation of actions have no application to the non-user of the corporate franchise to bear the right of action of such electors for such writ.—*Elliott v. Pardee*, 149 Cal. 516, 86 Pac. 1087.

VALIDATING ELECTION OF OFFICERS—CITIES OF THE SIXTH CLASS.

ACT 3090—An act providing that in the event of no election having been held for the election of officers of municipalities of the sixth class at the time fixed for first election after incorporation thereof, that the officers elected at the time of the incorporation shall continue in office until after the municipal election to be held in 1912.

History: Approved April 10, 1911, Stats. 1911, p. 839.

Failure to hold election. Officers.

§ 1. When a municipality of the sixth class has been incorporated under the laws of the state of California less than sixty days prior to the date of the municipal election on the second Monday in April, and for any reason no election was held on said date and the officers of such municipality elected at the time of its incorporation have continued to hold office and have discharged the duties of such offices ever since the date of their said election, their right to hold such offices is hereby confirmed, and they are hereby declared to be the officers of such municipality and their terms shall continue until the next municipal election hereafter to be held on the second Monday in April, 1912.

§ 2. This act shall take effect immediately.

MUNICIPAL ELECTIONS—FIFTH AND SIXTH CLASS CITIES.

ACT 3090a—An act to provide for and regulate municipal elections in cities of the fifth and sixth class.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 928.

Elections in cities of the fifth and sixth class.

§ 1. All general municipal elections at which city officials are to be voted for in cities of the fifth and sixth class, shall be held and conducted in accordance with the provisions of this act.

Notice of election.

§ 2. Not earlier than the sixtieth day nor later than the twentieth day before any such election, the city clerk shall cause a notice of the same to be published at least once in one or more newspapers published and circulated in such city. Said notice shall be headed "Notice of Election," and shall contain a statement of the time of the election, the offices to be filled thereat, (specifying short terms, if there be any), propositions to be voted on, if any, and briefly, a general description of the voting precincts and location of the polling places. In case there is no newspaper published and circulated in such city said notice shall be typewritten and copies thereof shall be posted conspicuously within said time in at least three public places in said city. Said notice shall be substantially in the following form:

Form.**NOTICE OF ELECTION.**

Notice is hereby given that a general municipal election will be held in the..... of, on Monday, the day of April, 19....., for the following offices: (name them). (In case there are any propositions to be submitted, add the following clause.) The following propositions will be submitted at said election: (give brief synopsis of same).

There will be voting precincts for the purpose of holding said election, consisting of a consolidation of the regular election precincts established for holding the last general state or county election as follows: Consolidated voting precinct "A" comprising state and county precincts numbers one, two and three, and the polling place thereof shall be at (stating place); consolidated voting precinct "B" comprising state and county election precincts numbers four, five and six, and the polling place thereof shall be at (stating place).

The polls will be open between the hours of..... ..m. andm.

.....

City clerk.

Dated,

Precincts.

§ 3. The voting precincts for such general municipal elections shall consist of a consolidation of any two or more of the regular election precincts established for the last state or county election.

Election officers.

§ 4. For every such general municipal election the board of trustees shall appoint one inspector, two judges and two clerks as election officers to have charge of such election in and for each such consolidated voting precinct. The board of trustees may, in their discretion, advertise for election officers, or they may appoint such officers from the register of applicants for such positions on file with the county clerk; provided, that other things being equal, preference shall be given for ability and previous experience. Each election officer must be an elector and a resident of the consolidated voting precinct for which he is appointed. Said election officers shall receive such compensation as the board of trustees may deem just.

Nomination of candidates.

§ 5. Candidates may be nominated for any of the elective offices of such city in the manner following:

Not earlier than the sixtieth day nor later than twelve o'clock noon on the twentieth day before such election, the electors may nominate candidates for such election by signing a nomination paper such as hereinafter set forth. Each candidate shall be proposed by not less than five nor more than ten qualified electors, but only one candidate shall be named in any one nomination paper. No elector may sign more than one nomination paper for the same office, but each seat on the board of trustees shall be deemed a different office. Any person or persons may circulate a nomination paper.

The signatures to each nomination paper shall all be appended on the same sheet of paper and each signer shall add thereto his occupation, date and place of residence (giving the street and number [if such there be] otherwise such designation of his place of residence as will enable the location to be readily ascertained). All such nomination papers shall be filed with the city clerk not later than twelve o'clock noon on the twentieth day before such election, and shall be accompanied by a verified statement of the candidate that he will accept the nomination, and also accept the office in

the event of his election. Said nomination papers and affidavit shall be substantially in the following form:

Form of nomination paper.

NOMINATION PAPER.

We, the undersigned electors of the city of.....hereby nominate
.....for the office of.....of said city.

Name.	Occupation.	Date.	Residence.
.....
.....
.....
.....

AFFIDAVIT OF NOMINEE.

State of California
County of.....} ss.
.....being duly sworn, says that he
is the above named nominee for the office of.....and
that he will accept said office in the event of his election.
.....
Subscribed and sworn to before me this.....day of....., 191..
.....
Notary public in and for the county of.....State of California.

Publication of names of nominees.

§ 6. It shall not be necessary to print or send out sample ballots for such election, but the city clerk shall publish a list of the names of the nominees, in alphabetical order and the respective offices for which they have been nominated at least twice before the day of election in one or more daily or weekly newspapers published in such city. Said list shall be headed, "Nominees for public office," in conspicuous type, and be substantially in the following form:

Form of notice.

NOMINEES FOR PUBLIC OFFICE.

Notice is hereby given that the following persons have been nominated for the offices hereinafter mentioned to be filled at the general municipal election to be held in the city of....., on Monday, the.....day of April, 19.....
(Here follow with the list of nominees. In case any propositions are to be voted on, set them forth also.)
Dated,
.....
City clerk.

Election booths and supplies.

§ 7. The city clerk shall procure the necessary voting booths and see that they are properly erected; he shall also have the necessary ballots printed and secure the necessary ballot boxes, stamps, ink pads, voting lists, roster, instruction cards, affidavits of registration and index thereto, tally lists, returns, envelopes, and all other necessary supplies, and see that they are properly distributed to each voting booth prior to the opening of the polls on the day of election.

Ballots.

§ 8. All official ballots shall have the names of the candidates printed thereon in a column four inches in width, each name occupying a separate place divided by fine lines one-half an inch apart, and having below the printed list, the necessary blank space or spaces to permit the elector to write in the name or names of other persons not printed on the ballot. The names shall be printed on the ballot in alphabetical order.

Each group of candidates to be voted on shall be headed by the designation of the office and the words "Vote for One" or "Vote for Two," or more as the case may be, according to the number to be elected to such office; and where the office is for a short or unexpired term, the same shall be so specified. On the top of the face of the ballot the following directions shall be printed:

Instructions to voters.**INSTRUCTIONS TO VOTERS.**

To vote for a candidate of your selection, stamp a cross (X) in the voting square next to the right of the name of such candidate. Where two or more candidates for the same office are to be elected, stamp a cross (X) after the name of all the candidates for that office for whom you desire to vote not to exceed, however, the number of candidates who are to be elected. If the ballot does not contain the names of candidates for all offices for which you may desire to vote, you may vote for candidates for such offices so omitted by writing the name of the candidate for whom you wish to vote in the blank space left for that purpose. To vote for a person not on the ballot, write the name of such person under the title of the office in the blank space left for that purpose.

To vote on any question, proposition or constitutional amendment, stamp a cross (X) in the voting square after the word "Yes" or after the word "No." All marks, except the cross (X) are forbidden. All distinguishing marks or erasures are forbidden and make the ballot void.

If you wrongly stamp, tear or deface this ballot, return it to the inspector of election and obtain another.

A separate parallel column four inches in width shall be provided for any questions or propositions to be submitted at such election. The right side of each column shall be set off by a light vertical line so as to form half-inch squares or voting spaces.

Printing, etc., of ballots.

The ballots shall be printed on tinted paper containing a water-marked design, and they shall be kept secret from all persons not engaged in the preparation of the ballots until the day of election. The printing, perforating, padding, numbering, and amount of the ballots, and the kind of type used in printing the same, shall be substantially the same, as nearly as may be, as is used for the preparation of ballots for state and county elections, except as may be otherwise herein provided.

Bound in books.

§ 9. All ballots, when printed, shall be bound in stub books, each book to consist of ten, or some multiple of ten ballots, and so issued. A record of the number of ballots printed by them shall be kept by the city clerk.

Registration.

§ 10. At any such municipal election, the original affidavits of registration, or carbon copies thereof, shall be used therefor, and no person shall be entitled to vote at such election unless he has registered and shall have resided in the city at least thirty days prior to the day of election.

Index to registration books.

§ 11. Before opening the polls the election board must post in separate convenient places, at or near the polling place and easy of access to the electors not less than four of the copies of the index to the book of affidavits of registration furnished for that precinct.

Oath of election officers.

§ 12. Before opening the polls, the election officers must take and subscribe to an oath to faithfully perform the duties imposed upon them by law. Any elector of the city may administer and certify to such oath.

Booths.

§ 13. The clerk shall provide a sufficient number of voting booths or compartments to accommodate the voters, and of such a character that each voter in the marking of his ballot will be screened from the observation of others.

Care of ballot box.

§ 14. Before receiving any ballots the election board shall, in the presence of such persons as may be assembled at the polling place, open, exhibit and close the ballot box; and thereafter it must not be removed from the polling place or presence of the bystanders until all the ballots have been counted, nor must it be opened until after the polls are finally closed.

Opening and closing polls.

§ 15. The polls must be and remain open on the day of such an election between such hours as the board of trustees may determine, but not less than eight consecutive hours. The hours of opening and closing the polls shall be specified in the notice of election, otherwise such hours shall be the same as those provided for general state elections. Before the board receive any ballots, they must cause it to be proclaimed aloud at the place of election that the polls are open.

Manner of voting.

§ 16. Any elector desiring to vote shall write his or her name and address on the roster provided for that purpose. If no challenge is interposed, or if a challenge be interposed and overruled, the election officer shall give him a blank ballot, after registering the number of the same. The voter shall then be permitted to enter the voting booth and stamp his ballot. No persons shall be permitted within six feet of any voting booth except those voting or those assisting voters in the manner authorized by law. Before leaving the booth the voter shall fold the ballot so that the number thereof only is visible. He shall then hand it to the inspector who shall announce the name of the voter and number of his ballot. If found to correspond, the inspector shall tear off the number from the ballot and deposit the ballot in the ballot box. Any member of the election board may administer and certify oaths required to be administered during the progress of the election.

Assisting voters.

§ 17. Voters who can not read, or by reason of physical disability are unable to mark their ballots may be assisted in voting in the manner provided by section one thousand two hundred eight of the Political Code.

Challenges.

§ 18. Voters may be challenged and the challenge disposed of as provided in sections one thousand two hundred thirty-one to one thousand two hundred forty-two inclusive of the Political Code.

Spoiled ballot.

§ 19. Any voter who shall spoil a ballot shall return the same to the inspector and obtain another. The inspector shall thereupon cancel the spoiled ballot by drawing two crossed lines over the face thereof in ink.

Closing polls.

§ 20. When the polls are closed that fact must be proclaimed aloud at the place of election; and after such proclamation, no ballot must be received; provided, however, that if at the hour of closing there are any other voters in the polling place, or in line at the door, who are qualified to vote and have not been able to do so since appearing, the polls shall be kept open a sufficient time to enable them to vote.

Defacing unused and spoiled ballots.

§ 21. Immediately upon the closing of the polls, and before opening the ballot box and proceeding to count the ballots, the inspector shall deface all the unused and spoiled ballots by drawing across the face thereof, in red ink, with a pen, two lines which shall cross each other; and all spoiled and unused ballots shall be placed within and sealed in an envelope before the ballot box is opened.

Canvass of votes.

§ 22. As soon as the polls are finally closed the officers must immediately proceed to canvass the votes given at such election. The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed and the result thereof is declared.

Ballots folded together.

§ 23. If two or more separate ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed; then, if upon comparison of the count with the number of names of electors on the lists which have been kept by the clerks, it appears that the two ballots thus folded together were cast by one elector, they must be rejected.

Ballots in excess of names on list destroyed.

§ 24. The ballots must be immediately replaced in the box, and if the ballots in the box exceed in number the names on the lists, one of the officers must publicly, and without looking into the box, draw out therefrom singly, and destroy, unopened a number of ballots equal to such excess; and the board of election must make a record, upon the poll list of the number of ballots so drawn and destroyed. The number of ballots agreeing or being thus made to agree with the number of names on the lists, the lists must be signed by the members of the board.

Count.

§ 25. After the lists are thus signed, the board must proceed to open the ballots and count and ascertain the number of votes cast for each person voted for. All ballots rejected for illegality must have indorsed upon the ballot the cause of such rejection, and be signed by a majority of the election board, and thereafter strung upon a string.

Tallies.

§ 26. Each clerk must write down each office to be filled, and the name of each person marked in each ballot as voted for, to fill such office, and keep the number of votes by tallies, as they are read aloud. Such tallies must be made with pen and ink as the name of each candidate voted for is read aloud from the respective ballot, and immediately upon the completion of the tallies the clerks who respectively complete

the same must draw two heavy lines in ink from the last tally mark to the end of the line in which such tallies terminate, and also write the initials of the person making the last tally in such line. The ballot so read and the tally sheet so kept must, during the reading and tallying, be within the clear view of watchers at the count.

Rules for counting ballots.

§ 27. (a) In canvassing the votes any ballot which is not marked as provided by law shall be void; but such ballot must be preserved and returned with the other ballots; provided, however, that two or more impressions of the voting stamp in one voting square, or a cross (X) made partly within and partly without a voting square or space shall not make such ballot void. Any name written upon a ballot shall be counted for such name for the office under which it is written, provided it is written in the blank space therefor, whether or not a cross (X) is stamped or made with pen or pencil in the voting square after the name so written.

(b) If a voter marks more names than there are persons to be elected to an office, or if, for any reason, it is impossible to determine the voter's choice for any office to be filled, his ballot shall not be counted for such office.

(c) If a voter stamps in the voting square after the name of any candidate and also writes the name of a person for such office in the blank space, such act does not invalidate his ballot, but his vote shall not be counted for any person for that office, but as to all other offices the ballot must be counted for the candidates opposite whose names the ballot is stamped in the voting squares.

(d) No mark upon a ballot which is unauthorized by this act shall be held to invalidate such ballot, unless it shall appear that such mark was placed thereon by the voter for the purpose of identifying such ballot.

After counting.

§ 28. The ballot, as soon as the names marked on it as voted for are read and verified, must be strung on a string by one of the officers and must not thereafter be examined by any person, but must, as soon as all are counted, be carefully sealed in a strong envelope, each member of the board writing his name across the seal.

Lists containing number of votes.

§ 29. As soon as all the votes are counted and the ballots sealed up, lists must be attached to the tally lists containing the names of persons voted for and for what office, and the number of votes given for each candidate, the number being written at full length, and such lists must be signed by the members of the board.

Lists sent to city clerk. Posting returns. Returns sent to city clerk.

§ 30. The board must, before it adjourns, inclose in a cover, and seal up and direct to the city clerk, the copy of the register upon which one of the officers marked the word "voted" as the ballots were received, all certificates of registration received by it, one of the lists of the persons challenged, one copy of the list of voters, and one of the tally lists, and list attached thereto. The board must also, before it adjourns, post conspicuously, on the outside of the polling place, a copy of the result of the votes cast at such polling place; such copy of the result must be signed by the members of the board. The board must also immediately transmit unsealed to the city clerk a copy of the result of the votes cast at such polling place, which copy must be signed by the members of the board, and which copy shall be open to the inspection of the public. It shall be a misdemeanor for any person to remove or deface such posted copy of the result or to delay or change the copy to be delivered to the city clerk.

Other lists sent to county clerk.

§ 31. The other lists of voters, tally list and list attached thereto must be sent to the city clerk or registrar and retained by him open to inspection of all electors for at least six months.

Delivery of sealed packages.

§ 32. The sealed packages containing the register, lists, papers, and ballots, must, before the board adjourns, be delivered to one of its members, to be determined by lot, unless otherwise agreed upon.

§ 33. The member to whom such packages are delivered, must, without delay, deliver such packages without their having been opened, to the city clerk, who shall indorse on such packages the name of the party delivering them and date of such delivery.

One package to contain the voted ballots, only; one package to contain one poll and tally list only; one package to contain the precinct registers, index to register, list of voters challenged, and list of assisted voters; and one package to contain the unused ballots.

Ballots kept twelve months.

§ 34. On receipt of the packages the clerk must file the one containing the ballots, and must keep it unopened and unaltered for twelve months, after which time, if there is not a contest commenced in some tribunal having jurisdiction about such election, he must burn the package without having opened or examined its contents.

Canvass of returns by board of trustees.

§ 35. The board of trustees must meet at their usual place of meeting, on the first Monday after such election, to canvass the returns and install the newly elected officers.

The board of trustees must declare elected the persons having the highest number of votes given for each office. Upon the completion of the canvass and before installing the new officers, the board shall pass a resolution reciting the fact of the election and such other matters as are enumerated in the following section.

Statement of result.

§ 36. The clerk of the board must, as soon as the result is declared, enter on the records of such board a statement of such result, which statement must show:

1. The whole number of votes cast in the city;
2. The names of the persons voted for, and the propositions voted upon;
3. The office to fill which each person was voted for;
4. The number of votes given at each precinct to each of such persons, and for and against each of such propositions;
5. The number of votes given in the city to each of such persons, and for and against each of such propositions voted upon.

Certificate of election.

§ 37. The city clerk must immediately make out and deliver to each of such persons elected a certificate of election, signed by him, and duly authenticated; he shall also impose the constitutional oath of office and have them subscribe thereto.

Campaign expenditures.

§ 38. It shall not be necessary, for any candidate or nominee for a municipal office to file a statement of his expenditures used in aid of his election.

General election law of state to apply.

§ 39. In all other respects, not otherwise provided for herein, such general municipal elections shall be held and conducted in accordance with the general election laws of the state so far as the same may be applicable. This act shall be liberally construed to promote the objects hereof, and no error, omission or irregularity shall ever be held to invalidate such an election providing the provisions of this act have been substantially complied with.

DISINCORPORATION OF SIXTH CLASS CITIES.**ACT 3091—An act to provide for the disincorporation of municipal corporations of the sixth class.**

History: Approved March 26, 1895, Stats. 1895, p. 115. Amended (1) February 23, 1897, Stats. 1897, p. 17; (2) February 17, 1899, Stats. 1899, p. 13; (3) May 29, 1915; in effect August 8, 1915; Stats. 1915, p. 982.

Disincorporation. Procedure. Election. Property, debts and taxes.

§ 1. A municipal corporation of the sixth class may disincorporate after proceedings had as required in this act. The council, board of trustees, or other legislative body of such corporation shall, upon receiving a petition therefor, signed by not less than half of the qualified electors thereof, as shown by the vote cast at the last municipal election held therein, submit to the electors of such corporation the question whether such municipal corporation shall disincorporate. Such question shall be submitted at a special election to be held for that purpose, and such legislative body shall give notice thereof by publication in a newspaper printed or published in said corporation, or if there is no newspaper published in said corporation, then in some newspaper published in the county in which said corporation is situated, for a period of thirty days prior to such election. Said notice shall state that the question of disincorporating said corporation will be submitted to the legal voters of the same at the time appointed for such election, and the electors shall be invited thereby to vote upon such proposition by placing upon their ballots the cross, as provided by law, after the words "For disincorporation," or "Against disincorporation." Such legislative body shall also designate in said notice the place or places at which the polls will be open in said municipal corporation; and shall also appoint and designate in such notice the names of the officers of election. The vote at said election shall be taken, canvassed, and returned in the same manner as in other municipal elections. Such legislative body shall meet on the Monday next succeeding the day of such election, and proceed to canvass the votes cast thereat. If it be found by the canvass of said votes that less than two-thirds of the votes cast were in favor of disincorporation, such legislative body shall declare the petition for disincorporation denied, in which case no new election shall be held on the question of disincorporating the corporation involved in said petition and vote until after the expiration of two years from the date of the election so held. In case it shall appear from said canvass that two-thirds of all the votes cast were in favor of disincorporation, said legislative body shall, under their hands, make and file in their office, and cause to be entered upon their record of proceedings, an order that the petition for such disincorporation be granted, and declaring that such corporation be disincorporated; said order to take effect at the time hereinafter provided.

Said legislative body shall, in case said corporation is so disincorporated, forthwith cause their clerk, or other officer performing the duties of clerk, by an order entered in their minutes, to make and transmit to the secretary of state and board of supervisors of the county in which said corporation is situated, a certified copy and abstract of the notice of election hereinbefore provided for, the whole number of electors voting for said disincorporation, and the number of electors voting against said disincorporation. Thirty days from and after the holding of the election, in case two-thirds of the

said votes were cast in favor of said disincorporation, said municipal corporation shall be forever disincorporated. Said legislative body shall forthwith, after ascertaining by said canvass that said disincorporation has been carried, determine the amount of the indebtedness of said municipal corporation, the amount of money in the treasury thereof, and the amount of any tax levy made by said corporation unpaid or not due, and all other indebtedness due or coming due to said corporation, and within thirty days from the date of said election shall transmit a certified statement of said amount to the board of supervisors of the county in which said municipal corporation is situated; and the treasurer of said corporation shall before the expiration of said thirty days, turn over to the treasurer of said county all moneys of said municipal corporation in his possession, and said county treasurer shall place said moneys in a special fund, to be drawn upon as hereinafter provided for. Upon the disincorporation of said municipal corporation, every public officer of said corporation shall immediately turn over to the board of supervisors of the county in which said corporation is situated, all public property of every nature and description in their possession; provided, however, that all court records of the recorder's court of the said municipal corporation shall be retained by said recorder as justice of the peace of the township, and as such justice of the peace he shall have authority to execute and complete all unfinished business standing on the same. Nothing contained in this act shall be held to relieve said municipal corporation, or the territory included within it, from any liability for any debt contracted by such municipal corporation prior to its disincorporation. All warrants for said indebtedness shall be drawn by the board of supervisors of the county in which said municipal corporation is situated, on the fund hereinabove provided for in the county treasury. If, at the time of said disincorporation, a tax shall have been levied by said municipal corporation, and remains uncollected, it shall be the duty of the tax collector of the county in which said municipal corporation was situated to collect said tax when due, and pay the same into the county treasury. All property upon which any municipal tax has been levied and the same has become delinquent, either before or after the date of such disincorporation, and all property sold for any tax levied by said municipal corporation, may be redeemed by any party interested, by the payment to the county treasurer, upon the estimates of the auditor, of the money that would have been necessary to redeem such property, had said city not disincorporated. All moneys paid into the county treasury under the provisions of this act shall be placed to the credit of the special fund hereinbefore provided for. If, at any time after the disincorporation of such municipal corporation, it should be found that there is not sufficient money in the treasury to the credit of the fund hereinabove provided for, with which to pay any indebtedness of said municipal corporation, the board of supervisors of said county shall have the power, and it shall be their duty to levy, and there shall be collected from the territory formerly included within said municipal corporation, a tax or taxes sufficient in amount to pay the said indebtedness, of said municipal corporation, as the same shall become due; such tax or taxes, assessments, and collections shall be made in the same manner and at the same time that other taxes of said county are levied and collected, and shall be an additional tax upon the property included within said territory for the payment of said debts. If, after payment of the debts of said municipal corporation, there shall remain any surplus in the hands of said county treasurer to the credit of the fund hereinafter mentioned, the money so remaining shall be transferred to the school fund of the districts or district covered by said municipal corporation. [Amendment approved February 17, 1899. Stats. 1899, p. 13.]

This section was also amended February 23, 1897, Stats. 1897, p. 17.

Duty of supervisors.

§ 2. The board of supervisors of the county in which any such municipal corporation has been disincorporated, shall have the power, and it shall be their duty, if the board of trustees or other legislative body of such corporation shall fail or refuse to return to said board of supervisors the statement of said amounts as hereinbefore in this act provided, to ascertain the indebtedness of said municipal corporation at the time of its disincorporation, and the amount of money in its treasury and the amount due to it at the said time. Said board of supervisors shall make provision for the collection of the amounts due to said municipal corporation, and for the closing up of its affairs, and any act or acts necessary for such purpose and not otherwise herein provided for, shall, upon the order of said board of supervisors directing the same, be as fully done and performed by the officer or officers performing similar duties for the said county, and with as full effect as if the same had been performed by the proper officer of said municipal corporation, before disincorporation, and said county shall succeed to and possess all the rights of said municipal corporation in and to said indebtedness, and shall have power to sue for or otherwise collect any such debts, in the name of the county. All costs and expenses of ascertaining the facts hereinbefore mentioned, and all other costs and expenses incurred by the board of supervisors in the execution of the powers and duties of said board of supervisors, provided for in this act, shall be paid out of the special fund in said county treasury hereinbefore in this act provided for. All provisions of this act relating to the settlement of a municipal corporation after disincorporation shall be applicable to the winding up of the affairs of any disincorporated municipality whether disincorporated before or after the passage of this act. [Amendment approved February 17, 1899. Stats. 1899, p. 14.]

Supervisors may take over public utilities of disincorporated municipalities.

§ 2a. In the event of the disincorporation of any municipality under the provisions of this act, the board of supervisors of the county in which such municipality was situated may by ordinance assume control and authority over all electric, power, lighting or gas plants, or all systems of water-works, or street lighting or other public utilities owned by such municipality at the time of its disincorporation, and thereafter continue to administer and conduct the same. In case the revenues from any such public utility are not sufficient for the administration, conduct or improvement thereof, then said board of supervisors shall have power to levy a special tax upon all properties within the former corporate limits of said municipality, said special tax to be levied upon the assessed value of such properties as shown by the assessment thereof by the county assessor as of March first of that year, and shall be collected in the same manner and form as other county taxes are collected, and all sums so collected shall be placed in a separate fund with the county treasurer for the administration, conduct and improvement of the public utility for which said tax is levied. [New section added May 29, 1915. In effect August 8, 1915. Stats. of 1915, p. 982.]

§ 3. This act shall take effect and be in force from and after its passage.

1. Constitutionality.—Not in conflict with subdv. 33, section 25, article IV, constitution.—The disincorporation act of 1895 is not unconstitutional as in conflict with subdv. 33, section 25, article IV, of the constitution.—*Mintzer v. Schilling*, 117 Cal. 361, 49 Pac. 209.

2. Petition.—Not objectionable for failure to represent subscribers as qualified electors.—A petition for disincorporation is not objectionable on the ground that it did not represent the subscribers as qualified electors where they were described as

citizens of the city and were in fact qualified electors.—*Frederick v. San Luis Obispo*, 118 Cal. 391, 50 Pac. 661.

3. Petition.—Prayer for disincorporation not necessary.—The petition for disincorporation need not directly and specifically pray for disincorporation, and it is sufficient if it contains a prayer for the submission of the question to a vote of the electors.—*Mintzer v. Schilling*, 117 Cal. 361, 49 Pac. 209.

4. Notice of election.—Publication sufficient.—Where the notice of election to be

held July 27, 1896, was published weekly beginning June 27, 1906, and ending July 25, 1906, such publication sufficiently complied with the requirements of the statute.—*Mintzer v. Schilling*, 117 Cal. 361, 49 Pac. 209.

5. Notice of election—Signature of members of board not required.—The notice of election need not be signed by the members of the board and it is sufficient if the notice is published over the initial signature of the clerk showing that it was by the authority of the board.—*Mintzer v. Schilling*, 117 Cal. 361, 49 Pac. 209.

6. Duty of board of trustees—Petition signed by requisite number of qualified electors.—The fact that a petition for disincorporation was received by the board of trustees imposes upon such board the duty to call the election where such petition shows that it was signed by the requisite number of qualified electors and not the fact that it describes the subscribers as "electors"; and whether the subscribers were electors is for the consideration of the

board and a mere affirmative allegation that there were such electors would not preclude or materially aid the inquiry.—*Frederick v. San Luis Obispo*, 118 Cal. 391, 50 Pac. 661.

7. Complaint in mandamus—Sufficient.—In a complaint for mandamus to compel the board of trustees of a city to call a disincorporation election, it is sufficient under the requirement of section 1086 of the Code of Civil Procedure to aver that the complainant is a property owner and taxpayer.—*Frederick v. San Luis Obispo*, 118 Cal. 391, 50 Pac. 661.

8. Action to compel board to rescind order fixing date of election—Board necessary party defendant.—Individuals composing the board of trustees of a municipality can only rescind the action of such board in fixing a date for a disincorporation election by an action taken as a board and such board is a necessary party defendant in an application for a writ of mandate to compel such decision.—*Taylor v. Burks*, 6 Cal. App. 225, 91 Pac. 814.

REORGANIZATION ACT OF 1899.

ACT 3092—An act to provide for the reorganization of municipal corporations and for determining the population thereof.

History: Became a law under constitutional provision, without governor's approval, March 8, 1899, Stats. 1899, p. 75.

Reorganization of municipal corporations.

§ 1. The legislative body of any municipal corporation of the sixth class, upon receiving a petition for the reorganization of said corporation under a higher or lower class, according to the classification now provided by law, signed by not less than one-fifth of the qualified electors of said corporation, as shown by the vote cast at the last municipal election held therein, shall submit to the electors of such city, at a special election to be called within two weeks after receiving such petition, the question whether such city shall so reorganize under and in accordance with the provisions of this act. Such election shall be held within four weeks after the time when so called. Notice of such election shall be given by publication for at least ten days in a newspaper published in said city; or, if there be no newspaper published therein, by printing and posting the same in at least four public places therein. Such notice shall state the proposition to be submitted at said election. The ballots to be used at such election shall contain the words: "reorganization—yes," and "reorganization—no." Such election shall be held in accordance with the general laws of the state so far as applicable. The legislative body of said city shall, at the time of the next regular meeting of said body after such election, canvass the votes cast thereat and declare the result. If a majority of all the electors voting at said election shall be found to have voted for such reorganization such legislative body shall, at said time, and by an order to be entered in its minutes, cause the clerk of said city to forthwith make and transmit to the secretary of state a certified abstract of such vote showing the whole number of electors voting at said election, the number of votes cast for reorganization, and the number of votes against reorganization; and thereafter, at the time prescribed by law for a general municipal election in municipal corporations of the class under which it has been so voted to reorganize, such officers shall be elected in said city as are or may be by law required to be elected at such general municipal election; and from and after the qualification of such officers, said city shall belong to such class; provided, that if such canvass of votes, on reorganization, shall occur within less than thirty-five days

prior to the time of a general municipal election in cities of the class into which it has been so voted to reorganize, or within three months after such time, then the said legislative body shall immediately call a special election, to be held within at least six weeks after said canvass of votes, which election shall be in lieu of, and be conducted, as far as may be, as by law prescribed for such general municipal elections, and with like effect.

Title to property, etc.

§ 2. The reorganization of any city under the provisions of this act shall not affect the title to any property held by such city, or in trust therefor, or any debts, liabilities, or obligations in favor of or against such city, or any proceedings then pending, or any ordinances theretofore adopted, or any liability incurred for the violation of any ordinance; provided, such ordinance or ordinances are not in conflict with such general laws.

Duties of officers.

§ 3. As soon as the officers elected under the provisions of section one of this act shall have qualified in accordance with law, all persons in possession of the offices of said city shall surrender such possession to such elected officers, and deliver to them all moneys, books, papers and other things in their official custody, and all property of such city in their hands, notwithstanding the terms of office for which they were elected, or appointed, respectively, may not then have expired.

Basis of population.

§ 4. The census taken under the direction of the congress of the United States in the year eighteen hundred and ninety, and every ten years thereafter, shall be the basis upon which the respective populations of municipal corporations shall be determined, unless a direct enumeration of the inhabitants thereof has been made since such census; in which case such enumeration shall constitute such basis; provided, that if no such census, or no direct enumeration, shall have been taken or made within three years next preceding the presenting of the petition for reorganization mentioned in section one of this act, such population shall be determined by multiplying by five the number of voters voting at the last general election held in such city.

Repeal of inconsistent acts.

§ 5. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 6. This act shall take effect immediately.

OWNERSHIP OF PROPERTY OF DISINCORPORATED MUNICIPALITY.

ACT 3093—An act to provide for the ownership of property and the winding up of the affairs of municipal corporations disincorporated under the provisions of an act of the legislature of the state of California, entitled "An act to provide for the disincorporation of municipal corporations of the sixth class," approved March 26, 1895, when two-thirds or more in value of assessable property within the former limits thereof shall be included within the boundaries of any subsequently incorporated city or town.

History: Approved February 17, 1899, Stats. 1899, p. 17.

Ownership of property of disincorporated cities of sixth class. Liability for debts.

§ 1. Any city or town heretofore or hereafter incorporated that, at the time of incorporation, shall embrace within the corporate limits thereof two thirds or more in value of assessable property formerly contained within the corporate boundaries of any city or town disincorporated under the provisions of an act of the legislature of the state of California, approved March twenty-sixth, eighteen hundred and ninety-five, entitled "An act to provide for the disincorporation of municipal corporations of the sixth

class," shall succeed to and become the owner of all public property formerly belonging to such disincorporated city or town; and also to such proportion of the corporate debts, liabilities, and credits due or owing and unpaid, as the total value of assessable property of such former city or town lying within its boundaries, as aforesaid, shall bear to the total value of all assessable property situated within the former limits of said municipal corporation so disincorporated; such valuation to be determined by the assessment roll of the county in which such city or town is situated for the fiscal year in which said municipality was disincorporated; provided, that any territory contained therein that was not included within the former limits of said disincorporated municipality shall not be liable to be taxed for any debt or liability of said disincorporated city or town.

Valuation of property. Apportionment of debts. Title to public property.

§ 2. The board of supervisors of the county in which said city or town is situated shall, upon written request of the board of trustees or other legislative body thereof, forthwith cause the county auditor to prepare a statement of the total valuation of assessable property in said disincorporated municipality and the total amount thereof contained in said incorporated city or town, as aforesaid, and said auditor shall prepare the same without cost. If it appears from said statement that two thirds or more in value of said assessable property is contained within the boundaries of said incorporated city or town, said board of supervisors shall, by an order duly entered upon their minutes, fix the relative proportion thereof, which proportion so fixed shall be the proportion of the debts and liabilities of said disincorporated municipality for which said incorporated city or town shall be liable; and shall forward a certified copy of said entry to the secretary of state and also to the city clerk of said incorporated city or town, and forthwith turn over to the board of trustees or other legislative body thereof, all public property taken by them under the provisions of said act providing for the disincorporation of cities of the sixth class, and such proportion of all moneys in the special fund provided for in said act, as said incorporated city or town is entitled to, estimated as in the case of debts and liabilities, as aforesaid. And thereupon the ownership and title to all public property of every description formerly belonging to said disincorporated municipality, which under the provisions of said act has been taken possession of by the board of supervisors and passed into the control of the county or passed into the ownership and possession of the state of California by reason of said disincorporation, shall immediately be vested in said incorporated city or town as fully as if said property had been originally acquired by it.

Bonded indebtedness, payment of.

§ 3. If there be a bonded indebtedness of said disincorporated municipality existing on its former territory, a portion of which is included in said city or town as aforesaid, the board of trustees or other legislative body of such city or town shall make provisions to pay its proportion thereof, estimated as aforesaid, in the same manner it should have been paid had said city or town not disincorporated; and for that purpose shall annually levy and collect, at the same time other city taxes are levied and collected, a special tax on the territory of said disincorporated municipality within the limits of said city or town, sufficient to pay its proportion thereof as the same shall become due; and the board of supervisors of said county shall annually levy and collect, at the same time other county taxes are levied and collected, a special tax on the remainder of said territory not included in said city or town, sufficient to pay the balance thereof, and cause the same to be paid to the treasurer of said city or town, and it shall be the duty of said city treasurer to pay said bonded indebtedness as the same becomes due with said moneys levied and collected as aforesaid, in conformity with the laws under which such indebtedness was incurred.

Property sold for taxes.

§ 4. Any property within the limits of said disincorporated city or town that has been sold for any tax levied by such disincorporated municipality may be redeemed or a tax deed issued therefor, in the same manner and with the same effect as if said municipality had not disincorporated. Such proceedings to be had and deed issued in the corporate name of said city or town in which said land is situated.

Repeal of conflicting acts.

§ 5. All acts or parts of acts in conflict herewith are hereby repealed.

§ 6. This act shall take effect immediately.

CITY PLANNING COMMISSIONS.

ACT 3093a—An act to provide for the establishment, government, and maintenance of city planning commissions within municipalities, and prescribing their powers and duties.

History: Approved May 21, 1915. In effect August 8, 1915. Stats. 1915, p. 708.

City planning commission.

§ 1. The city council, board of trustees, or other legislative body of any incorporated city or town in the state of California may, by ordinance, create a city planning commission for such city or town.

Membership. Term. Vacancies. Compensation.

§ 2. Such city planning commission shall consist of five members, to be appointed by the mayor or other executive head of the municipality, by and with the consent of the legislative body thereof, one of which shall be a member of the legislative body of such municipality; and in addition thereto the city attorney and city engineer, if such there be, of such municipality, shall be ex officio full members of said commission; and provided, further, that the mayor or other executive head of such municipality shall also in addition thereto be an ex officio member of said commission but without any right of vote in the deliberation thereof except in case of a tie. The five members of the first commission so appointed hereunder shall so classify themselves by lot that one of their number shall go out of office at the end of the current calendar year, two at the end of one year thereafter, and the other two at the end of two years thereafter. Vacancies for any unexpired term shall be filled by appointment as in the first instance. Non-residents shall be eligible to appointment on the city planning commission. Excepting the secretary hereinafter mentioned the members of the commission shall not receive any compensation for their services, but the said legislative body shall fix the amount of compensation, if any, to be paid to the secretary.

Meetings. Officers.

§ 3. The members of the city planning commission shall meet at least once a month at such times and places as they may fix by resolution. They shall select one of their number as president and another as secretary, and both shall serve for one year and until their successors are appointed; in case of their absence, the members of the commission shall select a president or secretary pro tem, as the case may be. Special meetings may be called at any time by the president or three members, by written notice served upon each member of the commission at least three hours before the time specified for the proposed meeting. Four members of the commission shall constitute a quorum for the transaction of business. The commission shall cause a proper record to be kept of its proceedings.

Powers.

§ 4. City planning commissions shall have power, except as otherwise provided by law:

First—To recommend to the proper officers of the municipality plans for the regulation of the future growth, development and beautification of the municipality in respect to its public and private buildings and works, streets, parks, grounds, and vacant lots;

Second—To recommend to the proper officer of the municipality, plans, consistent with the future growth and development of the municipality in order to secure to the city and its inhabitants sanitation, proper service of all public utilities, harbor, shipping and transportation facilities;

Third—To make recommendations to any public authorities or any corporation or individuals of such city with reference to the location of any proposed buildings, structures or works;

Fourth—To recommend to the proper officers of the municipality the approval or disapproval of maps or plats of subdivisions of land. Every such map or plat shall, prior to its final approval or disapproval by the proper officers of the municipality be submitted to said commission for its recommendations thereon to such officers.

Fifth—To do and perform any and all other acts and things necessary or proper to carry out the provisions of this act.

Map of city. Recommendations.

§ 5. The city planning commission shall make or cause to be made, at the direction of the city council, a map or maps of the city or any portion thereof, including adjacent territory lying outside of the corporate boundaries thereof, showing the streets, highways and other natural or artificial features therein; also the locations or relocations proposed for any new public buildings, civic center, street, parkway, boulevard, park, playground, or other public ground or improvement; also any proposed widening, extension, closing, or relocation of any street or highway, or any change in the plan of the city that it may deem advisable. Said commission may, at its discretion, prepare such maps or plans as aforesaid for the purpose of making recommendations in connection therewith to the proper officers of such municipality having charge, superintendence or control of the matters set forth in such recommendations.

It shall make suggestions or recommendations to the city council from time to time, concerning any of the matters and things aforesaid for action by the council thereon, having due regard for the present conditions and the future needs and growth of the city, including the distribution and relative location of all public buildings, grounds and open spaces devoted to public use; also the planning and laying out for urban uses of all private grounds brought into the market from time to time, and the division of the city into zones or districts for the purpose of conserving and protecting the public health, comfort and convenience.

Public buildings, playgrounds, etc.

§ 6. Any officer or department whose duty it is to prepare ordinances and resolutions relating to the location of any public building of the city, or location, extension, widening, enlargement, ornamentation, or parking of any street, boulevard, alley, parkway, park, playground, or other public grounds, or to the vacation of any street, or other alteration of the city plan of streets and highways, or the location of any bridge, tunnel, or subway, or of any surface, underground or elevated railway or public utility, or ordinances relating to housing, building codes or zones, shall, prior to the submission to the proper board or officer of the municipality, of the ordinance or resolution required to be adopted before such proceedings are instituted, give notice to the commission of the pendency before the officer or department of proceedings with reference to any of the above matters.

Tax levy.

§ 7. The city council of each municipality may, in making its annual tax levy and as a part thereof, levy and collect a tax for the purpose of defraying the lawful expenses incurred by the city planning commission of such municipality not to exceed two mills on the dollar of assessed valuation; provided, however, that no expense of any kind shall be incurred by the commission unless first authorized and approved by the city council.

INITIATIVE AND REFERENDUM.

ACT 3093b—An act to provide for direct legislation by cities and towns, including initiative and referendum.

History: Approved January 2, 1912, Stats. 1911 (ex. sess.), p. 131.
Amended May 3, 1915; in effect August 8, 1915; Stats. 1915, p. 319;
May 17, 1917; in effect July 27, 1917; Stats. 1917, p. 655.

Manner of enacting ordinances. Petition. Contents. Affidavit. Examination by clerk. Supplementary petitions when needed. Petition submitted to legislative body.

§ 1. Ordinances may be enacted by and for any incorporated city or town of the state in the manner following: Any proposed ordinance may be submitted to the legislative body of such city or town by a petition filed with the clerk of such legislative body after being signed by qualified electors of the city or town not less in number than the percentages hereinafter required. The signatures to the petition need not all be appended to one paper. Each signer shall add to his signature his place of residence and occupation, giving street and number, where such street and number, or either, exist, and if no street or number exist, then such a designation of the place of residence as will enable the location to be readily ascertained. Each such separate paper shall have attached thereto an affidavit made by a qualified elector of the city or town, and sworn to before an officer competent to administer oaths, stating that the affiant circulated that particular paper and saw written the signatures appended thereto; and that according to the best information and belief of the affiant, each is the genuine signature of the person whose name purports to be thereunto subscribed, and of a qualified elector of the city or town. Within ten days from the date of filing such petition, the clerk shall examine, and from the records of registration, ascertain whether or not said petition is signed by the requisite number of qualified electors, and he shall attach to said petition his certificate showing the result of said examination. If by the clerk's certificate the petition is shown to be insufficient, it may be supplemented within ten days from the date of such certificate by the filing of additional papers, duplicates of the original petition except as to the names signed. The clerk shall, within ten days after such supplementing papers are filed, make like examination of the supplementing petition, and if his certificate shall show that all the names to such petition, including the supplemental papers, are still insufficient, no action on the petition shall be mandatory on the legislative body; but the petition shall remain on file as a public record; and the failure to secure sufficient names shall be without prejudice to the filing later of an entirely new petition to the same or similar effect. If the petition shall be found to be sufficient, the clerk shall submit the same to the legislative body at its next regular session. If the petition accompanying the proposed ordinance be signed by not less than fifteen per cent of the electors of such city or town, and contains a request that such ordinance be submitted forthwith to a vote of the people at a special election, then the legislative body shall either:

Ordinance passed.

(a) Pass such ordinance without alteration at the regular session at which it is presented and within ten days after it is presented; or,

Special election.

(b) Forthwith, the legislative body shall proceed to call a special election at which such ordinance, without alteration, shall be submitted to a vote of the electors of the city or town.

Regular election. Ballots. Ordinance adopted. Ordinance proposed by people repealed only by vote of people. Any number may be voted on at once. Argument for measure submitted by legislative petition. Legislative body may submit ordinances. Sample ballot mailed to voters. Liberal construction. Enacting clause. Time of calling special election. Time ordinances go into effect. Protest.

If the petition be signed by not less than ten per cent of the electors of such city or town, and the ordinance petitioned for is not required to be, or for any reason is not, submitted to the electors at a special election, and is not passed without change by said legislative body, then such ordinance, without alteration, shall be submitted by the legislative body to a vote of the electors at the next regular municipal election. The ballots used when voting upon said proposed ordinance shall have printed thereon the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite such proposition to be voted on, and to the right thereof, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If an elector shall stamp a cross (X) in the voting square after the printed word "Yes," his vote shall be counted in favor of the adoption of the ordinance, and if he shall stamp a cross (X) in the voting square after the printed word "No," his vote shall be counted against the adoption of the same. If a majority of the qualified electors voting on said proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city or town, and be considered as adopted upon the date that the vote is canvassed and declared by the canvassing board, and go into effect ten days thereafter. Such ordinance shall have the same force and effect as one passed by the legislative body of the city or town, except that no ordinance proposed by petition as in this section provided, and thereafter passed by the vote of the legislative body of the city or town without submission to a vote of the people, or voted upon and adopted by the people, shall be repealed or amended, except by a vote of the people, unless provision otherwise be made in the ordinance itself. Any number of proposed ordinances may be voted upon at the same election in accordance with the provisions of this statute; provided, that there shall not be held under this statute more than one special election in any period of six months. If any measure be submitted upon an initiative petition of registered voters, as hereinbefore provided, the persons filing said petition shall have the right, if they so choose, to present and file therewith a written argument in support thereof not exceeding three hundred words in length, which argument shall be printed upon the sample ballot issued for said election. Upon the same ballot shall also be printed any argument of not exceeding three hundred words in length in opposition thereto which may be prepared by the legislative body. If the provisions of two or more ordinances adopted at the same election conflict, then the ordinance receiving the highest number of affirmative votes shall control. The legislative body of the city or town may submit to the people, without a petition therefor, a proposition for the repeal of any adopted ordinance, or for amendments thereto, or for the enactment of any new ordinance, to be voted upon at any succeeding regular or special municipal city or town election, and if such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall be repealed, amended or enacted accordingly. Whenever any ordinance or proposition is required by this statute to be submitted to the voters of a city or town at any election, the clerk of the legislative body shall cause the ordinance or proposition to be printed and he shall mail a copy thereof, enclosed in an envelope with a sample ballot to each voter at

least ten days prior to the election. All the provisions of this statute are to be liberally construed for the purpose of ascertaining and enforcing the will of the electors. The enacting clause of an ordinance passed by the vote of the electors shall be substantially in the following form: "The people of the city (or town) of do ordain as follows:". When a special election is to be called under the terms of this section, it shall be held not less than thirty nor more than sixty days after the date of the presentation of the proposed ordinance to the legislative body, and shall be held as nearly as may be in accordance with the election laws of the state; provided, however, that, to avoid holding more than one such election within any six months, the date for holding such special election may be fixed later than sixty days, but at as early a date as practicable after the expiration of such six months; provided, further, that when under any of the terms of this statute fixing the time within which a special election shall be held it is made possible to hold the same within six months prior to a regular municipal election, the legislative body may in its discretion, submit the proposed ordinance at such regular election instead of at a special election. Except an ordinance calling or otherwise relating to an election, no ordinance passed by the legislative body of a city or town, except when otherwise specially required by the laws of the state, and except an ordinance for the immediate preservation of the public peace, health or safety, which contains a declaration of, and the facts constituting its urgency and is passed by a four-fifths vote of the legislative body of a city or town, and no ordinance granting a franchise shall go into effect before thirty days from its final passage; and if, during said thirty days, a petition, signed by not less than ten per cent of the electors of such city or town, protesting against the passage of such ordinance, be presented to the legislative body, the same shall thereupon be suspended from going into operation, and it shall be the duty of the legislative body to reconsider such ordinance. If said legislative body shall thereupon not entirely repeal said ordinance, it shall submit the same to a vote of the electors either at a regular municipal election or a special election to be called for the purpose, and such ordinance shall not go into effect or become operative unless a majority of the voters voting upon the same shall vote in favor thereof. Such petitions and the provisions of the law relative to the duty of the clerk in regard thereto and the manner of voting thereon, shall conform to the rules provided herein for the initiation of legislation by the electors.

In cities having mayor with veto power. Duty of legislative body also duty of mayor.

In cities or towns having a mayor (or like officer), with the veto power, the passage of an ordinance petitioned for by the electors, followed by its veto by the mayor (or like officer) and the failure of the legislative body to pass the same over such veto, shall be deemed and treated as a refusal of the legislative body to pass the ordinance, within the meaning of this statute; and a vote of the legislative body in favor of the repeal of an ordinance previously passed (but protested against by the electors as herein provided for) followed by a veto of such repeal by the mayor (or like officer) and the failure of the legislative body to pass said repeal over said veto, shall be deemed and treated as a refusal to repeal the ordinance so protested against. In such city or town the date of approval of an ordinance by the mayor or like officer (or of the expiration without his action thereon of the time within which he may veto the same, if such expiration of time for his action without his approval or veto has the effect of making the ordinance a law) shall be deemed the date of final passage of the ordinance by the legislative body, within the meaning of this statute. Any duty herein in terms, or by reasonable implication, imposed upon the legislative body in regard to calling an election, or in connection therewith, shall be likewise imposed upon any mayor, or any other officer having any duty to perform connected with the elections, so far as may be necessary to fully carry out the provisions of this statute. [Amendment of May 3, 1915. In effect August 8, 1915. Stats. 1915, p. 319.]

Not applicable to street proceedings.

§ 2. This act is not intended to apply to those cities having a freeholders' charter adopted and ratified under the provisions of section eight of article XI of the constitution and having in such charter provision for the direct initiation of ordinances by the electors; nor to proceedings had for the improvement of streets in or rights of way owned by municipalities, the opening or closing of streets, the changing of grades or the doing of other work, the cost of which or any portion of which is to be borne by special assessments upon real property. [Amendment of May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 655.]

Repeal of former law.

§ 3. Sections 2 and 3 of the act approved March 14th, 1911, entitled "An act adding three new sections to an act entitled 'An act to provide for the organization, incorporation and government of municipal corporations,' approved March 13, 1883, to be numbered 10, 11 and 12 and relating to the government of municipal corporations and providing for the recall, initiative and referendum," are hereby repealed.

1. Certificate of city clerk.—Where the certificate of the city clerk attached to an initiative petition recites that that officer has examined the same and the records of registration and has ascertained that the petition was signed by the requisite number of qualified electors, such petition sufficiently shows that the requisite number of such subscribers were registered qualified electors of such city, although the certificate contains no recital that the register examined was the only existing great register of the county.—*Minges v. Board of Trustees*, 27 Cal. App. 15, 148 Pac. 816.

2. Same—Personal examination necessary.—The city clerk is not authorized by the initiative and referendum act to make any certificate as to the sufficiency of an initiative petition until he has personally examined the registration records and ascertained thereby whether the petition is signed by the requisite number of qualified electors, and he can not delegate his duty in this respect to the county clerk.—*Gabbert v. Perry*, 36 Cal. App. 690, 173 Pac. 472.

3. Act relates to legislative, not ministerial or administrative, matters.—The provisions of section 1 of article IV of the constitution reserving to the people themselves the right to propose laws and amendments to the constitution and to adopt or reject the same at the polls independent of the legislature, refers exclusively to matters of strictly legislative cognizance as distinguished from matters that are ministerial or administrative.—*Chase v. Kalber*, 28 Cal. App. 561, 153 Pac. 397.

4. Same.—The provision of section 1, article IV of the constitution whereby power is given to the legislative body of a city, or city and county, or town to provide for the exercise of the right of initiative or referendum until the legislature shall otherwise provide, applies to legislative matters.—*Chase v. Kalber*, 28 Cal. App. 561, 153 Pac. 397.

5. Later effect of ordinance than act provides.—Where a proposed municipal ordi-

nance contains a provision that the ordinance shall take effect at a later date than that provided in the initiative and referendum act, such ordinance is not for that reason in conflict with the provisions of that act.—*Minges v. Board of Trustees*, 27 Cal. App. 15, 148 Pac. 816.

6. Street improvement proceedings in freeholders' charter cities—Legislative.—Street improvement proceedings of municipalities not governed by freeholders' charters are legislative in character and not ministerial or administrative; and they are none the less so because expressed or evidenced by resolution instead of ordinance.—*Chase v. Kalber*, 28 Cal. App. 561, 153 Pac. 397.

7. Same—Power of initiative and referendum can not coexist with street improvement system.—The power of initiative and referendum conferred by the constitution can not coexist with the system established by the legislature for the improvement of public streets; and notwithstanding the fact that such proceedings are legislative in their character, it is held that the intention of the people with respect to the scope and nature of the constitutional provision referred to, was not that it should be applied to such proceedings since the practical application thereof would wholly destroy the power to compel the improvement of streets indispensable to the convenience, comfort and well-being of the inhabitants affected.—*Chase v. Kalber*, 28 Cal. App. 561, 153 Pac. 397.

8. Same—Same—Intention of people.—It is reasonable to suppose that the people in enacting the initiative and referendum, did not intend to vest the right in voters to a voice in the matter of a proposed improvement in which their property was not to be affected.—*Chase v. Kalber*, 28 Cal. App. 561, 153 Pac. 397.

9. Same—Same—Effect of application of initiative and referendum power.—The application of the initiative and referendum to street improvement proceedings would have

the effect not only to deprive the persons interested of their right to hearings upon the proposed improvement but also would delay the improvement to the great inconvenience of the public and give to the bonds voted for such improvement a precarious and doubtful value.—*Chase v. Kalber*, 28 Cal. App. 561, 153 Pac. 397.

10. Bakersfield charter—Act not applicable to Bakersfield.—The initiative and referendum act has no application to the city of Bakersfield although the referendum provisions of the charter of that city are modeled upon the terms of the statute.—

Bakersfield, etc., Co. v. Hay, 29 Cal. App. 289, 155 Pac. 132.

11. "Wyllie local option law"—Electors may exercise powers.—Under the initiative and referendum act of 1911 the electors of a municipality may exercise powers of the board of trustees of such municipality under the Wyllie local option act, and may by proper petition make it incumbent upon the board to pass a prohibitive ordinance or call an election submitting such an ordinance to the electors under such initiative act.—*Giddings v. Board of Trustees*, 165 Cal. 695, 133 Pac. 479.

HOURS OF LABOR OF MUNICIPAL EMPLOYEES.

ACT 3093c—An act providing for hours of rest for persons employed by municipal corporations during more than one hundred twenty hours per week, and prescribing penalties for violations hereof.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1644.

Hours off for certain municipal employees.

§ 1. Any person in the employ of a municipal corporation and whose hours of labor exceed one hundred twenty hours in a calendar week of seven days, shall be entitled to be off duty at least three hours during every twenty-four hours for the purpose of procuring meals and no deduction of salary shall be made by reason thereof.

Penalty.

§ 2. Any officer or agent of a municipal corporation having supervision and control of the employees referred to in section one hereof who shall violate the provisions hereof shall be guilty of a misdemeanor and shall be punishable as provided in section nineteen of the Penal Code.

FISCAL YEAR OF FREEHOLDER CHARTER CITIES.

ACT 3093d—An act providing for changing the fiscal year of cities in this state operating under a charter framed under section 8, article 11, of the constitution.

History: Approved March 16, 1895, Stats. 1895, p. 128.

Editor's note: This act provided that the legislative body of such a city might, by ordinance, change the date of the fiscal year of such city, by adding to the tax rate for the new fiscal year a sufficient amount

in addition to the limit provided by the charter, to raise enough money to pay claims contracted between the end of the previous fiscal year to the commencement of the new fiscal year.

REFUNDING ACT OF 1897.

ACT 3093e—An act authorizing the common council, board of trustees, or other governing body of any incorporated city or town other than cities of the first class to refund its indebtedness, to issue bonds therefor and to provide for the payment of the same.

History: Approved March 9, 1897, Stats. 1897, p. 75. Amended March 12, 1901, Stats. 1901, p. 274; May 10, 1919; in effect July 22, 1919; Stats. 1919, p. 498. Prior act of March 15, 1883, Stats. 1883, p. 370. Amended March 1, 1893, Stats. 1893, p. 59; March 27, 1895, Stats. 1895, p. 203. Repealed by the present act.

Refunding bonded indebtedness of municipal corporations. Interest. "Serials." "Funding fund." When election necessary. Application of proceeds of sale of bonds.

§ 1. The common council, board of trustees, or other governing body of any incorporated city or town other than cities of the first class in this state, having an out-

standing indebtedness evidenced by bonds or warrants thereof, or by judgment or judgments, is empowered, by a two-thirds vote of its number, to fund or refund the said indebtedness and issue bonds of such city or town therefor in sums of not less than one hundred dollars nor more than one thousand dollars each, and having not more than forty years to run, and bearing a rate of interest not exceeding six per cent per annum, payable semiannually; provided, that no indebtedness shall be refunded at a higher rate of interest than that borne by the original debt. Such bonds shall be of the character known as "serials," not less than one-fortieth of the principal being payable each year, together with the interest due on all sums unpaid. Principal and interest on said bonds shall be payable in gold coin or other lawful money of the United States, as may be expressed in said bonds, at the office of treasurer of said city or town. Said bonds shall be sold in the manner provided by such city council or other governing body, to the highest bidder therefor, for not less than their face value, in the same character of money as that in which they are payable. The proceeds of such sale shall be placed in the treasury of such city or town to the credit of the "funding fund," and shall be applied only to refunding the indebtedness for which said bonds are issued. Said trustees, or other governing body, shall at the time for fixing the general tax levy for each year, and in the same manner as such tax levy is made, levy and collect sufficient money to pay such part of the principal of said bonds issued under this act, as one year bears to the number of years for which the bonds are to run, and also the annual interest upon the sums unpaid.

Where such indebtedness is evidenced by judgment or judgments obtained for indebtedness or liability incurred by any such incorporated city or town exceeding the income and revenue provided for the year in which such indebtedness or liability was incurred, within the meaning of section eighteen of article eleven of the constitution, bonds to fund the same shall not be issued unless authorized by the assent of two-thirds of the qualified electors of such incorporated city or town voting at an election to be called and held for that purpose. The election shall be called and held in the manner provided for in an act entitled "An act authorizing the incurring of indebtedness by cities, towns and municipal corporations for municipal improvements, and regulating the acquisition, construction or completion thereof," in effect February 25, 1901, and amendments thereto, and the ordinance calling the election shall recite the object and purposes for which such bonded indebtedness is proposed to be incurred. The proceeds arising from the sale of such bonds shall be applied by the treasurer to the satisfaction of such judgment or judgments. [Amendment of May 10, 1919. In effect July 22, 1919. Stats. 1919, p. 498.]

This section was also amended March 12, 1901, Stats. 1901, p. 294.

Duty of treasurer.

§ 2. Whenever sufficient money is in the funding fund, in the hands of the treasurer, to redeem one or more of the outstanding bonds proposed to be refunded, he shall publish once a week for two weeks in some newspaper of general circulation published in such city or town, if there be any, a notice to the effect that he is prepared to pay such bond or bonds (giving the number thereof), and if the same are not presented for redemption within thirty days after the first publication of such notice, the interest on such bonds will cease. He shall, at the same time, deposit in the postoffice a copy of such notice, inclosed in a sealed envelope, with the postage paid thereon, addressed to the owner or owners of such bond or bonds, at the postoffice address of such owner or owners, as shown by the record thereof kept in the treasurer's office. If such bond or bonds are not presented within the time specified in such notice, the interest thereon shall then cease, and the amount due be set aside for the payment of the same, whenever presented. All redemption of bonds shall be made according to the priority in the order of their issuance, beginning at the first number. Whenever such outstanding

bonds are surrendered and paid, the treasurer shall proceed to cancel the same by indorsing on the face thereof the amount for which they are received, the word "canceled" and the date of cancellation. He shall also keep a record of such bonds so redeemed, and shall make a report of the same to the common council, or other governing body of such city or town, at least once a month, accompanying the same therewith by the bonds which have been taken up and canceled.

Disposition of balance in fund.

§ 3. All moneys which shall remain in said funding fund after all outstanding bonds or indebtedness as were proposed to be refunded have been taken up and canceled, shall be paid into the general fund of such city or town, and become a part thereof. [Amendment of March 12, 1901, Stats. 1901, p. 275.]

Repeal of conflicting statutes.

§ 4. Chapter eighty-two of the statutes of eighteen hundred and eighty-three, chapter forty-eight of the statutes of eighteen hundred and ninety-three, and chapter one hundred and seventy-six of the statutes of eighteen hundred and ninety-five, all being laws of the state of California in conflict herewith, are hereby repealed.

§ 5. This act shall take affect and be in force immediately after its passage.

1. Constitutionality—Title fails to express subject of section 4.—Section 4 of this act is unconstitutional and void for failure of the title of the act to express the subject of that section, and can not operate as a valid repeal of section 6 of the municipal indebtedness act of 1889 as amended in 1893; and mandamus will lie to compel the city clerk of the city of Los Angeles to countersign improvement bonds authorized by said act of 1889.—*Los Angeles v. Hance*, 122 Cal. 77, 54 Pac. 387.

1a. Constitutionality—Not discriminatory.—The act of 1883 is not discriminatory because not applicable to cities of the first class.—*Los Angeles v. Teed*, 112 Cal. 319, 44 Pac. 580.

1b. Same—Submission of question of issue of bonds to voters.—As to indebtedness incurred after January 1, 1880, the act is unconstitutional as authorizing the issue of bonds without submission to the voters.—*Los Angeles v. Teed*, 112 Cal. 319, 44 Pac. 580.

1c. Same—Payment in New York.—Act of 1883 was unconstitutional so far as it provided for payment out of the state.—*Los Angeles v. Teed*, 112 Cal. 319, 44 Pac. 580.

2. Act not repealed.—The refunding act of 1897 was not repealed either expressly or by implication by the act of 1901 (Stats. 1901, p. 794); but the two acts are complementary.—*Long Beach v. Lisenby*, 180 Cal. 52, 179 Pac. 198.

3. Act deals with "municipal affair"—Application.—This act deals with a municipal affair and applies only to cities organized under the municipal corporation act, and not to a city organized under a freeholders' charter.—*Morton v. Broderick*, 118 Cal. 474, 50 Pac. 644.

See, also, *Popper v. Broderick*, 123 Cal. 456, 56 Pac. 53.

4. Act does not apply to cities whose mayor or chief executive is member of governing body.—This act has no application to municipalities in which the mayor or other chief executive is a member of the governing body, and the act of the mayor of a city of the fifth class in refusing to sign an ordinance must be considered under the provisions of the general municipal corporation act; and it being his ministerial duty under that act to authenticate ordinances passed by the board, it is one subject to enforcement by writ of mandate.—*San Buena Ventura v. McGuire*, 8 Cal. App. 497, 97 Pac. 526, 528.

5. Act has no application to freeholders' charter cities.—This act has no application to municipalities organized under a freeholders' charter and can apply only to cities organized under the general municipal corporation act.—*San Buena Ventura v. McGuire*, 8 Cal. App. 497, 97 Pac. 526, 528.

See *Los Angeles v. Davidson*, 150 Cal. 59, 88 Pac. 42; *Sacramento Paving Co. v. Anderson*, 1 Cal. App. 672, 82 Pac. 1069.

6. Judgment for personal injuries.—Under the refunding act of 1897 a municipality is authorized to issue a refunding bond to cover a warrant issued to pay a judgment for personal injuries.—*Long Beach v. Lisenby*, 180 Cal. 52, 179 Pac. 198.

7. "Fund"—"Refunding"—To "fund" an outstanding debt of a municipal corporation is to convert such indebtedness into a permanent form with an extended time of payment and with interest which is regular and which may also be reduced, and the usual method of "funding" such a debt is by the issuance of bonds.—*Long Beach v. Lisenby*, 180 Cal. 52, 179 Pac. 198.

DESTRUCTION OF UNSOLD BONDS.

ACT 3093f—An act providing for the destruction of municipal bonds of municipal corporations where the same have been executed and remained unsold.

History: Approved February 26, 1897, Stats. 1897, p. 34.

Providing for destruction of municipal bonds unsold. Notice and manner of destruction.

§ 1. Whenever there remain in the possession of any municipal corporation in this state any bonds voted to be issued for municipal purposes, which have been executed but not sold and disposed of, and the sale and disposal of such bonds shall be deemed by the board of trustees or other governing body of such city to have become impossible or inexpedient, and that their destruction is desirable, it shall be lawful for said board to give public notice of its intention publicly to destroy such bonds by a notice published for four successive weeks in the official newspaper of said city, if there be such a paper, and otherwise, in any newspaper published and circulated in said city which may be designated by said board; such notice shall specify the time and place of such intended destruction, and the reason alleged therefor, together with a general description of the character and amount of said bonds. And it shall be lawful for said board, at the time and place and in accordance with the terms of said notice, publicly to destroy said bonds unless at least three days prior to said time, written objections to such destruction shall be filed with the clerk of said city, signed by a majority of the legal voters of said city as appears by the vote cast at the last preceding general municipal election.

No other issue of bonds.

§ 2. No further or other issue of bonds in place of those thus destroyed shall be made by such city, or its board of trustees, or other governing board, unless again authorized by a vote of the people as provided by law.

§ 3. This act shall take effect and be in force from and after its passage.

BONDS DECLARED DUE BEFORE MATURITY.

ACT 3093g—An act to authorize municipal corporations to declare all or any of their bonded indebtedness to be at once due and payable, to compromise such bonded indebtedness and to consent to a judgment in favor of the holders of the same.

History: Approved March 16, 1903, Stats. 1903, p. 164.

Election to declare bonded indebtedness due and payable. Notice of election. Duty of common council.

§ 1. Whenever any incorporated city or town in this state has an outstanding indebtedness evidenced by the bonds thereof the common council, board of trustees or other governing body thereof, shall have the power to submit to the qualified electors of such city or town at any election to be held for that purpose, the question of declaring all or any of such bonds to be at once due and payable, of compromising such bonded indebtedness, of consenting to a judgment in favor of the holders of such bonds, and of providing for the payment of such judgment in installments.

Said election shall be called and held in the same manner in which other elections are held in such city or town. The notice of such election shall specify the bonded indebtedness which it is proposed to declare at once due and payable, the terms of the proposed compromise of the same, of the proposed judgment by consent in favor of the holders of such bonds, and the proposed method of paying such judgment in installments.

The question shall be voted upon as an entirety. If at such election two-thirds of the qualified electors vote in favor of the question submitted, the said common council, board of trustees or other governing body shall, by ordinance, declare the bonds de-

scribed in said notice of election, to be at once due and payable and thereupon shall be authorized to carry into effect the compromise and to consent to the judgment specified in such notice of election, and to the proposed method of paying the same in installments, and to designate by resolution the officers and attorneys who shall sign the necessary documents, and to provide for the collection of an annual tax, sufficient to pay the interest on such judgment as it falls due, and such a proportion of the principal thereof as is designated in such notice of election.

Nonconsenting bondholders.

§ 2. No proceeding under section 1 hereof shall affect the rights of any nonconsenting holder of any bond or bonds specified in the notice of election.

Regularity of proceedings.

§ 3. In any action brought upon any of the bonds described in the notice of election, the judgment of any court of competent jurisdiction in such action, shall be conclusive as to the regularity of all proceedings taken under the provisions of section 1 of this act.

Judgment of court.

§ 4. Whenever any action is brought upon any of the bonds described in the notice of election, the plaintiff shall be required to deposit in the court in which such action is brought, the bonds upon which he sues and when the judgment of such court, rendered in accordance with the terms of the proposed compromise described in such notice of election, becomes final, the bonds sued upon shall be delivered to the treasurer of the city or town against which such judgment is rendered, to be held by him and his successors in office until such judgment shall have been satisfied in full. If for any reason such judgment should be reversed or set aside or any orders or writs thereunder should be disobeyed by the defendant or its officers, it shall be the duty of such treasurer to return said bonds to the plaintiff who thereupon may at his own option be relegated to all the rights which he held and enjoyed under such bonds, crediting, however, on such rights, all amounts already received on such judgment. The performance of the duty imposed herein upon such treasurer may be enforced by the court in which such judgment is rendered.

Repeal of conflicting acts.

§ 5. All acts or parts of acts conflicting with this act are hereby repealed.

§ 6. This act shall take effect immediately.

PAYMENT OF BONDS BEFORE MATURITY.

ACT 3093h—An act to provide for the payment of municipal bonds before maturity.

History: Approved June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 397.

Payment of bonds before maturity.

§ 1. The legislative body of any municipality of this state proposing to incur indebtedness by the issuance of bonds may, in the ordinance or resolution authorizing the issuance of such bonds and prescribing the manner in which the same shall be payable, also provide that a certain portion of such bonds, to be determined and specified in such ordinance or resolution, will be paid by the municipality each year after the incurring of such bonded indebtedness and prior to maturity of such portion of said bonds, at the option of the holders thereof, subject, however, to the conditions herein-after prescribed. Such advance payment of bonds shall be in addition to and exclusive of the payment, at maturity, of bonds of the same issue.

Determination of bonds to be paid.

§ 2. The legislative body of the municipality shall, in the ordinance or resolution wherein provision is made for the payment, prior to maturity, of bonds of such municipality, also prescribe the method or procedure for determining the particular bonds to be so paid, and the manner in which the same shall be so payable, and also fix the amount to be paid by the municipality in lieu of interest on such bonds accrued but not due at the time of the payment of the bonds, which amount shall not exceed the amount of such accrued interest.

Tax to meet such payment.

§ 3. In case provision shall be made for the payment of bonds of a municipality in advance of the maturity thereof, as hereinabove prescribed, such municipality, through its proper officers, shall levy and collect each year, until all such bonds are paid, or until there shall be a sum in the treasury of such municipality, set apart for that purpose, to meet all sums due or to become due on the principal of such bonds, a tax which, with any other funds in such treasury, set apart for the purpose, shall be sufficient to pay the portion of such bonds which may become payable, under the terms of the ordinance or resolution aforesaid, before the maturity thereof and prior to the time for fixing the next general tax levy. The taxes herein required to be levied and collected shall be in addition to all other taxes levied and collected for municipal purposes and for meeting payments on the principal and interest of such bonded indebtedness as they fall due, and shall be levied and collected at the time and in the same manner as other municipal taxes are levied and collected, and be used for the purpose of paying bonds prior to the maturity thereof, as hereinabove provided, and for no other purpose.

From what fund payable.

§ 4. The amount fixed by such legislative body to be paid in lieu of interest, accrued but not due, on bonds, as provided in section two of this act, shall be paid by the municipality out of the fund provided in its treasury for meeting sums coming due for interest on such bonds, and, at the time of the payment of such bonds, said amount, together with all interest due and unpaid thereon, shall be paid by the municipality upon presentation and surrender of all outstanding coupons for interest on such bonds.

REGISTRATION OF BONDS.**ACT 3093i—An act in relation to municipal bonds.**

History: Approved February 28, 1903, Stats. 1903, p. 61.

Registered municipal bonds. Form of registration.

§ 1. Whenever the owner of any coupon bond, or of any bond payable to bearer, already issued or hereafter issued by any municipal corporation now or hereafter existing in this state, shall present any such bond to the treasurer or other officer of such corporation, who by law performs the duties of treasurer, with a request for the conversion of such bond into a registered bond, such treasurer, or such other officer, shall cut off and cancel the coupons of any such coupon bond so presented, and shall stamp, print, or write upon such coupon bond, or such other bond payable to bearer, so presented, either upon the back or upon the face thereof, as may be convenient, a statement to the effect that the said bond is registered in the name of the owner, and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter, and from time to time any such bond may be transferred by such registered owner in person, or by attorney duly authorized on presentation of such bond to such treasurer, or such other officer, and the bond be again registered as before, a similar statement being stamped, printed, or written thereon. Such state-

ment stamped, printed, or written upon any such bond may be in substantially the following form.

(Date, giving month, year, and day.)

This bond is registered pursuant to the statute in such cases made and provided in the name of —— (here insert name of owner) and the interest and principal thereof are hereafter payable to such owner.

_____,
Treasurer (or such other officer).

After any bond shall have been registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. Such treasurer, or such other officer, shall keep in his office a book or books which shall at all times show what bonds are registered and in whose names respectively.

Municipal option as to form of bonds.

§ 2. Whenever under any statute of this state or any charter of any municipal corporation in this state, any bonds are issued, whether the proceedings for the issuance of such bonds have been had in whole or in part prior to the enactment of this statute, or whether the same have been had in whole or in part after the enactment of this statute, such bonds may be issued either in the form of coupon bonds, or in the form of registered bonds, or some in the form of coupon bonds, and some in the form of registered bonds, as has been or hereafter may be provided in the proceedings for the issuance of such bonds, and notwithstanding any language or provision to the contrary contained in any such statute or charter authorizing the issuance of the bonds, or in any other law of the state. The provisions of section 1 of this act shall apply to coupon bonds, so issued, as well as to other coupon bonds, or other bonds payable to bearer.

§ 3. This act shall take effect immediately.

INVESTMENT BOND ACT OF 1909.

ACT 3093j—An act to authorize municipal corporations to issue bonds, for the purpose of investing the proceeds arising from the sale thereof, in other bonds issued for public improvements.

History: Approved April 26, 1909, Stats. 1909, p. 1096.

Bonds to provide funds for improvement.

§ 1. Any municipal corporation in the state of California may incur a bonded indebtedness to provide a fund to be called a "general improvement fund," and said fund may be invested or reinvested in any bonds issued by such municipality, or bonds issued for street work or other public improvements, under any act of the legislature providing for the performance of street work or other public improvements.

How issued.

§ 2. The bonds authorized to be issued under the provisions of this act shall be called "investment bonds," and shall be issued in the manner provided for in an act entitled "An act authorizing the incurring of indebtedness by cities, towns and municipal corporations for municipal improvements, and regulating the acquisition, construction and completion thereof," in effect February 25, 1901, and amendments thereto; provided, that the ordinance calling for the election therein provided for, need not contain any statement as to the estimated cost of the proposed public improvement. Such bonds when issued, shall be redeemed and paid as provided in the above herein mentioned act.

Investment of bonds. Reinvestment.

§ 3. It shall be the duty of the legislative branch of every town, city or municipal corporation availing itself of this act, to keep the funds arising from the sale of bonds issued under this act, separate and distinct from all other municipal funds, and to invest and reinvest the same in the serial improvement bonds issued for street, sewer, drainage or other improvements within said municipality, and to collect the interest on said bonds and credit the same to said fund, and said municipality shall have the right to sell, at the discretion of its legislative branch, any of said serial bonds by it purchased, provided that they shall not sell said bonds at a price less than the price paid therefor, and said purchase price of said bonds so sold, together with the accrued interest thereon, shall be credited to the said "general improvement fund," and may be again reinvested in serial bonds, as aforesaid, the intention being that said general improvement fund shall constitute a revolving fund, for the purpose of enabling the property owners to pay their serial bonds in annual installments to the city, and thus enable the municipality to let contracts for the completion of said improvement, on a cash basis.

§ 4. The provisions of this act shall not repeal nor modify the provisions of any other act.

§ 5. This act shall take effect and be in full force and effect from and after its passage.

INVESTMENT BOND ACT OF 1915.

ACT 3093k—An act authorizing any municipality to incur indebtedness by the issuance and sale of bonds for the purpose of investing the proceeds arising from the sale thereof in other bonds, evidences of debt or liens issued for public improvements in said municipality.

History: Approved April 22, 1915. In effect August 8, 1915. Stats. 1915, p. 109.

Municipal investment bonds. Bonds may be resold.

§ 1. Any municipality incorporated under the laws of the state of California may incur a bonded indebtedness by the issuance and sale of bonds to be known as "municipal investment bonds," the proceeds from the sale of which shall be used for the purchase of municipal securities or evidences of debt, either of the municipality or of boroughs or districts therein; including municipal bonds, borough bonds, district bonds, or any bonds or liens arising out of the construction or acquiring of public improvements by local assessment within such municipality. Bonds, securities or other evidences of debt so purchased may at any time be resold at a price not less than that at which they were originally purchased by the city. The proceeds from the sale of investment bonds may also be used for the temporary financing of public improvements which shall have been legally authorized to be paid for by special assessments. Money expended from a municipal investment bond fund shall, as soon as practicable, be returned to said fund from the receipts derived from the securities in which it was invested, or from the proceeds of the special assessments levied and collected to meet the cost of such improvements in accordance with the legal procedure that may be prescribed therefor.

How bonds may be issued.

§ 2. Bonds issued under the provisions of this act shall be issued in the manner provided for in an act entitled "An act authorizing the incurring of indebtedness by cities, towns and municipal corporations for municipal improvements, and regulating the acquisition, construction and completion thereof," in effect February 25, 1901, and

amendments thereto; provided, however, that the ordinance calling the election therein provided for, need not contain any statement as to the proposed public improvement, or the estimated cost thereof. Such bonds when issued shall be redeemed and paid as provided in the hereinabove mentioned act.

Municipal investment bond fund.

§ 3. It shall be the duty of the legislative branch of every municipality availing itself of this act to keep the funds arising from the sale of bonds issued under this act separate and distinct from all other municipal funds, in a fund to be known as the "municipal investment bond fund," and to invest and reinvest the same in bonds of said municipality, or of boroughs or districts therein, or in bonds, or liens or other evidences of debt arising out of the construction or acquisition of public improvements therein by local assessments, and to collect the principal thereof and the interest thereon and place the same in said fund; and said municipality shall have the right to sell, at the discretion of its legislative branch, any such bonds, evidences of debt or liens acquired or held by it; provided, that none of such bonds, evidences of debt or liens shall be sold at a price less than the cost or expense to such municipality of such bonds, evidences of debt or liens respectively. The amount received from the sale of such bonds, evidences of debt or liens so sold, together with the accrued interest thereon, shall be paid into said "municipal investment bond fund," and may be again reinvested as aforesaid.

§ 4. The provisions of this act shall not repeal or modify the provisions of any other act.

LEGALIZATION ACT OF 1919.

ACT 3093 I—An act to legalize bonds heretofore issued and sold, or to be issued and sold, by municipalities where authority for such issuance has already been given by vote of not less than two-thirds of the electors of such municipality voting upon the question of incurring such indebtedness.

History: Approved May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 144. Curative acts of like tenor and effect, and in practically identical language, were approved March 4, 1907, Stats. 1907, p. 104; March 24, 1909, Stats. 1909, p. 689; March 21, 1911, Stats. 1911, p. 421; May 29, 1913, Stats. 1913, p. 329; April 19, 1917, Stats. 1913, p. 143.

Municipal bond issues legalized.

§ 1. In all cases where the legislative branch of any municipality in this state has deemed it necessary to incur an indebtedness in excess of the ordinary annual income and revenue of such municipality, and has called an election for the purpose of submitting to the qualified electors of such municipality the question whether such indebtedness shall be incurred, and where at such election not less than two-thirds of all the qualified electors voting thereat shall have voted in favor of incurring such indebtedness, and the mode of creating such indebtedness has been by the proposed issuance of the bonds of such municipality, the power of such municipality to issue such bonds and all the acts and proceedings of such municipality leading up to and including the issuance and sale or the proposed issuance and sale of such bonds are hereby legalized, ratified, confirmed and declared valid to all intents and purposes; and all such bonds, sold either before or after the passage of this act for not less than their par value are hereby legalized and declared to be legal and valid obligations of and against such municipality so issuing and selling the same, and the faith and credit of such municipality is hereby pledged for the prompt payment and redemption of the principal and interest of said bonds.

§ 2. This act shall not operate to legalize any bonds of any municipality that have not, at the time of the passage of this act, been authorized by the vote of not less than

two-thirds of the qualified electors of such municipality voting at any such election, or any bonds which have been sold for less than their par value.

VALIDATION ACT OF 1915.

ACT 3093m—An act to validate municipal bonds, and to provide for the levy and collection of taxes to pay the principal and interest on such bonds.

History: Approved April 10, 1915. In effect August 8, 1915. Stats. 1915, p. 41. Curative acts of like tenor and effect, in practically the same phraseology were enacted February 28, 1911, Stats. 1911, p. 95; April 4, 1913, Stats. 1913, p. 14.

Municipal bonds validated.

§ 1. Where in any municipal corporation, proceedings have been taken for the purpose of issuing and selling bonds of such municipal corporation, for any purpose or purposes, all such acts and proceedings leading up to and including the issuance of such bonds, if they have heretofore been sold, and all such acts and proceedings heretofore had, although the bonds are not yet sold, are hereby legalized, ratified, confirmed and declared validated to all intents and purposes, and the power of said municipal corporation and of the legislative body thereof, to issue such bonds, is hereby, ratified, confirmed and declared, and the bonds already sold are declared to be, and the bonds hereafter sold shall be, the legal and binding obligation of and against the municipal corporation, having heretofore issued or hereafter issuing such bonds, and the faith and credit of such municipal corporation is hereby pledged for the prompt payment and redemption of the principal and interest of said bonds.

Tax levy for interest and principal.

§ 2. The legislative branch of such municipal corporation shall at the time of fixing the general tax levy and in the manner for such general tax levy provided, levy and collect annually each year until said bonds are paid, or until there shall be a sum in the treasury of said municipal corporation, set apart for that purpose sufficient to meet all sums coming due for the principal and interest on such bonds a tax sufficient to pay the annual interest on such bonds and also such part of the principal thereof as shall become due before the time for fixing the next general tax levy; provided, however, that if the maturity of the indebtedness created by the issue of bonds be made to begin more than one year after the date of the issuance of such bonds, such tax shall be levied and collected at the time and in the manner aforesaid annually each year, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof on or before maturity. The taxes herein required to be levied and collected shall be in addition to all other taxes levied for municipal purposes and shall be collected at the time and in the same manner as other municipal taxes are collected and be used for no other purpose than for the payment of said bonds and the accruing interest thereon.

Bonds sold for less than par not legalized.

§ 3. This act shall not operate to legalize any bonds which have been sold for less than par, nor to legalize any bonds the issuance of which has not received the assent of two-thirds of the qualified electors of such municipal corporation, voting at an election held for the purpose of determining whether such indebtedness should be incurred, nor to legalize any bonds which mature at a date more than forty years from the time of their issuance.

VALIDATION OF IMPROVEMENT AND PUBLIC UTILITY BONDS.

ACT 3093n—An act to validate bonds issued and sold, or to be issued and sold for the purpose of the acquisition or construction of any public improvement work or public utility in any portion of a municipality.

History: Approved May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 229.

Bonds issued by portion of municipality validated.

§ 1. Where, in any portion of a municipality of this state proceedings have been taken for the purpose of creating an indebtedness, to be represented by bonds of such district, the proceeds from the sale of which are to be used for the acquisition or construction therein of any public improvement work or public utility which the municipality of which such district forms a part is authorized by law to acquire or construct, all acts and proceedings leading up to and including the issuance of such bonds, if they have heretofore been sold, and all such acts and proceedings heretofore had, although the bonds are not yet sold, are hereby legalized, ratified, confirmed and declared valid to all intents and purposes, and the power of said district and of the legislative body of such municipality to issue such bonds is hereby ratified, confirmed and declared, and the bonds already are declared to be, and the bonds hereafter sold shall be, the legal and binding obligation of and against such district for which such bonds have heretofore, or may hereafter be, issued, and the full faith and credit of such district is hereby pledged for the prompt payment and redemption of the principal and interest of said bonds; provided, that this act shall not operate to legalize any bonds of any district that have not, at the time of the passage of this act, been authorized by the vote of not less than two-thirds of the qualified electors in said district voting at an election held for the purpose of voting upon the question of the issuance of such bonds, or any bonds which have been sold for less than their par value.

SPECIAL TAX LEVY.

ACT 3093o—An act authorizing counties, cities and counties and municipalities to levy a tax necessary to pay principal and interest on bonds authorized and unsold at the time the annual tax levy is made.

History: Approved June 4, 1913. In effect August 10, 1913. Stats. 1913, p. 446.

Tax levy for interest on unsold bonds.

§ 1. The legislative body of any county, city and county or municipal corporation, at the time of the fixing of the annual tax levy shall estimate the amount of money required to meet the payment of the principal and interest on any bonds the issuance of which may have been authorized by the electors, and which have not been sold but which in the judgment of the legislative body will be sold prior to the making of the next subsequent tax levy, and may levy a tax sufficient to raise the money to pay the principal and interest so estimated. In case any bonds are declared invalid or for any reason are not issued, any tax levied as herein provided shall be refunded.

ORDINANCES.

ACT 3093p—An act to require ordinances and resolutions passed by the city council or other legislative body of any municipality to be presented to the mayor or other chief executive officer of such municipality for his approval.

History: Enacted March 27, 1897, Stats. 1897, p. 190.

Ordinances and resolutions to be approved by chief executive. Objections. Passage on reconsideration by three-fourths. Exception.

§ 1. Every ordinance and every resolution of the city council of any municipality, providing for any specific improvement, or the granting of any franchise, or other privilege, or affecting real property interests, or the expenditure of more than one hundred dollars of the public moneys, or levying tax or assessment, or establishing rates for artificial light, and every ordinance or resolution imposing a duty or penalty, which shall have passed the city council, shall, before it takes effect, be presented to the mayor for his approval. The mayor shall return such ordinance or resolution to the city council within ten days after receiving it. If he approve it he shall sign it, and it shall then take effect. If he disapprove it he shall specify his objections thereto in writing. If he do not return it with such disapproval within the time above specified, it shall take effect as if he had approved it. The objections of the mayor shall be entered at large on the journal of the city council, and the city council shall cause the same to be immediately published. The city council shall, after five, and within thirty days after such ordinance or resolution shall have been returned with the mayor's disapproval, reconsider and vote upon the same; and if the same shall, upon reconsideration, be again passed by the affirmative vote of not less than three-fourths of all the members, the presiding officer shall certify that fact on the ordinance or resolution, and when so certified, it shall take effect as if it had received the approval of the mayor; but if the ordinance or resolution shall fail to receive upon the first vote thereon after its return with the mayor's disapproval, the affirmative votes of three-fourths of all the members, it shall be deemed finally lost. The vote on such reconsideration shall be taken by ayes and noes, and the names of the members voting for or against the same shall be entered in the journal; provided, that the provisions of this section shall not apply to cities in which the mayor is a member of the city council, or other governing body.

Municipality and city defined.

§ 2. The word "municipality," and the word "city," as used in this act, shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes.

City council, what includes.

§ 3. The term "city council" is hereby declared to include any body or board which, under the law, is the legislative department of the government of any city.

Cities without mayors.

§ 4. In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees, or other chief executive officer of the municipality.

§ 5. This act shall take effect and be in force from and after its passage, and all acts and parts of acts in conflict with this act are hereby repealed.

MUNICIPAL CORPORATION BILL.

ACT 3094—An act to provide for the organization, incorporation, and government of municipal corporations.

History: Approved March 13, 1883, Stats. 1883, p. 93. Amended (1) March 14, 1885, Stats. 1885, p. 127; (2) March 14, 1885, Stats. 1885, p. 134; (3) March 4, 1887, Stats. 1887, p. 12; (4) March 19, 1889, Stats. 1889, p. 371; (5) March 19, 1889, Stats. 1889, p. 389; (6) March 2, 1891, Stats. 1891, p. 21; (7) March 10, 1891, Stats. 1891, p. 28; (8) March 10, 1891, Stats. 1891, p. 54; (9) March 10, 1891, Stats. 1891, p. 55; (10) March 17, 1891, Stats. 1891, p. 114; (11) March 31, 1891, Stats. 1891, p. 233; (12) March 23, 1893, Stats. 1893, p. 299; (13) March 5, 1895, Stats. 1895, p. 25; (14) March 26, 1895, Stats. 1895, p. 159; (15) March 27, 1895, Stats. 1895, p. 267; (16) March 9, 1897, Stats. 1897, p. 89; (17) March 18, 1897, Stats. 1897, p. 175; (18) March 27, 1897, Stats. 1897, p. 183; (19) March 27, 1897, Stats. 1897, p. 196; (20) April 1, 1897, Stats. 1897, p. 403; (21) March 14, 1899, Stats. 1899, p. 98; (22) February 20, 1901, Stats. 1901, p. 12; (23) February 20, 1901, Stats. 1901, p. 18; (24) February 28, 1901, Stats. 1901, p. 70; (25) March 12, 1901, Stats. 1901, p. 269; (26) March 14, 1901, Stats. 1901, p. 293; (27) March 23, 1901, Stats. 1901, p. 656; (28) February 26, 1903, Stats. 1903, p. 40; (29) March 9, 1903, Stats. 1903, p. 93; (30) March 13, 1903, Stats. 1903, p. 135; (31) March 20, 1903, Stats. 1903, p. 336; (32) February 20, 1905, Stats. 1905, p. 16; (33) March 3, 1905, Stats. 1905, p. 45; (34) March 7, 1905, Stats. 1905, p. 72; (35) March 8, 1905, Stats. 1905, p. 88; (36) March 20, 1905, Stats. 1905, p. 408; (37) March 15, 1907, Stats. 1907, p. 272; (38) March 6, 1909, Stats. 1909, p. 148; (39) March 19, 1909, Stats. 1909, p. 420; (40) April 16, 1909, Stats. 1909, p. 937; (41) February 14, 1911, Stats. 1911, p. 58; (41a) March 1, 1911, Stats. 1911, p. 253; (42) March 9, 1911, Stats. 1911, p. 316; (43) March 14, 1911, Stats. 1911, p. 359; (44) April 10, 1911, Stats. 1911, p. 842; (45) January 2, 1912, Stats. 1911 (ex. sess.), p. 131; (46) January 2, 1912, Stats. 1911 (ex. sess.), p. 135; (47) February 4, 1913, in effect immediately, Stats. 1913, p. 10; (48) April 4, 1913, in effect August 10, 1913, Stats. 1913, p. 15; (49) April 16, 1913, in effect August 10, 1913, Stats. 1913, p. 31; (50) April 16, 1913, in effect August 10, 1913, Stats. 1913, p. 32; (51) April 16, 1913, in effect August 10, 1913, Stats. 1913, p. 33; (52) April 16, 1913, in effect August 10, 1913, Stats. 1913, p. 33; (53) August 16, 1913, in effect August 10, 1913, Stats. 1913, p. 34; (54) June 3, 1913, in effect August 10, 1913, Stats. 1913, p. 375; (55) April 23, 1915, in effect August 8, 1915, Stats. 1915, p. 170; (56) May 4, 1915, in effect August 8, 1915, Stats. 1915, p. 331; (57) May 25, 1915, in effect August 8, 1915, Stats. 1915, p. 828; (58) June 8, 1915, in effect August 8, 1915, Stats. 1915, p. 1304; (59) June 1, 1917, in effect July 31, 1917, Stats. 1917, p. 1528; (60) June 1, 1917, in effect July 31, 1917, Stats. 1917, p. 1663; (61) June 1, 1917, in effect July 31, 1917, Stats. 1917, p. 1666; (62) April 4, 1919, in effect July 22, 1919, Stats. 1919, p. 19; (63) April 30, 1919, in effect July 22, 1919, Stats. 1919, p. 158; (64) May 5, 1919, in effect July 22, 1919, Stats. 1919, p. 311; (65) May 21, 1919, in effect July 22, 1919, Stats. 1919, p. 761.

SUMMARY OF CONTENTS.

Chapter I. ORGANIZATION OF MUNICIPAL CORPORATIONS. §§ 1-12.

Chapter II. MUNICIPAL CORPORATIONS OF THE FIRST CLASS, OVER 100,000. §§ 19-288.

Article I. General Powers. § 19.

II. General Provisions Relating to Officers. §§ 20-29.

III. Legislative Department. §§ 40-107.

IV. Executive Department. §§ 118-204.

V. Judicial Department. §§ 213-246.

VI. Educational Department. §§ 247-272.

VII. Miscellaneous Provisions. §§ 286-288.

Chapter III. MUNICIPAL CORPORATIONS OF THE SECOND CLASS, 30,000-100,000. §§ 300-426.

Article I. General Powers. § 300.

II. General Provisions Relating to Officers. §§ 301-307.

III. Legislative Department. §§ 319-359.

IV. Executive Department. §§ 370-380.

V. Judicial Department. §§ 390-403.

VI. Educational Department. §§ 410-426.

Chapter IV. MUNICIPAL CORPORATIONS OF THE THIRD CLASS, 15,000-30,000. §§ 500-591.

- Article I. General Powers. § 500.
- II. General Provisions Relating to Officers. §§ 501-509.
- III. Legislative Department. §§ 520-536.
- IV. Executive Department. §§ 550-553.
- V. Judicial Department. §§ 560-563.
- VI. School Department. §§ 570-579.
- VII. Miscellaneous Provisions. §§ 590, 591.

Chapter V. MUNICIPAL CORPORATIONS OF THE FOURTH CLASS, 10,000-15,000. §§ 600-719.

- Article I. General Powers. § 600.
- II. General Provisions Relating to Officers. §§ 601-611.
- III. Legislative Department. §§ 620-636.
- IV. Taxation. §§ 640-666.
- V. Executive Department. §§ 670-681.
- VI. Judicial Department. §§ 690-701.
- VII. School Department. §§ 710-719.

Chapter VI. MUNICIPAL CORPORATIONS OF THE FIFTH CLASS, 3,000-10,000. §§ 750-813.

- Article I. General Powers. § 750.
- II. General Provisions Relating to Officers. §§ 751-758.
- III. Legislative Department. §§ 760-778.
- IV. Executive Department. §§ 786-791.
- V. School Department. §§ 795-805.
- VI. Judicial Department. §§ 806-808.
- VII. Miscellaneous Provisions. §§ 810-813.

Chapter VII. MUNICIPAL CORPORATIONS OF THE SIXTH CLASS, 3,000. §§ 850-886.

- Article I. General Powers. § 850.
- II. General Provisions Relating to Officers. §§ 851-857.
- III. Legislative Department. §§ 858-875.
- IV. Executive Department. §§ 876-881.
- V. Judicial Department. §§ 882-884.
- VI. Miscellaneous Provisions. §§ 885, 886.

CHAPTER I.**ORGANIZATION OF MUNICIPAL CORPORATIONS.****City or town may incorporate.**

§ 1. Any portion of a county containing not less than five hundred inhabitants, and not incorporated as a municipal corporation, may become incorporated under the provisions of this act, and when so incorporated, shall have the powers conferred, or that may be hereafter conferred, by law, upon municipal corporations of the class to which the same may belong.

Manner of proceeding in organizing a municipal corporation.

§ 2. A petition shall first be presented to the board of supervisors of such county, signed by at least fifty of the qualified electors of the county, residents within the limits of such proposed corporation, and the affidavit of three qualified electors residing within the proposed limits, filed with the petition, shall be prima facie evidence of the requisite number of signers. The petition shall set forth and particularly describe the proposed boundaries of such corporation, and state the number of inhabitants therein, as nearly as may be, and shall pray that the same may be incorporated under the provisions of this act. Such petition shall be presented at a regular meeting of such board, and shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper printed and published in such county, together with a notice stating the time of the meeting at which the same will be presented. When such petition is presented, the board of supervisors shall hear the same, and may adjourn such hearing from time to time, not exceeding two months in all, and on the final hearing, shall make such changes in the proposed boundaries as they may find to be proper and shall establish and define such boundaries, and shall ascertain and determine how many inhabitants reside within such boundaries; provided, that any changes made by

said board of supervisors shall not include any territory outside of the boundaries described in such petition. The boundaries so established by the board of supervisors shall be the boundaries of such municipal corporation until by action, authorized by law for the annexation of additional territory to, or the taking of territory from, said municipal corporation, such boundaries shall be changed; provided, whenever it shall appear to the board of supervisors that the boundaries of any municipal corporation have been incorrectly described, the board shall direct the county surveyor to ascertain and report a description of the boundaries. The board of supervisors shall, at their first regular meeting after the filing of the report of the county surveyor, cause notice to be published in some newspaper published in the county, that the report will be acted upon at the next regular meeting of the board, and at said meeting the board shall ratify the report of the county surveyor, with such modifications as they shall deem necessary, and the boundaries so established shall be the legal boundaries of said municipal corporation. They shall then give notice of an election to be held in such proposed corporation for the purpose of determining whether the same shall become incorporated. Such notice shall particularly describe the boundaries so established, and shall state the name of such proposed corporation, and the number of inhabitants so ascertained to reside therein, and the same shall be published for at least two weeks prior to such election, in a newspaper printed and published within such boundaries, or posted for the same period in at least four public places therein. Such notice shall require the voters to cast ballots, which shall contain the words "For incorporation," or "Against incorporation," or words equivalent thereto, and also the names of persons voted for to fill the various elective municipal offices prescribed by law for municipal corporations of the class to which such proposed corporation will belong. [Amendment approved March 19, 1889, Stats. 1889, p. 371. In effect immediately.]

Election, how conducted.

§ 3. Such elections shall be conducted in accordance with the general election laws of the state, and no person shall be entitled to vote thereat unless he shall be a qualified elector of the county, enrolled upon the great register thereof, and shall have resided within the limits of such proposed corporation for at least sixty days next preceding such election. The board of supervisors shall meet on the Monday next succeeding such election, and proceed to canvass the votes cast thereat; and if, upon such canvass, it appears that the majority of the votes cast are for the incorporation, the board shall, by an order entered upon their minutes, declare such territory duly incorporated as a municipal incorporation of the class to which the same shall belong, under the name and style of the city (or town, as the case may be) of — (naming it), and shall declare the person[s] receiving, respectively, the highest number of votes for such several offices to be duly elected to such offices. Said board shall cause a copy of such order, duly certified, to be filed in the office of secretary of state, and from and after the date of such filing, such incorporation shall be deemed complete, and such officers shall be entitled to enter immediately upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices respectively only until the next general municipal election to be held in such city or town and until their successors are elected and qualified; and it shall not be necessary in any action, civil or criminal, to plead and prove the organization or existence of such corporation, and the courts shall take judicial cognizance thereof without proof. [Amendment approved March 19, 1889, Stats. 1889, p. 372. In effect immediately.]

This section was also amended on March 4, 1887, Stats. 1887, p. 12.

How incorporated city or town may incorporate under this law.

§ 4. The common council, board of trustees, or other legislative body of any city or county, city, or town, organized or incorporated prior to the first day of January,

eighteen hundred and eighty, at twelve o'clock, meridian, shall, upon receiving a petition therefor, signed by not less than one-fifth of the qualified electors of such city and county, city, or town, as shown by the vote cast at the last municipal election held therein, submit to the electors of such city and county, city, or town, at the next general election to be held therein, the question whether such city and county, city, or town shall become organized under the general laws of the state relating to municipal corporations of the class to which such city and county, city, or town may belong. Notice that such question will be so submitted shall be given by publication in a newspaper printed and published in such city and county, city, or town; or if there be no newspaper printed and published therein, by printing and posting the same in at least four public places therein, including the place or places where such election is to be held. Such notice shall be so published or posted for at least four weeks prior to such election, and shall also be made a part of the general election notice. Such notice shall distinctly state the proposition to be so submitted, and shall designate the class to which such corporation belongs, and shall invite the electors thereof to vote upon such proposition by placing upon their ballots the words "For reorganization," or "Against reorganization," or words equivalent thereto. The votes so cast shall be canvassed at the time and in the manner in which the other votes cast at such election are canvassed. If, upon such canvass, a majority of all the electors voting at such election shall be found to have voted for such reorganization, the said council, board, or other legislative body shall, by an order entered upon their minutes, cause their clerk, or other officer performing the duties of clerk, to make and transmit to the secretary of state a certified abstract of such vote; which abstract shall show the whole number of electors voting at such election, the number of votes cast for reorganization, and the number of votes cast against reorganization. Said council, board, or other legislative body shall immediately thereafter call a special election for the election of the officers required by law to be elected in corporations of the class to which such city and county, city, or town shall belong, which election shall be held within six weeks thereafter. Such election shall be held in all respects in the manner prescribed, or that may hereafter be prescribed by law for municipal elections in corporations of such class, and shall be canvassed by the council, board, or other legislative body calling the same, who shall immediately declare the result thereof, and cause the same to be entered upon their journal. From and after the date of such entry, such corporation shall be deemed to be organized under such general laws, under the name and style of the city and county (or city or town, as the case may be) of — (naming it), with the powers conferred, or that may hereafter be conferred, by law upon municipal corporations of the class to which the same may belong; and the officers elected at such election shall be entitled immediately to enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices, respectively, only until the next general municipal election to be held in such city and county, city, or town, and until their successors are elected and qualified.

Effect of reincorporation.

§ 5. Any city and county, city, or town organized under the provisions of section 4 of this act shall, for all purposes, be deemed and taken to be in law the identical corporation theretofore incorporated and existing; and such reorganization shall in no wise affect or impair the title to any property owned or held by such corporation, or in trust therefor, or any debts, demands, liabilities, or obligations existing in favor of or against such corporation, or any proceeding then pending; nor shall the same operate to repeal or affect in any manner any ordinance theretofore passed or adopted and remaining unrepealed, or, to discharge any person from any liability, civil or criminal, then existing, for any violation of any such ordinance; but such ordinances, so far as

the same are not in conflict with such general laws, shall be and remain in force until repealed or amended by competent authority; provided, that proceedings theretofore commenced shall, after such reorganization, be conducted in accordance with the provisions of such general laws.

Duty of outgoing officers.

§ 6. As soon as the officers elected under the provisions of either section 3 or section 4 of this act shall have qualified in accordance with law, all persons, if any, then in possession of the offices of such corporation, shall immediately quit and surrender up the possession of such offices and shall deliver to the officers so elected all moneys, books, papers, or other things in their official custody, and all property of such corporation in their hands, notwithstanding that the terms of office for which they were respectively elected or appointed may not then have expired; and all officers, boards, and persons holding any property in trust for any public use, the administration of which use is vested by such general laws in such corporation or such officers, convey such property to such corporation or such officers, by good and sufficient deeds of conveyance, in trust for such public use.

Boundary, how changed.

§ 7. The boundaries of any municipal corporation may be altered, and new territory included therein, after proceedings had as required in this section. The council, board of trustees, or other legislative body of such corporation shall, upon receiving a petition therefor, signed by not less than one-fifth of the qualified electors thereof, as shown by the vote cast at the last municipal election held therein, submit to the electors of such corporation, and to the electors residing in the territory proposed by such petition to be annexed to such corporation, the question whether such territory shall be annexed to such corporation and become a part thereof. Such question shall be submitted at a special election, to be held for that purpose, and such legislative body shall give notice thereof by publication in newspaper printed and published in such corporation, and also in a newspaper printed and published outside of such corporation, and in the county in which such territory so proposed to be annexed is situated, in both cases for a period of four weeks prior to such election. Such notice shall distinctly state the proposition to be so submitted, and shall designate specifically the boundaries of the territory so proposed to be annexed; and the electors shall be invited thereby to vote upon such annexation, by placing upon their ballots the words "For annexation." or "Against annexation," or words equivalent thereto. Such legislative body shall also designate the place or places at which the polls will be opened in such territory so proposed to be annexed, which place or places shall be that of those usually used for that purpose within such territory, if any such there be. Such legislative body shall also appoint and designate in such notice the names of the officers of election. Such legislative body shall meet on the Monday next succeeding the day of such election, and proceed to canvass the votes cast thereat. The votes cast in such territory so proposed to be annexed shall be canvassed separately, and if it shall appear upon such canvass that a majority of all the votes cast in such territory and a majority of all the votes cast in such corporation shall be for annexation, such legislative body shall, by an order entered upon their minutes, cause their clerk, or other officer performing the duties of clerk, to make and transmit to the secretary of state a certified abstract of such vote; which abstract shall show the whole number of electors voting in such territory, the whole number of electors voting in such corporation, the number of votes cast in each for annexation and the number of votes cast in each against annexation. From and after the date of the filing of such abstract, such annexation shall be deemed complete, and thereafter such territory shall be and remain a part of such corporation,

contracted prior to or existing at the date of such annexation. If the territory so proposed to be annexed consists, in whole or in part, of any municipal corporation, or part thereof, such territory shall not be annexed under the provisions of this section.

Municipal corporations, how consolidated.

§ 8. Two or more contiguous municipal corporations may become consolidated into one corporation after proceedings had as required in this section. The council, board of trustees, or other legislative body of either of such corporations shall, upon receiving a petition therefor, signed by not less than one-fifth of the qualified electors of each of such corporations, as shown by the votes cast at the last municipal election held in each of such corporations, submit to the electors of each of such corporations the question whether such corporations shall become consolidated into one corporation. Such legislative body shall designate a day upon which a special election shall be held in each of such corporations to determine whether such consolidation shall be effected, and shall give written notice thereof to the council, board of trustees, or other legislative body of each of the other of such corporations, which notice shall designate the name of the proposed new corporation. It shall thereupon be the duty of such legislative body of each of the corporations so proposed to be consolidated to give notice of such election, by publication in a newspaper printed and published in such corporation, for a period of four weeks prior to such election. Such notice shall distinctly state the proposition to be so submitted, the name of the corporations so proposed to be consolidated, the name of the proposed new corporation, and the class to which such proposed new corporation will belong; and shall invite the electors to vote upon such proposition by placing upon their ballots the words "For consolidation," or "Against consolidation," or words equivalent thereto. The legislative bodies of each of such corporations shall meet in joint convention at the usual place of meeting of the legislative body of that one of such corporations having the greatest population, as shown by the last federal census, on the Monday next succeeding the day of such election, and proceed to canvass the votes cast thereat. The votes cast in each of such corporations shall be canvassed separately; and if it shall appear upon such canvass that a majority of the votes cast in each of such corporations shall be for consolidation, such joint convention, by an order entered upon their minutes, shall cause the clerk, or other officer performing the duties of clerk, of the legislative body at whose place of meeting such joint convention is held, to make a certified abstract of such vote; which abstract shall show the whole number of electors voting at such election in each of such corporations, the number of votes cast in each for consolidation, and the number of votes cast in each against consolidation. Such abstract shall be recorded upon the minutes of the legislative body of each of such corporations; and immediately upon the record thereof, it shall be the duty of the clerk, or other officer performing the duties of clerk, of each of such legislative bodies to transmit to the secretary of state a certified copy of such abstract. Immediately after such filing, the legislative body of that one of such corporations having the greatest population, as shown by the last federal census, shall call a special election, to be held in such new corporation for the election of the officers required by law to be elected in corporations of the class to which such new corporation shall belong, which election shall be held within six months thereafter. Such election shall be called and conducted in all respects in the manner prescribed, or that may hereafter be prescribed, by law for municipal elections in corporations of such class, and shall be canvassed by the legislative body so calling the same, who shall immediately declare the result thereof, and cause the same to be entered upon their journal. From and after the date of such entry, such corporations shall be deemed to be consolidated into one corporation, under the name and style of the city and county (or city or town as the case may be) of — (naming it), with the powers conferred, or that

may hereafter be conferred, by law upon municipal corporations of the class to which the same shall so belong; and the officers elected at such election shall be entitled immediately to enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices, respectively, only until the next general municipal election to be held in such city and county, city, or town, and until their successors are elected and qualified. All the provisions of sections 5 and 6 of this act shall apply to such corporation and to the officers thereof; provided, that no property within either of the former corporations so consolidated shall ever be taxed to pay any portion of any indebtedness of either of the other of such former corporations contracted prior to or existing at the date of such consolidation.

City clerk or city recorder, powers and duties of.

§ 9. The city clerk of each municipal corporation and the city recorder of each municipal corporation where there is no city clerk shall have the powers and shall perform the duties of a registrar within such municipality which are prescribed and required by the provisions of an act entitled, "An act for the registration of deaths, the issuance and registration of burial and disinterment permits, and the establishment of registration districts in counties, cities and counties, cities, and incorporated towns, under the superintendence of the state bureau of vital statistics and prescribing the powers and duties of registrars, coroners, physicians, undertakers, sextons and other persons in relation to such registration and fixing penalties for the violation of this act.'" [New section approved March 20, 1905. Stats. 1905, p. 408. In effect March 31, 1905.]

Recall of municipal officers.

§ 10. [Repealed January 2, 1912. Stats. 1911 (ex. sess.), p. 131.]
This was a new section approved March 14, 1911, Stats. 1911, p. 359.

Initiative.

§ 11. [Repealed January 2, 1912. Stats. 1911 (ex. sess.), p. 135.]
This was a new section approved March 14, 1911, Stats. 1911, p. 361.

Referendum. Other questions may be submitted.

§ 12. [Repealed January 2, 1912. Stats. 1911 (ex. sess.), p. 135.]
This was a new section approved March 24, 1911, Stats. 1911, p. 363.

CHAPTER II.

MUNICIPAL CORPORATIONS OF THE FIRST CLASS.

(Cities having a population of more than 100,000.)

ARTICLE I.—GENERAL POWERS.

First class.

§ 19. Every municipal corporation of the first class shall be entitled the city and county of —, or the city of — (naming it), as the case may be, and by such name shall have perpetual succession, may sue and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the city authorities, and may purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of the same for the common benefit.

ARTICLE II.—GENERAL PROVISIONS RELATING TO OFFICERS.

Names, numbers, and terms of officers.

§ 20. There shall be elected by the qualified voters of such city, or city and county, at the general state election to be held on the first Tuesday after the first Monday of the month of November in each even-numbered year, the following officers, viz.: A mayor, sheriff, auditor, tax collector, treasurer, county clerk, recorder, district attorney, city or

city and county attorney, coroner, surveyor, superintendent of streets, twelve school directors, six justices of the peace, public administrator, and two police judges, who shall hold office for two years. The terms of such officers shall commence on the first Monday after the first day of January next following their election. Also, twelve aldermen, in the manner, and who shall hold office, as provided in section 41 of this chapter, and twelve assistant aldermen, who shall hold office as provided in section 43 of this chapter.

What offices kept open.

§ 21. The mayor, sheriff, county clerk, county recorder, treasurer, district attorney, auditor, tax collector, assessor, city or city and county attorney, superintendent of streets, and surveyor shall keep public offices, which shall be kept open for the transaction of business every day in the year except Sundays, Christmas, New Year's, Fourth of July, Thanksgiving, the twenty-second of February, and on any days during which a general election shall be held, between the hours of nine o'clock a. m. and five o'clock p. m.

Manner of filling vacancies.

§ 22. Whenever vacancies occur in any of the elective offices of such city, or city and county, and provision is not otherwise made in this or some other act for filling the same, the mayor shall appoint, subject to the confirmation of the board of aldermen, a person to discharge the duties of such office until the next election, when the vacancy shall be filled by election for the unexpired term. All persons so appointed shall, before entering upon their duties, take the oath of office, and give bonds as required by law.

What fees paid out of treasury.

§ 23. No fees or compensation to be paid out of the treasury, other than those expressly allowed in this chapter, shall be allowed or received by any officer of such city, or city and county, or of any district, or other subdivision thereof; nor shall any allowance or provision be made for them, or any of them, at the public expense beyond the fixed compensation herein provided under the name of office rent, fuel, lights, stationery, contingencies, extra services, or otherwise, except the compensation or percentage allowed to the tax collector and to the assessor in the collection of poll taxes, and except that the necessary and proper books, stationery, and official blanks may, at the discretion of the municipal council, be purchased and supplied for all the courts of such city, or city and county, its officers, municipal council, and other boards, and officers, the expense whereof, when the amount in each particular case shall have been previously authorized and fixed by the municipal council, may be paid out of the general fund, upon demand upon the treasury duly audited, as in this chapter provided.

Bonds, how given.

§ 24. All officers of such city, or city and county, must, before they can enter upon their official duties, give a bond as required by law. The bonds and sureties of such officers must be approved by the president of the board of aldermen, auditor, and a judge of the superior court, in and for such city and county, or in and for the county in which such city may be situated. When the amount of such official bond is not fixed by law, it shall be fixed by the municipal council. No banker residing or doing business in such city, or city and county, nor any such banker's partner, clerk, employee, agent, attorney, father, or brother, shall be received as surety for the treasurer, mayor, sheriff, auditor, or any officer having the collection, custody, or disbursement of money. No person can be admitted as surety on any such bond unless he be worth, in fixed property, including mortgages, situated in such city, or city and county,

the amount of his undertaking over and above all sums for which he is already liable, or in any manner bound, whether as principal, indorser, or security, or whether such prior obligation or liability be conditional or absolute, liquidated, or unliquidated, certain or contingent, due or to become due. All persons offered as sureties on official bonds must be examined on oath touching their qualifications. The official bond of the auditor shall be filed and kept in the office of the clerk of such city, or city and county. All other official bonds shall be filed and kept in the office of the auditor; provided that the bonds and sureties of the mayor must be approved by the chairman of the house of assistant aldermen, auditor, and a judge of the superior court in and for such city and county, or in and for the county in which such city may be situated; and that the bonds and sureties of the auditor must be approved by the president of the board of aldermen, the chairman of the house of assistant aldermen, and a judge of the superior court in and for such city and county, or in and for the county in which such city may be situated.

Compensation.

§ 25. The compensation or salary of any officer provided for in this chapter shall not be increased or reduced after his election or during his term of office.

Salaries.

§ 26. The salaries of the officers, clerks, deputies, or employees of such city and county, except as otherwise in this chapter provided, shall be as follows, and payable in monthly installments at the end of each and every month, viz:

Mayor and clerk.

1. The salary of the mayor shall be four thousand dollars per annum; he may appoint a clerk, to be known as the mayor's clerk, whose salary shall be one thousand eight hundred dollars per annum.

Sheriff, deputies, attorney, etc.

2. The salary of the sheriff shall be six thousand dollars per annum; he may appoint one under-sheriff, whose salary shall be two thousand four hundred dollars per annum; one bookkeeper, whose salary shall be two thousand four hundred dollars per annum; he may appoint twenty-five deputies, each of whom shall receive a salary of one thousand six hundred dollars per annum, one of which said deputies shall be assigned to and perform the duties of assistant bookkeeper; sixteen deputies, whose salaries shall be one thousand five hundred dollars per annum; one counsel, who shall be an attorney of the supreme court of the state, whose salary shall be one thousand eight hundred dollars per annum; one matron, whose salary shall be nine hundred dollars per annum; one driver of prison wagon, whose salary shall be nine hundred dollars per annum.

Auditor and deputies.

3. The salary of the auditor shall be four thousand dollars per annum; he may appoint one deputy, whose salary shall be twenty-four hundred dollars per annum; and two clerks at a salary of one thousand six hundred dollars per annum each.

Treasurer and deputies.

4. The salary of the treasurer shall be four thousand dollars per annum; he may appoint one chief deputy, whose salary shall be two thousand four hundred dollars per annum, and one deputy, whose salary shall be two thousand one hundred dollars per annum.

Tax collector, deputies, etc.

5. The salary of the tax collector shall be four thousand dollars per annum; he may appoint one chief deputy, one cashier, each of whom shall receive a salary of two thou-

sand dollars per annum, and ten permanent deputies, whose salary shall be one thousand six hundred dollars per annum each.

Assessor, deputies, etc.

6. The salary of the assessor shall be four thousand dollars per annum; he may appoint one chief office deputy, one chief field deputy, and one head draughtsman, each of whom shall receive a salary of two thousand dollars per annum; an assistant draughtsman, who shall receive a salary of one thousand eight hundred dollars per annum; and eleven office deputies, each of whom shall receive a salary of one thousand eight hundred dollars per annum. He may also appoint such additional deputies as may be allowed by the municipal council, at salaries not to exceed five dollars per day each, for such time as they may be employed.

Recorder, deputies, etc.

7. The salary of the recorder shall be three thousand dollars per annum; he may appoint one chief deputy, whose salary shall be two thousand four hundred dollars per annum, and two deputies, each of whom shall receive a salary of one thousand eight hundred dollars per annum; also, two porters, who shall perform the duties of watchmen; each of whom shall receive a salary of nine hundred dollars per annum.

County clerk, deputies, etc.

8. The salary of the county clerk shall be four thousand dollars per annum; he may appoint deputies as follows: one chief deputy, whose salary shall be two thousand four hundred dollars per annum; twelve courtroom clerks, twelve registry clerks, each of whom shall receive a salary of one thousand eight hundred dollars per annum; twelve assistant registry clerks, each of whom shall receive a salary of one thousand five hundred dollars per annum; and twelve copyists, each of whom shall receive a salary of one thousand six hundred dollars per annum; and such county clerk, when the exigencies of his office shall require, may, in his discretion, employ such additional copyists as shall be necessary, at a compensation not to exceed three dollars per day for the days of actual service; provided, said number shall not exceed at any one time three copyists for each judge of the superior court, to be paid from the treasury in the same manner as the salaries herein provided for are to be paid.

District attorney, assistants, etc.

9. The salary of the district attorney shall be five thousand dollars per annum; he may appoint two assistants, who shall be attorneys of the supreme court of this state, each of whom shall receive a salary of two thousand four hundred dollars per annum, and two clerks, who shall be attorneys of the supreme court of this state, each of whom shall receive a salary of one thousand five hundred dollars per annum.

City and county attorney and assistants.

10. The salary of the city, or city and county, attorney shall be four thousand dollars per annum; he may appoint two assistants, who shall be attorneys of the supreme court of this state, each of whom shall receive a salary of two thousand four hundred dollars per annum; and one copyist, who shall receive a salary of nine hundred dollars per annum.

Coroner and deputies.

11. The salary of the coroner shall be three thousand dollars per annum; he may appoint two deputies, one to act as first deputy, whose salary shall be one thousand six hundred dollars per annum, the other to act as second deputy and whose salary shall be one thousand five hundred dollars per annum; and one messenger, to take charge of the dead-wagon, and perform such other duties as are required by the coroner or his deputies. The salary of the messenger shall be nine hundred dollars per annum.

Superintendent of streets and deputies.

12. The salary of superintendent of streets shall be four thousand dollars per annum; he may appoint twenty deputies; three of said deputies shall receive a salary of two hundred dollars per month each, and seven of said deputies shall receive a salary of one hundred and fifty dollars per month each, and ten of said deputies shall receive a salary of one hundred and twenty-five dollars per month each.

Surveyor.

13. The salary of the city, or city and county, surveyor shall be four thousand dollars per annum; he may appoint as many deputies, not to exceed four, as the municipal council shall from time to time determine are necessary, who shall receive such compensation as such municipal council shall provide, not to exceed the sum of five dollars per day when actually employed.

Superintendent of schools.

14. The salary of the superintendent of schools shall be three thousand dollars per annum.

Police judge.

15. The salary of each of the police judges shall be four thousand dollars per annum.

Prosecuting attorney.

16. The salary of the prosecuting attorney of the police court shall be twenty-four hundred dollars per annum; and his two assistants shall each receive a salary of one thousand five hundred dollars per annum.

Justices of the peace.

17. The salary of the presiding justice of the justices' court shall be three thousand dollars per annum; and each of the other justices of the peace shall receive a salary of two thousand four hundred dollars per annum.

Clerk of the justices' court.

18. The salary of the clerk of the justices' court shall be two thousand four hundred dollars per annum; his two deputies shall receive a salary of one thousand two hundred dollars per annum.

Collector of licenses.

19. The salary of the collector of licenses shall be three thousand dollars per annum. He may appoint one chief deputy, who shall receive one thousand eight hundred dollars per annum, and twelve deputies, who shall receive a salary of one thousand five hundred dollars per annum each.

Officers not to be interested in contracts, etc.

§ 27. Any officer or commissioner of such city, or city and county, or any officer or member of any house, board, or department of the government thereof, who shall be directly or indirectly interested in, or a beneficiary or participant of, the profits of any contract made with or for such city, or city and county, or any board or department thereof, or who shall participate in the profits made by any person or persons upon services, labor, purchases, sales, subsistence, supplies, materials, or any article or thing furnished to or done for such city, or city and county, or any institution, public work, or branch, or department of the government thereof, or sold by the same, which contract, profit, purchase, sale, or supply is made or could have been made, influenced, or brought about, through or by means of the official action or conduct of such officer, commissioner, or member of such board, except the official salary or compensation of

such officer, commissioner, or member of such board or department provided expressly by law, shall be deemed guilty of a felony, and, on conviction by any court of competent jurisdiction, punished accordingly. Any commissioner, officer, clerk, or other person having custody of or access to any bids or proposals, whether sealed or otherwise, for supplying or furnishing any goods, provisions, subsistence, labor, material, printing, or other thing of any nature, or constructing, cleaning, repairing any work or thing, or doing or furnishing anything whatsoever to such city and county, or any department, board, commissioner, or officer thereof, who shall open or examine into any one or more of such bids, proposals, or change, interline, alter, or otherwise tamper with the same, or shall purposely find out the contents thereof, or who shall aid, abet, assist, or permit another so to do, before or in advance of the time prescribed by law for the opening thereof, or any lawful postponement of such time, shall be deemed guilty of a felony, and, on conviction by any court of competent jurisdiction, shall be punished accordingly.

Questions of difference, how settled.

§ 28. All questions of differences between the officers of such city, or city and county, as to their relative duties, may be referred by either of them to the city, or city and county, attorney, who shall examine and determine such questions, and his decision shall be final as between such officers.

Reports of officers.

§ 29. The following officers, and the heads of the following departments of such city, or city and county, shall report to the municipal council on or before the first day of August of each year the condition of their respective departments during the fiscal year ending June thirtieth previous thereto, embracing all their operations and expenditures: Auditor, assessor, tax collector, county clerk, superintendent of streets, fire department, hospital, almshouse, park commissioners, treasurer, sheriff, county recorder, city, or city and county surveyor, license collector, public schools, fire-alarm and police telegraph, poundkeeper, board of health, city or city and county attorney, industrial school, police, coroner, health officer, justices' court, city hall commissioners, home for the care of the inebriate, board of election directors, commissioner of elections, house of correction, city cemetery, free public library, and the building committee of the municipal council. Immediately after the first Monday in February, the mayor and municipal council shall make up and publish an extract from these several reports and other sources, of the operations, expenditures, and condition of all departments of government of such city, or city and county.

ARTICLE III.—LEGISLATIVE DEPARTMENT.

Legislative power, how vested.

§ 40. The legislative power of such city, or city and county, shall be vested in a body to be styled the "municipal council," which shall be composed of two boards or houses of legislation, one to be called the "board of aldermen," and the other the "house of assistant aldermen."

Board of aldermen, how elected.

§ 41. The board of aldermen shall consist of twelve persons, to be elected by general ticket, from the city, or city and county, at large, the members of which shall hold office for the term of four years, to commence on the first Monday after the first day of January next following their election, except that of the aldermen, who are elected at the first election under this chapter; the six receiving the smallest number of votes shall hold their office for two years only; so that thereafter only six shall be elected every two years. In case of a tie vote at such first election, the question of which

aldermen shall hold the full and which the short term shall be determined between the candidates so tied by lot. The aldermen shall receive each a salary of one thousand two hundred dollars a year, payable in monthly installments, out of the general fund.

Secretary.

§ 42. The board of aldermen shall appoint a secretary, with a salary not to exceed two hundred dollars a month, who shall keep the records of said board. He shall hold office during the pleasure of the board. He shall have power to administer oaths and affirmations in all cases, and to certify and authenticate copies of all records, papers, and documents in his official custody, and shall perform any other services required by the board.

Assistant aldermen.

§ 43. The house of assistant aldermen shall consist of twelve persons, to be elected every two years, one each by the qualified electors of the respective wards, into twelve of which such city, or city and county, shall be divided for such purpose. The assistant aldermen shall hold office for the term of two years, to commence on the first Monday after the first day of January next following their election, and shall receive each a salary of one thousand two hundred dollars a year, payable monthly out of the general fund.

Salary of clerk.

§ 44. The house of assistant aldermen may appoint a clerk, who shall keep their records, and hold office during their pleasure. He shall have a salary not to exceed two hundred dollars a month; shall have power to administer oaths and affirmations, and to certify and authenticate all records, documents, and papers in his official custody. He shall perform any other service required of him by the house.

Vacancy, how filled.

§ 45. Any vacancy occurring in either board shall be filled by the mayor; and the person appointed to fill such vacancy shall hold office till the next election by the people, and until his successor is qualified.

Qualification.

§ 46. Every member of the board of aldermen shall be a qualified voter, at least twenty-five years of age, and shall have been a citizen of the United States and of this state, and a resident of such city, or city and county, for three years next before his election or appointment.

Qualification.

§ 47. Every member of the house of assistant aldermen shall be a qualified voter, at least twenty-five years of age, shall have been a citizen of the United States and of this state, and a resident of such city, or city and county, at least two years, and of the ward from which he is elected or appointed at least one year next before his election or appointment.

Qualification.

§ 48. Every member of either branch of the municipal council shall, at all times during his incumbency of said office, possess the following qualifications: He shall not be, directly or indirectly, interested in any contract with such city, or city and county, or any department or institution thereof. He shall not have been convicted of malfeasance in office, bribery, or other corrupt practices or crimes. Any member who fails to possess, or who shall at any time during his term of office cease to possess, any of the qualifications mentioned in this act as a qualification shall thereby forfeit his seat in

the board or house to which he belongs, and the vacancy shall be filled as in other cases. If any member of either branch absent himself from the state, or neglect to attend the meeting of the board or house to which he belongs, for a period of thirty days, his office shall be declared vacant by said board, and a successor must be appointed, to hold till the next election by the people, as provided in other cases.

Rules of houses of aldermen.

§ 49. Each board or house shall elect its own officers, except as to the presiding officer of the board of aldermen. The mayor shall preside at all the sessions of the board of aldermen, without the right to vote. In his absence, during any session, the board shall appoint one of its members as president pro tempore, who shall, however, have the same right to vote as other members. Each house shall be the judge of the election returns and qualifications of its own members, and may determine the rules of its own proceedings, except as herein provided. Each house shall keep a record of its acts, and allow the same to be published, and the yeas and nays on any question shall, at the request of any member, be entered on the journal of the house; may arrest and punish by fine, not exceeding five hundred dollars, or imprisonment as provided by ordinance, not exceeding thirty days, or both, any person not a member who shall be guilty of disrespect to the board or house by disorderly or contemptuous behavior in its presence during its session; may punish its members for disorderly conduct, and, with the concurrence of two-thirds of all the members elect, may expel a member.

Quorum.

§ 50. The house of assistant aldermen shall elect one of their own number presiding officer of said house, who shall be designated as the "chairman" thereof. A majority of the members of either house shall constitute a quorum to do business; and no regulation, resolution, ordinance, or order of either house can pass without the concurrence of a majority of all the members elected or appointed to such house; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as the house or board may provide.

Sessions shall be public.

§ 51. All sessions, acts, and resolutions of each house shall be public. Neither house shall, without the consent of the other, adjourn for more than seven days at any one time, nor to any other place than that in which the two houses may be sitting.

Not eligible to any other office.

§ 52. No member of the municipal council shall during the time for which he is elected, be eligible or appointed to any other office under the city, or city and county, except such offices as may be filled by election by the people; nor shall any member, while such, be an employee of such city, or city and county, or any board or department thereof, or of either branch of the municipal council, in any capacity whatever; and no compensation shall be audited or paid for services as such officer or employee; and no act, ordinance, or resolutions shall ever be passed whereby any member of either house shall become the disbursing officer of such city, or city and county, or any board or department thereof, or pay out any of its money upon any pretense whatever.

Limitations on contracts.

§ 53. No member of the municipal council, or of the board of education, or any officer of such city, or city and county, or of any ward thereof, shall have any power to contract any debt or liability whatsoever against such city, or city and county, nor shall the people, or taxpayers, or any property therein, ever be liable to be assessed for or on account of any debt or liability hereafter contracted, or attempted to be contracted, in contravention of this chapter.

Finance committee.

§ 54. The municipal council shall appoint a joint committee of five, three from the board of aldermen, and two from the house of assistant aldermen, to be denominated the "finance committee," which committee may at any time, and shall whenever required by the municipal council, or either branch thereof, investigate the transactions and accounts of any and all officers appertaining to the government of such city, or city and county, having the collection, custody, or disbursement of public money, or having the power to approve, allow, or audit demands on the treasurer, and report thereon to the municipal council. Said committee shall have full power to send for all persons and papers, and enter into, examine, inquire, and investigate all offices and places, to administer oaths and affirmations, to examine witnesses, and compel their attendance by subpoena and attachment for contempt, and the production of records, books, and papers, and may imprison in the city or county jail any person refusing to appear or testify, as well as any officer or person failing or refusing obedience to the orders to show records, papers, or books, or to testify when required so to do. The sheriff or any policeman of such city, or city and county, shall enforce all orders of said committee, and attend upon it in like manner as upon courts of record. The mayor may be present and participate in such investigations.

When municipal council shall meet.

§ 55. The municipal council shall meet on the first Monday after the first day of January, and on the first Mondays of April, July, and October of each year, and at such other times as required by law, and may be specially convoked by the mayor as herein provided.

Passage of ordinances.

§ 56. No ordinance shall be passed except by bill, and no bill shall be so amended in its passage as to change its original object. No bill shall contain more than one subject, which shall be expressed by its title. On the final passage of all bills the vote shall be by "yeas" and "nays" upon each bill, separately, and the names of the members voting for and against the same shall be entered on the journal. Bills may originate in either house, and no bill shall be passed by either house except by a majority vote of all the members elected or appointed to either house.

Amendments, how concurred in.

§ 57. No amendments to bills by either house shall be concurred in by the other except by a vote of a majority of all the members elected or appointed thereto, taken by "yeas" and "nays," and the names of those voting for and against recorded upon the journal thereof; and reports of committees of conference shall be adopted by either house only by the vote of a majority of all the members elected thereto, taken by "yeas" and "nays," and the names of those voting recorded upon the journals.

Re-enacting ordinances.

§ 58. No ordinance shall be revived, re-enacted, or amended, by mere reference to its title, but such ordinance or section shall [be] set forth at length, as if revived, re-enacted, or amended.

Reconsideration.

§ 59. When a bill is put upon its final passage in either house, and failing to pass, a motion is made to reconsider the vote by which it was defeated, the vote upon such motion to reconsider shall be taken up, and the subject finally disposed of at the next meeting of the council, unless such house, by a two-thirds vote, decides to act upon such reconsideration at the same meeting.

Signing bills.

§ 60. No bill shall become an ordinance until the same shall have been signed by the presiding officer of each of the two houses in open session, in authentication of its adoption by such house. In signing such bill for authentication, the presiding officer shall call the attention of the house to the bill, and that he is about to sign it, and if any member request, the bill shall be read at length for information as to its correctness as enrolled. If any member object that the bill is not the same in substance and form as when considered and passed by the house, such objection shall be passed upon, and if sustained, the presiding officer shall withhold his signature and the bill shall then be corrected, and finally disposed of, and signed, before the house proceeds to any other business.

Appropriation bills.

§ 61. No general appropriation act or authorization shall ever be passed, but all appropriations shall be for the specific amount of the claim to be paid, and no more; and each ordinance or resolution authorizing the payment of money shall contain one claim only, which shall be expressed in the title. Every ordinance or resolution of the municipal council providing for any specific improvement, the granting of any privilege, or involving the lease or appropriation of public property, or the expenditures of public moneys, except for sums less than five hundred dollars, or levying tax or assessment, and every ordinance or resolution imposing a new duty or penalty, shall, after its introduction in either house, be published, with the "yeas" and "nays," in a newspaper doing the city and county printing, at least five successive days before final action upon the same by the house in which it was introduced; and in case such ordinance or resolution shall be amended before final passage in said house, then the bill as amended, shall be so published, in the same manner, before final action by such house thereon; and every such ordinance, after the same shall have passed both houses, shall, before it takes effect, be presented to the mayor for his approval. If he approves, he shall sign it; if not, he shall return it within ten days to the house in which the same originated, with his objections in writing. Said house shall then enter the objections on the journal, and publish them in the newspaper doing the city printing. At the next stated meeting thereafter, said house shall proceed to reconsider such bill. If, after such reconsideration, it again passes both houses by the votes of nine of the members elected or appointed to each house voting therefor, it shall become a law, notwithstanding the mayor's objections. Should any such ordinance or resolution not be returned by the mayor within ten days after he receives it, it shall become valid, the same as if it had received his signature. Where a claim against the treasury amounts to more than five hundred dollars it shall not be lawful to divide or break up the same into several sums of less than that amount so as to evade the provisions of this section concerning claims; and any effort or attempt to accomplish such unlawful division, or breaking up a claim, shall be deemed, as to every member of the municipal council or other officer consenting thereto, or aiding the same, a misdemeanor in office, and be cause for his removal. All ordinances authorizing the payment of any money out of the treasury, or any claim thereon, shall be referred to the appropriate standing committee of the house where the bill is introduced, who shall present the same to the auditor, in order that he may certify that there is sufficient money in the proper fund out of which such claim can lawfully be paid, and that such appropriation can be made without violating the provisions of this chapter; and until the auditor certifies in writing, signed by his name, that there is sufficient money in the proper fund, and that the authorization can be made without violating the provisions of this chapter, no further proceedings shall be had with such bill. It shall be the duty of the auditor with reasonable promptness, to ascertain the facts, and to give the certificate when the facts warrant him in doing so, and not otherwise.

Powers.

§ 62. The powers of the municipal council, and all other boards, commissioners, and officers, are those specially named in this chapter, and they are prohibited from exercising any other.

Enacting clause.

§ 63. The enacting clause of ordinances shall be in the following terms: "The municipal council of the city and county of —, or city of — (as the case may be), hereby ordains as follows."

Further powers.

§ 64. The municipal council shall further have power by regulation or ordinance:

Selling and leasing property.

1. To provide for the security, custody and administration of all property of such city, or city and county, and to purchase land required for municipal purposes without any power to sell or encumber the same, or lease any part thereof for more than three years; except, however, that such personal property belonging to the fire, street, or other departments, as they deem unsuited to the uses and purposes for which the same was designed, or so much worn and dilapidated as not to be worth repairing, may be sold or exchanged.

Opening streets.

2. To provide for cases omitted in this chapter, and in conformity with the principles adopted in it, for opening, altering, extending, constructing, repairing, or otherwise improving public streets and highways at the expense of the property benefited thereby, without any recourse in any event upon such city, or city and county, or the public treasury, for any portion of the expense of such work, or any delinquency of the property holders or owners.

Lighting streets.

3. To provide for lighting the streets. But no contract for lighting streets or public buildings shall ever be made for more than one year in duration; nor shall any contract to pay more for gas or other illuminating material than is legally charged to ordinary consumers, or than the usual market rates, be valid.

To provide water.

4. To provide water for all municipal purposes and to pay for the same where lawful and necessary. In case water is supplied to such city, or city and county, for municipal purposes, any person, corporation, or association holding a valid franchise under the laws of this state to collect water rates for the use of water, then such city, or city and county, when it is lawful and necessary, shall pay the lawful rates, and no more, as established each year for water supplied for other municipal purposes; and it shall not be lawful to make any special contract with such person, corporation, or association for water so as to vary from the rates fixed by law.

To regulate markets.

5. To regulate market-houses and market-places.

Regulating public grounds.

6. To provide for inclosing, improving, and regulating all public grounds of such city, or city and county.

Establish fire limits, etc.

7. To prohibit the erection of wooden buildings or structures within any fixed limits where the streets have been established and graded, or ordered to be graded, or to restrict and limit the height of such buildings or structures; to regulate the sale, storage, and use of gunpowder, and to restrict the limits within which may be manufactured or kept giant-powder, dynamite, nitroglycerine, or other explosive or combustible materials and substances, and the maintenance of acid works; and make all useful regulations in relation to the manufacture, storage, and transportation of all such substances, and the maintenance of acid works, slaughter-houses, brick-burning, tanneries, and all other manufactures and works of every description that may jeopardize the public safety, and to exclude them from the city, or city and county, when necessary, or to restrict them, or any of them, to a district. To make all necessary regulations for protection against fire, as well as such rules and regulations concerning the erection and use of buildings as may be necessary for the safety of the inhabitants.

To permit laying down railroad tracks.

8. To permit the laying down of railroad tracks and the running of cars thereon along any street, or portion of street, for the sole purpose of excavating and filling in a street, or a portion of a street, or adjoining lots, and for such limited time as may be necessary for the purpose aforesaid, and no longer.

Fix penalties.

9. To determine the fines, forfeitures, and penalties that shall be incurred for the breach of regulations established by the said municipal council, and also for a violation of the provisions of this chapter, where no penalty is affixed thereto or provided by law; but no penalty to be imposed shall exceed the amount of one thousand dollars, or six months' imprisonment, or both. And every violation of any lawful order or regulation, or ordinances of the municipal council, is hereby declared a misdemeanor or public offense, and all prosecutions for the same shall be in the name of the people of the state of California.

Employment of prisoners.

10. To regulate and provide for the employment of prisoners sentenced to labor on the public works of such city, or city and county, and to maintain and regulate city, or city and county, jails and prisons, with manufacturing or other laboring establishments, or appliances connected therewith.

To provide certain offices.

11. To provide a suitable office and jury-room and dead-house or morgue, with the furniture necessary to enable the coroner to efficiently discharge the duties of his office, and to make the necessary appropriation therefor; and to audit and pay for the necessary expenses of maintaining the morgue and officers attached, such sum as may be necessary, not to exceed seventy-five dollars per month, out of the general fund.

Regulate home of inebriate.

12. To maintain and regulate a home of the inebriate, in its discretion.

City prison.

13. To provide and maintain a city prison.

Improve cemeteries.

14. To maintain and improve the city cemeteries, and to pay out of the general fund a keeper thereof, to be appointed by the board of health, at a salary not to exceed one hundred dollars a month.

Grant licenses.

15. To license and regulate hackney carriages and other public passenger vehicles, and to fix the rates to be charged for the transportation of persons, baggage, goods, merchandise, and property, or either, thereon; and to license and regulate all vehicles used for the conveyance of merchandise, earth, and ballast, or either; and also to license and regulate persons and parties employed in conveying baggage, property, and merchandise, or either, to or from any of the wharves, slips, bulkheads, or railroad stations within the limits of such city, or city and county; to fix and establish the amount of every license paid into the city, or city and county, treasury for city, or city and county, purposes; to provide for the summary removal and disposition of any or all vehicles found in the streets, highways, and public squares during certain hours of the day or night, to be designated by the council; and, in addition to all other remedies, to provide by regulation for the sale or other disposition of such vehicles; to protect the public from injury by runaways, by punishing persons who negligently leave horses or carriages in the street; to prescribe the width of the tires of all drays, trucks, and carts, in accordance with the weight to be carried thereby, for the preservation of the streets and highways.

Regulation of intelligence offices.

16. To regulate, license, and control the business of keeping intelligence offices, prescribe the method of conducting said business, and to enforce, by fines and penalties, the payment of the license, and by any violation of the regulation touching said business. To license and regulate pawnbrokers, and to enact regulations to protect the public in dealing with them.

Fix fees.

17. To fix the fees and charges to be collected by the surveyor of such city, or city and county, for certificates or surveys for buildings or other purposes, and to provide for a sufficient corps of deputy surveyors to perform such work, to be paid from such fees only; also, to regulate the fees to be charged by the superintendent of streets, the county recorder, and any and all other municipal officers where their fees are not otherwise fixed by law, and compel the payment of all such fees and charges into the city and county treasury into the proper fund, in accordance with the provisions of this act.

Enforce collection of certain moneys.

18. To license and regulate, for the purposes of city, or city and county, revenue, all such callings, trades, and employments as the public good may require to be licensed and regulated, and as are not prohibited by law; to provide for and enforce, with penalties, or otherwise, the collection and due payment into the city, or city and county, treasury of all moneys so due or raised, and to make all needful rules and regulations to govern the official conduct and duties of the collector of licenses.

Construction of hydrants.

19. To provide and pay for the construction and repair of hydrants, fire plugs, cisterns, and pumps in the streets.

Pay for celebrating.

20. To allow and order paid out of the general fund a sum not to exceed three thousand dollars in any year, for the celebration in such city, or city and county, of the anniversary of our national independence.

Election expenses.

21. To allow and order paid out of the general fund for the election expenses of such city, or city and county, not to exceed forty dollars for each election precinct for each election in said city, or city and county.

Prosecute claims.

22. To provide ways and means for the prosecution of the claims of such city, or city and county, to any land or other property or right claimed by such municipality.

Appoint weigher of coal.

23. To provide for the appointment by the mayor for a weigher of coal, without salary, and to regulate and define his duties, and establish rates of charges to be collected from persons requiring his services, and for his compensation from such rates and charges alone, and with no claim upon such city, or city and county.

Abatement of nuisances.

24. To authorize and direct the summary abatement of nuisances; to make all regulations which may be necessary or expedient for the preservation of the public health and the prevention of contagious diseases; to provide fines and penalties against individuals who may be guilty of maintaining any nuisances, and enforcing the same until such nuisance be removed or abated; to provide by regulation for the prevention and summary removal of all nuisances and obstructions in the streets, alleys, highways, and public grounds of such city, or city and county, and to prevent or regulate the running at large of dogs, and to authorize the destruction of the same when at large contrary to ordinance.

Regulate or prohibit houses of ill-fame.

25. To prohibit, suppress, regulate, or exclude from certain limits all houses of ill-fame, prostitution, and gaming; to prohibit, suppress, regulate, or exclude from certain limits all occupations, houses, places, pastimes, amusements, exhibitions, and practices which are against good morals, contrary to public order and decency, or dangerous to the public safety.

Regulate manner of street work.

26. To require, by ordinance, all contractors for street work, or other persons lawfully undertaking to improve, grade, or alter streets or public highways, to erect fences or barriers, to keep lights at night, and to take other necessary precautions to protect the public from damage, loss, or accident by reason of such grading, alteration, or improvement, and to fix and prescribe penalties for the violation of the provisions of such ordinance.

Safekeeping of lost property.

27. To provide for the safekeeping and disposition of lost, stolen, or unclaimed property of every kind, which may at any time be in the possession or under the control of the police of such city, or city and county.

Suppress public demonstrations.

28. To regulate, and when necessary to suppress, all public demonstrations and processions which interfere with public traffic.

Regulation of fire department.

29. To appoint a fire marshal. Such appointment shall be made on the nomination of the board of fire underwriters of such city, or city and county, if such board shall exist therein. If more than one such board shall exist therein, then upon the nomination of the board which shall have been longest organized. His salary shall be fixed and paid by such board of fire underwriters. Such fire marshal shall, before entering upon the office, take and subscribe the oath of office, and execute a bond to the state of California in the sum of five thousand dollars, with two or more sureties, to be approved by

a judge of the superior court, for the faithful discharge of his duties. Any person aggrieved by any misconduct of such marshal, or his deputy, may bring an action in his own name upon such official bond, which bond shall be filed in the office of the county clerk. It shall be the duty of such fire marshal to attend all fires which may occur in such city, or city and county, with a badge of office, conspicuously displayed. He shall take charge of and protect all property which may be imperiled at any such fire, and safely keep the same under his possession and control until satisfactory proof of ownership be made thereto; and shall, as far as practicable, prevent such property from being injured at such fire, and direct, when in his opinion it shall be necessary, the removal of goods, merchandise, and other property to a place of safety. He shall be authorized and empowered to exercise the functions of a peace officer of such city, or city and county. Any person who shall willfully hinder or obstruct said officer in the lawful discharge of his duties shall be deemed guilty of a misdemeanor; provided, however, that nothing herein contained shall be so construed as to authorize such fire marshal to interfere in any manner with the proper discharge of the lawful duties and authority of any chief engineer of any fire department of such city and county. It shall be the duty of such fire marshal to institute investigations into the cause of such fires as occur in such city, or city and county; and for this purpose he shall have power to issue subpoenas and administer oaths, and compel the attendance of witnesses before him by attachment or otherwise. All subpoenas issued by him shall be in such form as he may prescribe, and shall be directed to and served by any police officer, or by any peace officer of such city, or city and county. Any witness who refuses to attend or testify in obedience to such subpoena shall be deemed guilty of contempt, and be punishable by him as in cases of contempt in justices' courts in civil cases. He shall make a written report of the testimony to the district attorney, and institute criminal prosecutions in all cases in which there appears to him to be a reasonable and probable cause for believing that a fire has been caused by design. It shall be the duty of such fire marshal to aid in the enforcement of the fire ordinances of such city, or city and county, and for this purpose he is duly authorized to visit and examine all buildings in process of erection or undergoing repairs, and to institute prosecutions for all violations of the ordinances of such city, or city and county, which relate to the erection, alteration, or repairs of buildings, and for the prevention of fires. He shall exercise such additional powers as may be conferred upon him by the ordinances of such city, or city and county, to enable him fully to carry out the object and purpose of his appointment, and for the prevention of fires. He shall have the power to appoint a deputy, who may exercise all the powers and perform all the duties of such marshal. The salary of such deputy shall be paid in the same manner as the fire marshal. Any person who saves from fire, or from a building endangered by fire, any property, and who willfully neglects for two days to give notice to such fire marshal, or to the owner of such property, of his possession thereof, shall be deemed guilty of grand or petit larceny, as the case may be, according to the value of said property; and any person who shall be guilty of false swearing in any investigation under this subdivision shall be deemed guilty of perjury, and, upon conviction thereof, shall be punished therefor as in other cases of perjury. Such fire marshal may be removed at any time by the same power or powers that appointed him. And in case of the removal, resignation, or death of such fire marshal, his successor shall be appointed in the same manner as hereinbefore provided. Such fire marshal is hereby authorized and empowered to appoint one or more persons, during the time of fire, for the purpose of saving and protecting property at such fire, and until it shall be delivered to the owner or claimant thereof, and such person or persons so appointed shall have, during such period, the authority and power of a policeman of such city, or city and county, and shall be known as the fire marshal's police; and each of such persons shall wear, while in the discharge of his duty, conspicuously displayed on his

person, such badge or device as such fire marshal shall designate. No person shall be entitled to any property in the hands of such fire marshal, saved from fire, until satisfactory proof of ownership be made, and until the actual expenses incurred by such officer for the preservation and keeping of the same shall be paid to him by the owner or claimant of said property; and in case of dispute as to the amount of such expenses, said dispute to be determined by the justices' court of such city, or city and county. Such fire marshal is hereby duly authorized and empowered to hold and sell, or cause to be sold, at public auction, all property in his possession, saved from a fire or fires, for which no owner can be found, after advertising the same in two daily newspapers published in such city, or city and county, for the period of thirty days; provided, however, that if, upon application of such fire marshal to the police judge, it shall appear that such property is perishable, such judge may order such fire marshal to make sale thereof upon such notice as in the opinion of such judge may be reasonable. The proceeds of all such sales, together with an account thereof, after deducting all expenses, shall be by him deposited with the treasurer of such city, or city and county, to be held by such treasurer, subject to the claim of the owner of such property. Such fire marshal shall, from time to time, file with the clerk of such city, or city and county, under oath, a statement and description of all property in his possession, or under his control and sold by him, together with the amount of money by him deposited with the treasurer of such city, or city and county.

Maintain fire-alarm.

30. To maintain a fire-alarm and police telegraph in such city, or city and county.

Regulate drifting of sand.

31. To require the owners of lots to prevent sand from drifting, being blown, or otherwise moved therefrom, into or deposited upon any paved, planked, or macadamized street, alley, place, park, thoroughfare, or other public property, and to enforce all such regulations by sufficient fines and penalties.

Maintain house of correction.

32. To maintain, regulate, govern, manage, and carry on a house of correction, and to utilize therein and thereby the labor of all persons committed to the jail or house of correction of such city, or city and county, by the police courts and the superior courts; to prescribe rules of commitment and detention of prisoners, hours of labor, and all necessary rules, regulations, and restrictions for the proper operation of said institution. All prisoners sentenced to a term in the county jail, or house of correction, shall be deemed to have been sentenced to labor during such term. The judges of police courts and of the superior courts in such city or city and county, may sentence criminals to the house of correction when, in the judgment of such judge, the criminal is too young to be sentenced to the state prison, or when it is deemed better for the well-being of the prisoner. No person shall be sentenced to imprisonment in the house of correction for a shorter or longer term than that for which he might be sentenced in the jail of such city, or city and county, or in the state prison; and in no case whatever for a shorter term than three months nor for a longer term than three years. No person who might be sentenced to imprisonment in the state prison shall be sentenced to imprisonment in the house of correction if he is more than twenty-five years of age, if he has been once before convicted of a felony, or twice before convicted of petit larceny, nor unless, in the opinion of the court, imprisonment in the house of correction will be more for his interest than imprisonment in the state prison, and equally for the interest of the public. The fact of a previous conviction may be found by the court upon evidence introduced at the time of sentence. The board of aldermen of the city, or city and county, shall appoint a competent superintendent of the house of correction of such

city and county, who shall also be treasurer of said house of correction, and who shall give good and sufficient bonds, in a sum, and with sureties, to be approved by said board of aldermen, for the faithful discharge of his duties, and to whom shall be paid a salary, to be fixed by them, not to exceed two hundred and fifty dollars per month, payable monthly. Said superintendent shall only be removed for just and sufficient legal cause, after a fair and impartial investigation of his case by said board of aldermen. He shall, immediately after his appointment, and when authorized by said board of aldermen, appoint, subject to the approval thereof, such subordinates as may be deemed necessary by the board of aldermen; and the pay of such subordinates shall be fixed by said board of aldermen, not exceeding one hundred dollars per month to each party so appointed. The superintendent shall manage the general interests of the institution; see that its affairs are conducted in accordance with the requirements of this chapter and of such by-laws as the board of aldermen may from time to time adopt for the orderly and economical management of its concerns; to see that strict discipline is maintained therein; to provide employment for the inmates; adjust and certify all claims against the institution. And all by-laws made by said board of aldermen for the management of said institution, and not contrary to the laws of this state, shall be binding, in all respects, upon said superintendent, officers, and inmates; and said superintendent shall each year prepare and submit, under oath, to the board of aldermen a report of the concerns of said institution. The superintendent shall reside at the house of correction, have charge of its inmates and property, and be its treasurer; keep accounts of all his receipts and expenditures, and of all such property and account in such manner as the said municipal council may require, and hold all books and papers open to their inspection.

Maintain an industrial school.

33. To maintain and regulate an industrial school for the detention, management, reformation, education, and maintenance of such children, under the age of eighteen years, as shall be committed or surrendered thereto by the courts of such city, or city and county, as vagrants, living an idle or dissolute life, or who shall be convicted by the police or superior court of any crime or misdemeanor, or who, being tried for any crime or misdemeanor in such court, shall be found to be under fourteen years of age, and to have done an act which, if done by a person of full age, would be a crime or misdemeanor; and said council is empowered to regulate the commitment, detention and discharge of such children, and to designate and prescribe the causes, terms, and conditions thereof; and the said police court and superior court shall have power to adjudge that such persons so convicted shall be so imprisoned; and persons so convicted shall remain at said industrial school until he or she shall attain majority, unless a shorter time shall be fixed by said court in the commitment. Such children shall be kept at such employments and be instructed in such branches of useful knowledge as may be suitable to their age and capacity. The municipal council may provide for binding out such children as apprentices during their minority, to learn proper trades and employments. There shall be a superintendent of said industrial school, to be appointed by the board of aldermen. He shall be deemed a public officer, whose salary shall not exceed two hundred and fifty dollars per month, and such other employees as may be necessary, with salary not to exceed one hundred dollars per month each. Such police and superior court, or either of them, upon the application of the board of aldermen, and upon its certificate that it is expedient to do so, shall have power to discharge any child committed to said industrial school, and who is not bound out as an apprentice, or adopted, and may in like manner discharge such child upon the application, in writing, of the parents or guardian of such child, who shall not have been bound out or adopted, and after ten days' notice, in writing, to the board of aldermen, if, upon the

hearing of the application, such police court or superior court shall consider that such discharge is expedient.

Maintain almshouse, etc.

34. To establish and maintain an almshouse, a city and county hospital, a smallpox hospital, and such other institutions of the same character as are or may be necessary, and to perpetuate such institutions as may have been heretofore established in such cities, or cities and counties, heretofore incorporated.

Payment of judgment.

35. To order paid out of the general fund any final judgment against such city, or city and county.

Public pound.

36. To maintain, regulate, and govern a public pound, fix the limits within which animals shall not run at large, and appoint poundkeepers, who shall be paid for out of the fines imposed and collected of the owners of impounded animals, and from no other source.

Improvement of waterfront.

37. To allow and order paid out of the street department fund such sums as may be deemed necessary for improvement of streets bordering on the waterfront, and improvement of sewers and streets in front of public property.

Burial of indigent dead.

38. To allow and order paid out of the general fund such sums as may be necessary for burying the indigent dead.

Pay of special counsel.

39. To allow and order paid out of the general fund such sums, not to exceed five thousand dollars in any one fiscal year, as may be deemed necessary for the employment of special counsel.

Enact certain regulations.

40. To enact such general and special police regulations for such city, or city and county, as shall secure the health, comfort, and security of the inhabitants, the safety and security of property and life, and to enforce the same therein.

Regulation of offices and departments.

41. To make needful rules and regulations for the administration, care, and maintenance and conduct of all departments and offices of such city, or city and county, when not otherwise in this chapter provided for, so as to secure more perfect safety of the public funds, and greater efficiency in all departments of the service, and to enforce the observation of such rules and regulations, and to authorize the appointment of such additional clerks, assistant deputies, and employees as in their judgment may be necessary for the proper discharge of the duties of such offices and departments.

General fund.

42. To appropriate the moneys derived from the revenue of such city, or city and county to a general fund, and such funds as have been heretofore or shall be hereafter established by law, or the said council, and as shall be necessary for the proper and economical administration of such city, or city and county.

Free library.

43. To establish, maintain, and regulate free public libraries and reading-rooms, and to perpetuate such free libraries and reading-rooms as may have been heretofore established in such cities, or cities and counties, heretofore incorporated.

Law library.

44. To provide, fit up, and furnish, and provide with fuel, lights, stationery, and all necessary attendance, conveniences, and care, rooms convenient and accessible to the courts, sufficient for the use and accommodation of a law library and those who have occasion to use it, and approved by the officers having the government of said library, and to perpetuate and in the same manner provide for any law library now existing in such city, or city and county, the use of which has been secured by law to the courts, the bar, and the city, or city and county government. The municipal council shall have power, and it shall be their duty, to appropriate, allow, and order paid out of the proper fund such sums as may be necessary therefor.

Medical dispensary.

45. To establish and maintain a free medical dispensary, and to perpetuate any such heretofore existing in such city, or city and county.

Building committee.

46. To appoint a committee of five, three from the board of aldermen and two from the house of assistant aldermen, to be denominated the "Building Committee," to superintend the construction of buildings hereafter to be constructed for such city, or city and county, or now in progress of construction therefor, and to appoint a secretary for such committee, and to fix his compensation, and, if necessary, also to appoint a superintendent and architect therefor, fix their respective compensation, and require of such superintendent and architect to execute bonds, with two sureties, conditioned for the faithful performance of their duty, in such sums as may be deemed necessary.

Division of city into wards.

47. To divide the city, or city and county, by ordinance, into twelve wards, to fix the boundaries thereof, and to change the same from time to time; provided, that no change in the boundaries of any ward shall be made within sixty days next before the date of said general election, nor within twenty months after the same shall have been established or altered.

Levy and collection of revenue.

48. To provide for the levy, collection, and appropriation of revenue heretofore by law provided to be collected for the erection and completion of any public building in and for such city, or city and county, in the manner as heretofore provided by any law of this state for the levy, collection, and appropriation of the same.

Board of equalization.

§ 65. The municipal council shall constitute a board of equalization for such city, or city and county, and as such shall have the powers conferred by the general laws regulating the assessment and collection of taxes, when not inconsistent with the provisions of this chapter.

Definition of public streets.

§ 66. All the streets, lanes, alleys, places, or courts, as laid down on the official map of such city, or city and county, and all other streets, lanes, alleys, places or courts now dedicated or open to public use, are hereby declared to be open public streets, lanes, alleys, places or courts for the purpose of this chapter; and the municipal council is

invested with jurisdiction to order any of the work mentioned in section 67 of this act to be done on any of said streets, alleys, places, or courts, when the grade and width of said streets, lanes, alleys, places, or courts have been officially established; and for the purposes of this chapter the grade of all intermediate or intersecting streets, lanes, alleys, places, or courts in any one block shall conform to the grades as established of the crossings of the main streets.

Grading streets.

§ 67. The municipal council is hereby authorized and empowered to order the whole or any portion of the said streets, lanes, alleys, places, or courts graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, piled or repiled, capped or recapped, and to order sidewalks, sewers, cesspools, man-holes, culverts, curbing, and cross-walks to be constructed, and to order any streets and sewers cleaned, and to order any other work to be done which shall be necessary to make and complete the whole or any portion of said streets, lanes, alleys, places, or courts, and they may order any of the said work to be improved; and when any street, or portion of a street has been or shall hereafter be constructed to the satisfaction of the municipal council and the superintendent of streets, and shall have a brick sewer, or cement or iron-stone pipe constructed therein, under such regulations as said municipal council shall adopt, the same shall be accepted by it, and thereafter shall be kept open and improved by such city, or city and county, the expense thereof, together with all work done in front of city, or city and county, property, to be paid out of the street department fund, or other proper fund; provided, that the municipal council shall not accept of any portion of the street less than the entire width of the roadway (including the curbing and one block in length, or one entire crossing); and provided further, that it may, partially or conditionally, accept any street, or portion of a street, without a sewer or pipe therein as above stated, if a sewer or pipe therein shall be deemed by them unnecessary; but the lots of land previously assessable for the cost of construction of a sewer or pipe shall still remain and be assessable for such cost, and for the cost of repair and restoration of the street damaged in the said construction, when thereafter a sewer or pipe shall be deemed necessary, the same as if no partial or conditional acceptance had ever been had. The said superintendent of streets shall keep in his office a register of all accepted streets, the same to be indexed so that reference may be easily had thereto.

Special assessment for work on private property.

§ 68. The municipal council may order work authorized by this chapter, the cost and expense of which is made chargeable, or may be assessed upon private property by special assessment, to be done, after notice of its intention so to do in the form of a resolution describing the work, and signed by the clerks of both branches of the municipal council, has been published for the period of five days in the paper doing the printing for such city, or city and county, and also in two daily newspapers, one of which newspapers shall be published as a morning edition and one as an evening edition, printed and published in such city, or city and county, for five days, Sundays and nonjudicial days excepted; provided, that no such notice shall be given or order made for the grading of any street, unless the majority of the frontage of the lots and land fronting on the work proposed to be done, and described in said resolution, or which is to be made liable for such grading, except public property, shall have been represented by the owners thereof, or by their agents, in a petition to the said municipal council, stating that they are the owners and in possession or agents of the lots named in the petition, and also requesting that such improvements or street work shall be done. All owners of lands, or lots, or portions of lots, who may feel aggrieved, or have objection to the ordering of the work described in said notice, or who may have objection to any

of the subsequent proceedings of the municipal council in relation to the work mentioned in such notices of intention, or may have any objection to any of the acts of the superintendent of streets, and the city, or city and county, surveyor of such city, or city and county, in the discharge of any of the obligations or duties imposed upon him or them by virtue of their offices, shall file with the clerk of either branch of the municipal council a petition or remonstrance, wherein they shall set forth in what respect they feel aggrieved, or the acts or proceedings to which they object, which petition or remonstrance shall be passed upon by the municipal council, and its decisions thereon shall be final and conclusive; but the municipal council shall not order the work described in said notice to be done unless all objections and protests that may have been presented and filed as aforesaid shall have been by them disposed of. Should the owners or agents of more than one-half in frontage of the lots and lands fronting on the work proposed to be done, and designated in said notice of resolution or liable to be assessed for work, file with the clerk of either branch of the municipal council written objections against any grading described in said notice, at any time before the expiration of the publication of said notice of intention, and the publication thereof, as hereinbefore provided, then and thereupon the municipal council shall be barred from proceeding further for the period of six months; and shall not renew the notice of intention for doing any street work so protested against within six months, unless the owners or agents of a majority of the frontage of the lots and land fronting on said street work, or liable to be assessed therefor as aforesaid, shall petition anew for the work to be done. At the expiration of any notice of intention, the municipal council shall be deemed to have acquired jurisdiction to order any work to be done which is authorized by this chapter; and it is further provided, that where any public street shall have been graded, or graded and macadamized, or graded and paved, for the distance of one or two blocks upon each side thereof of any one or two blocks or crossing of a street which is not improved, it shall be the duty of the municipal council, upon the recommendation of the superintendent of streets, to order the notice provided in this section to be given without the petition provided first aforesaid; and if the owners of three-fourths of the frontage of the land and lots fronting on such portions of said streets to be graded or improved shall, within the time prescribed in said notice, file written objections to the improvement of the said street, such objection shall be a bar for six months for the doing of said work or making said improvement, except when the work or improvement proposed to be done is the construction of sewers, man-holes, culverts, cross-walks, and sidewalks, the municipal council shall duly consider said objections before ordering said work; and if it shall decide and declare by an entry in the minutes of both branches thereof that the objections so made are not good, thereupon it shall be deemed to have acquired jurisdiction to order any such street work to be done that is described in said notice; provided further, that when one-half or more of the grading, planking, macadamizing, paving, sidewalking, or sewerage of any one street, lying between two main street-crossings, has been already performed, the municipal council may order the remainder of such grading, planking, macadamizing, paving, sidewalking, or sewerage to be done, notwithstanding the objections of any or all of the property owners.

Manner of compelling certain street work to be done.

§ 69. The owners of more than one-half in frontage of lots and lands fronting on any street, lane, alley, place, or court, mentioned in section 66 of this act, or their duly authorized agents, may petition the said municipal council to order any of the work mentioned in section 67 of this act to be done; and the said board may order the work mentioned in said petition to be done, after notice of their intention so to do has been published as provided in section 68 of this act. No order or permission shall be given

to grade, or pile and cap, any street, lane, alley, place, or court, in the first instance, or any portion thereof, without extending or completing the same throughout the whole width of said street, lane, alley, place, or court. When any such work has heretofore been done, or when any such work shall hereafter be done, in violation of this section, neither the lots nor portions of lots in front of which such work has been or may be done hereafter, nor the owners thereof, shall be exempt from assessments made for the payment of the work afterwards done to complete said street, lane, alley, place or court to its full width, as provided in this chapter.

May be transmitted.

§ 70. At the expiration of publication of such notice, the clerk of either branch of the municipal council shall cause to be transmitted to the city, or city and county, surveyor, and to the superintendent of streets of such city, or city and county, a copy of the resolution, order or ordinance authorizing the said street work. The said surveyor shall thereupon, within fifteen days from the completion of the publication mentioned in the last section, transmit to said municipal council a map of the district to be benefited by said street improvement; which map shall show the relative location of each lot to the work proposed to be done, and be signed by said surveyor. The superintendent of streets shall also thereupon, within fifteen days from the completion of said publication, transmit to the municipal council an estimate of the cost and expense of said improvement, which said estimate shall contain the items composing the gross sum estimated, and shall be signed by said superintendent.

Adoption or modification of map.

§ 71. The municipal council shall, at the first meeting after the receipt of such map and estimate, or as soon as may be practicable, either adopt, modify, or reject the same, and after its final action upon said map and estimate, the same shall be transmitted to said superintendent of streets, who shall record the same in a book to be kept by him for such purpose; and the said superintendent shall forthwith prepare plans and specifications for such street work, and the clerk of either branch of the municipal council shall cause to be conspicuously posted in the office of said superintendent, and also published for five days (nonjudicial days excepted) in the newspapers hereinbefore mentioned, a notice inviting sealed proposals to contract for the work contemplated to be performed; such work not to be performed, nor any contract for the same made or entered into, until after the moneys sufficient for the payment of the costs and expenses thereof shall have been levied, collected, and paid into the treasury of such city, or city and county, as hereinafter provided; which notice shall substantially contain the plans and specifications above mentioned; and all notices, resolutions, and orders required to be posted or published under the provisions of this chapter shall be posted or published, or both posted and published, as the law may require, by said clerk, as a matter of course, and without any special direction or authority from said municipal council. The said superintendent shall furnish specifications for the performance of any and all street work ordered by the municipal council and authorized by this chapter, and the time within which said work must be completed after entering into the contract for doing the same. All proposals shall be delivered to the clerk of either branch of the municipal council, and the house of which he is the clerk shall, in open session, open, examine, and publicly declare the same; and all proposals shall be for a price payable in gold coin of the United States; provided, said municipal council may reject any and all proposals should they deem it for the public good, and also may reject the proposals of any party who may be proved delinquent or unfaithful with any former contract with such city, or city and county; and if all proposals shall be rejected, the municipal council shall direct the clerk of either house thereof to again post said notice, and publish the same as in the first instance. All proposals shall be accompanied with a bond

to such city, or city and county, to be approved by the clerk of either house of said municipal council, in the sum of one thousand dollars, and in such additional amount as may be fixed by said superintendent of streets, with two good and sufficient sureties, who must be freeholders of such city, or city and county, said sureties to justify in double the amount, conditioned that the party making such proposal shall, or will, within ten days after notice from said superintendent that the moneys for the cost and expenses for such work have been paid into the treasury, enter into a contract with such city, or city and county, in pursuance of such proposal, and to commence such work within five days after the execution of such contract, and complete the same within the time mentioned in the said plans and specifications, or either of them, or within any extended time; it is further provided, that all persons proposing, owners included, who shall fail to enter into any contract as herein provided, or to complete the contracts entered into, are hereby prohibited from proposing a second time for the same work; and in case of owners, they are hereby prohibited from electing to take the same work a second time, and from entering into any contract concerning the same. At any time within five days after such money has been paid into the treasury, the owners of a majority of the frontage of lots and lands liable to be assessed for said work, or their agents, and who shall make oath that they are such owners, or the agents of such owners, may elect to do the said work, and to enter into a written contract to do the whole work at the price for which the same is awarded, upon giving the bond as hereinafter provided; and they shall commence said work within five days after the execution of such contract, and shall prosecute it diligently and continuously, and complete it within the time limited in the contract, or within any extended time; but should the said contractor, or the property owners, fail to prosecute the same diligently or continuously, in the judgment of said superintendent, or complete it within the time prescribed in the contract, or within the extended time, then it shall be the duty of said superintendent to report the same to the municipal council, who shall immediately order the clerk of either branch of the municipal council to advertise for proposals as in the first instance, and relet the contract in the manner hereinbefore provided; and it is further provided that all contractors for street work shall, at the time of entering into said contract, execute a bond payable to such city, city or county, with two or more sureties, in the sum of not less than one thousand dollars, and in such additional amount as may be fixed by said superintendent, conditioned for the faithful performance of said contract; and said sureties shall justify in double the amount of the penalty fixed in said bond; such sureties to justify before said superintendent or his deputy, and the qualifications and responsibility of such sureties shall be the same as prescribed for sureties on the official bonds of the officers of such city, or city and county; and it is further provided that in case of the nonfulfillment by the obligor in either of the bonds mentioned in this section, of the conditions thereof, it shall be the duty of the city, or city and county, attorney to sue for and collect the sum in said bond mentioned, in any court of competent jurisdiction, and pay the same into the city and county treasury, to the credit of the proper fund.

Assessment.

§ 72. After the proposal shall have been received and considered by the municipal council, the superintendent of streets shall make an assessment in proportion to the benefit upon all the land in the district shown upon said map. Said assessment shall show the work proposed to be done, the estimated cost thereof, the rate per front foot assessed against each lot within the assessment district, the amount of each assessment, the name of the owner of each lot, or portion of lot, if known to the superintendent, and if such owner be unknown, the word "unknown" shall be written opposite the number of the lot (but an assessment made to a person not the owner shall not render such

assessment illegal), and the amount assessed thereon, the number of each lot, or portion of lot, assessed, and shall have attached thereto a diagram showing the assessment district, and the relative location of each lot assessed to the work proposed to be done, each lot being numbered in said assessment and diagram; and when completed, shall be signed by said superintendent, and transmitted to the board of aldermen.

Notice of hearing objections to assessment-roll.

§ 73. At the first meeting of the board of aldermen, after the receipt by it of the assessment made by said superintendent, as soon thereafter as may be practicable, it shall cause notice of the time and place of the hearing of all objections to said assessment to be published for at least five days (Sundays and nonjudicial days excepted), prior to the time of such hearing, in two daily newspapers, one published as a morning edition and one as an evening edition, in such city, or city and county. All objections shall be heard in open session of said board of aldermen. At said hearing said board of aldermen may alter, modify, or confirm said assessment, as it shall deem proper; and said superintendent shall thereupon record said assessment and diagram in a book to be kept by him for that purpose. When so recorded, the several amounts assessed shall be deemed a tax levied upon the lands described in said assessment and diagram, upon which they are respectively assessed, and shall be a lien upon such parcels of land. Said superintendent shall give to each assessment a number by which the fund collected for said work shall be known, and shall immediately after the record of said assessment, as hereinbefore provided, deliver the said assessment and diagram to the tax collector of such city and county, who shall thereupon cause to be published for ten successive days (Sundays and nonjudicial days excepted), in two newspapers of general circulation, one of which shall be published as a morning edition and one as an evening edition, published in such city, or city and county, a notice containing a description of the proposed improvement, and of the portion of street or streets upon which the same is proposed to be done, that the same is in his hands for collection; that if said assessment is not paid within fifteen days from the date of the last publication of such notice, that the same will be delinquent; that the property assessed, and upon which the assessment remains unpaid, will be sold by said tax collector for said assessment, a brief description of the property assessed, the amount assessed thereon, and the time and place of sale, which shall be not less than five days nor more than ten days after such delinquency.

Sale of property for unpaid taxes.

§ 74. On the day fixed for the sale, said tax collector, between the hours of 10 a. m. and 3 p. m., must commence the sale of the property advertised, upon which the assessment remains unpaid, and sell the same at public vendue, in the office of said tax collector, to the person who will take the least quantity of the respective parcels of land assessed, and pay the assessment thereon, together with two dollars to said tax collector for the duplicate certificate of sale. If the purchaser does not forthwith pay the amounts of the assessment and costs by him bid, the tax collector shall immediately proceed to sell such parcel or parcels again, in the same manner, for the amount of said assessment and costs.

Duplicate certificate.

§ 75. After receiving the amount of the assessment and costs, said tax collector must make out in duplicate a certificate, dated on the day of sale, showing the name of the person assessed, when known, a brief description of the property sold, the street improvement for which the assessment was levied, the number of the assessment, that it was sold for an assessment, the amount thereof, that the same is subject to redemption at any time within one year after sale, and specifying the date when the purchaser will be entitled to a deed; and upon payment to said tax collector of the fee for record-

ing the same, said tax collector shall deliver one of such duplicates to the purchaser, and the same day file the other in the office of the recorder of the county, or city and county, who shall record the same.

Vesting of lien.

§ 76. Upon filing the said duplicate in the office of said recorder, the lien aforesaid is vested in the purchaser, and is only divested by payment to him, or to the treasurer of such city, or city and county, for his use, of the purchase money and costs, and two per cent per month and fraction of a month up to date of redemption thereon. A redemption of the property sold may be made by the owner, or any party in interest, within twelve months from the date of purchase.

Deed to purchaser and conclusions of law.

§ 77. If property is not redeemed within twelve months from the date of such sale, the tax collector must make to the purchaser, or his assignee, a deed, reciting substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption. The matters recited in the certificate of sale must be recited in the deed, and such deed, duly acknowledged, shall be prima facie evidence that:

1. The property was assessed as required by law.
2. That the assessment was not paid.
3. That the property was sold at the proper time and place, and by the proper officer.
4. That the person who executed the deed was the proper officer therefor.
5. That the title to the property therein described is vested in the purchaser, his heirs, or assigns, free from all encumbrances, except taxes for purposes of revenue.

Payment into treasury by tax collector.

§ 78. Said tax collector shall daily pay into the treasury of such city, or city and county, to the credit of the proper street improvement fund, all moneys collected by him on account of such fund, and shall, upon the receipt of any assessment, mark the same paid upon the assessment-roll, and shall receipt to the person paying the same therefor, which receipt shall show the number of the street improvement fund, the work done, the number of the lot upon which the assessment is paid, and the amount thereof.

Certificate of payment into treasury.

§ 79. When the full amount of such assessment has been collected by said tax collector, the said collector shall certify to the superintendent of streets that the same has been collected and paid into the treasury of such city, or city and county. Upon the receipt of such certificate from the tax collector, the said superintendent shall forthwith notify the person whose proposal shall have been accepted by the municipal council, as aforesaid, of the payment of such money into the treasury, and that such city, or city and county, is ready to enter into a contract with such person for such work, in pursuance of said proposal; and said superintendent shall hold himself in readiness to execute said contract on behalf of such city, or city and county. The board of aldermen may extend the time of performance of the contract, as fixed by the contract of specifications, upon the recommendation of said superintendent; but the time of the performance shall in no event be in any manner extended beyond sixty days after the time fixed in such specifications or contract for the completion of said work.

Certificate to contractor and publication of notice.

§ 80. Whenever any contract shall have been completed to the satisfaction and acceptance of the superintendent of streets, he shall deliver to the contractor a certificate to that effect, and shall also notify said board of aldermen that said work and

improvement, and the contract therefor, having been completed to his satisfaction and acceptance, and that he has given to said contractor his certificate to that effect. Thereupon said board of aldermen shall direct the clerk of said board to give notice by publication for five days, in a newspaper published and circulated in such city, or city and county, that said work and improvement, and the contract therefor, have been completed to the satisfaction and acceptance of the superintendent of streets of such city, or city and county.

Appeal of property owner.

§ 81. Any person owning property which has been assessed to pay the cost and expenses of such work and improvement, feeling aggrieved at the manner in which such work and improvement shall have been done, or feeling aggrieved at any act or determination of said superintendent of streets in relation to said work and improvement subsequent to the date of the execution of the contract therefor, shall, within five days from the first publication of said notice, appeal to said board of aldermen by briefly stating their objections in writing, and by filing the same with the clerk of said board. At the meeting of the board next ensuing after the expiration of said five days allowed above for filing said objections, the said board, if no objections have been filed, shall, by resolution, ratify and confirm all said acts of said superintendent of streets, and shall accept such work and improvement. But if any such objections last aforesaid shall have been filed within said five days, then said board shall fix the time for hearing such objections, and shall direct the clerk of said board to notify all persons desirous of being heard upon said objections of the time and place when and where said board will hear all parties desiring to be heard upon the same. Said notice shall be in writing, and shall be given by posting the same in three of the most conspicuous public places in such city, or city and county, and published five days in two daily newspapers (one morning and one evening edition), at least five days before the time set for said hearing. At the time and place fixed for said hearing of said objections, said board shall proceed to hear all parties present and desiring to be heard upon the matters specified in such objections. And whenever said board shall have determined, by personal inspection or otherwise, that said work and improvement objected to have been completed in all respects according to the contract therefor, they shall, by resolution, accept said work and improvement, and ratify and confirm all said acts of said superintendent of streets in relation thereto.

Notice to superintendent of streets.

§ 82. If, upon such hearing, said board of aldermen shall determine, by personal inspection or otherwise, that said work and improvement have not been performed according to the contract therefor, then they shall notify the said superintendent of streets to that effect, specifying in said notice to him the particulars in which said contract has not been performed. And said superintendent of streets shall thereupon at once cause said contractor to complete said work and improvement under the contract therefor in those particulars specified by said board in said notice to said superintendent of streets. Whenever said board shall ascertain that said work and improvement have been completed in all respects according to the terms of the contract therefor, they shall, by resolution, accept such work and improvement. All acts and determinations of said board of aldermen upon appeals, under the provisions of this and the next preceding section, shall be final and conclusive upon all persons entitled to an appeal thereunder.

Payment to contractor.

§ 83. Whenever any work or improvement shall have been so completed upon any street, lane, alley, court, or place in such city, or city and county, for the payment of

costs and expenses of which an assessment shall have been levied and collected under the provisions of this act, the said board of aldermen shall, by resolution, direct the treasurer to pay out of the appropriate fund, at the expiration of fifteen days from the passage of such resolution, to the contractor who shall have so completed said work and improvement, the amount to which he is entitled under the terms of his contract; provided, however, that such payment by the treasurer shall be made subject to the following provisions, to wit: that any person or persons who have performed labor upon or furnished materials for the construction of said work or improvement, may file within said fifteen days, with the treasurer, any written claim or claims he or they may have on account of such labor performed or materials furnished; and at the expiration of said fifteen days, said treasurer shall pay to said contractor the amount specified in said last named resolution, less the aggregate amount of all such claims, if any, theretofore filed in accordance with the provisions of this section. Should any money be retained by said treasurer on account of such claim or claims, he shall pay over the amount of each claim only upon the order therefor of said contractor, indorsed by the claimant entitled thereto, or upon the order therefor of any court of competent jurisdiction.

Repayment of moneys.

§ 84. And when all moneys required to be paid by the said treasurer, under the last preceding section, shall have been by him paid, as required in said section, if there is any money remaining in the fund out of which said payments shall have been made as aforesaid, it shall be the duty of said treasurer immediately to report the amount of said remaining moneys to said board of aldermen. Thereupon it shall be the duty of said board to empower and direct said treasurer to distribute and repay such remaining moneys, and in the proportion of the amounts of the original assessments, to the persons by or for whom said original assessments were paid, or to their legal representatives. And it shall be the duty of said treasurer, in each instance of such repayment, to require, receive and file away a receipt of said proportionate amount from said persons or their legal representatives. And in no case shall a contractor who has failed to fulfill the terms and conditions of his contract be entitled to receive any portion of the contract price therefor, and he shall be deemed to have forfeited all right to recover or receive any compensation whatever under said contract.

Kind of labor on accepted streets.

§ 85. No contract to do any work upon any accepted streets, other than cleaning streets and sewers, shall be let, but such work shall be done under the direction of the superintendent of streets, by laborers employed by such city, or city and county, through said superintendent, at such wages as may be from time to time fixed by the municipal council. All contracts for materials necessary to be used for work on accepted streets must be given by the municipal council to the lowest bidder offering adequate security, after due public notice, for not less than five days, in at least two newspapers published in such city, or city and county.

Repairing streets, sewer, etc.

§ 86. In case of urgent necessity, the superintendent of streets may, and it shall be his duty to, repair any of the unaccepted public streets, sewers, or crossings cornering thereon; and the expense of the same shall be paid out of the street department fund, in the same manner as provided for the improvement of accepted streets; and all such repairs shall be made in uniformity with the work to be repaired, but such repairs between two main streets shall not exceed in cost the sum of two hundred dollars, and the repairs of any crossing shall not exceed in cost the sum of one hundred dollars;

provided, the sums so expended shall not exceed the sum of two thousand dollars in any one month. Such work, and the material therefor, shall be performed and provided in the same manner as provided in the foregoing section concerning labor and material for accepted streets.

No recourse against city for damage for accident on defective street.

§ 87. No recourse shall be had against such city, or city and county, for damage to person or property suffered or sustained by or by reason of the defective condition of any street or public highway of such city, or city and county, whether originally existing or occasioned by construction, excavation, or embankment, or want of repair of said street or public highway; and whether such damage be occasioned by accident on said street or public highway, or by falling from or upon the same; but if any person, while carefully using any street or public highway of such city and county, graded, or in course of being graded, or carefully using any other street or public highway leading into or crossing the same, be injured, killed, lost, or destroyed; or any horses, animals, or other property be lost, injured, or destroyed, through any defect in said street or public highway, graded, or in course of being graded, as aforesaid, or by reason of any excavation or embankment in or of the same, or by falling from or upon such embankment or excavation, then the person or persons upon whom the law may impose the duty either to repair such defect or to guard the public from the excavation, embankment, or grading aforesaid, and also the officer or officers through whose official neglect such defect remained unrepaired, or said excavation or embankment remained unguarded as aforesaid, shall be jointly and severally liable to the person or persons injured for the damages sustained.

Improvement of streets by property owners.

§ 88. The superintendent of streets may require, at his option, by notice in writing, to be delivered to them personally or left on the premises, the owners, tenants, or occupants of lots or portions of lots liable to be assessed for work done under the provisions of this chapter, to improve forthwith any of the work mentioned in section 67 of this act in front of the property of which he is the owner, tenant, or occupant, to the center of the street or otherwise, as the case may require, or to remove all filth, sand, earth, or dirt from the street in front of the premises; and, by a like notice, to be served personally upon the president or any officer of a railroad corporation or company, or to be left at the office of said corporation or company, to require such corporation or company to improve forthwith any work mentioned in this chapter, which said corporation or company are required by law to do and perform; said notice to specify what improvement is required or work is to be done. After the expiration of five days, if such notice shall not have been complied with, such proceedings shall be taken by the proper authorities to cause the moneys necessary for the doing of such work to be paid into the treasury as is hereinbefore provided in reference to work and improvements upon unaccepted streets, and to be paid for in the same manner.

Notice, how served.

§ 89. Notices in writing, which are required to be given by the superintendent of streets, under the provisions of this chapter, may be served by any police officer, or by any male citizen over the age of twenty-one years, and the fact of such service shall be verified by the oath of the person making it, taken before the superintendent (who is hereby authorized to administer oaths) or any other person authorized to administer oaths. The superintendent of streets shall keep a record of the fact of giving such notices and proof of service, and shall keep the original proof thereof.

Levy of taxes.

§ 90. 1. On or before the fourth Monday of July, annually, the municipal council of such city, or city and county, shall levy the amount of taxes for city, or city and county, purposes, required by law to be levied upon all property not exempt from taxation; said amount to be such as the said council may deem sufficient to provide for the payment of all demands upon the treasury authorized by law to be paid out of the same; provided, that such taxation, exclusive of any and all special taxes, now or which hereafter may be authorized by law, shall not in the aggregate exceed the rate of one dollar upon each one hundred dollars valuation of the property assessed; provided further, that the said municipal council shall, in making the said levy of taxes, apportion and divide the taxes so levied, and to be collected and applied to the several specific funds known as the corporation debt fund, general fund, school fund, street-light fund, street-department fund, or other fund provided for by law or by the said council, according to the estimate of said council of the necessities of the said funds, except that the rate for the school fund shall not exceed thirty-five dollars for each pupil who shall have attended and been taught the preceding year; and provided further, that the said municipal council shall authorize the disbursement of said money for the purposes hereafter mentioned; and at the close of each fiscal year the said council shall direct the treasurer to transfer all surplus moneys of all funds, excepting the school fund, after liquidating or providing for all outstanding demands upon said funds, to the general fund; but no money shall be transferred from either of the said funds to another, nor used in paying any demands upon such other fund, until all the indebtedness arising in any fiscal year, and payable out of said funds so raised for said fiscal year, shall have been paid and discharged.

Corporation debt fund.

2. The corporation debt fund shall be applied to and used for the payment of the interest, and to extinguish or provide for the extinguishment of the lawfully contracted funded debts of such city, or city and county, in accordance with laws in force at the time of the organization of such city, or city and county, under this act.

General fund.

3. The general fund shall be applied and used for the payment of all sums authorized by law to be paid out of the general fund, and not otherwise provided for in this chapter.

School fund.

4. The school fund shall be applied and used for the payment of all sums authorized by law to be paid out of the school fund.

Street-light fund.

5. The street-light fund shall be applied and used in the payment for lighting the streets of such city and county, and for the repair of lamps and posts, in pursuance of any existing or future legal contract of such city and county.

Street-department fund.

6. The street-department fund shall be applied and used for repairing and improving all streets, lanes, and the crossings thereof, which shall have been or hereafter may be accepted, so as to become a charge upon such city and county; for cleaning streets, lanes, crossings and sewers; and for the expense of improvements of streets in front of school lots; for all street work in front of or assessable upon property belonging to such city and county; for all street work on the waterfront of such city and county, not by law assessable upon private property; for all work authorized by the said council, upon the recommendation of the superintendent of streets, as immediately essential

for the safety of life, limb, or property, or necessary for public health, or which can not be by law assessed upon private property, and for such other objects relating to streets and highways as shall be directed by law or said council to be paid therefrom. All moneys received from licenses on vehicles, from the income from street railroads, from fines and penalties for violation of any law or ordinance regulating vehicles on the public streets, shall be paid into the street-department fund.

No payment of public funds unless authorized by law.

§ 91. No payment can be made from the treasury or out of the public funds of such city, or city and county, unless the same be specifically authorized by law, nor unless the demand which is paid be duly audited, as in this chapter provided, and that must appear upon the face of it. No demand upon the treasury shall be allowed by the auditor in favor of any person, officer, company, or corporation, in any manner indebted thereto without first deducting the amount of such indebtedness, nor to any person or officer having the collection, custody, or disbursement of public funds, unless his account has been duly presented, passed, approved, and allowed, as required by law; nor in favor of any officer who shall have neglected to make his official returns or his reports, in writing, in the manner and at the time required by law, or by the regulations established by the municipal council; nor to any officer who shall have neglected or refused to comply with any of the provisions of this or any other act of the legislature regulating the duties of such officer, on being required in writing to comply therewith by the president of the board of aldermen, or any member of the finance committee of the municipal council; nor in favor of any officer for the time he shall have absented himself without lawful cause, from the duties of his office, during the office hours prescribed in this chapter; and the auditor may examine any officer receiving a salary from the treasury, on oath, touching such absence.

Definition of "audited."

§ 92. The term "audited," as used in this chapter with reference to demands upon the treasury, is to be understood [as] their having been presented to and passed upon by every officer and board of officers, and finally allowed as required by law; and this must appear upon the face of the paper representing the demand, or else it is not audited.

What demands to be audited.

§ 93. Every demand upon the treasury, except the salary of the auditor, and including the salary of the treasurer, must, before it can be paid, be presented to the auditor for such city, or city and county, to be allowed, who shall satisfy himself whether the money is legally due and remains unpaid, and whether the payment thereof from the treasury of such city and county is authorized by law, and out of what fund. If he allow it, he shall indorse upon it the word "Allowed," with the name of the fund out of which it is payable, with the date of such allowance, and sign his name thereto; but the allowance or approval of the auditor, or the municipal council, or either branch thereof, or any board, committee, or officer, of any demand which, upon the face of it, appears not to have been expressly made by law payable out of the treasury or fund to be charged therewith, shall afford no warrant to the treasurer or other disbursing officer for paying the same. No demand can be approved, allowed, audited, or paid, unless it specify each several item, date, and value composing it, and refer to the law, by title, date, and section, authorizing the same.

Demands of auditor, how allowed.

§ 94. The demand of the auditor for his monthly salary shall be audited and allowed by the president of the board of aldermen. All other monthly demands on account of

salaries, allowances, or compensations fixed by law or this act, and made payable out of the treasury of such city, or city and county, may be allowed by the auditor without any approval. All demands payable out of the school fund must, before they can be allowed by the auditor, or paid, be previously approved by the board of education, or by the president thereof, and superintendent of schools, acting under express authorization of said board. Demands for teachers' wages, or other expenses appertaining to any school, can not be approved, allowed, or audited to any amount exceeding the share of school money which such school will be entitled to have apportioned to it during the current fiscal year. All other lawful demands payable out of the treasury, or any public funds of such city, or city and county, and not hereinbefore in this section specified, must, before they can be allowed by the auditor in any manner, or recognized or paid, be first approved by the municipal council, except, if the demand be under two hundred dollars, by the mayor and two members of the board of aldermen, appointed by the said board for that purpose, with power to act under and subject to its instructions and regulations during recess of the said board. The auditor must number and keep a record of all demands on the treasury allowed by him, showing the number, date, amount, and name of the original and present holder, on what account allowed, out of what fund payable, and, if previously approved, by what officer, officers, or board it has been so approved; and it shall be deemed a misdemeanor in office for the auditor to deliver any demand with his allowance thereon until this requisite shall have been complied with.

Who may administer oaths.

§ 95. The mayor, mayor's clerk, auditor, auditor's clerk, chief of police, police commissioners, president of the board of education, each member of the municipal council, and every other officer required by law or ordinance to allow, audit, or certify demands upon the treasury, or to perform any other official act or function, shall have power to administer oaths and affirmations, and take and head testimony, concerning any matter or thing concerning any demand upon the treasury, or otherwise relating to their official duties. Every officer who shall approve, allow, or pay any demand on the treasury not authorized by law, or by a valid ordinance of the municipal council, passed in accordance with the same, or in case it is the act of a board, who shall, as a member thereof, vote for the same, shall be liable to the city, or city and county, individually, and on his official bond, for the amount of the demand so illegally approved, allowed, or paid. Every citizen shall have the right to inspect the books of the auditor, treasurer, secretary of the board of aldermen, and clerk of the house of assistant aldermen, at any time during business hours. Copies or extracts from said books, duly certified, shall be given by the officer having the same in custody, to any citizen demanding the same and paying fifteen cents per folio of one hundred words for such copies or extracts.

Payment of audited demands.

§ 96. Every lawful demand upon the treasury, duly audited as in this chapter required, shall in all cases be paid on presentation, and canceled, and the proper entry thereof be made, if there be sufficient money in the treasury belonging to the fund out of which it is payable; but if there be not sufficient money belonging to said fund to pay such demand, then it shall be registered in a book to be kept by the treasurer for that purpose, showing its number, when presented, date, amount, name of the original holder, and on what account allowed, and out of what fund payable, and being so registered, shall be returned to the party presenting it, with an indorsement of the word "Registered," dated and signed by the treasurer.

Investigation of nonpayment of audited demands.

§ 97. Whenever any audited demand has been presented to the treasurer and not paid, and it be made known to the president of the board of aldermen, he shall proceed immediately to investigate the cause for such nonpayment, and if it be ascertained that the demand has been illegally and fraudulently approved or allowed, he shall cause the officer guilty of such illegal and fraudulent approval or allowance to be suspended and proceeded against for misconduct in office. If he ascertains that the demand has been duly audited and that the treasurer has funds applicable to the payment thereof, which, without reasonable grounds for doubt as to the legality of such payment, he refuses to apply thereto, he shall proceed against him as a defaulter. If it be ascertained that the demand was not paid for want of funds, then he shall cause the tax collector, or other officer or person who ought to have collected or to have paid the money into the treasury, if they have been grossly negligent therein, to be proceeded against according to law and without delay.

Receipts for money by all officers.

§ 98. The treasurer, for all money received into the treasury, and all other officers of such city, or city and county, receiving money from the treasury for disbursement, shall give receipt for all moneys by them received, which receipt shall be presented to and countersigned by the auditor. The auditor, before countersigning any such receipt, shall number it and make an entry in a book of record to be kept in his office for that purpose, of the number, date, and amount, by whom and in whose favor given, and on what account. No such receipt shall be valid as evidence in favor of the person or officer receiving it till presented to the auditor and countersigned as aforesaid; and any person or officer using or offering to use such receipt as evidence in favor of such person or officer, of the payment specified in it, without being first countersigned as above required, shall forfeit to such city, or city and county, double the amount of money specified in such receipt.

Remedy against auditor and other officers.

§ 99. If any person feel aggrieved by the decision of the auditor, or other proper officer or officers of such city, or city and county, except the board of education, in the rejection of or refusal to approve or allow any demand upon the treasury presented by such person, he may appeal and have the same passed upon by the municipal council, whose decision thereon shall be final; and if the said council shall approve and allow the demand, it shall afterwards be presented to the auditor, and entered in the proper book, in like manner as other demands allowed by him, and an indorsement must be made of its having been so entered before it can be paid; but nothing herein contained shall be construed to bar the party presenting the claim from prosecuting the same in any court of competent jurisdiction; provided, that from the decision of the president of the board of education and superintendent of schools, refusing or not agreeing to allow any demand payable out of the school fund, the appeal shall be taken to the board of education, whose decision shall be final; but nothing herein contained shall be construed to bar the party presenting the claim from prosecuting the same in any court of competent jurisdiction.

Opinion of city attorney.

§ 100. In all cases of such appeals to the municipal council, or the board of education, if, in the opinion of said council or of said board deemed expedient, the opinion of the city, or city and county, attorney shall be required, and obtained in writing, read, and filed; any upon such appeal, and in all other cases upon the approval or allowance of any demand upon the treasury or school fund, the vote shall be taken by "yeas" and "nays," and entered upon the records.

Examination of books of treasurer and other officers.

§ 101. The president of the board of aldermen, in conjunction with the auditor and the chairman of the house of delegates of such city, or city and county, shall, every month, examine the books of the treasurer and other officers of such city, or city and county, having the collection and custody of the public funds, and shall be permitted, and it shall be their duty, to see and count over all the moneys remaining in the hands of such treasurer, or other officer, after having previously ascertained the amount which should be remaining in his hands. The finance committee shall also, twice a year, viz., on the first Monday in July and January, make the same examination of books, count said money, and report the result to the municipal council. If they ascertain clearly that such treasurer, or other officer, is a defaulter, they shall forthwith take possession of all funds, books, and papers belonging to such office, and the president of the board of aldermen shall appoint a person to fill the same until the said defaulting officer can be proceeded against according to law, which shall be done without delay, and until the said officer shall be restored to duty, or office, or until his successor shall be appointed, or elected and qualified. The person so appointed shall give bonds and take the oath of office in the same manner as was required of the officer whose place he is appointed to fill. If the treasurer, or other officer so discharged as defaulter, be acquitted thereof, he shall resume his duties.

One-twelfth law.

§ 102. Neither the municipal council, the board of education, nor any other board, commission, committee, officer, or person, shall have power to authorize, allow, contract for, pay, or render payable, and they are prohibited from authorizing, allowing, contracting, paying, or rendering payable, in present or future, in any one month, any demand or demands, liability or liabilities, against the treasury of such city, city and county, or the funds thereof, which shall, in the aggregate, exceed one-twelfth part of the amount allowed by laws existing at the time of such contract, authorization, allowance, payment or liability, to be expended within the fiscal year of which said month is a part; provided, however, that if, at the beginning of any month, any money remains unexpended in any of the funds set apart for maintaining the municipal government of such city, or city and county, and which might lawfully have been expended the preceding month, such unexpended sum or sums may be carried forward and expended by order of the municipal council, for the same purpose allowed by law in any succeeding month of the fiscal year. All contracts, authorizations, allowances, payments, and liabilities to pay, made or attempted to be made, in violation of this section, shall be absolutely void, and shall never be the foundation or basis of a claim against the treasury of such city, or city and county; and all officers of such city, or city and county, are hereby charged with notice of the condition of the treasury of such city, or city and county, and the extent of the claims against the same.

Duties of certain officers under the one-twelfth law.

§ 103. It is the duty of the superintendent of streets to keep an exact account of all street and sewer work upon accepted streets, and it shall be the duty of the building committee to keep an account of all work done on all public buildings and every other expenditure chargeable against the treasury in any of the departments under charge of said building committee and officers; and it is the duty of the superintendent of schools, the president of the board of education, the president of the board of fire commissioners, the president of the board of election directors, the president of the board of police commissioners, and every other officer and board having the power to contract any demand, or to aid in the contraction of any demand, against said treasury, to keep an exact and full account of all purchases, expenditures, and liabilities made

or contracted in their respective departments; and for the purpose of making such accounts, said officers shall have power to demand and receive from every other city, or city and county, officer, detailed statements in writing, when necessary to keep said accounts, and it is hereby made the duty of any and all officers to furnish said statements when demanded; such accounts shall be constantly posted up to date, so that it can be known exactly at any time what part or proportion of the monthly sum allowed by this chapter and existing laws has been contracted for, paid, or rendered liable to pay in the present and future. Such accounts shall show every contract for street and sewer work, public buildings, purchases of material, or supplies, or other expenditure, in whatever department it is made, from its incipency through the various stages of progress to completion, with the amount to be paid for the same so far as the same is capable of exact estimation, and when not, then a sworn estimate by the proper officer of the probable cost. Whenever, at any time, the contracts performed or unperformed, claims due or to become due, exceed said one-twelfth part of the amount that can be lawfully expended out of any fund in the current fiscal year, the president of the board, head of department, or other officer or board having the supervision of such expenditure, shall give notice thereof in writing, as to his or their department, to the auditor and the treasurer, and to the municipal council a notice in writing, served upon the clerks of each branch thereof, and shall post the same in his or their office, from which time no further contracts shall be made or expenditures authorized or allowed, until such time has elapsed as will allow of further proceedings consistent with the provisions of the law.

Penalty for noncompliance with law.

§ 104. Any failure or neglect on the part of any of said officers or boards, or members of boards, to comply with any of the provisions of the preceding sections, shall render such officer, and each member of such board consenting thereto, liable personally and upon his official bond to any contractor or other person suffering damage by said failure or neglect; but such contractor or person damaged shall have no remedy against such city, or city and county, and the said officers or members of boards authorizing or aiding to authorize, auditing, or allowing any claim or demand upon or against said treasury, or any fund thereof, in contravention thereof, shall be liable in person and on his official bond to the contractor or person damaged, to the extent of his loss. The treasurer paying any claim authorized, allowed, or audited in contravention of the provisions thereof shall be liable on his official bond to refund the same to such city, or city and county, and it shall be the duty of the city, or city and county, attorney to sue for the same, if necessary.

Exception to operation of one-twelfth law.

§ 105. In case of any great public calamity or danger, such as earthquakes, conflagrations, pestilence, invasion, insurrection, or other great and unforeseen emergency, the provisions of the three preceding sections may be temporarily suspended, as to any lawful contract, authorization, or expenditure necessary to avert, mitigate, or relieve such evil; provided, that such expenditure, contract, or authorization shall be passed by the unanimous vote of all members elected or appointed to each house of the municipal council, and entered in the journals of each house, and the character and fact of such emergency must be recited in the ordinance authorizing such action; and such ordinance must be approved by the mayor, auditor, and treasurer of such city, or city and county.

Printing and advertising must be let to lowest bidder.

§ 106. All city, or city and county, official printing and advertising, for all departments thereof, excepting that of the sheriff's office, shall be let by the municipal council,

during the month of January of each year, to the lowest responsible bidder, printing, publishing, and proposing to advertise in a newspaper of general circulation in such city, or city and county, and that has been in existence at the time of the letting of said contract at least three years; and provided, that any such newspaper may bid for the whole or any part of the advertising. The bids shall be opened by the board of aldermen, and all bidders may be present thereat. No bid shall be considered in which there shall be any erasure or interlineation. All such contracts, when awarded, shall be entered into and bonds taken by the clerk of the board of aldermen, in such sum and containing such conditions as the board of aldermen shall provide.

Contracts, how made.

§ 107. All contracts relating to city, or city and county, affairs shall be in writing, signed and executed in the name of the city, or city and county, by the officer authorized to make the same; and in cases not otherwise directed by the law, such contracts shall be made and entered into by the mayor. All contracts shall be countersigned by the auditor, and registered, by number and dates, in his office, in a book to be kept by him for that purpose. In all cases of letting contracts to bidders, when for any reason a contract fails of completion, new bids shall be invited, opened, and awarded, as provided in this chapter in the first instance, until a sufficient contract is executed. In all cases when the board of aldermen have reason to think the prices too high, or that bidders have combined together to prevent genuine bidding, or for any reason that the public interests will be subserved, it may in its discretion, reject any and all bids, and cause the same to be readvertised. The provisions of this act, as to bids and contracts, shall be enforced by the municipal council by appropriate ordinances as to all bids, proposals, and contracts with such city, or city and county, or any department thereof.

ARTICLE IV.—EXECUTIVE DEPARTMENT.

Qualifications and duties of mayor.

§ 118. The mayor shall be the chief executive officer; shall be a qualified voter, at least twenty-five years of age, and shall have been a citizen of the United States and of this state, and a resident in such city, or city and county, for three years. It shall be his duty vigilantly to observe the official conduct of all public officers of such city, or city and county, and to take note of the fidelity and exactitude, or the want thereof, with which they execute their duties and obligations, especially in the collection, custody, administration, and disbursement of the public funds and property, for which purpose the books, records, and official papers of all boards, officers, and magistrates of such city, or city and county, shall at all times be open to his inspection. He shall take especial care to see that the books and records of all such officers are kept in legal and proper form; and any official defalcation, or willful neglect of duty, or official misconduct, which he may have discovered, or which shall have been reported to him, shall at the earliest opportunity be laid before the municipal council, and before the grand jury, in order that the public interests shall be protected and the officer in default be proceeded against according to law. He shall, from time to time, give the municipal council information relative to the state of such city, or city and county, and shall recommend to their consideration such measures as he may deem expedient in the interests of the city. He shall take care that the laws of the state and the ordinances of the municipal council are enforced.

Mayor pro tempore.

§ 119. Whenever and so long as the mayor, from any cause, is unable to perform his official duties, the board of aldermen shall designate one of their number as mayor pro tempore, who shall perform the same.

Special sessions of council

§ 120. The mayor may, by due notice, call special sessions of the municipal council, and shall specially state to them, when assembled, the objects for which they have been specially convened, and their actions shall be confined to such objects.

Duties of auditor.

§ 121. The auditor shall be the head of the finance department of such city, or city and county, and as such required to be constantly acquainted with the exact condition of the treasury, and every lawful demand upon it. He shall keep a public office, and give his personal attendance there daily during the office hours fixed in this chapter, and shall not follow or engage in any other occupation or calling while he holds said office. If he absents himself from his office during such office hours, except on indispensable official business or urgent necessity, he shall lose his salary for the day; and it shall be a part of his official duty to keep account of the times and occasions when he shall be so absent from duty. He shall be the general accountant of such city, or city and county, and as such it shall be his duty to receive and preserve in his office all accounts, books, vouchers, documents, and papers relating to the accounts or contracts of such city, or city and county; its debts, revenues, and other fiscal affairs, and to adopt a proper mode and manner of double-entry bookkeeping, and keep the accounts of such city, or city and county, general and special, in a systematic and orderly manner. He shall state and render all accounts filed or kept in his office between the city and other persons or body corporate, except when otherwise provided by law or ordinance. He shall have power to administer oaths, and shall require settlements of accounts to be verified by affidavit whenever he thinks proper. He shall be responsible for all acts of his employees.

Duties of treasurer.

§ 122. The treasurer of such city, or city and county, shall receive and safely keep in a secure fire-proof vault, to be prepared for that purpose, all moneys belonging to or which shall be paid into the treasury, and shall not loan, use, or deposit the same, or any part thereof, to or with any banker or other person, nor pay out any part of said moneys except on demand authorized by this chapter, and after they have been duly audited. He shall keep the key of said vault, and not suffer the same to be opened except in his presence. At the closing up of the same each day he shall take an account and enter in the proper book the exact amount of money on hand, and at the end of every month he shall make and publish a statement of all receipts into and payments from the treasury, and on what account. If he violates any of the provisions of this section he shall be considered a defaulter, and shall be deemed guilty of a misdemeanor in office, and be liable to removal, and shall be proceeded against accordingly. If he loan or deposit said moneys, or any part thereof, contrary to the provisions of this section, or apply the same to his own use, or the use of any other person, in any manner whatsoever, or suffer the same to go out of his personal custody, except in payment of audited demands upon the treasury, he shall be deemed guilty of a felony, and, on conviction thereof, shall suffer imprisonment in the state prison for a period not less than three months nor more than ten years.

§ 123. The treasurer shall keep the money belonging to each fund separate and distinct, and shall in no case pay demands chargeable against one fund out of moneys belonging to another, except as otherwise provided in this chapter, without an express ordinance of the municipal council, which can only be made during or after the end of the third quarter of the fiscal year, by a vote of two-thirds of each house. The said treasurer shall give his personal attendance at his public office during the office hours

fixed by this chapter, and if he be absent himself therefrom, except on account of sickness or urgent necessity during such office hours, he shall lose his salary for the entire day on which he was absent.

Duties of county clerk.

§ 124. The county clerk of such city and county shall take charge of and safely keep, or dispose of according to law, all books, papers, and records which are or may be filed or deposited in his office, and of all the courts of which he is clerk; and he shall not allow any paper, files, or records to leave his custody, except when required by the judges of the courts, to be used by them or any of them.

Original papers not to be produced in court except on subpoena.

§ 125. No judge or officer of any court shall make any order for the delivery by the county clerk of such city and county, of any paper, files, or records in his custody, except bills of exceptions and statements on motion for a new trial; nor shall the courts, or judges thereof, have any power to make orders for the delivery of any certificate of incorporation, bonds, or other papers filed with the said county clerk. Whenever any of said papers are required for evidence in any of the courts within such city and county, the county clerk, or his deputies, shall produce the same under subpoena or order of the court, or furnish certified copies of the same on application, on payment to said clerk for said copy at the rate of ten cents per folio for each hundred words, which shall be paid into the city and county treasury by him.

County clerk not to attend as witness outside of city, unless his expenses are paid.

§ 126. Neither the county clerk nor any of his deputies shall be required to attend as witnesses, in their official capacities, outside of such city and county, except in criminal cases, unless his expenses be paid at the rate of ten cents per mile to and from the place where he may be required, and three dollars a day for each day's attendance. A sufficient number of deputies shall be assigned by him as courtroom clerks to the various courts of which he is the official clerk, while such courts are in session, and to do duty in the office when such courts are not in session. He shall transfer such deputies to duty in court, or at his office, as the exigency of the service may require, so as to efficiently perform the work in the most economical manner possible.

Fee for law library.

§ 127. On the commencement in or removal to the superior court of such city and county of any civil action or proceeding, he shall collect from the plaintiff, or party instituting such proceeding or filing the first papers therein, the sum of one dollar, and pay over the same at the end of each month to the treasurer of the law library provided for in this chapter; and the payment of the sum of one dollar shall be a condition precedent to the commencement of such action or proceeding, for which sum so required to be collected he and his sureties shall be responsible on his official bond.

Tax collector to be charged with moneys, etc., coming into his hands.

§ 128. The tax collector, upon the final settlement to be made by him as such tax collector, according to the requirements of the law, shall be charged with, and shall pay into the hands of the treasurer, the full amount of all taxes paid to him under protest or otherwise, or by him collected and not previously paid over, without any deduction of commissions, fees, or otherwise; he shall also be charged with and be deemed debtor to the treasury for the full amount of all taxes due upon the delinquent list delivered to him for collection, unless it be made to appear that it was out of his power to collect the same by levy and sale of any property liable to be seized and sold therefor. If the impossibility to collect any portion of such delinquent taxes have

resulted from such negligence or defects in such assessment caused by the willful misconduct of the assessor, then the assessor whose duty it was to make the assessment shall be liable and be deemed debtor to the treasury for the amount remaining uncollected for that cause.

Election of assessor and his duties.

§ 129. There shall be elected by the qualified voters of such city, or city and county, at the general state election, an assessor, who shall take office on the first Monday after the first day of January next following his election, and hold for the term of four years, and until his successor is elected and qualified. It shall be his duty to assess all taxable property within such city, or city and county.

Duty of sheriff.

§ 130. The sheriff shall attend in person, or by deputy, all the courts in and for such city and county, except the police courts. He shall obey the lawful orders and directions of such courts, and in all other respects conform to the laws regulating sheriffs in this state.

Duties of recorder.

§ 131. The recorder of such city and county shall have the custody of all books, records, maps, and papers deposited in his office. He, or his chief deputy, when any papers are presented for registration, or to be copied, shall write on the margin of each paper so presented the number of folios paid for, and shall, in his monthly return to the treasurer, certify under oath the number of folios copied or registered by each deputy or copyist appointed by him; and such certificate of the recorder or his chief deputy shall be conclusive evidence to authorize the auditor to audit such certified accounts of such deputies or copyists monthly. He shall appoint as many copyists as he shall deem necessary to the proper discharge of the duties of his office, who shall be paid at the rate of twelve cents per folio of one hundred words for all matters registered or copied by them respectively.

Duties of district attorney.

§ 132. The district attorney is the public prosecutor, and shall be an attorney of the supreme court, and shall attend the superior court of this state, in and for such city and county, and such other courts as may be hereafter established in and for the same, and conduct therein, on behalf of the people, all prosecutions for public offenses. He shall perform such other duties as are prescribed by law.

Duties of city and county attorney.

§ 133. The city, or city and county, attorney shall be an attorney of the supreme court, and shall prosecute and defend all suits and actions at law and in equity, and conduct all legal proceedings, in the courts and elsewhere, necessary to preserve and protect such city's, or city and county's, rights, whether such suits or proceedings be conducted in the name of such city, or city and county, or in the name of others. He shall give legal advice to the city government, and all the officers, boards, and departments thereof, when required so to do, and perform such other duties as such attorney as the municipal council shall from time to time prescribe. He shall keep in his office well-bound books of registry, in which shall be entered and kept a register of all actions, suits, and proceedings in which such city, or city and county, is interested. Each outgoing city, or city and county, attorney shall deliver such books and all other records, law reports, quarterly reports from municipal boards and officers, documents, statutes, papers, furniture, and property, in his possession, to his successor in office, who shall give him duplicate receipts therefor, one to be filed in the office of the auditor and one to be retained by the outgoing city, or city and county, attorney.

Public administrator.

§ 134. The public administrator of such city, or city and county, shall be subject to the orders of the superior court in and for such city, or city and county, and shall perform all the duties prescribed by law.

Duties of coroner.

§ 135. The coroner of such city, or city and county, in addition to the duties imposed by law upon every coroner, shall keep a record of all inquests held by him, with a copy of all testimony and the inquisition of the jurors in full; and in case of loss of the original records, the same shall be admissible in evidence with like effect as the original would have been. He may appoint such deputies, and a messenger or messengers, as are allowed in this act, or as may be hereafter allowed by the municipal council of such city, or city and county. He shall receive no fees for any services rendered by him.

Duties of superintendent of streets.

§ 136. The superintendent of streets shall keep a public office, in some convenient place, to be designated by the municipal council. His office shall be kept open as in this chapter provided. He shall not, during his continuance in office, follow any other profession or calling, but shall be required to devote himself exclusively to the duties of his said office. He shall have under his special charge the construction, reconstruction, repairing, and cleansing of all public sewers, man-holes, sinks, drains, cess-pools, and of the public streets, highways, alleys, places, and squares, excepting the parks. It shall be his duty to see that the laws, orders, and regulations relative to the public streets and highways, alleys, places, and squares are carried into execution, and that the penalties therefor are rigidly enforced, as may be prescribed by the municipal council. He shall keep himself informed of the condition of all public streets, highways, alleys, places, and squares; and should he fail to see that the laws, ordinances, and regulations relating to the public streets, highways, alleys, places, and squares are carried into execution, after notice from any citizen of a violation thereof, such superintendent and his sureties shall be liable upon his official bond to any person injured in person or property by such official neglect.

Duties of surveyor.

§ 137. The city, or city and county, surveyor shall be engineer-in-chief of such city, or city and county, and of the sewerage system; shall make all necessary plans, surveys, maps, and drawings, and other necessary things, and keep the same in his office; and all such maps, plans, machinery, and drawings shall be the property of such city, or city and county, and remain in the office, and be transferred by the outgoing to the incoming officer. He shall do all necessary surveying and engineering for the streets, alleys, highways, and squares, at the request of the municipal council, or of any committee appointed by either branch of the same, and all or any other surveying and engineer[ing] work that such city, or city and county, may require, and of the public parks, at the request of the park commissioners.

Appointment of collector of licenses and his duties.

§ 138. Within twenty days after their first meeting, the municipal council of such city, or city and county shall appoint a suitable person as collector of licenses of such city, or city and county, who shall hold office for two years from and after his appointment, and until his successor shall be appointed and qualified. In case of a vacancy occurring by death or otherwise in the office of the collector of licenses of such city, or city and county, holding his office under the provisions of this chapter, the same shall be filled for the remainder of the unexpired term by appointment of the board of aldermen; and in case of the inability of said collector of licenses to act, his place

shall, in the same manner, be temporarily filled until such disability is removed. The collector of licenses and his deputies are hereby authorized, empowered, and required to collect all the municipal licenses now required to be collected, or which shall hereafter be required to be collected by them, or either of them; and it shall be the duty of said collector of licenses, and his deputies, or assistant collectors, to attend to the collection of licenses, and examine all places of business and persons liable to pay licenses, and to see that licenses are taken out and paid for. They shall each have and exercise, in the performance of their official duties, the same powers as police officers in serving process or summons, and in making arrests; also shall each have and exercise the power to administer such oaths and affirmations as shall be necessary in the discharge and exercise of their official duties; and they, and each of them, are hereby empowered to enter any place of business for which a license by law is provided and required, free of charge, at their pleasure, and to demand the exhibition of any license for the current time from any person, or firm, or corporation engaged or employed in the transaction of any business for which a license is by law rendered necessary; and if such person, or firm, or corporation, or either of them, shall be unable, or refuse, or neglect, or fail, to then and there exhibit such license, he, she, or they, as the case may be, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished accordingly.

License moneys.

§ 139. The collector of licenses shall daily pay to the treasurer of such city, or city and county, all moneys so collected for licenses sold, or by him received as fees; and shall, under oath, at least once in each calendar month, and oftener when required so to do by the auditor, make to the auditor a report of all such licenses sold and on hand, and of all amounts so paid to the city, or city and county, treasurer; shall at such time exhibit to the auditor all unsold licenses in his hands, and the treasurer's receipts for all moneys paid into the treasury; and all licenses so signed by the license collector, or deputy license collector, or either of them, shall be as valid as if signed by the city, or city and county, treasurer. All fees so paid to him shall be placed to the credit of the proper fund by the treasurer.

Department of police.

§ 140. The department of police of such city, or city and county, shall consist of:

Police commissioners, how appointed.

First—A board of police commissioners of such city, or city and county, consisting of five members, each of whom shall be a qualified voter, at least thirty years of age, and shall have been a citizen of the United States and of this state, and a resident of such city, or city and county, for five years next preceding his appointment, four of whom shall be appointed by the governor and chief justice of the supreme court of the state of California, within thirty days after the organization of such city, or city and county, under this act, and who shall hold office for the term of four years from and after the first Monday next succeeding the date of their appointment, and until their successors are appointed and qualified; and in the month next preceding the expiration of the said term, and every four years thereafter, the said governor and chief justice of the supreme court shall appoint their successors, who shall hold office for the term of four years from and after the first Monday next succeeding the date of their appointment; but in making such appointments, the said governor and chief justice shall elect two qualified persons from each of the two dominant national political parties. Vacancies that may occur in the office of any of the members so appointed shall be filled by appointment by said governor and chief justice, of some suitable person of the same political party as that to which the last incumbent belonged, and for the remainder of

the vacant term only. The four members appointed, as hereinbefore provided, shall meet in such city, or city and county, on the first Monday next succeeding the date of their appointment, and shall forthwith organize by electing one of their number president, and shall appoint the other member of said board, who shall be the chief of police of such city, or city and county. Every member of said board shall, before he enters upon the duties of his office, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be), that I will support the constitution of the United States and the constitution of the state of California; that I will faithfully discharge the duties of police commissioner according to the best of my ability; and that in the discharge of my duties I will make no appointment to, or removal from the police force for political or partisan reasons; and that I will, to the best of my ability, discharge the duties of said office impartially and uninfluenced by political considerations, or any consideration other than that of the public good." Every member of said board who shall absent himself from such city, or city and county, for the continuous period of sixty days, shall, by force thereof, cease to be a police commissioner, and his office shall become vacant. No member of said board shall be eligible to any other office during his incumbency of the office of police commissioner. No member of said board shall, during his term of office, be a member of any convention, the purpose of which is to nominate candidates for office, nor act as a judge, inspector, clerk, or officer of any election, or primary election, or take part in any election except to deposit his vote; nor shall any member of said board, directly or indirectly, influence, or attempt to influence or control, the political action of any member of the police force of such city, or city and county, or any employee of said department; nor shall any member of said board collect, or suffer to be collected, from any member or employee of said department, any assessment or contribution for political purposes. A violation of any of the provisions of this section shall be a misdemeanor and shall be cause for the immediate removal from office of the person guilty of such violation. The said board shall hold sessions at least once a month in the office of chief of police, or in such other convenient place as the municipal council of such city, or city and county, shall designate, or, in case of emergency, at such place as it shall select, and the clerk of the chief of police, hereinafter provided for, shall act as clerk of said board. Every member of said board, and the clerk of said board, shall have power to administer oaths in all matters pertinent to the business of their respective offices, and in all investigations pending before said board, or any member thereof. The said board shall keep a record of its proceedings. The said board shall have power:

Powers of board.

1. To appoint, suspend, or remove any person from the police force of such city, or city and county; provided, however, that the chief of police shall only be removable in the manner provided by law for the removal of other municipal officers.

Prescribe rules.

2. To prescribe all needful rules and regulations for the control, government, and discipline of said police force, and from time to time to alter or repeal the same, and prescribe penalties for the violation of any of them.

Determine complaints.

3. To hear and summarily determine all complaints of misconduct, inefficiency, or other charge against any member of said police force, and to take such action thereon as shall be conducive to the maintenance of the discipline and efficiency of the same.

Grant permits.

4. To grant permits to all persons desiring to engage in the retail liquor business in such city, or city and county, and to revoke any such permit whenever it shall be made to appear to said board that the retail liquor business of the person to whom such permit was given is conducted in a disorderly or improper manner, or whenever it shall be made to appear that the person to whom such permit was granted has, after the grant of such permit, been convicted in the police or other court of such city, or city and county, of disorderly or improper conduct, or of the commission of any criminal offense upon the premises whereon such retail liquor business is conducted; provided, however, that whenever said board refuses to grant such permit, or proposes to revoke such permit, the person who is refused such permit or whose permit is proposed to be revoked, shall be entitled to be heard before said board in person or through counsel, and to have free of charge all reasonable facilities for the full, fair, and impartial hearing on the merits of his application or opposition. In such permit shall be distinctly stated and described the name of the person to whom the same is given, and the premises on which such retail business is proposed to be carried on.

Appoint special officers.

5. Upon the petition of any person, firm, or corporation, to appoint a special officer to do special service to be paid for by such person, firm, or corporation, specifying the boundary or locality at or within which he is to act as such special officer, which boundary or locality shall be described in his warrant of appointment; provided, that no special officer shall be appointed to act in any part of such city, or city and county, commonly known as the Chinese quarter; and provided further, that all special officers shall report daily to the chief of police, and be subject to his orders in case of emergency; and in no event shall such officers be paid by such city, or city and county.

Badge.

6. To prescribe the badge of office and uniform to be worn by all members of the police force, and the badge of office to be worn by all special officers.

Contingent expenses.

7. To allow and order paid out of the police contingent fund, for contingent expenses, any and all orders signed by the chief of police; provided, that the aggregate of such orders shall not exceed the sum of seven thousand two hundred dollars a year, which sum shall be set apart annually in the treasury of said city and county for this purpose.

Appoint substitutes.

8. To appoint substitutes, not to exceed four per cent of the police force, to serve under such regulations, and subject to such restrictions, as it may prescribe, and without pay from such city, or city and county.

Issue subpoenas, etc.

9. To issue subpoenas, tested in the name of its president, and to enforce obedience thereto, and punish disobedience thereof, in the same manner and to the like extent as the justices' court of such city, or city and county; and to exercise the same powers as the said justices' court in preserving decorum in all open sessions of said board, and to punish any contempt committed thereat.

Designate prisons.

10. To designate the prisons to be used for the reception of all persons arrested, convicted, or sentenced for public offenses in cases not provided for by law or by ordinance; to establish stations and station-houses, or substations and substation-houses, at its discretion, for the accommodation thereof of members of the police force, and as places of temporary detention for persons arrested.

Discretionary powers.

11. In its discretion, on conviction of a member of the force of any legal offense or neglect of duty, or violation of the rules of the board, or neglect of or disobedience of orders, or incapacity, or absence without leave, or any conduct injurious to the public peace or welfare, or other breach of discipline, or immoral conduct, or any conduct unbecoming an officer, to punish the offending party by reprimand, forfeiting and withholding pay for a special time, suspension, or dismissal from the force; all such fines shall be immediately paid into the treasury to the credit of the police life and health insurance fund.

Warrant of appointment.

12. To issue to every member of the police force a proper warrant of appointment, signed by the president and countersigned by the clerk of the board, which warrant shall contain the date of his appointment and his rank.

Supplies.

13. To make requisition on the municipal council of such city, or city and county, for all supplies or necessities that may be required in the administration of the department; provided, that the aggregate amount of the same, exclusive of salaries, shall not, in any one fiscal year, exceed the sum of five thousand dollars.

Report, when made.

14. To annually, on or before the first day of August, report to the municipal council an estimate of the amount of money that will be required to pay all salaries of the department, and of the amount of money that will be required for the administration and support of the department in such year, specifying in detail the purposes and items for which the same will be required, with the estimated cost thereof, respectively.

Sale of property.

15. To provide for the custody, care, restitution, sale, time, place, and manner of sale of all property that may come into the possession of the property clerk hereinafter provided for.

Control police life insurance fund.

16. To control, care for, and manage the police life and health insurance fund, hereinafter mentioned, which fund shall consist of the moneys retained from the monthly salaries of the members of the police force, fines collected from members of said force, and of such other moneys as may be contributed thereto by law, or ordinance, or by gift, devise, or bequest, and of all moneys to the credit of said fund at the time said board shall take office, and to invest the moneys of said fund in such of the following securities as shall seem most safe and profitable, viz.: the bonds of such city, or city and county, the bonds of the state of California, and the bonds of the United States of America. The moneys and securities shall be held by the treasurer of such city, or city and county, who shall have no power to deposit, pledge, or in any other way part with the same, except on the order of said board.

Payment to heirs out of fund.

17. To order paid, upon the death of any member of the police force, out of the police life and health insurance fund, to the heirs of such member, the sum of one thousand dollars.

Repayment to infirm officers.

18. To order paid, out of the police life and health insurance fund, to any police officer who shall resign by reason of bad health or bodily infirmity, the amount of the principal sum which such officer shall have contributed thereto.

Repayment to incompetent officers.

19. To order paid, out of the police life and health insurance fund, to any officer dismissed for mere incompetency, not coupled with any offense against the laws of this state, an amount not exceeding one-half of the principal which such officer may have contributed thereto; provided, that any officer dismissed for gross neglect or violation of duty, or upon conviction of any misdemeanor or felony, shall forfeit all claim upon said fund.

Registration of demands.

20. In case said police life and health insurance fund shall not be sufficient to pay the demands on it, to cause such demands to be registered, and to be paid in their order out of the fund as received.

Repayment of excess to certain officers.

21. When the police life and health insurance fund shall exceed the sum of fifty thousand dollars, to allow and order paid out of the same, to any officer who shall have been permanently disabled while in the discharge of his duty as such officer, such sum as in their judgment they shall deem proper, not to exceed one thousand dollars; but in no case shall said fund be reduced thereby below the sum of fifty thousand dollars. The president of said board shall receive a salary of three thousand dollars per annum. The other members of said board shall each receive a salary of one thousand two hundred dollars per annum, payable monthly, at the end of each and every month.

Chief of police, his powers and duties.

Second. A chief of police, appointed as hereinbefore provided, who shall have power to select and designate one police officer to serve as clerk to the chief of police; one police officer to serve as property clerk, who, before entering upon his duties, shall give bond, with good and sufficient sureties, in the sum of ten thousand dollars, to such city, or city and county, to be approved as in cases of other official bonds, which bond shall be filed with the auditor of such city, or city and county; twelve detective officers, and thirty sergeants of police. He shall have the sole and exclusive control, direction, and superintendence of the city prisons of such city, or city and county, and may detail to duty therein such number of officers as the exigencies shall require. In the suppression of any riot, public tumult, disturbances of the public peace, or organized resistance against the laws, or public authorities, in the lawful exercise of their functions, he shall have all the powers that now are or may be conferred upon sheriffs by the laws of this state; and his lawful orders shall be promptly executed by all police officers, and every citizen shall also lend him aid, when required, for the arrest of offenders and the maintenance of public order. In case of great public emergency or danger, he may appoint an additional number of policemen of approved character for honesty and sobriety, who shall have the same powers as other police officers, but who shall act without pay. In case of imminent danger of riot, or actual riot, or organized resistance to the laws, he shall have power, and it shall be his duty, if in his opinion, the organized police force be insufficient in number or unequal in strength to preserve the peace and maintain public order, to make his requisition on the governor, or in case of urgency on the nearest military commander in the national guard of California, for such military force as may be necessary for the occasion; and such military force shall be placed under his command until the restoration of order and tranquillity, or until the governor declares such city, or city and county, in a state of insurrection, as provided by law. He shall keep a public office, which shall be open, and at which he, or in case of his necessary absence, a captain of police or sergeant of police by him designated for that purpose, who shall have, during such absence, the same powers as are conferred by law upon the chief of police, shall be in

attendance at all hours of the day and night. In case of his absence from his office, it shall be made known to the captain or sergeant of police in attendance where he can be found if needed. He shall designate one or more police officers to attend constantly upon the police court to carry on the business, and to execute the orders and process of said court. He shall command, supervise, and direct the police force; and shall observe, and cause to be observed and enforced, the laws and ordinances within such city, or city and county. He shall see that all lawful orders and process of the police court are promptly executed; and shall exercise such other powers connected with his office as may be prescribed by law, or by the rules and regulations adopted by the board of police commissioners. He shall acquaint himself with all the statutes and laws in force in this state defining public offenses and nuisances and regulating the criminal proceedings; and shall procure and keep in his office the statutes of this state and of the United States, and all elementary works on those subjects. He shall give information and advice touching said laws gratuitously to all police officers asking for it. He shall have power from time to time to dispose of such sum or sums for incidental expenses as in his judgment shall be for the best interest of such city, or city and county; provided, that the aggregate of all such sums shall not, in any one fiscal year, exceed the sum of seven thousand two hundred dollars; but all sums so disbursed or paid shall be subject to the approval of the said board. He may, for good cause, grant leave of absence for not more than thirty days to any member of the police force; but officers absent from the city within or without the state on official business shall not be deemed to be absentees. As chief of police, he shall hold office for the term of four years from his appointment, and shall receive a salary of four thousand dollars per annum, payable monthly, at the end of each and every month.

Captains of police, how appointed.

Third. Six captains of police, who shall be appointed by the board of police commissioners from the members of the police force, who shall be assigned to such duty, and who shall be subject to such rules and regulations, as the chief of police shall prescribe. They shall receive a salary of two hundred dollars per month each, payable monthly at the end of each and every month.

Police officers, their qualifications, powers, and duties.

Fourth. As many police officers, not exceeding five hundred, as the board of police commissioners may determine to be necessary, to be appointed by said board; but it shall be the duty of said board, on its first organization, to appoint as members of the police force the members of the police force, if any, then in service, unless such members be incompetent or incapable to serve. Every person applying for appointment to said police force, unless he be a member of the police force then existing in such city, or city and county, shall produce and file with the said board a certificate, signed by not less than twelve freeholders and qualified voters of the smallest political subdivision of such city, or city and county, stating that they have been personally and well acquainted with the applicant for one year or more next preceding the application, and that the applicant is of good repute for honesty and sobriety, and they believe him to be, in all respects, competent and fit for the office. All such certificates shall be preserved in the office of said board, and shall not be returned to the applicant. Every appointee to said police force must be a citizen of the United States and of this state, able to read and write the English language, and a resident of such city, or city and county, at least five years previous to his appointment, except such member of said police force as may be in service at the time of the organization of said board; every appointee shall not be less than twenty-five nor more than forty years of age, and not less than five feet and seven inches in height, and shall, after his nomination, and before his appointment, pass a thorough examination by the surgeon of police, or by

any physician appointed by said board, and be found on such examination to be sound in health, and to possess the physical qualifications required for recruits for the United States army. The police officers, in subjection to the rules and regulations of the said board, to the orders of the respective captains, and under the general direction of the chief of police, shall be prompt and vigilant in the detection of crime, the arrest of public offenders, the suppression of all riots, frays, duels, and disturbances of the public peace, the execution of process from the police court in causing the abatement of public nuisances, and the enforcement of the laws and regulations of the police. They shall, as soon as practicable, upon an arrest, under penalty of dismissal from the force, or of a fine of not more than one hundred dollars, or of both, at the discretion of the board, convey in person the offender before the nearest sitting magistrate. If the arrest is made during the hours that the magistrate does not regularly hold court, or if the magistrate is not holding court, such offender may be detained in a station-house until the next public sitting of the magistrate, and no longer, unless discharged on bail, according to law. No member of the police force shall be eligible to any other office while a member of such force, nor shall he take any part whatever in any convention held for the purposes of a political party; nor shall he be a member of any political club; nor shall he be allowed to interfere with politics on the day of election, or at any time while employed on said force, except to cast his vote. No member of said police force while on duty shall enter into any liquor-saloon, bar-room, or place where liquors are retailed, except when necessary in the discharge of his duties, on penalty of reprimand, fine, suspension, or removal from office. No member of the police force shall devote his time to any other profession or calling, become bail for any person charged with any offense whatever, solicit counsel or attorneys for prisoners, receive any present or reward for official services rendered, or to be rendered, unless with the knowledge and approbation of a majority of said board; such approbation to be given in writing and certified by the clerk of said board. Police officers who shall be selected to act as sergeants of police, and police officers who shall be selected to act as detective police officers, shall each receive a salary of one hundred and twenty-five dollars per month, payable monthly, at the end of each and every month. The police officer who shall be selected to act as clerk to the chief of police, and the police officer who shall be selected to act as property clerk, shall each receive a salary of one hundred and fifty dollars per month, payable monthly, at the end of each and every month. All other police officers shall each receive a salary of one hundred and two dollars per month, payable monthly, at the end of each and every month; provided, that the treasurer of such city, or city and county, is hereby authorized to deduct and retain from the salary of each member of said police force two dollars from every month's salary, to be paid into the fund of the police life and health insurance fund herein mentioned.

Surgeon of police, and his duties.

Fifth. A surgeon of police, whose duty it shall be to attend to all cases of accident or sickness at the several police stations, to attend all officers who may be taken sick or injured in the discharge of their duty, to examine all applicants for appointment on the police force, and to perform such other duties as the board of police commissioners may from time to time prescribe. He shall be appointed by the said board, and shall hold office during its pleasure, but he shall not be removed without just cause. He shall receive a salary of two hundred dollars per month, payable monthly, at the end of each and every month.

Fire commissioners, how appointed and term of office.

§ 141. There shall be a board of fire commissioners of such city, or city and county, consisting of five persons, possessing the same qualifications of eligibility as are herein prescribed for the members of the board of aldermen, who shall be appointed by the

mayor, with the advice of the board of aldermen, and shall hold office for the term of four years from and after the time of their appointment, and no more than three of whom shall belong to the same national political party; provided, that the fire commissioners now acting as such in such city, or city and county, shall continue to hold their respective office[s] until the expiration of the term for which they may have been respectively elected or appointed.

Powers and duties of fire commissioners.

§ 142. The said board of fire commissioners shall supervise and control said fire department, its officers, members, and employees, subject to the laws governing the same, and shall see that the officers, members, and employees thereof faithfully discharge their duties, and that the laws, orders, and regulations relating thereto are carried into operation and effect. They shall not, nor shall either of them, or the chief engineer, or assistant chief engineer, or assistant engineers, of said fire department, be interested in any contracts pertaining in any manner to said fire department, or the sale, furnishing of apparatus, or supplies for the same; and all contracts in violation of this section are declared void, and any of said persons violating the provisions of this section shall be deemed guilty of misdemeanor, and upon conviction, shall be punished accordingly. The municipal council of such city, or city and county, shall have power to contract and provide for all cisterns, hydrants, apparatus, horses, supplies, engine, hose and hook-and-ladder houses, and all alterations and repairs required; and said board of fire commissioners shall supervise all contracts awarded, and work done for the said fire department, and shall see that all contracts awarded and work done are faithfully performed. The said board of fire commissioners shall have power to prescribe the duties of the officers, members, and employees of said fire department, and to adopt rules and regulations for the management and discipline thereof; and a majority of them shall certify to the correctness of all claims and demands before the same shall be paid. And the municipal council is authorized and required to provide and furnish for the use of the board of fire commissioners a suitable room or rooms in some of the buildings of such city, or city and county, to serve as an office for their meetings and the transaction of business relating to said fire department, in which their clerk, janitor, and messenger shall be in attendance daily during office hours. The chief engineer, assistant chief engineer, and assistant engineer[s] of said department shall also make it their headquarters daily during office hours, when not otherwise engaged in official duties. And the said municipal council shall furnish the chief engineer, and also the assistant chief engineer and assistant engineers hereinafter mentioned, with a horse and buggy, and shall provide for keeping the same.

Officers of fire department.

- § 143. The officers of the fire department of such city, or city and county, shall be:
1. Five fire commissioners, to be appointed as aforesaid;
 2. One chief engineer;
 3. One assistant chief engineer;
 4. Four assistant engineers;
 5. One superintendent of steam fire-engines.

Members and employees of fire department.

- § 144. The members and employees of said fire department shall be:
1. One assistant superintendent of steam fire-engines;
 2. One clerk and storekeeper for the corporation yard;
 3. One corporation yard drayman;
 4. One night watchman of corporation yard;
 5. Two hydrantmen;

6. One veterinary surgeon;
7. One foreman of each company;
8. One engineer for each steam fire-engine;
9. One substitute engineer and machinist;
10. One driver for each company;
11. One fireman for each steam engine company;
12. One carpenter;
13. One tillerman for each hook-and-ladder company;
14. One steward for each hose company;
15. One janitor and messenger;
16. One clerk.

Paid members of department to give entire time to duties.

§ 145. All paid members of said fire department, except the veterinary surgeon, foreman, assistant foreman, company clerks, hosemen, hook-and-ladder men, and stewards of volunteer companies shall give their undivided attention to their respective duties, but the foreman, assistant foreman, company clerks, hosemen, and hook-and-ladder men, and stewards of volunteer companies, shall perform such duties as may be prescribed from time to time by said board of fire commissioners and ordered to be executed by the chief engineer.

Certain officers, how appointed.

§ 146. The chief engineer, the assistant chief engineer, the superintendent of steam fire-engines, the assistant engineers, the clerk, and all members and employees of the fire department, shall be appointed by the fire commissioners, and retain their positions during good behavior; and it shall be the duty of such fire commissioners, on their first organization under this act, to appoint as members thereof the officers and members of any fire department which shall be in service in any such city, or city and county, at the time of its organization under this act. No officer, member, or employee of said fire department shall be removed for political reasons.

Fire department to consist of what.

§ 147. The fire department of such city, or city and county, shall consist of such engine, hook-and-ladder, and hose companies as shall be recommended by the board of fire commissioners, and determined by the municipal council necessary to afford protection against fire; provided, that as an auxiliary thereto patent fire-extinguishers may also be purchased and employed; if, in the judgment of said board, deemed advisable; provided, that no hand-engine shall be purchased for the use of said department, but such as shall be in possession of such city, or city and county, prior to its organization under this act, may be used in such localities and under such regulations as the board of fire commissioners may prescribe. The companies of said department shall be organized as follows: Each steam fire-engine company shall consist of (1) one foreman, one (1) engineer, one (1) driver, one (1) fireman, and eight (8) hosemen; one (1) of whom shall act as assistant foreman, and one (1) as clerk. Each hook-and-ladder company shall consist of one (1) foreman, one (1) driver, one (1) tillerman, and twelve (12) hook-and-ladder men; one (1) of whom shall act as assistant foreman, and one (1) as clerk. Each hose company shall consist of one (1) foreman, one (1) driver, and one (1) steward, and six (6) hosemen; one (1) of whom shall act as assistant foreman, and one (1) as clerk.

Duties of chief engineer.

§ 148. The chief engineer shall be the executive officer of said fire department, and it shall be his duty (and that of the assistant chief engineer and assistant engineers)

to see that the laws, orders, rules, and regulations concerning the same are carried into effect, and also to attend to such duties as fire wardens as may be required, and to see that all laws, orders, and regulations established in such city, or city and county, to secure protection against fire, are enforced. It shall also be the duty of the chief engineer to enforce the rules and regulations made from time to time to secure discipline in said fire department, and he shall have power to suspend any subordinate officer, member, or employee for a violation of the same, and shall forthwith report in writing, with his reasons therefor, to the board of fire commissioners for their action. He shall diligently observe the condition of the apparatus and workings of said department, and shall report in writing, at least once in each week, to said board of fire commissioners, upon the same, and make such recommendations and suggestions respecting it, and for securing its greater efficiency, as he may deem proper; and in the absence or inability of the chief engineer to act, the assistant chief engineer shall assume the duties of said office of chief engineer.

Clerk of board, his bond and duties.

§ 149. The person elected as clerk by said board of fire commissioners shall, before entering upon the discharge of his duties, execute a bond, with two or more sureties, in the penal sum of twelve thousand (\$12,000) dollars, for the faithful discharge of his duties, which bond shall be approved by said board of fire commissioners, and the mayor of such city, or city and county, and when so approved shall be filed in the office of the auditor. The amount of said bond may be increased from time to time, when directed by the board of fire commissioners, should it deem it necessary for the public good; said clerk shall attend daily, during office hours, at the office of the board of fire commissioners (which shall be the office of the chief engineer, assistant chief engineer, and assistant engineers); shall perform the duties of clerk to said board and chief engineer, and shall perform such other duties from time to time as said board may prescribe. The clerk and storekeeper for the corporation yard shall, before entering upon his duties, furnish a bond in the sum of ten thousand (\$10,000) dollars, to be approved in the same manner as the bond provided for in this section, to be given by the clerk of said board of fire commissioners, and filed with the auditor.

Property of department, how sold.

§ 150. The mayor of such city, or city and county, upon the recommendation of the board of fire commissioners, with the approval of the municipal council, is authorized to sell at private or public sale from time to time any or all of the engines, hose-carriages, engine-houses, lots on which such houses stand, or parts of lots (or to exchange any of said lots, when in their judgment demanded by the public good), or other property which shall not be required for the use of the department, and to execute, acknowledge, and deliver good and sufficient deeds or bills of sale for the same, paying the proceeds of such sales into the county treasury, to the credit of the proper fund.

Appropriation for purchase of horses, supplies, etc.

§ 151. The municipal council of such city, or city and county, is hereby authorized and required to appropriate, allow, and order paid annually out of the general fund of such city, or city and county, the salaries hereinafter specified and allowed, and salaries at similar rates to the several officers and men of any additional companies created as aforesaid, and the municipal council is required to appropriate, allow, and order paid, out of the general fund, a sum not to exceed eighty thousand (\$80,000) dollars annually for running expenses, horse-feed, repairs to apparatus, and for the construction and erection of cisterns and hydrants, and for the erection and repair of buildings, and

other expenses of the fire department. To appropriate a sum not to exceed thirty thousand (\$30,000) dollars for the purchase of horses and apparatus for the fire department.

Allowance to disabled member.

§ 152. Whenever a member of the paid fire department of such city, or city and county, shall become disabled by reason of injuries received at any fire, so as to be unable to perform his duties, the municipal council, upon the recommendation of the board of fire commissioners, is hereby authorized and empowered to allow said disabled man a sum not exceeding fifty (\$50) dollars per month for not to exceed three (3) months, payable out of the general fund of such city, or city and county, in the same manner and form as other payments are made out of said fund.

“Fireman’s charitable fund.”

§ 153. The municipal council shall provide, by ordinance, for the payment into a “Fireman’s Charitable Fund” of such city, or city and county, of all moneys received for licenses for the storage, manufacture, or sale of gunpowder, blasting-powder, gun-cotton, fireworks, nitro-glycerine, dualine, or any explosive oils or compounds, or as a municipal tax upon the same; also all fines collected in the police court, for violations of fire ordinances. Said fund shall be under the direction and control of and subject to such regulations as may be prescribed by the board of fire commissioners.

Assistant foreman and clerk.

§ 154. The chief engineer shall have power to appoint one member of each company to act as assistant foreman; also, one member to act as clerk; said clerk to receive five (\$5) dollars per month extra pay.

Organization of board and time of meeting.

§ 155. The fire commissioners shall organize said board immediately upon their appointment, and on the first Monday after the first day of January of each and every year thereafter, by selecting one of their number as president and they shall meet at least once in each month publicly at their office to transact the business of said fire department; and, in addition to the stated meetings, they shall meet twice in each month for the purpose of investigating charges against officers, members, and employees of said department for violating any of the rules and regulations thereof; and shall hold such intermediate sessions as they shall deem necessary to the proper administration of the fire department. No person shall be eligible to any position in said department who is not a citizen of the United States, or a resident of such city, or city and county, at least two years, nor under twenty-one (21) years of age at the time of his appointment.

Investigations, how conducted.

§ 156. In all investigations for violation of the rules and regulations of the fire department, the president of the board of fire commissioners shall have power to issue subpoenas, and administer oaths, and compel the attendance of witnesses before him by attachment or otherwise. All subpoenas issued by him shall be in such form as he may prescribe, and shall be served by any police officer or by any peace officer of such city, or city and county. Any person who refuses to attend or testify in obedience to such subpoenas shall be deemed guilty of contempt, and be punished by him as in cases of contempt in justices’ court in civil cases.

Members, how dismissed.

§ 157. No officer, member, or employee of the fire department shall be dismissed unless for cause, nor until after a trial. The accused shall be furnished with a written

copy of the charges against him at least five (5) days previous to the day of trial, and he shall have an opportunity to examine witnesses in his behalf, and all witnesses shall be examined under oath, and all trials shall be public.

Workshop at corporation yard.

§ 158. The municipal council of such city and county is hereby authorized and empowered to establish and maintain at the corporation yard a workshop for making repairs and improvements upon the apparatus of the fire department, and such workshop and such repairs and improvements to be under the supervision of the board of fire commissioners, and the municipal council shall allow and order paid, out of the proper fund, all the expenses of such workshops, repairs, and improvements.

Restrictions on members.

§ 159. No member of said board of fire commissioners shall, during his term of office, be a member of any party convention, the purpose of which is to nominate candidates for political office, nor shall the officers, members, or employees of said fire department take any part whatever in any partisan convention, held for the purposes of a political party; nor shall any member of the said board of fire commissioners, directly or indirectly, attempt to control or influence the action of any member of said fire department, or any employee thereof, in any primary or general election. No member of the fire department shall levy, collect, or pay any amount of money as an assessment or contribution for political purposes. Any violation of the foregoing provisions of this section shall be deemed a misdemeanor.

Salaries of officers of fire department.

§ 160. The salaries of the officers of the fire department shall be paid in monthly installments, and as follows:

1. The salary of the fire commissioners shall be one thousand two hundred dollars per annum;
2. The salary of the chief engineer shall be four thousand dollars per annum;
3. The salary of the assistant chief engineer shall be two thousand four hundred dollars per annum;
4. The salaries of the assistant engineers shall each be one thousand eight hundred dollars per annum;
5. The salary of the superintendent of steam fire-engines shall be two thousand four hundred dollars per annum.

Salaries of employees of fire department.

§ 161. The salaries of the members and employees of the fire department shall be paid in monthly installments, and as follows:

1. The salary of assistant superintendent of steam fire-engines shall be one thousand six hundred and eighty dollars per annum;
2. The salary of the clerk and storekeeper for the corporation yard shall be one thousand five hundred dollars per annum;
3. The salary of the corporation yard drayman shall be one thousand and eighty dollars per annum;
4. The salary of the night watchman for the corporation yard shall be nine hundred dollars per annum;
5. The salary of the two hydrantmen shall be one thousand and eighty dollars per annum each;

6. The salary of the veterinary surgeon shall be one thousand two hundred dollars per annum;
7. The salary of the foreman of each company shall be five hundred and forty dollars per annum;
8. The salary of the engineer for each steam fire-engine company shall be one thousand six hundred and eighty dollars per annum;
9. The salary of the substitute engineer and machinist shall be one thousand six hundred and eighty dollars per annum;
10. The salary of the driver for each company shall be one thousand and eighty dollars per annum;
11. The salary of the fireman for each steam fire company shall be one thousand and eighty dollars per annum;
12. The salary of the carpenter for said department shall be one thousand two hundred dollars per annum;
13. The salary of the tillerman for each hook-and-ladder company shall be one thousand and eighty dollars per annum;
14. The salary of the steward for each hose company shall be nine hundred and sixty dollars per annum;
15. The salary of each hoseman and each hook-and-ladder man shall be four hundred and eighty dollars per annum;
16. The salary of the janitor and messenger shall be one thousand two hundred dollars per annum;
17. The salary of the clerk of the board of fire commissioners shall be one thousand eight hundred dollars per annum.

Fire-alarm and police telegraph.

§ 162. There shall be maintained and provided for by the municipal council in such city, or city and county, a fire-alarm and police telegraph for municipal use, and the superintendent thereof shall be appointed by the board of fire commissioners, to serve during its pleasure, except that he shall not be removed for political causes, reasons, or purposes. Said superintendent is authorized to appoint the following officers and employees: One chief operator, three operators, one repairer, two assistant repairers, and one batteryman. It shall be the duty of such board, on their first organization under this act, to appoint as officers and employees thereof the officers and employees of any fire-alarm and police telegraph which shall be in service in such city, or city and county, at the time of its organization under this act.

Salaries of officers of fire-alarms, etc.

§ 163. The salaries of the officers of said fire-alarm and police telegraph shall be paid in monthly installments, and as follows:

1. The salary of the superintendent shall be two thousand four hundred dollars per annum;
2. The salary of the chief operator shall be one thousand eight hundred dollars per annum;
3. The salary of each of the three operators herein provided for shall be one thousand five hundred dollars per annum;
4. The salary of the repairer shall be one thousand two hundred dollars per annum;
5. The salary of each of the two assistant repairers herein provided for shall be one thousand and eighty dollars per annum;
6. The salary of the batteryman shall be nine hundred dollars per annum.

Appropriation.

§ 164. The municipal council shall appropriate such sum as may be necessary, not exceeding fifteen thousand dollars per annum, for the maintenance, repair, and extension of said telegraph, and to defray the cost of instruments and machinery therefor, and for such horses and vehicles as may be necessary for the use of said superintendent.

Board of health, how constituted.

§ 165. There shall be a board of health for such city, or city and county, which board shall consist of the mayor of the city and county, and five physicians in good standing, residing in such city, or city and county, who shall be appointed by the governor, and who shall hold office for the term of four years, and until their successors are appointed and qualified; and in case any vacancy shall at any time occur in said board by removal, or resignation, or otherwise, the same shall be filled by appointment by the governor.

Meetings.

§ 166. The mayor of such city, or city and county, shall be ex-officio president of the board of health, and in his absence, at any meeting, the board may elect a chairman, who shall, for the time, be clothed with all the power of the president. Said board shall hold a regular meeting at least once in each month, and at other times, when called thereto by the president, or by a majority of the board.

Jurisdiction of board of health.

§ 167. Said board of health is hereby invested with general jurisdiction over all matters appertaining to the sanitary condition of such city, or city and county, and over all quarantine regulations and the enforcement thereof, and hospitals and almshouses, and all municipal institutions created and maintained for charitable purposes and not herein enumerated, within the corporate limits of such city, or city and county, and adopt such orders and regulations as may be necessary to the complete exercise of the powers hereinbefore enumerated, and may appoint or discharge such attendants and employees as may seem best to promote the public welfare.

Salary.

§ 168. The members of said board of health shall receive no salary.

Salaries of officers appointed by board of health.

§ 169. Said board of health shall have power to appoint the following officers and employees, who shall receive the salaries hereinafter provided, payable in monthly installments at the end of each month, viz.:

1. One health officer, who shall be executive officer of said board, at a salary of two thousand four hundred dollars per annum;
2. One quarantine officer, at a salary of one thousand eight hundred dollars per annum;
3. One secretary, at a salary of two thousand four hundred dollars per annum;
4. Six health inspectors and one market inspector, at a salary of one thousand two hundred dollars per annum each; one messenger at nine hundred dollars per annum;
5. One superintendent of the city, or city and county, hospital, who shall be a physician and graduate of some medical college in good standing, at a salary of two thousand four hundred dollars per annum;
6. One resident hospital physician, at a salary of one thousand five hundred dollars per annum;
7. One hospital steward, at a salary of one thousand two hundred dollars per annum;
8. One hospital matron, at a salary of nine hundred dollars per annum;

9. One hospital apothecary, at a salary of one thousand two hundred dollars per annum;

10. One hospital engineer, at a salary of nine hundred dollars per annum;

11. Two physicians and two surgeons, to be selected from the faculty of the medical department of the University of California, and two physicians and two surgeons to be selected from the faculty of the Pacific Medical College, at such salary as the board of health may designate, not to exceed one thousand two hundred dollars each per annum, as visiting physicians and surgeons to the city, or city and county hospital;

12. One almshouse superintendent, at a salary of two thousand four hundred dollars per annum;

13. One resident almshouse physician, at a salary of one thousand five hundred dollars per annum;

14. One almshouse matron, at a salary of seven hundred and twenty dollars per annum;

15. One city physician, at a salary not to exceed one thousand eight hundred dollars per annum;

16. One assistant city physician for the industrial school and house of correction, at a salary of one thousand two hundred dollars per annum;

17. One first cook, at a salary of sixty dollars per month;

18. One second cook, at a salary of thirty-five dollars per month;

19. One third cook, at a salary of thirty dollars per month;

20. One baker, at a salary of seventy-five dollars per month;

21. One clerk, at a salary of forty dollars per month;

22. One interpreter, at a salary of forty dollars per month;

23. One ambulance driver, at a salary of forty dollars per month;

24. Sixteen nurses, at a salary of thirty-five dollars each.

Appointing power.

§ 170. The appointing power of all and every of the aforesaid officers and employees is vested solely in said board of health, and said board shall have power to prescribe the duties of every and all of said officers and employees, and to remove the same at pleasure; and said board of health is hereby empowered to employ such additional employees as may be necessary to carry out the purposes of this act, at such compensations as said board of health may fix.

Salaries, how paid.

§ 171. The salaries of the officers and employees of said board of health, and all other expenses legally incurred by said board under the provisions of this charter, shall be payable out of the general fund of the treasury of such city, or city and county; and the auditor of such city, or city and county, is hereby directed to audit all such demands, and the treasurer of such city, or city and county, is hereby directed to pay the same out of said general fund. The said board of health shall, annually, upon the third Monday of April of each year, transmit, in writing, to the municipal council of such city, or city and county, an estimate of the amount of money necessary to defray all of the expenditures of said board of health for the next fiscal year; and the board of health shall not expend, in any one fiscal year, an amount exceeding the amount of such estimate so transmitted by said board of health for such fiscal year, allowed upon such estimate by the municipal council, except in case of an epidemic of any contagious disease, when such board of health is hereby authorized to increase such expense as may be deemed necessary for the public safety; and all such expenses shall be payable out of the general fund of such city, or city and county, at the same time and in the same manner provided for other expenses of said board. Nothing in this act shall be construed to authorize said board of health to contract for or purchase supplies for any

of the charitable institutions placed under its control by this chapter. All contracts for any of the work authorized by this charter to be caused to be performed by said board of health shall be awarded by said board to the lowest responsible bidder, after notice, for not less than five days, in two daily newspapers published in such city, or city and county, under such regulations and requirements as said board of health may adopt.

Restriction on officers.

§ 172. It shall not be lawful for any superintendent, or other principal officer in charge of any almshouse in such city, or city and county, to have or receive any perquisites, or to derive any income or revenue therefrom, either directly or indirectly, other than the salary allowed to him by the board of health; nor shall it be allowable for any subordinate officer or employee to have or receive any perquisites, either directly or indirectly; and it shall be the duty of the board of health to remove any such superintendent, or other principal officer, or any subordinate officer or employee who violates any provision of this section. All fees authorized by any of the provisions of this chapter, to be collected by any officer or employee of the board of health, shall be immediately paid by such officer or employee to the secretary of said board of health, who shall, upon the first Monday of each month, pay the same into the treasury of such city, or city and county, to be credited to the proper fund.

Report of shipmasters of contagious diseases.

§ 173. Shipmasters bringing vessels into the harbor of any such city, or city and county, and all masters, owners, or consignees having vessels in such harbor, which have on board any cases of Asiatic cholera, smallpox, yellow, typhus, ship-fever, or any other contagious disease, must report the same in writing, to the quarantine officer before landing any passengers, casting anchor, or coming to any wharf, or as soon thereafter as they, or either of them, become aware of the existence of either of these diseases on board of their vessel.

Restrictions on shipmasters, etc.

§ 174. No captain or other officer in command of any vessel sailing under a register, arriving at the port of any such city, or city and county, nor any owner, consignee, agent, or other person having charge of such vessel, must, under a penalty of not less than one hundred dollars nor more than one thousand dollars, land, or permit to be landed, any freight, passengers, or other persons from such vessels, until he has reported to the quarantine officer, presented his bill of health, and received a permit from that officer to land freight, passengers, and other persons.

Duty of pilot.

§ 175. Every pilot who conducts into the port of any such city, or city and county, any vessel subject to quarantine, or examination by the quarantine officer, must:

1. Bring the vessel no nearer such city, or city and county, than is allowed by law;
2. Prevent any person from leaving such vessel, and any communication being made with the vessel under his charge, until the quarantine officer has boarded her and given the necessary orders and directions;
3. Be vigilant in preventing any violation of the quarantine laws, and report, without delay, all such violations that come to his knowledge, to the quarantine officer;
4. Present the master of the vessel with a printed copy of the quarantine laws, unless he has one;
5. If the vessel is subject to quarantine, by reason of infection, place at the masthead a small yellow flag.

Duty of master of vessel.

§ 176. Every master of a vessel subject to quarantine, or visitation by the quarantine officer, arriving in the port of any such city, or city and county, who refuses or neglects either:

1. To proceed with and anchor his vessel at the place assigned for quarantine, when legally directed so to do; or,

2. To submit his vessel, cargo, and passengers to the quarantine officers, their inspection, examination, and direction, and furnish all necessary information to enable that officer to determine to what quarantine or other regulations they might respectively be subject; or,

3. To report all cases of disease and of death occurring on his vessel, and to comply with all the sanitary regulations of such port or harbor;

Is liable in the sum of five hundred dollars for every such neglect or refusal.

Master of infected vessel must report.

§ 177. All vessels arriving off the port of any such city, or city and county, from ports which have been legally declared infected ports, and all vessels arriving from ports where there is prevailing, at the time of their departure, any contagious, infectious, or pestilential diseases, or vessels with decaying cargoes, or which have usually foul or offensive holds, are subject to quarantine, and must be by the master, owner, pilot, or consignee reported to the quarantine officer without delay. No such vessel must pass within the bounds prohibited them by the board of health, until the quarantine officer has boarded her and given the order required by law.

Duty of quarantine officer.

§ 178. The quarantine officer must board every vessel subject to quarantine or visitation by him, immediately on her arrival, make such examinations and inspection of vessels, books, papers, or cargo, or of persons on board, under oath, as he may judge expedient, and determine whether the vessel should be ordered to quarantine, and if so, the period of quarantine.

Masters of certain vessels not to permit landing until he receive permit.

§ 179. No captain, or other officer, in command of any passenger-carrying vessel of more than one hundred and fifty tons burden, nor of any vessel of more than one hundred and fifty tons burden having passengers on board, nor any consignee, owner, agent, or other persons having charge of such vessel or vessels, must, under a penalty of not less than one hundred dollars nor more than one thousand dollars, land, or permit to be landed, any passenger from the vessel until he has presented his bill of health to the quarantine officer and received a permit from that officer to land such passengers, except in such cases as the quarantine officer deems it safe to give the permit before seeing the bill of health.

Fees.

§ 180. The following fees shall be collected by the quarantine officer for giving a permit to land freight or passengers, or both: From any sailing vessel of less than five hundred tons burden, from any port out of this state, two dollars and fifty cents; five hundred and under one thousand tons burden, five dollars; each additional one thousand tons burden, or fraction thereof, an additional two dollars and fifty cents; for steam vessels, propelled in whole or in part by steam, of one thousand tons burden or less, five dollars, and two dollars and fifty cents additional for each additional one thousand tons burden or fraction thereof. But vessels not propelled in whole or in part by steam, sailing to and from any port or ports of the Pacific states of the United States, or territories, and whaling vessels entering the harbor of any such city and county, are excepted from the provisions of this section.

Duty of board of health.

§ 181. The board of health may enforce compulsory vaccination on passengers or [on] variola-infected ships, or coming from ports infected with the same.

Same.

§ 182. The board of health shall establish quarantine grounds at such points and places as in its judgment may best conduce to public safety; may provide suitable hospitals whenever the same are required for the public safety, and furnish and supply the same with nurses and attaches, and remove thereto all persons afflicted with cholera, smallpox, yellow, typhus, ship-fever, or other contagious diseases; provided, said quarantine grounds and hospitals shall not be established within one mile of the main land on the north side of the bay of San Francisco.

Duty of board of health.

§ 183. The board of health must cause to be kept a record of all births, deaths, and interments occurring in such city, or city and county, coming under the provisions of this chapter. Such records, when filed, must be deposited in the office of the city, or city and county, recorder, and produced when required for public inspection.

Duty of physicians and midwives.

§ 184. Physicians and midwives must, on or before the fourth day of each month, make a return to the health officer of all births, deaths, and the number of stillborn children occurring in their practice during the preceding month. In the absence of such attendants, the parents must make such report within thirty days after the birth of the child. Such returns must be made in accordance with rules adopted by, and upon blanks furnished by, the board of health.

Human bodies not to be buried without permit.

§ 185. No person shall deposit in any cemetery, or inter in any such city, or city and county, any human body, without first having obtained and filed with the health officer a certificate, signed by a physician or midwife, or coroner, setting forth as near as possible the name, age, color, sex, place of birth, occupation, date, locality, and the cause of death of deceased, and obtain from such health officer a permit. The physicians, when death occurs in their practice, must give the certificate herein mentioned. It shall be the duty of the said board of health to see that the dead body of a human being is not allowed to remain in any public receiving vault for a longer period than five days. At the expiration of that time it shall cause the body to be buried, or to be placed in a vault or niche, constituted of brick, stone, or iron, and hermetically sealed. It shall also be the duty of said boards to require all persons having in charge the digging of graves, and the burial of the dead, to see that the body of no human being who has reached ten years of age shall be interred in a grave less than six feet deep, or if under the age of ten years, the grave to be not less than five feet deep. The board of health shall have entire charge of all cemeteries belonging to such city, or city and county, and may employ a superintendent thereof, at a salary not to exceed seventy-five dollars per month, the same to be paid out of the general fund as the salaries of the other employees are paid.

Duty of superintendent of cemeteries.

§ 186. Superintendents of all cemeteries in any such city, or city and county, must return to the health officer, on each Monday, the names of all persons interred or deposited within their respective cemeteries during the preceding week, and no superintendent of a cemetery, or any other person, can remove, or cause to be removed, or cause to be disinterred, any human body or remains that have been deposited in a cemetery, without a permit therefor from the health officer, or by order of the coroner.

Human body not to be disinterred without permit.

§ 187. It shall be unlawful to disinter or exhume from a grave, vault, or other burial-place within the limits of such city, or city and county, the body or remains of any deceased person, unless a permit for so doing shall have first been obtained from the health officer of such city, or city and county. Nor shall any body or remains disinterred, exhumed, or taken from any grave, vault, or other place of burial or deposit, be transported in or through the streets or highways of any such city, or city and county, unless the person or persons removing or transporting such body or remains shall first obtain from the health officer a permit, in writing, therefor, as aforesaid. But when an applicant for a permit to disinter a body shall desire to remove said body beyond the limits of such city, or city and county, and shall so state on making application, the permit, if the same be issued, shall include the right to disinter and remove, and said permit shall accompany the remains.

Discretion of health officer.

§ 188. Permits to disinter or exhume the bodies or remains of deceased persons and to transport the same, or to exhume, or to transport, as in the last section provided, may be granted, in the discretion of the health officer, and under such restrictions and conditions only as he, in his judgment, may affix, so as in the best possible manner to protect the public health. The health officer shall prepare a book of blank permits in proper form, and consecutively numbered, containing stubs, on which, as well as in the permit, shall be entered a record of the transaction, giving the name, age, sex, nativity, date of death, destination of remains sought to be removed, and upon granting each permit shall be required to be paid to him the sum of ten dollars therefor, for the use and benefit of the general fund of such city, or city and county.

Penalty of disinterring without permit.

§ 189. Any person or persons who shall disinter, exhume, or remove, or cause to be disinterred, exhumed, or removed, from a grave, vault, or other receptacle or burial-place, the remains of a deceased person, without a permit therefor, shall be guilty of a misdemeanor, and be punished by fine not less than fifty dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

Penalty for transporting body without permit.

§ 190. Any person or persons who shall transport, or cause to be transported, on or through the streets or highways of any such city, or city and county, the body or remains of a deceased person which has been disinterred or exhumed without a permit therefor, in accordance with this chapter, shall be guilty of a misdemeanor, and be punished as provided in the preceding section.

Exception.

§ 191. Nothing in this chapter contained shall be taken to apply to the removal of the remains of the deceased person from one place of interment to another place of interment, or cemetery, within this state.

Penalties.

§ 192. No person, master, captain, or conductor in charge of any boat, vessel, or railroad car, or public or private conveyance, shall receive for transportation, or shall transport, the body of any person who has died within the limits of such city, or city and county, without said body is accompanied by a permit for such transportation from the health officer, which permit shall accompany the body to its destination; and no

person, master, captain, or conductor as aforesaid, shall bring into or transport through any such city, or city and county, the dead body or remains of any person unless it be accompanied with a certificate from some proper authority of the place from whence it came, stating the name, age, sex, and cause of death, which certificate shall be filed at the health office; provided, that in no case shall the body of any person who died of contagious disease be brought to such city, or city or county, within one year after the day of death.

Nuisances, how abated.

§ 193. Whenever a nuisance shall exist on the property of any nonresident, or any property the owner or owners of which can not be found by either health inspector, after diligent search, or on the property of any owner or owners upon whom due notice may have been served, and who shall for three days refuse or neglect to abate the same, or any property belonging to such city, or city and county, it shall be the duty of the board of health to cause the said nuisance to be at once removed or abated, and to draw upon the general fund in such sums as may be required for such removal or abatement, not to exceed two hundred dollars; provided, that whenever a larger expenditure is found necessary to be made in the removal or suppression of any nuisance, the municipal council of such city, or city and county, shall, upon the written application of the board of health, by ordinance, appropriate, allow, and order paid, out of the general fund, such sum or sums as may be necessary for that purpose; provided further, that in all cases where such expenditure will exceed five hundred dollars, no appropriation shall be made for that purpose unless the city, or city and county, attorney shall first give his opinion in writing that such expenditure would be a legal charge against the property affected thereby. And the auditor shall audit and the treasurer shall pay all appropriations of money made in pursuance of this section, in the same manner as is now provided by law for auditing and paying demands upon the treasury.

Fee-book open to public inspection.

§ 194. The health officer and the quarantine officer must each keep a book open to public inspection, in which must be entered daily all fees collected by them, and they must pay all fees collected to such city, or city and county, treasurer, daily, to the credit of the general fund.

Bond of health officer.

§ 195. The health officer must execute an official bond, with two sureties, to be approved by the board of health, in the sum of ten thousand dollars; and the quarantine officer must execute a like official bond, with two sureties, in the sum of ten thousand dollars; which bonds shall be filed with the auditor of such city, or city and county.

Who may administer oaths.

§ 196. Any member of the board of health, the health officer, and the quarantine officer, and the secretary of the board of health, is hereby authorized to administer oaths on business connected with the health department.

Suits, where maintained.

§ 197. Whenever any cause of action arises under any of the provisions of this chapter relating to the health department, suit may be maintained thereon in the name of the health or quarantine officer, as the case may be, in any superior court or justice's court of this state.

Duty of physicians in certain cases.

§ 198. Every physician in any such city, or city and county, shall report to the health officer, in writing, every patient he shall have laboring under Asiatic cholera, variola, diphtheria, scarlatina, or other contagious diseases, immediately thereafter, and report to the same officer every case of death from such disease.

Duty of householders in certain cases.

§ 199. Every householder in any such city, or city and county, shall forthwith report, in writing, to the health officer the name of every person boarding, or an inmate of his or her house, whom he or she shall have reason to believe sick of cholera, or small-pox, and any deaths occurring at his or her house from such disease.

Park commissioners, how appointed and their duties.

§ 200. There shall be a board of park commissioners of such city, or city and county, consisting of three persons, to be appointed by the governor of this state, who shall hold their office for four years, and who shall receive no compensation for their services. In case of a vacancy, the same shall be filled by the remaining members of the board for the residue of the term then vacant; and all vacancies occasioned by expiration of terms of office, or neglect, or incapacity, shall be filled by the governor aforesaid. Each of said commissioners shall be a freeholder and resident of such city, or city and county. Said board shall have full and exclusive control and management of all the parks of such city, or city and county, which at the time of the organization of such city, or city and county, under this act, were treated and improved as public parks, with the avenues and great highways connected therewith. Two of said commissioners shall constitute a quorum to do business, but no money shall be expended or contract entered into authorizing the expenditure of money without the approval of the mayor and a majority of said board of park commissioners.

Powers.

§ 201. Said board shall have power to govern, manage, and direct said parks and avenues leading thereto as have heretofore been operated or managed in connection therewith; to lay out, regulate, and improve such parks and avenues; to pass ordinances for the regulation and government of the same; to appoint one general superintendent, who shall perform the duties of overseer and managing gardener, who shall receive a salary of two thousand four hundred dollars per annum. The city, or city and county, surveyor shall be ex-officio engineer of the works, and shall perform such engineering work as the commissioners may require of him. Prisoners over the age of twenty-one years, sentenced to hard labor in any of the jails, prisons, houses of correction, work-houses, or other penal establishments of such city, or city and county, may be put to work upon the parks. The commissioners may employ such other laborers as shall be necessary; within the amount allowed by law to be expended on said parks, at wages not to exceed the current wages paid in such city, or city and county, for labor. They shall in no year incur any debt or deficit, nor expend any money beyond the amount realized by the tax herein provided for. All persons violating any of the ordinances of the commissioners regulating the parks shall be deemed guilty of misdemeanor, and punished accordingly.

Taxes for park improvement, how levied.

§ 202. The municipal council shall have the power to levy and collect, in the mode prescribed by law for the levy and collection of taxes, each year, upon all property in such city, or city and county, the sum of one and one-half cents upon each one hundred dollars valuation of taxable property therein, for the purpose of preserving and improving the parks and avenues under control and management of said commis-

sioners. Said money shall be paid into the treasury, and paid out for said purpose; all claims to be first allowed by said commissioners and audited by the auditor. The jurisdiction of the park commissioners shall not extend to unimproved parks, nor squares and places not hitherto treated as parks, unless extended thereto by an ordinance of the municipal council. The commissioners may lease, for terms not to exceed three years, any portion of said grounds not immediately required for improvement, the proceeds to go to the improvement of the parks and avenues.

Reports of park commissioners.

§ 203. The park commissioners shall make semi-annual reports to the mayor and municipal council of all their proceedings, and a detailed statement of all the receipts and expenditures.

Duties of mayor and other officers in reference to contracts.

§ 204. The mayor shall see that all contracts and agreements with the city are faithfully kept and performed, and to this end he shall cause legal proceedings to be instituted and prosecuted against all persons or corporations failing to fulfill their agreements. And it is the duty of any and every city, or city and county, officer, when it shall come to his knowledge that any contract with such city, or city and county, relating to the business of any office whatever, has been or is about to be violated by the other contracting party, forthwith to report the fact to the mayor. A failure to do so shall be a sufficient cause for the removal of any officer of any department. The mayor shall give a certificate, on demand, to any officer giving such information that he has done so, which certificate shall be evidence in exoneration from a charge of neglect of such duty. The city, or city and county, attorney shall prosecute all suits so ordered by the mayor.

ARTICLE V.—JUDICIAL DEPARTMENT.

Number and jurisdiction of justices.

§ 213. There shall be in and for such city, or city and county, one justice's court, composed of six justices of the peace, which shall have the powers and jurisdiction prescribed and conferred by law upon justices of the peace and justices' courts, in such city, or city and county. All actions, suits, and proceedings whereof justices of the peace and justices' courts in such city, or city and county, have jurisdiction, shall be commenced, entitled and prosecuted in said court. Such courts shall be always open, nonjudicial days excepted, and causes therein may be tried before the presiding justice, before any one of the justices before whom the original process may be made returnable, or to whom the cause may be assigned or transferred for trial.

Presiding justice.

§ 214. The board of aldermen shall appoint one of the justices of the peace to be presiding justice, who, as such, shall hold office until his successor shall in the same manner be appointed; and any one of the other justices may attend, preside and act as presiding justice during the temporary absence or disability of the justice so appointed. The board of aldermen, within ten days after its organization as such board, shall appoint a justices' clerk, who shall hold office during the pleasure of the appointing power. The clerk shall take the constitutional oath of office, and give bond, with at least two sufficient sureties, to be approved in the same manner as the official bond of other officers of such city, or city and county, in the sum of not less than fifteen thousand dollars, payable to the city, or city and county, conditioned for the faithful discharge of the duties of his office, and well and truly to account for and pay into the treasury of such city, or city and county, as required by law, all moneys by him collected or received, and by law designated for that use. A new or additional bond

may be required by the municipal council whenever it deems it necessary; and on failure to furnish such new or additional bond within five days after it shall be required, the office shall become vacant. The justices' clerk shall have authority to administer oaths, and take and certify affidavits in any action, suit or proceeding in all courts in such city, or city and county, and to appoint two deputy clerks, for whose acts he shall be responsible on his official bond; the said deputy clerks to hold office during the pleasure of said clerk. Said deputy clerks have the same power as the said clerk, except that of appointment.

Offices for justices, and office hours.

§ 215. The municipal council of such city, or city and county, shall provide, in some convenient locality in the city, or city and county, a suitable office, or suite of offices, for said presiding justice, justices' clerk, deputy clerk, and deputy sheriff, and offices suitable for holding sessions of said court, and separate from one another, for each of said justices of the peace, together with attendants, furniture, fuel, lights and stationery, sufficient for the transaction of business; and if they are not provided, the court may direct the sheriff to provide the same, and the expenses incurred, certified by the justices to be correct, shall be a charge against the city, or city and county, treasury and paid out of the general fund thereof. The said justices, justices' clerk and deputy clerk, shall be in attendance at their respective offices for the dispatch of official business daily, from the hour of 9 o'clock a. m. until 5 o'clock p. m.

Legal process, how issued.

§ 216. All legal process of every kind in actions, suits or proceedings in said justices' court, for the issue of service of which any fee is or may be allowed by law, shall be issued by the said justices' clerk, upon the order of the presiding justice, or upon the order of one of the justices of the peace, acting as presiding justice, as in this chapter provided; and the fees for issuance and service of all such process, and all other fees which are allowed by law for any official services of justices, justices' clerk, or sheriff, shall be exacted and paid in advance into the hands of said clerk, and be by him daily, weekly or monthly, as the municipal council may require, and before his salary shall be allowed, accounted for in detail, under oath, and paid into the treasury of such city, or city and county, as part of the special fee fund thereof; provided, that such payment in advance shall not be exacted from parties who may prove, to the satisfaction of the presiding justice, that they have good cause of action, and that they are not of sufficient pecuniary ability to pay the legal fees; and no judgment shall be rendered in any action before said justices' court, or any of said justices, until the fees allowed therefor, and all fees for previous services therein, which are destined to be paid into the treasury, shall have been paid, except in cases of poor persons, as hereinbefore provided.

Sheriff and deputies for justices' courts.

§ 217. The sheriff of such city and county shall be ex-officio an officer of said court, and it shall be his duty to serve or execute, or cause to be served and executed, each and every process, writ, or order that may be issued by said justices' court; provided, that a summons issued from said court may be served and returned as provided in section 849 of the Code of Civil Procedure; and that subpoenas may be issued by the justices' clerk, and served as provided in sections 1987 and 1988 of the Code of Civil Procedure. The said sheriff may appoint, in addition to the other deputies allowed by law, three deputies, whose duty it shall be to assist said sheriff in serving and executing the process, writs, and orders of the said justices' court. Said deputies shall receive a salary of not to exceed one hundred and twenty-five dollars per month each, payable monthly, out of the city and county treasury, and out of the special fee fund,

after being first allowed and audited as other demands are by law required to be audited and allowed. One of said deputies shall remain in attendance during the sessions of said court, and at such other times as the said court or the presiding justice thereof may order and direct, for the purpose of attending to such duties as may be imposed on said sheriff or said deputies, as herein provided or required by law. The said sheriff shall be liable on his official bond for the faithful performance of all duties required of him or any of his said deputies.

Style of action.

§ 218. All actions, suits, and proceedings in such city, or city and county, whereof justices of the peace or justices' courts have jurisdiction, except those cases of concurrent jurisdiction that may be commenced in some other court, shall be entitled: "In the justices' court of the city of — (or the city and county of —)," (inserting the name of the city, or city and county), and commenced and prosecuted in said justices' court, which shall be always open. The original process shall be returnable, and the parties summoned required to appear, before the presiding justice, or before one of the other justices of the peace, to be designated by the presiding justice at his office; but all complaints, answers, and other pleadings and papers required to be filed, shall be filed and a record of all such actions, suits, and proceedings made and kept in the clerk's office aforesaid; and the presiding justice, and each of the other justices, shall have power, jurisdiction, and authority to hear, try, and determine any action, suit, or proceeding so commenced, and which shall have been made returnable before him, or may be assigned or transferred to him, or any motion, application, or issue therein (subject to the constitutional right of trial by jury), and to make any necessary and proper orders therein.

In case of disability of justice, case to be tried before another justice.

§ 219. In case of sickness, or disability, or absence of a justice of the peace (on the return of a summons, or at the time appointed for trial) to whom a cause has been assigned, the presiding justice shall reassign the cause to some other justice, who shall proceed with the trial and disposition of said cause in the same manner as if originally assigned to him; and if, at any time before the trial of a cause or matter returnable or pending before any of said justices, either party shall object to having the cause or matter tried before said justice on the ground that such justice is a material witness for either party, or on the ground of the interest, prejudice, or bias of such justice, and such objection be made to appear in the manner prescribed by section 833 of the Code of Civil Procedure, the said justice shall suspend proceedings, and the presiding justice, on motion and production before him of the affidavit and proofs, shall order the transfer of the cause or matter for trial before some other justice, to be designated by him. The presiding justice may, in like manner, assign or transfer any contested motion, application, or issue in law, arising in any cause, returnable or pending before him or any other justice, to some other justice, and the said justice to whom any cause, matter, motion, application, or issue shall be so as aforesaid assigned or transferred, shall have power, jurisdiction, and authority to hear, try, and determine the same accordingly.

Certain cases to be certified to superior court by presiding justice, and justices' clerk.

§ 220. Cases which, by the provisions of law, are required to be certified to the superior court, by reason of involving the question of title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, shall be so certified by the presiding justice and justices' clerk; and for that purpose, if such question shall arise on the trial while the case is pending before one of the other justices, such justice shall certify the same to the presiding justice. All abstracts and

transcripts of judgments and proceedings in said court, or in any of the dockets or registers of or deposited in said court, shall be given and certified from any of such dockets or registers and signed by the presiding justice and clerk, and shall have the same force and effect as abstracts and transcripts of justices of the peace in other cases. Appeals from judgments rendered in said court shall be taken and perfected in the manner prescribed by law, and the notice of appeal and all papers required to be filed to perfect it shall be filed with the justices' clerk. Statements on appeal shall be settled by the justice who tried the cause. Sureties on appeal, or on any bond or undertaking given in any cause or proceeding in said court, when required to justify, may justify before any one of the justices.

Jurisdiction.

§ 221. The jurisdiction of the justices' court of such city, or city and county, extends to the limits of the city, or city and county, and its process may be served in any part thereof.

Powers of associate justices.

§ 222. The presiding justice, whenever in his judgment the prompt dispatch of business shall demand it, may require the aid of one of the justices of the peace in the discharge either of his own duties or those of the justices' clerk (the collection of fees, accounting for, and paying the same into the treasury excepted), and each of the justices, when so required, shall, for the purpose, have the same power and authority as the presiding justice or clerk in whose aid he shall act; and any one of the justices, when required as aforesaid, may act as a justices' clerk pro tempore during the temporary absence or disability of such clerk, with the same powers, duties, and responsibilities.

'Justices' docket.'

§ 223. In a suitable book, strongly bound, the justices' clerk shall keep a permanent record of all actions, proceedings and judgments commenced, had, or rendered in said justices' court, which book shall be a public record, and be known as the "Justices' Docket," in which docket the clerk shall make the same entries as are provided for in section 911 of the Code of Civil Procedure, and which said docket and entries therein shall have the same force and effect as is provided by law in reference to dockets of justices of the peace. To enable the clerk to make up such docket, each of the justices shall keep minutes of his proceedings in every cause returnable before, or assigned or transferred to, him for trial or hearing; and upon judgment, or other disposition of a cause, such justice shall immediately certify and return the said minutes, together with all pleadings and papers in said cause, to the clerk's office, who shall immediately thereupon file the same, and make the proper entries under the title of the action in the docket aforesaid.

Procedure.

§ 224. The justices' court and the justices of the peace of every such city and county shall be governed in their proceedings by the provisions of law regulating proceedings before justices of the peace, so far as such provisions are not altered or modified in this chapter, and the same are or can be made applicable in the several cases arising before them. The justices' court of such city, or city and county, shall have power to make rules, not inconsistent with the constitution and laws, for the government of such justices' court and the officers thereof; but such rules shall not be in force until thirty days after their publication; and no rule shall be made imposing any tax or charge on any legal proceeding, or giving any allowance to any justice or officer for services.

New justices' court a continuation of old.

§ 225. All actions and proceedings pending and undetermined before the justices' court of such city, or city and county, if any, at the time of its organization under this act, shall be proceeded in, heard, and determined before the court herein provided for, and execution shall be issued thereon, and other proceedings had therein, whether before or after judgment, whether on appeal or otherwise; and the court provided for under this act shall be deemed to be a continuation of the same court before existing, and not a new court.

Prohibition to practice by justices.

§ 226. It shall not be lawful for any justice of the peace, the justices' clerk, or the sheriff, or any of his deputies, of such city, or city and county, to appear or advocate, or in any manner act as attorney, counsel, or agent for any party or person in any cause, or in relation to any demand, account, or claim, pending, or to be sued or prosecuted before said justices, or any of them, or which may be within their jurisdiction. A violation of the provisions of this section shall be deemed a misdemeanor in office.

Qualifications of attorneys.

§ 227. No person other than an attorney at law, duly admitted and licensed to practice in courts of record, shall be permitted to appear as attorney or agent for any party in any cause or proceeding before said justices, or any of them, unless he produce a sufficient power of attorney to that effect, duly executed and acknowledged before one of said justices, or before some other officer authorized by law to take acknowledgment of deeds; which power of attorney, or a true copy thereof, duly certified by one of the justices aforesaid (who, on inspection of the original, shall attest to its genuineness), shall be filed among the papers in such cause or proceeding.

Appointment of additional justices.

§ 228. If, at the time of the organization of any such city, or city and county, under this act, there shall not be the complement of justices of the peace provided for in this chapter, the municipal council of such city, or city and county, shall appoint a suitable person or persons to fill such complement and the person or persons so appointed shall hold office from his or their appointment, and until his or their successor or successors is or are elected or appointed and qualified.

Police court.

§ 229. The judicial power of such city, or city and county, shall be vested in a "police court," to be held therein by the police judges. The police court shall not be a court of record. Said court shall have a seal. The judges of said court may hold as many sessions of said court at the same time as there are judges thereof. There shall be two departments of said court, denominated, respectively, department one and department two. The court may sit in departments, and shall be always open for the transaction of business. There shall be, as far as practicable, an equal distribution of cases between the said departments, which cases shall be alternately set down for trial to each department in the order in which the warrants are issued or proceedings brought before the court. Said judges shall, as soon as may be after the commencement of the terms of their office, classify themselves by lot for assignment to said departments, and shall be thereby assigned accordingly.

Power and jurisdiction of police court.

§ 230. All the power and jurisdiction of said court shall be enjoyed and may be exercised in bank, or in either department thereof. All the powers of said judges may be exercised by either of them.

Same.

§ 231. The police court of such city, or city and county, shall have jurisdiction:

1. Of an action or proceeding for the violation of any ordinance of such city, or city and county;
2. Of proceedings respecting vagrants and disorderly persons.

Same.

§ 232. The police court shall have jurisdiction of the following public offenses committed in such city, or city and county:

1. Petit larceny; receiving stolen property, when the amount involved does not exceed fifty dollars;
2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his duties or with intent to kill;
3. Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment;
4. Said court or judges shall have jurisdiction of proceedings for security to keep the peace; and also, throughout such city and county, the same powers and jurisdiction, in other criminal actions, cases, prosecutions, and proceedings as are now or hereafter may be conferred by law upon police or justices' courts.

Power to hold examinations.

§ 233. The judges of said court shall have power to hear cases for examination, and may commit and hold the offender to bail for trial in the superior court, and may try, condemn, or acquit, and carry their judgment into execution, as the case may require according to law, and shall have power to issue warrants of arrest, subpoenas, and all other process necessary to the full and proper exercise of their power and jurisdiction.

May commit to home of inebriate.

§ 234. Said court or judges shall also have power to commit to the home for the care of the inebriate, when any such institute may be established, any person who may be convicted before them of habitual intemperance, for a term not exceeding six months, or until sooner released by order of the police judges, or by the board of managers of such institution by a two-thirds vote of all the members of said board.

When may commit to industrial schools.

§ 235. The said court or judges shall have the power to commit all offenders duly convicted, under eighteen years of age, to the industrial school of said city and county, in all cases where such commitment shall by said court or judge be deemed to be more suitable than the punishment otherwise provided by law, not to exceed six months. If, upon any trial, it shall appear that the person on trial is under fourteen years of age, and has done an act which if done by a person of full age would warrant a conviction of the crime of misdemeanor charged, then and in that case said court or judges shall have power to commit such child to the industrial school. In either case said court or judges may sentence such person to be confined in the correctional department of said industrial school for any term not exceeding six months. Upon application of the mayor, or any member of the supervisors, or of any three citizens, charging that any child under eighteen years of age lives an idle, or dissolute life, and that his parents are dead, or, if living, do, from drunkenness or other vices or causes, neglect to provide any suitable employment, or exercise salutary control over such child, the said court or judges shall have power to examine the matter, and upon being satisfied of the truth of such charges, may sentence such child to the industrial school; provided, that no person shall be so sentenced for a longer period than until he arrive at the age of eighteen years.

May sentence to labor on public works, etc.

§ 236. In cases where, for any offense, the said court is or judges are authorized to impose a fine, or imprisonment in the county jail, or both, it or they may instead sentence the offender to be employed at labor on the public works, or in the house of correction or workhouse as the supervisors may prescribe, for a period of time equal to the term of imprisonment which might legally be imposed, and may, in case a fine is imposed, embrace as a part of the sentence that in default of payment thereof the offender shall be obliged to labor on said works, at said house of correction or workhouse, or elsewhere, at the rate of one dollar a day, till the fine imposed is satisfied; provided, that no person under the age of twenty-one years, or who is to be sentenced, on conviction for drunkenness or breach of the peace, shall be sentenced to labor upon the public works away from the house of correction or workhouse.

Punishment of contempt.

§ 237. The said court and judges may punish contempts in the same manner and to the same extent as superior courts, and the laws concerning contempts applicable to superior courts shall be applicable to said police court and judges.

Record to be kept by county clerk.

§ 238. The county clerk shall keep a record of the proceedings of the police court, issue all process ordered by said court, and shall render to the auditor, monthly, and before any amount can be paid to him on account of his salary, an exact and detailed account, upon oath, of all fines imposed, and all bail forfeited, and moneys collected, as clerk of said court, since his last account rendered. He shall prepare bonds, justify and accept bail, when the amount has been fixed by the police judges, in cases not exceeding one thousand dollars, and he shall fix, justify, and accept bail after arrest, in the absence of the police judges, in all cases not amounting to a felony, in the same manner and with the like effect as if the same had been fixed by the police judges or police court. The county clerk shall appoint three deputy clerks, who shall act as deputy clerks of said police court. The clerk and the deputy clerks in this section mentioned shall have authority to administer oaths and affirmations, and take and certify affidavits in any proceeding in said police court, in and for said city and county, and to issue subpoenas.

Office hours.

§ 239. The police judges and the deputy clerks shall attend at the courtrooms of said court for the dispatch of business daily, from the hour of 9 o'clock a. m. until 5 o'clock p. m., and during such other reasonable hours as may be necessary for the discharge of their respective duties, except on legal holidays.

Payment of fines by clerk into treasury.

§ 240. The county clerk, as clerk of the police court, shall pay to the treasurer of said city and county, immediately, all fines collected and bail forfeited, accompanied by a verified written statement showing from whom each fine was collected, when collected, in what case, specifying the offense, and in what amount, and in what case and by whom such bail was forfeited. He shall immediately upon the forfeiting of any bail bond in the police court, transmit to the district attorney a copy of such bail bond, duly certified by him under the seal of that court to be a true copy, stating in such certificate the fact of such forfeiture, and the date thereof.

Justice of the peace may preside in police court.

§ 241. Any justice of the peace of the said city and county who may be designated, in writing, by the mayor for the purpose, shall have power to preside in and hold the

police court of said city and county, or any department thereof, in the event of the temporary absence of the police judges, or either of them, or of their inability to act from any cause; and during such temporary absence or disability the justice so designated shall act as police judge, and shall have and exercise all the powers, jurisdiction, and authority which are or may be by law conferred upon said court or judges.

Duty of assistant district attorney.

§ 242. It shall be the duty of the assistant district attorneys, acting in the police court, or either and each of them, whenever they shall have been credibly informed that any person criminally injured by another is likely to die, to take the dying statement of such person, and to immediately reduce the same to writing. It is also hereby made the duty of attending physicians, and others knowing of such cases, to report the same immediately to such assistant district attorneys.

Attorney before police court.

§ 243. No person shall be permitted to act as attorney or counsel before the police court or the police judges, unless he shall be an attorney and counselor admitted to practice in the supreme court of this state.

Bailiffs for court.

§ 244. The chief of police shall designate two or more policemen, who shall attend constantly upon the police court, act as bailiffs therein, and execute the orders and process of said court and the judges thereof.

Abolition of courts and transfer of records.

§ 245. The police judge's court and the police judge's court number two of said city and county, and the offices of the judges thereof, shall be abolished at 12 o'clock noon, of the first Monday after the first day of January, in the year eighteen hundred and eighty-five, and at that time all records, registers, dockets, books, papers, actions, warrants, judgments, and proceedings lodged, deposited, or pending before the said last-mentioned courts, or the judges thereof, shall be by force hereof transferred to said police court, which police court and the police judges herein provided for shall have the same power and jurisdiction over them as if they had been in the first instance lodged, deposited, or commenced in said police court, or before the judges last aforesaid; but nothing herein contained shall affect any judgment rendered or proceeding had before that time in said police judge's court or said police judge's court number two, or before the judges thereof, or either of them.

Interpreters.

§ 246. There shall be appointed by the judges of the superior court of such city and county five competent persons deputies to act as interpreters and translators of the following languages: French, German, Italian, Spanish, Portuguese, Chinese, and Slavonian. The said deputies shall each receive a salary of one thousand two hundred dollars per annum, which shall be paid in the same manner as the salaries of other officers are paid. It shall be the duty of each of said deputies to attend in all the courts in and for such city and county, when required by any of the judges thereof, without further compensation than the salaries above provided.

ARTICLE VI.—EDUCATIONAL DEPARTMENT.

Boards of education.

§ 247. There shall be a board of education for such city, or city and county, which shall be composed of twelve school directors, elected as provided in this chapter, who shall hold office for two years, and until their successors are elected and qualified. They shall have the same qualifications as to eligibility requisite for members of the

board of aldermen. Said board shall organize immediately after the election and qualification of its members, by electing a president from among the directors elected, and annually thereafter, and shall hold meetings monthly, and at such times as the board shall determine. A majority of all the members elected shall constitute a quorum to transact business, but a smaller number may adjourn from time to time. The board may determine the rules of its proceedings. Its sessions shall be public, and its record shall be open to public inspection.

Superintendent of schools.

§ 248. There shall be elected by the qualified voters of such city and county, at the general state election, a superintendent of schools, who shall take office on the first Monday after the first day of January next following his election, and hold office for the term of four years, and until his successor is elected and qualified. He shall perform such duties as are prescribed by law.

Powers of board.

§ 249. The board of education shall have power:

Establish districts.

1. To establish school districts, and to fix and alter the boundaries thereof.

Maintain schools.

2. To maintain public schools as organized at the time of the organization of such city, or city and county, under this act, and to consolidate and discontinue the same as the public good may require.

Establish high schools.

3. To establish high, normal, and experimental schools for the education of teachers.

Employ and dismiss teachers, etc.

4. To employ and pay and to dismiss teachers, janitors, school-census marshals, and such mechanics and laborers, and such other persons as may be necessary to carry into effect the powers and duties of the board, and unless otherwise provided by law, to fix, alter, and allow paid their salaries and compensations, and to withhold, for good and sufficient cause, the whole or any part of the salary or wages of any person or persons employed as aforesaid.

Make and establish rules, etc.

5. Also to make and establish and enforce all necessary and proper rules and regulations for the government and efficiency of the schools, teachers, and pupils, and for the carrying into effect of the school system; and to establish and regulate, and grade the schools, the course of studies and mode of instruction therein; to investigate all charges of misconduct on the part of teachers and other employees of the board; to administer oaths and take testimony; to summon and enforce the attendance of and examine witnesses for such purpose before the board, or a member or committee thereof. Any person summoned and refusing to attend and testify shall be deemed guilty of a misdemeanor; and any person testifying falsely shall be guilty of perjury, and on conviction punished accordingly.

Provide fuel, stationery, etc.

6. To provide for the school department of such city, or city and county, fuel, lights, blanks, blank-books, books, printing, and stationery, and such other articles, materials, or supplies as may be necessary and appropriate for use in the schools, or in the office of the superintendent.

Provide schoolhouses.

7. To build, alter, repair, rent, and provide schoolhouses, and furnish them with proper school furniture, apparatus, and appliances, and to insure any and all school property, and to use and control such buildings as may be necessary for the uses of the board and its committees.

To purchase school lots.

8. To receive, purchase, lease, and hold in fee, in trust for such city, or city and county, any and all real estate and personal property that may have been or which hereafter may be acquired for the use and benefit of the schools of such city, or city and county.

Grade school lots.

9. To grade, fence, and improve school lots, and in front thereof.

To sue and be sued.

10. To sue for any and all lots, lands, and property belonging to or claimed by the school department of such city, or city and county, and to prosecute and defend all actions at law or in equity necessary to recover the full enjoyment and possession of said lots, lands, and property, and to require the services of the city, or city and county, attorney in all such suits and proceedings.

To superintend disbursement of school moneys.

11. To establish regulations for the just and equal disbursement of all moneys belonging to the school department, or to the public school fund, and to make rules and regulations to secure economy and accountability in the expenditure of school money.

To sell certain personal property.

12. To discharge all legal encumbrances existing upon any school property; to dispose of and sell such personal property used in the schools as shall no longer be required, and all moneys realized by such sales shall be paid into the city treasury to the credit of the public school fund.

To lease lots, etc.

13. To lease, for the benefit of the public school fund, for a term not exceeding five years, any unoccupied property of the school department not required for school purposes; to prohibit any child under six years of age from attending the schools; and generally to do and perform such other acts as may be necessary and proper to carry into force and effect the powers conferred on said board.

Who may administer oaths.

§ 250. The president of the board of education, the superintendent, and the secretary shall have power to administer oaths or affirmations concerning any demands upon the treasury payable out of the public school fund, or other matters relating to their official duties or the school department.

Reports.

§ 251. It shall be the duty of each director to make quarterly reports to the board of the condition of the schools in their respective districts.

Supplies, how furnished.

§ 252. It shall be the duty of the board of education to furnish all necessary supplies for the public schools. All supplies, books, stationery, fuel, printing, goods, material, building, repairs, merchandise, and every other article and thing supplied to or done

for the public schools, or any of them, when the expenditure to be incurred is likely to exceed two hundred dollars, shall be done by contract, let to the lowest responsible bidder, after advertisement by the superintendent of schools; and the contract shall be entered into by the superintendent with the party to whom the contract is awarded; and the superintendent shall take care that such contract is carried out in strict accordance with the terms thereof.

Bids and contracts, how made and awarded.

§ 253. All bids or proposals made under the preceding section shall be delivered to the superintendent of schools, and said board shall, in open session, open, examine, and publicly declare the same, and award the contract to the lowest responsible bidder; provided, said board may reject any and all bids, should they deem it for the public good, and also the bid of any party who may be proved delinquent or unfaithful in any former contract with such city and county, or said board, and cause a republication of the notice for proposals as above specified. Any person may bid for any one article.

Not to be interested in contract.

§ 254. Any school director, officer, or other person officially connected with the school department, or drawing a salary from the board of education, who shall, while in office, or so connected, or drawing salary, be interested, either directly or indirectly, in, or who shall gain any benefit or advantage from any contract, payments under which are to be made in whole or in part of the moneys derived from the school fund, or raised by taxation or otherwise for the support of the public schools, shall be deemed guilty of felony, and on conviction, punished accordingly; and this provision shall not be construed to relieve such persons from any other penalty, but shall be deemed cumulative to and with other penalties and disabilities as to such acts and offenses.

Annual report.

§ 255. The board shall make and transmit, between the fifteenth day of January and the first day of February of each year, to the state superintendent of public instruction, and to the mayor and municipal council of such city, or city and county, a report, in writing, stating the whole number of public schools within the jurisdiction, the length of time they have been kept open, the number of pupils taught in each school, the whole amount of money drawn from the treasury by the department during the year, distinguishing the amounts drawn from the general fund of the state from all other, and from what sources, and the manner and purpose in which such money has been expended, with particulars, and such other information as may be required from them by the state superintendent, the municipal council, or the mayor.

Evening school.

§ 256. The board shall provide evening schools, to be held in the public school-houses, for the benefit of those unable to attend the day schools. They shall make and enforce regulations requiring the teachers to keep records of the names, ages, and residences of all pupils, and the names and residences of their parents, and the aggregate attendance of each pupil during the year, and to verify and report the same on the thirty-first day of December to the board; and such other rules and regulations for the purpose of ascertaining the attendance and efficiency of the department and progress of education.

Superintendent a member of board.

§ 257. The superintendent of schools shall be ex-officio member of the board of education without the right to vote.

§ 258. Said superintendent shall appoint a clerk, subject to the approval of the board of education, who shall act as secretary of said board. His salary shall be two

hundred dollars a month. Said clerk may be removed at the pleasure of the superintendent, and shall perform such duties as shall be required of him by the board or the superintendent.

Report of superintendent.

§ 259. The superintendent shall report to the board annually, on or before the first day of August, and at such other time as the board may require, all matters pertaining to the expenditures, income, condition, and progress of the public schools of such city, or city and county, during the preceding fiscal year, with such recommendations as he may deem proper. He shall observe and cause to be observed, such general rules for the regulation, government, and instruction of the schools, not inconsistent with the laws of the state, as may be established by the board. He shall attend the sessions of the board, and inform himself, at each session, of the condition of schools, school-houses, school funds, and other matters connected therewith, and to recommend such measures as he may deem necessary for the advancement of education in such city, or city and county. He shall acquaint himself with all the laws, rules, and regulations governing the public schools in such city, or city and county, and the judicial decisions thereon, and give advice on subjects connected with the public schools gratuitously to officers, teachers, pupils, and their parents and guardians.

Shall visit schools.

§ 260. The superintendent of schools shall visit and examine the schools, and see that they are efficiently conducted, and that the laws and regulations of the board are enforced in all things, and that no religious or sectarian books or teachings are allowed in the schools, and to report monthly to the board. He shall also report to the state superintendent at such times as such officer shall require.

Vacancy, how filled.

§ 261. Any vacancy in the office of school director shall be filled for the remainder of the term by a person to be appointed by the board of aldermen.

Vacancy in office of superintendent, how filled.

§ 262. In case of a vacancy in the office of superintendent, the board of aldermen may appoint a person to fill the vacancy until the next regular election, when the office shall be filled by the people.

School fund.

§ 263. The school fund of such city, or city and county, shall consist of all moneys received from the state school fund; of all moneys arising from taxes which shall be levied annually by the municipal council of such city, or city and county, for school purposes; of all moneys arising from sale, rent, or exchange of any school property, and of such other moneys as may, from any source whatever, be paid into said school fund. Said fund shall be kept in the city, or city and county, treasury, separate and distinct from all other moneys, and shall only be used for school purposes under the provisions of this chapter. No fees or commissions shall be allowed or paid for assessing, collecting, keeping, or disbursing any school moneys; and if at the end of any fiscal year any surplus remains in the school fund, such surplus money shall be carried forward to the school fund of the next fiscal year, and shall not be, for any purpose whatever, diverted or drawn from said fund, except under the provisions of this chapter.

School fund, how used.

§ 264. The said school fund shall be used and applied by said board of education for the following purposes, to wit:

1. For the payment of the salaries or wages of teachers, janitors, school-census marshals, and other persons who may be employed by said board.

2. For the erection, alteration, repair, rent, and furnishing of schoolhouses;
3. For the expenses of high, normal, and experimental schools;
4. For the purchase money or rent of any real or personal property purchased or hired by the board;
5. For the insurance of all school property;
7. For the discharge of all legal encumbrances now or hereafter existing on any school property;
8. For lighting schoolrooms, and the office and rooms of the superintendent and the board of education;
9. For supplying the schools with fuel, water, apparatus, blanks, blank-books, and necessary school appliances, together with books for indigent children;
10. For supplying books, printing, and stationery for the use of the superintendent and board of education, and for the incidental expenses of the board and department;
11. In grading, fencing, and improving school lots.

Claims, how allowed.

§ 265. All claims payable out of the school fund (excepting coupons for interest in school bonds), shall be filed with the secretary of the board, and after they shall have been approved by a majority of all the members elect of the board, upon a call of "yeas" and "nays" (which shall be recorded), they shall be signed by the president of the board and the superintendent of the public schools, and be sent to the city and county auditor. Every demand shall have indorsed upon it a certificate of its approval by the board, showing the date thereof, and the law authorizing it, by title, date, and section. All demands for teachers' salaries shall be payable monthly.

Demands on school funds.

§ 266. Demands on the school fund may be audited and approved in the usual manner, although there shall not, at the time, be money in the treasury for the payment of the same; provided, that no demand on said fund shall be paid out of or become a charge against the school fund of any subsequent fiscal year; and further provided, that the entire expenditures of the said school department, for all purposes, shall not, in any fiscal year, exceed the revenues thereof for the same year.

Auditor to designate fund.

§ 267. The city, or city and county, auditor shall state, by indorsement upon any claim or demand audited in the school fund, the particular money or fund out of which the same is payable, and that it is payable from no other source.

Audited bills receivable for taxes.

§ 268. Audited bills for the current fiscal year for wages or salaries of the teachers in the public schools shall be receivable for school taxes due upon real estate.

Demands audited and paid in the usual manner.

§ 269. All lawful demands authorized by this chapter for school purposes shall be audited and approved in the usual manner, and the auditor and treasurer of such city, or city and county, are respectively authorized to audit and pay the same, when so ordered paid and approved by the said board; provided, that the said board shall not have the power to contract any debt or liability, in any form whatsoever, against such city, or city and county, in contravention of this chapter; and provided, further, that the allowance or approval by the board of demands not authorized by this chapter shall be no warrant or authority to the auditor or treasurer to audit or pay the same.

Board of education to make estimate.

§ 270. It shall be the duty of the board of education of such city, or city and county, on or before the second Monday of September of each year, to report to the municipal council an estimate of the amount of money which will be required during the year for the purpose of meeting the current annual expenses of public instruction in such city, or city and county, specifying the amount required for supplies furnished pupils, for purchasing and procuring sites, for leasing rooms, or erecting buildings, and for furnishing, fitting up, altering, enlarging, and repairing buildings; for the support of schools organized since the last annual apportionment; for salary of teachers, janitors, clerks, and other employees, and other expenditures authorized by law; but the aggregate amount so reported shall not exceed the sum of thirty-five dollars for each pupil who shall have actually attended and been taught in the preceding year in the schools entitled to participate in the apportionments. The number of pupils who shall be considered as having attended the schools during any one year shall be ascertained by adding together the number of days' attendance of all the pupils in the common schools during the year, and dividing the same by the number of school days in the year. Said municipal council is authorized and empowered to levy and cause to be collected, at the time and in the manner of levying state and other city, or city and county, taxes, the amount of tax, not to exceed thirty-five dollars per pupil, determined and reported by the board of education. The amount so levied and collected shall not include the amount received annually from poll taxes.

No sectarian school shall receive school money.

§ 271. No school shall receive any portion of the school moneys in which the religious doctrines or tenets of any particular Christian or other religious sect are taught, inculcated, or practiced, or in which any book or books containing compositions favorable or prejudicial to the particular doctrines or tenets of any particular Christian or other religious sect is used; nor shall any such books or teachings be permitted in the common schools.

No member of board shall disburse school money, or accept gift.

§ 272. No member of the board of education shall ever become the disbursing agent of such board, or handle or pay out any of its money under or upon any pretense whatever. Any violation of this provision shall be a misdemeanor, and shall subject the offender, besides the punishment, to removal from office. Any member or officer of the board of education who shall, while in office, accept any donation or gratuity in money, or of any valuable thing, either directly or indirectly, from any teacher, or candidate, or applicant for a position as teacher, upon any pretense whatever, shall be deemed guilty of a misdemeanor in office and shall be ousted by the board, or by any court of competent jurisdiction, from his seat, on proof thereof. Any member or officer of the board of education who shall accept any money, or valuable thing, or the promise thereof, with an agreement or understanding, express or implied, that any person shall, in consideration thereof, get the vote or influence of such member or officer for a situation as a teacher or employee of any kind in the school department, shall be deemed guilty of a felony, and on conviction, shall be punished accordingly.

ARTICLE VII.—MISCELLANEOUS PROVISIONS.**Laws which do not conflict with this act are continued in force.**

§ 286. All the existing provisions of law defining the duties of county officers, excepting those relating to supervisors and boards of supervisors, so far as the same are not inconsistent with, repealed, or altered by the provisions of this chapter, shall be considered as applicable to officers of any consolidated cities and counties, acting or elected under this chapter. Provisions shall be made from the revenues of any

city, or city and county, heretofore existing and reorganized under this act, for the payment of the legal indebtedness of the municipal corporation to which such reorganized city, or city and county, shall succeed, or of which it is a reorganization, as well as for that of such city, or city and county, after its organization, and all funding acts and other laws providing for the payments of principal and interest on any funded debt of such former corporation shall remain in force. The taxes which may be levied and collected in such city, or city and county, shall be uniform throughout the same.

Where provisions of this chapter shall apply.

§ 287. The provisions of this chapter concerning the following named officers, to wit: Sheriff, county clerk, recorder, coroner, and public administrator, shall apply only to consolidated cities and counties. The provisions of this chapter relating to the district attorney shall, except in consolidated cities and counties, be deemed to apply to the city attorney; and no sheriff, county clerk, recorder, district attorney, coroner, or public administrator shall be elected in any municipal corporation under the provisions of this chapter, except in consolidated cities and counties.

Duty of municipal council in the levy of taxes.

§ 288. The municipal council of any such consolidated city and county shall perform such duties in and about the levy and equalization of state and county taxes, and all other matters and things as are or may be prescribed by law for boards of supervisors of counties in like cases, and not inconsistent with the provisions of this chapter.

CHAPTER III.

MUNICIPAL CORPORATIONS OF THE SECOND CLASS.

(A charter for cities having a population of more than 30,000 and not exceeding 100,000.)

ARTICLE I.—GENERAL POWERS.

Powers of municipal corporations of the second class.

§ 300. Every municipal corporation of the second class shall be entitled the city of — (naming it), and by such name shall have perpetual succession, may sue, be sued, in all courts and places, and in all proceedings whatever, shall have and use a common seal, alterable at the pleasure of the city authorities, and may purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of the same for the common benefit; provided, that it shall purchase without the city no property except such as shall be deemed necessary for establishing hospitals, prisons, cemeteries, and industrial schools.

ARTICLE II.—GENERAL PROVISIONS RELATING TO OFFICERS.

Election, when held.

§ 301. The municipal election shall be held on the second Monday of March of each even-numbered year, and such election shall be subject to all the provisions of the law regulating elections for state officers, except as otherwise provided in this chapter. At such election there shall be elected, for the government of the city the following officers: Seven councilmen, who shall constitute a board to be known as the city council; a mayor; a treasurer, who shall be ex-officio clerk of the city council; a city attorney; a school superintendent, and a street superintendent, who shall respectively hold office for the term of two years, and until their successors are elected and qualified. One councilman shall be elected from each ward, by the vote of the city at large, and shall hold office for the term of two years, and until his successor is elected and qualified.

Bonds.

§ 302. The clerk and treasurer, superintendent of public schools, street superintendent, and all other officers when required by the city council by ordinance, shall each, before entering upon his official duties, and within ten days after receipt of his certificate of election or appointment, execute a bond, in such sum as the council may direct, payable to the city; which bond shall be subject to the law concerning the official bonds of officers, and to approval by the mayor. And the council may at any time require an additional amount, or new sureties, upon any bond which it may deem insufficient. If such additional security be not given, the council, upon notification thereof by the mayor, may, by vote of two-thirds of the members, declare the office vacant.

Fees, etc., to be paid into treasury.

§ 303. All fees, percentages, and all other moneys received or collected by any officer of the city, shall be paid by such officer, at the end of each month, into the city treasury, for the use of the city; and no payment shall be made to any officer for salary until he shall have taken, and filed with the clerk, an affidavit that he has paid into the city treasury, all fees, percentages, and all other moneys by him theretofore received or collected.

No city officer shall be surety on bond of any corporate officer.

§ 304. No member of the city council, or of the board of education, nor any officer of the city, shall be surety upon the official bond of any corporate officer, nor shall he be, directly or indirectly, interested with or be surety for any person who may be interested in any franchise, contract, appropriation, work, or business, or in the sale of anything the price of or consideration for which is paid or payable by the city, or by assessments levied under an ordinance of the council; nor shall any contract be awarded or franchise granted to any person who may be surety on the official bond of any officer of the city.

Vacancy, how filled.

§ 305. If any officer of such city, or member of the city council, or board of education, shall remove from the city, or absent himself therefrom for more than thirty days, or shall fail to qualify by taking the oath of office as prescribed by law, or to file his official bond, whenever such bond is required, within ten days from the time his election is duly ascertained and declared, his office shall be thereby absolutely vacated, and the city council shall thereupon fill the vacancy upon nomination by the mayor.

Oath of office.

§ 306. Every officer provided for in this chapter shall, before entering upon the duties of his office, take and file with the treasurer the constitutional oath of office; provided, that the oath of office of the treasurer shall be filed with the mayor.

Salaries.

§ 307. The salaries of the officers of such city shall be as follows: Mayor, one thousand dollars per annum; clerk and treasurer, two thousand dollars per annum; assistant to the clerk and treasurer, one thousand two hundred dollars per annum; clerk of the police court, one thousand two hundred dollars per annum; clerk to the police court, nine hundred dollars per annum; city attorney, two thousand dollars per annum; street superintendent, one thousand eight hundred dollars per annum; captain of police, one thousand eight hundred dollars per annum; police detective, one thousand five hundred dollars per annum; school superintendent, two thousand dollars per annum; assistant school superintendent, one thousand two hundred dollars per annum; policemen, nine

hundred dollars per annum each. The mayor may appoint a clerk, who shall receive a salary of nine hundred dollars per annum. The salaries of all officers shall be paid in monthly installments, at the end of each and every month of service.

ARTICLE III.—LEGISLATIVE DEPARTMENT.

Time of meeting.

§ 319. The city council shall meet on the first Monday after their election, and at such other times as they may by ordinance appoint. A majority of the council shall constitute a quorum for the transaction of business. They shall determine the rules of their proceedings, and judge of the qualification and election of all officers; and shall provide, by ordinance, the method of calling special meetings of the council. Their sittings shall be public. A journal of their proceedings shall be kept by the clerk, under their direction; and the ayes and noes shall be taken and entered on the journal at the request of any member. They shall prescribe, by ordinance, the duties of all officers whose duties are not defined in this act. They shall have the power to raise, by tax, not exceeding one per cent for all purposes (except for the redemption of bonds) on the assessed value of the real and personal property within the limits of such city, moneys for the establishment and support of free common schools, and to provide suitable grounds and buildings therefor, and defraying the ordinary expenses of the city, as well as for paving, planking, or otherwise improving the streets of the city. They shall also have power to pass all proper and necessary ordinances for the regulation and sale of city property, and to give deeds therefor. They shall have power to open, alter, establish, grade, or otherwise improve and regulate, streets, alleys, and lanes, and the sidewalks upon the same; to construct and keep in repair bridges, so as not to interfere with navigation, fences, public places, wharves, docks, ferries, piers, slips, sewers, and wells, and to make assessments therefor; to regulate and collect tolls, wharfage, dockage, and cramage, upon all water craft, and all goods landed; to make regulations for securing the health, cleanliness, ornament, peace, and good order of the city; for preventing and extinguishing fires, and appointing and regulating firemen, policemen, and such other officers as may be necessary to appoint; for the care and regulation of prisons and markets; for licensing, taxing, and regulating all such vehicles, business, and employments as the public good may require, and as may not be prohibited by law; to levy a tax license upon all dogs, or otherwise prevent the same from running at large in the streets and public grounds of the city; to regulate and suppress all occupations, houses, places, amusements, and exhibitions which are against good morals, or contrary to the public order and decency; for the regulation and location of slaughter-houses, markets, stables, and gas-works, and houses for the storage of gunpowder and other combustible materials, and limit the quantity of combustible or explosive materials to be stored in any one place; for prohibiting or suppressing the erection of slaughter-houses, or the slaughtering of animals within the limits of the city, and for prohibiting or suppressing the erection or carrying on of any soap or glue factory, tan-yard, powder magazine, or other nuisance within the limits of the city; and to declare what shall constitute a nuisance; and to make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws; and provide suitable buildings for the management, good government, and general welfare of the city. They shall also have power to pass such ordinance or ordinances as may be necessary to prevent animals from running at large within the limits of the city; to establish a pound, and appoint a pound-keeper, and prescribe his duties, and to provide for the public sale, by the pound-keeper, of such animals as may be impounded, in the same way and upon like notice that personal property is sold by execution under the laws of this state; provided, that the owner or owners of such property so impounded may reclaim the same at any time before sale, upon payment of costs and charges of taking up and impounding; and,

within thirty days after the sale, upon proof of ownership of the property sold, duly made before the mayor, and upon payment of the costs and expenses of impounding and selling, and upon the payment of the sum of one dollar to the mayor, as a fee for the investigation of the question of ownership, and for his certificate to that effect, such owner or owners may receive the purchase money arising from such sale or sales. Penalties for the violation of any and all ordinances shall be by fine not exceeding one hundred dollars, and in case the fine be not paid, then the person or persons may be imprisoned at the rate of one day for every two dollars of the fine imposed, or in lieu of the imprisonment, or any part of it, the person or persons so fined shall labor, under the direction of the city authorities, either upon the streets, public grounds, or buildings, or in such other places as may be deemed advisable for the benefit or revenue of said city. The city council, upon the nomination of the mayor, shall have power to appoint suitable persons to fill vacancies in any elective office, except that of mayor, until the next regular municipal election, when, if the term be unexpired, an election shall be held to fill such vacancy for the unexpired terms of said officers. The members of the city council shall receive no salary for their services. They shall have power to provide for all city elections, to designate the place or places of holding the same, giving at least ten days' notice thereof; to appoint inspectors and judges of election, examine the returns, and declare the result, and to determine contested elections. The president pro tempore of the board shall discharge the duties of mayor, whenever there shall be a vacancy in the office of mayor, or when the mayor shall be absent from the city for a period exceeding five days, or be unable, from sickness, to attend to the duties of his office. In the absence of the clerk, the city council shall appoint one of their members to act as clerk pro tempore; they shall also have power to set aside any amount of money belonging to the city which may at any time be in the hands of the treasurer, after deducting the current expenses of the city, and the interest due upon the funded debts of the city, as a sinking-fund whereby the bonds issued by the city may be redeemed, or they may, at any time before said bonds shall become due, with any surplus money which may belong to the city, after paying said expenses and interest, redeem or purchase for the city, and in its name, in the manner most advantageous to the city, any outstanding bonds, which bonds or claims, when so purchased, shall be immediately canceled; provided, this right shall not affect the rights of the holders of said bonds, or in any way prevent them from holding the same until said bonds become due and payable; they shall also have the power to determine the width of sidewalks, and the material and manner of their construction, as well as the grade of the same; they shall also have the power to establish fire districts, and within said districts to prevent the erection of wooden buildings, or any buildings composed of combustible materials, and also to prevent the further repairing of wooden buildings within the fire limits established.

Further powers.

§ 320. Said council shall also have power:

Construction of sinks, etc.

1. To regulate the construction of sinks, gutters, wells, cesspools and privy-vaults, and to compel the cleansing or emptying of the same, and the time and manner in which the work shall be done.

Anchorage of vessels, etc.

2. To regulate the anchorage of vessels within the limits of the city, and to prevent obstructions to the free navigation of all navigable waters within the same.

Pollution of water.

3. To prevent persons from throwing into any stream, creek, bay, or other body of water within the limits of the city, from vessels, wharves, or other places, any dirt, ballast, ashes, garbage, dead animals, or other materials that may obstruct the same or pollute the water thereof.

Open streets.

4. To open streets to the channel of any navigable stream or creek within the limits of the city, and to deep water to any navigable bay or lake within the same, and to construct and maintain public wharves at the ends of such streets.

Regulate location of boilers, etc.

5. To regulate the location of steam boilers, the putting up of signs and awnings, and the construction of entrances to basements or cellars from the sidewalks.

License hacks, etc.

6. To establish hack-stands, and to regulate the rates of charges of hacks and other licensed vehicles, and to require a schedule of such charges, printed in conspicuous type and satisfactory to the council, to be posted in a conspicuous place in each hack or other licensed vehicle; provided, however, that the standing of hacks shall not be permitted on any street upon which railroads operated by steam shall be used.

To compel attendance of absent members.

7. To compel the attendance of absent members of said council at any of the meetings thereof, and to cause the arrest of any person for disorderly conduct at their meetings.

Regulate speed of railway engines.

8. To regulate the speed of railway engines in the city; and to require railroad companies to station flagmen at street crossings; to grant franchises permitting steam railroads upon any of the streets of the city; provided, that the same shall only be granted after two weeks' notice, previously published in some newspaper published in the city, and by ordinance passed by the vote of two-thirds of the members elected to said council, approved by the mayor, and upon the previous petition, in writing, of the owners of two-thirds of the front feet of the lands upon the portion of the street to be so used.

Regulate entrance to and from theaters, etc.

9. To regulate the means of entrance to and exit from theaters, lecture-rooms, public halls, and churches, and to prohibit the placing of chairs, stools, benches, or other obstructions in the aisles of such buildings.

Railway companies to keep certain streets in repair.

10. To require railroad companies to keep the street in repair between the tracks and along and within the distance of two feet upon each side of the track occupied by the company.

License certain property and business.

§ 321. They shall also have the exclusive right, in the manner prescribed by ordinance, of issuing and granting licenses, and of collecting tax licenses for the benefit of the city, upon the following business and property, to wit: Upon each and every person within the limits of the city who shall vend any goods, wares or merchandise, wines, distilled or fermented liquors, drugs, medicines, jewelry, or wares of precious metals; upon persons who keep horses or carriages for rent or hire; upon persons keep-

ing billiard-tables for hire, bowling-alleys, and shooting-galleries; also upon all taverns, innkeepers, and upon all persons who may sell or dispose of any malt, spirituous or fermented liquors or wines in less quantities than one quart; and the said licenses shall be issued quarterly or yearly. Also upon any person within the limits of the city, who shall keep a stallion, jack, bull, or ram, and who shall permit the same to be used for the purpose of propagation for hire or profit, which license shall be a yearly license; all of which licenses when granted by such city and duly obtained by the person or persons desiring the same, shall entitle them to carry on such business, trade, or profession in such city.

Sales and leases of city property.

§ 322. All sales or leases of property belonging to the city shall be by public auction to the highest bidder, and upon such terms and conditions as the council may by ordinance direct; and all contracts for supplies, of any kind, for more than five hundred dollars, shall be let to the lowest responsible bidder, after ten days' notice given by posting the same in three of the most public places in the city or by publishing the same in any newspaper printed and published in such city.

Licenses.

§ 323. Licenses shall be discriminating and proportionate to the amount of business; and it shall be the duty of the council, by ordinance, to classify all kinds of business licensed in accordance herewith.

Ordinances.

§ 324. The enacting clause of all ordinances shall be as follows: "The mayor and council of the city of — do ordain as follows." Every ordinance passed by the city council shall be presented to the mayor for his approval; if he approve it, he shall sign it; if not, he shall return it at the first meeting of the council held after five days thereafter, or at its next meeting; when the city council shall reconsider such ordinance, and if the same be approved by a vote of two-thirds of all the members elected, and not otherwise, the same shall take effect and stand as an ordinance of such city. All ordinances shall be published for one week in a newspaper printed and published in such city, as often during such period as such newspaper shall be published.

Fixing rate of taxation.

§ 325. The council shall, upon the first Monday of October, in each year, fix the rate of taxation to be levied upon all property, both real and personal, in said municipality necessary to raise sufficient revenue to carry on the various departments of the city government for the then ensuing year, not to exceed one dollar for each one hundred dollars upon the assessment-roll, and to pay the bonded and other indebtedness of said city. The said council must, upon fixing said amount, transmit a statement thereof to the county auditor. The action of the city council in fixing the rate of taxation for city purposes is a valid levy of the rate so fixed upon all property, both real and personal, in the said city, and borne upon the assessment-roll of said county, and has the effect provided in sections 3716, 3717, and 3718 of the Political Code, in regard to state and county taxes. The county auditor shall thereupon compute and enter, in a separate money column in the assessment-book, the respective sums, in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, for the purposes of such city government, and foot up the column, showing the total amount of such taxes. The taxes so levied and computed shall be collected at the same time and in the same manner as state and county taxes; and when collected, shall be paid into the county treasury for the use of said city; provided, that any property sold for such taxes shall be subject to redemption within the time and in the

manner provided, or that may hereafter be provided by law, for the redemption of property sold for state or county taxes. All deeds made upon any sale of property for taxes or special assessments, under the provisions of this chapter, shall have the same force and effect in evidence as is or may hereafter be provided by law for deeds for property sold for nonpayment of state or county taxes. The county treasurer must, at any time upon the demand of the city treasurer and mayor, settle with the city treasurer, and pay over to him all moneys in the county treasury belonging to such city, taking the receipt of the mayor and city treasurer therefor. The county treasurer shall receive, as compensation for all services rendered under this section as tax collector and treasurer, one-third of one per cent of all moneys collected and paid over to the city treasurer, but not to exceed in all one thousand dollars per annum. The county treasurer and tax collector shall be liable on his official bond for all moneys received by him under the provisions of this section.

Vote by yeas and nays in certain cases.

§ 326. In all matters before the city council concerning the granting of franchises, letting of contracts, auditing of bills, ordering of work to be done or supplies to be furnished, or whatever may involve the payment of money, or incurring of debt by the city, the vote shall be by yeas and nays, and be recorded in the journal.

Restriction on members.

§ 327. No member of the city council shall vote in the council upon any motion, resolution, or ordinance, in favor of any franchise, contract, bill, award, or appropriation, in which he may have any pecuniary interest, present or prospective.

§ 328. The city council shall not create, allow or permit to accrue any debt or liability in excess of the available money in the treasury that may be legally apportioned and appropriated for such purposes; nor shall any warrant be drawn or evidence of indebtedness be issued, unless there be at the time sufficient money in the treasury legally applicable to the payment of the same, except as hereinafter provided.

Debt, how incurred and paid.

§ 329. If, at any time, the city council shall deem it necessary to incur any indebtedness in excess of the money in the treasury applicable to the purpose for which such indebtedness is to be incurred, they shall give notice of a special election by the qualified electors of the city, to be held to determine whether such indebtedness shall be incurred. Such notice shall specify the amount of indebtedness proposed to be incurred, the purpose or purposes of the same and the amount of money necessary to be raised annually by taxation for an interest and sinking fund, as hereinafter provided. Such notice shall be published for at least three weeks in some newspaper published in such city, as often during said period as said newspaper shall be published; and no other question or matter shall be submitted to the electors at such election. If, upon a canvass of the votes cast at such election, it appear that not less than two-thirds of all the qualified electors voting at such election shall have voted in favor of incurring such indebtedness, it shall be the duty of the city council to pass an ordinance providing for the mode of creating such indebtedness, and of paying the same; and an annual tax shall be levied and collected upon all the real and personal property subject to taxation within such city, sufficient to pay the interest on such indebtedness as it falls due; and also to constitute a sinking fund for the payment of the principal thereof, within a period of not more than twenty years from the time of contracting the same. It shall be the duty of the city council, in each year thereafter, at the time at which other taxes are levied, to levy a tax sufficient for such purpose, in addition to the taxes by this chapter authorized to be levied. Such tax, when collected, shall be exclusively

appropriated to the payment of the principal and interest or such indebtedness, and the city treasurer shall be liable upon his official bond for any part of said fund otherwise used or appropriated.

Separate fund.

§ 330. It shall be the duty of the city council before levying the annual city tax, to establish, by ordinance, separate funds, representing the several funded obligations of the city, if any, and the several departments requiring municipal expenditures, including a general fund, and the percentage of said levy shall be named for each fund, and the whole amount of taxes and revenues of the city apportioned accordingly, and no transfer shall be made except of balances in excess, or from the general fund to meet deficiencies, or to provide for the redemption of city bonds.

Bonded indebtedness, how paid.

§ 331. Any city having a bonded indebtedness, contracted, under laws heretofore passed, shall levy such taxes for the payment of such indebtedness, and the interest thereon, as are provided for in such laws, in addition to the taxes herein authorized to be levied. All moneys received from licenses, and from fines, penalties, and for forfeitures, shall be paid into the general fund.

Opening new streets.

§ 332. The city council shall have power, upon the payment of just compensation, to lay out and open new streets, lanes, alleys, courts, and places within the corporate limits of the city, but shall have no power to subject the city to any expense therefor, except for the necessary expense of surveying and mapping out the same, and when said streets are so laid out and opened, the provisions of this chapter shall be applicable thereto.

License on common carriers.

§ 333. The city council of said city shall have power to issue and collect an annual tax license on draymen, cabmen, omnibus proprietors, expressmen, and other common carriers doing business in the city, the proceeds of said licenses to be devoted to a street department fund for keeping in repair the streets in the city. Said annual license not to be more than twelve dollars nor less than eight dollars for such persons so licensed.

Widening streets.

§ 334. The city council is empowered to open, extend, and widen streets, and to modify the boundaries thereof within its corporate limits, and to determine the property benefited thereby, and to assess the expenses of such improvement upon the property benefited, as hereinafter provided.

Proceedings, how commenced.

§ 335. All proceedings under said power shall be commenced by petition of five or more residents and freeholders within the city, signed by the petitioners, addressed to the city council, and filed with the clerk of said council. Such petition shall contain:

1. The names of the petitioners, and a statement that each of the petitioners is a resident and freeholder within the city;
2. A statement that, in the opinion of the petitioners, the public interests require that the improvement asked for (describing it generally) should be made;
3. A request that the common council proceed to order the improvement made.

Duty of council.

§ 336. At the regular meeting next after the meeting at which the petition is presented to the council, or at any subsequent meeting to which the proceedings may be regularly adjourned, the said council may, by resolution duly passed, determine the lands to be benefited by the improvement asked for in the petition, and to be assessed for the expenses thereof. Said resolution shall contain a description of each lot, piece, or parcel of land necessary to be taken and condemned for such improvement, and shall also specify the exterior boundaries of the district of land benefited thereby, and to be assessed therefor, and shall direct the city engineer to make a survey and map of the lands described in the resolution, a copy of which resolution shall be forthwith transmitted by the clerk of said council to the said city engineer.

Duty of city engineer.

§ 337. It shall be the duty of the city engineer, immediately upon receiving a copy of the resolution mentioned in section 4, to survey the lands described in said resolution and make a map thereof, and to return said map to said council within twenty (20) days from the receipt by him of said copy of the resolution; said map shall show each piece, tract, or parcel of land necessary to be taken and condemned for said improvement, and also the exterior boundaries of the district to be benefited by such improvement and to be assessed on account of the cost and expenses thereof, as declared in the resolution, and the area thereof, exclusive of public streets and alleys. Said city engineer shall have the right to enter upon the lands and make examinations and surveys thereof, and such entry shall constitute no cause of action in favor of the owners of said lands, except for injuries resulting from negligence, wantonness, or malice.

Preliminary resolution.

§ 338. The council, at its regular meeting next after the return of the map by the city engineer, shall pass a preliminary resolution, declaring the intention of the corporation to make the improvement asked for in the petition. Said resolution shall contain a description of each piece, lot, or tract of land necessary and sought to be taken and condemned for the improvement, and also the exterior boundaries of the district of lands to be benefited thereby, and assessed for the expenses thereof; the resolution shall also specify a time, not more than fifteen (15) days from the passage thereof, for the hearing by said council of objections to the proposed improvement, and said resolution shall be published in at least one daily paper printed and circulated in the city, daily (Sundays and nonjudicial days excepted), for at least ten (10) days prior to the time fixed for said hearing.

Objections.

§ 339. If a majority of the owners of the lands in area to be assessed for the expenses of said improvement shall, on or before the day fixed by said resolution for the hearing of objections, appear and protest against said improvement, the proceedings shall be discontinued; provided, however, that such protest must be in writing, and shall contain a description of the land claimed by each protestant; and provided further, that the council may, by a unanimous vote of all its members, approved by the mayor, proceed to cause such improvement to be made, notwithstanding such protest.

Final resolution.

§ 340. If the owners of a majority in area of the property to be assessed for the expenses of said improvement fail to appear and protest as provided in section 7, or if the council, by a unanimous vote, approved by the mayor, order said improvement to be made, said council must immediately pass a final resolution, declaring such determination. Such resolution shall refer to the said preliminary resolution, by its num-

ber, for a description of the lands necessary and sought to be taken and condemned for said improvement, and the district to be assessed for the expenses thereof.

Commissioners to assess damages.

§ 341. Immediately after the passage of such final resolution, the council shall apply to the superior court of the county in which such city is situated, either in term time or vacation, by petition, for the appointing of three commissioners to assess the compensation which shall be paid to the owners thereof for the lands sought to be taken for such improvement, and to assess upon the property within the district to be benefited thereby the costs of such improvement. Said petition shall recite all the proceedings had in the premises, and shall specify the exterior boundaries of the lands sought to be taken, and also the exterior boundaries of the district of lands to be benefited thereby, and assessed for the expenses thereof. A copy of the map made by the city engineer shall be annexed to said petition, and may be referred to in the petition for a description of the lands aforesaid.

Duty of court.

§ 342. Upon filing such petition, such court shall pass and take such jurisdiction of such proceeding, and such court, or a judge thereof, shall, by order, fix a day for the hearing of such petition, which shall be not less than ten, nor more than twenty days from the date of such order. Such order shall further direct notice of the time and place of such hearing to be given by the clerk by publication in two daily newspapers published in such city, and designated in such order, for at least a period of ten days in succession.

Requisites of notice.

§ 343. Such notice shall specify the exterior boundaries of the lands sought to be taken for such improvement, and of the lands declared to be profited thereby and to be assessed for the expenses thereof, and shall further state that the damages to which the owner or owners of the land sought to be taken may be entitled for the same will be inquired into and determined, and that such damages, together with the cost of the proceedings for the acquiring title to such lands, and making apportionment thereof, will be apportioned and assessed upon the lands to be benefited thereby, by commissioners to be appointed by such court, on the day fixed by such order for the hearing. Such notice shall be published daily for at least ten days (Sundays and nonjudicial days excepted) before such hearing.

Hearing.

§ 344. At the time fixed for the hearing, or at such other time as the hearing may be adjourned to, the court shall proceed to hear any person interested touching the regularity of the proceedings, and if satisfied that the proceedings have been regular, shall appoint three competent and disinterested commissioners. The court may, at any time, remove any or all such commissioners for cause, upon reasonable notice and hearing, and may fill the vacancies occurring among them from any cause. Any persons interested may object to the appointment of any person as commissioner, on one or more of the grounds specified in section 641 of the Code of Civil Procedure, as grounds for the objection to the appointment of persons as referees.

Duty of commissioners.

§ 345. Commissioners shall be sworn to faithfully perform their duties according to the provisions of this chapter. They shall then proceed to view the lands mentioned and described in such resolution and petition, and may examine witnesses on oath, to be administered by any one of them, and shall keep minutes of the testimony so taken: they shall ascertain and appraise the value of the property sought to be taken for th

improvements, and of all improvements thereon partaking of the realty, and of each and every estate therein; if it consist of different parcels, the value of each parcel and each estate, or interest therein, shall be separately appraised; if this property sought to be taken constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned or taken by reason of the severance from the portion sought to be taken, and the construction of the improvement in the manner proposed shall be appraised by said commissioners; they shall also ascertain and determine, as near as may be, the entire costs of the proceedings for the opening, extension, or improvement aforesaid, including the costs of court and of commissioners; they shall then proceed to apportion and assess the whole amount of such costs and expenses, value of property sought to be taken, and damages to property not taken, upon the property within the district declared by the resolution of the council to be benefited by said improvement, and shall assess each tract, lot, piece, or parcel of land within said district in proportion to the benefits received by it from said improvement.

Report.

§ 346. The said commissioners, within a time to be fixed by the court, shall make a report of their proceedings, under their hands, or the hands of a majority of them, to the said court, in which report they shall describe, with common certainty, the several parcels of land sought to be taken for such improvement, and the names of the owners thereof, respectively, so far as they can be ascertained, designating unknown owners, if any such there be, and the sum of money which should be paid to each of said owners, as his or her compensation for the land necessary and sought to be taken and condemned for such improvement, or of his or her estate, therein; and in case only a part of a larger parcel has been taken for such improvement, and the remaining portion is damaged or benefited thereby, they shall describe such remaining portion, and specify the sum to be paid or assessed to the owner thereof, or such damages or benefits as the case may be; they shall also describe, with common certainty, the several parcels of land within the district deemed to be benefited by said improvement, and the names of the owners thereof, so far as they can be ascertained, designating unknown owners, if such there be, and the sum of money which is assessed upon each particular parcel, and which should be paid by the owner thereof.

Objections.

§ 347. Upon the filing of such report, the said court shall, by order, fix a day for hearing objections to the confirmation thereof, and shall direct notice of the time and place of said hearing to be given by the clerk, by publication in a daily newspaper published in said city, for at least ten days (Sundays and nonjudicial days excepted), prior to said day of hearing.

Hearing report.

§ 348. Upon the day fixed for the hearing, the court shall proceed to hear any person interested upon any question touching the regularity of the proceedings, the sufficiency of the compensation awarded, or the justice or equality of the assessment, and may confirm said report or set the same aside, or remand the same for correction or alteration in any particular. If the report be set aside, the matter may in like manner be referred to the same or new commissioners appointed by the court, who shall proceed as hereinbefore provided; if the report be remanded, it shall be corrected, or altered in any particular required by the court.

Compensation of commissioners.

§ 349. The commissioners shall be entitled to reasonable compensation for their services, to be certified to by the court, and taxed as part of the expenses of the proceeding.

Judgment, what to contain.

§ 350. Upon confirmation of the report of the commissioners, judgment shall be rendered by the court thereon, which judgment must describe each parcel of land taken for such improvement and the amount to which the owner is entitled as compensation or damages for the taking thereof, and the name of such owner or owners, if known; and in case only a portion of a larger parcel is taken, such judgment must describe such remaining portion, and the amount, if anything, to which the owner thereof is entitled as damages; and must also describe each parcel of land assessed for the expenses of such improvement, and the amount so assessed upon each parcel respectively. Such judgment shall direct a sale of each parcel so assessed, or so much thereof as may be necessary to pay the amount of such assessment and expenses of sale, and the application of the proceeds of such sale to the payment of the expenses of such sale, and the amount of compensation and damages awarded by such judgment. Such judgment shall be a lien upon the property against which such assessment is made, and may be enforced by a sale of the property assessed, as hereinafter provided.

Enforcement of judgment.

§ 351. Within thirty days after the entry of such judgment, the persons liable must pay to the clerk of the court, for the benefit of the parties entitled thereto, the several amounts specified in such judgment, in default of which the respective parcels of land upon which such assessments have not been paid shall be sold by the sheriff of such county under a certified copy of such judgment, and in the manner provided by law for the sale of property upon decree of foreclosure of mortgage.

Money, to whom paid.

§ 352. The moneys realized from such sale shall be paid by the officer making the same, to the clerk of the court, for the benefit of the parties entitled thereto.

Final order.

§ 353. Whenever the aggregate amount of damages or compensation awarded by such county, and thereupon, the property described therein shall vest in such city for moneys realized from sales under such judgment, the court must make and enter a final order or decree of condemnation of the lands taken for such improvement, which order or decree shall describe the property condemned and the purpose of such condemnation.

When title vests.

§ 354. A copy of such order or decree must be filed in the office of the recorder of such county, and thereupon, the property described therein shall vest in such city for the uses and purposes therein specified; and such city shall be entitled to and may take immediate possession thereof.

Payment of awards.

§ 355. Whenever the aggregate amount of damages or compensation awarded by such judgment shall have come to the hands of the clerk, he shall, upon the demand of any person entitled thereto, pay to said party the amount awarded to him or her by said judgment.

Where more than one claimant.

§ 356. If there is more than one claimant to any parcel of land taken for such improvement, or if the owner of any parcel is unknown, the amount awarded as damages or compensation for the taking thereof shall remain in court to be awarded to the true owner by due process of law.

Appeal.

§ 357. Any party feeling aggrieved by any proceedings, orders, or judgments of such court herein provided for may appeal to the supreme court, as in other cases.

Appointment of police.

§ 358. The city council shall not have power to appoint a greater number of policemen than shall be equal to one for every one thousand of the population of such city. No policeman or member of the fire department shall be removed from office except upon the order and direction of the mayor, and after charges in writing have been made against him, and evidence upon the same shall have been heard in public in the mode and manner to be prescribed by ordinance.

Supply of gas and water.

§ 359. All gas and water pipes laid in any paved, macadamized, or graded street must be of sufficient capacity to afford a free supply of gas or water for the estimated necessities of such street, and the district to be supplied by such pipes, for a period of not less than five years from the time of laying the same; which estimate of necessity and capacity shall be made by the city engineer, and approved by the council. It shall be the duty of the council, by ordinance, to prescribe regulations for the laying of gas and water pipes in the public streets.

ARTICLE IV.—EXECUTIVE DEPARTMENT.**Duty of mayor.**

§ 370. The mayor shall preside at all meetings of the city council, but the council shall elect a president pro tempore to preside during his absence. He shall communicate to the council semi-annually, or oftener if necessary a general statement of the situation and condition of the city, together with such recommendations relative thereto as he may deem expedient. He shall be vigilant and active in causing the ordinances of the city to be executed and enforced. He shall be the head of police, and shall exercise a supervision and control over the conduct of all subordinate officers, and receive and examine into all complaints preferred against any of them for violation or neglect of duty, and certify the same to the council. He shall sign all ordinances and contracts made on behalf of the city, and countersign all licenses and warrants on the treasury. He shall keep accounts current with every officer charged with the receipt or disbursement of money, and perform all the duties of an auditor. He shall perform such other duties as may be prescribed by law or ordinance.

Allowance of demands.

§ 371. Every demand upon the treasury, except for the salary of the mayor, must, before it can be paid, be presented to the mayor, to be allowed, who shall satisfy himself whether the money is legally due and remains unpaid, and whether the payment thereof from the treasury of the city is authorized by law, and out of what fund. If he allow it, he shall indorse upon it the word "Allowed," with the name of the fund out of which it is payable, with the date of such allowance, and sign his name thereto; but the allowance or approval of the mayor, or of the city council, or of any other board or officer, of any demand which upon the face of it appears not to have been expressly made by law payable out of the treasury or fund to be charged therewith, shall afford no warrant to the treasurer or other disbursing officer for paying the same. The demand of the mayor for his salary shall be audited and allowed by the president pro tempore of the city council.

Duty of chief of police.

§ 372. The chief of police shall execute, within the city, and return all process issued and directed to him by the city justices, or either of them, arrest all persons

guilty of a breach of the peace, or of a violation of any ordinance of the council, and take them before the proper magistrate within the city; and do and perform such other duties as may be prescribed by ordinance or may be required by the mayor.

Effect of records of street superintendent.

§ 373. The records kept by the street superintendent of the city, and signed by him, shall have the same force and effect as other public records, and copies therefrom, duly certified, may be used in evidence with the same effect as the originals. The said records shall, during all office hours, be open to the inspection of any citizen wishing to examine them, free of charge.

Office of street superintendent.

§ 374. The street superintendent shall keep a public office in some convenient place to be designated by the city council, and such records as may be required by law. He shall superintend and direct the cleaning of all the sewers in the public streets, and the expense of the same shall be paid out of the street department fund, and perform all duties required by law or ordinance of such city.

Duty of street superintendent.

§ 375. It shall be the duty of the street superintendent to see that the laws, orders, and regulations relating to the public streets and highways are fully carried into execution, and that the penalties therefor are regularly enforced. He shall keep himself informed of the condition of all public streets and highways, and also of all public buildings, parks, lots, and ground of the city, as may be prescribed by the council; and should he fail to see the laws, orders, and regulations relative to the public streets and highways carried into execution, after notice from any citizen of a violation thereof, he and his sureties shall be liable upon his official bond to any person injured in person or property in consequence of such neglect.

No recourse on city for certain damages.

§ 376. If, in consequence of any graded street or public highway, improved under the provisions of this chapter, being out of repair, and in a condition to endanger persons or animals passing therein, any person while carefully using such street or public highway, and exercising ordinary care to avoid such danger, suffer damage to his person, or if any animals or other property, being lawfully ridden, driven, or conveyed through such street or public highway, be injured, lost, or destroyed through any such defect therein, no recourse for damages thus suffered shall be had against the city; but if such defect in such street or public highway shall have existed for a period of twenty-four hours or more after notice to the street superintendent, then the street superintendent, and also all other officers through whose official negligence such defect shall have remained unrepaired, shall jointly and severally be liable to the party injured for the damages so sustained.

City engineer, appointment of, and duties.

§ 377. The city council shall have power to appoint a city engineer, and by ordinance to prescribe his duties and fix his compensation, not to exceed eighteen hundred dollars per annum. It shall be the duty of the city engineer to do the surveying and other work necessary to be done by law or any ordinance of said city, and to survey, measure, and estimate the work done and to be done under contracts for grading streets; and every certificate of work done by him, signed in his official capacity, shall be prima facie evidence in all the courts of this state of the truth of its contents; he shall also keep a record of all surveys made by him.

Duties of treasurer.

§ 378. The treasurer shall receive and pay out all moneys belonging to the city, and keep an account of all receipts and expenditures, under such regulations as may be prescribed by ordinance; he shall make a monthly statement to the council of the receipts and expenditures of the preceding month, and in his capacity as city clerk he shall keep all the papers and documents belonging to the city, attend the meetings of the council, and keep a journal of their proceedings, and a record of all their ordinances, and shall do all other things required of him by ordinances.

Reports of officers.

§ 379. It shall be the duty of the several elected and appointed officers of said city, whenever required by the city council, to make reports, to the said council, and in the manner required of them, and in their reports to embody all the matters and information required pertaining to the duties of their respective offices.

Other necessary affairs.

§ 380. The city council may provide by ordinance for the election or appointment of any other officer or officers necessary for the good government of the city, and the proper administration of the public interest, and shall prescribe their duties and terms of office, and fix their compensation.

ARTICLE V.—JUDICIAL DEPARTMENT.**Police court.**

§ 390. The judicial power of the city shall be vested in a police court, to be held therein by the city justices, or one of them, to be designated by the mayor, but either of said city justices may hold such court without such designation, and it is hereby made the duty of such city justices, in addition to the duties now required of them by law, to hold said police court.

Jurisdiction.

§ 391. The police court shall have exclusive jurisdiction of the following public offenses committed in the city:

1. Petit larceny;
2. Assault or battery, not charged to have been committed upon a public officer in the discharge of official duty, or with intent to kill;
3. Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by fine or by imprisonment, or by both such fine and imprisonment;
4. Of proceedings respecting vagrants, lewd or disorderly persons.

Jurisdiction.

§ 392. Said court shall also have exclusive jurisdiction of all proceedings for violation of any ordinance of said city, both civil and criminal, and of an action for the collection of any license required by any ordinance of said city.

Justices inhibited in certain cases.

§ 393. Neither of said justices shall sit in cases in which he is a party, or in which he is interested, or where he is related to either party by consanguinity or affinity within the third degree, and in case of sickness or inability of the city justices, either of them may call in a justice of the peace residing in the county to act in his place and stead.

Powers of justices.

§ 394. Each of the city justices, while acting as judge of said court, shall also have power to hear cases for examination, and may commit and hold the offender to bail for

trial in the proper court, and may try, condemn, or acquit, and carry his judgment into execution as the case may require, according to law, and punish persons guilty of contempt of court; and shall have power to issue warrants of arrests in case of a criminal prosecution for a violation of a city ordinance, as well as in case of the violation of the criminal law of the state; also all subpoenas, and all other processes necessary to the full and proper exercise of his powers and jurisdiction; and in such of the cases enumerated in this section in which trial by jury is not secured by the constitution of the state, he may proceed to judgment in the first instance without a jury, but on appeal the defendant shall be entitled to trial by jury in the superior court.

Clerk of court.

§ 395. The police court shall have a clerk, to be appointed by the city council, upon the nomination of the mayor, who shall hold office during the pleasure of the council. The clerk shall keep a record of the proceedings of and issue all process ordered by the city justices, or either of them, or by said police court, and receive and pay weekly into the city treasury all fines imposed by said court. He shall also each month render to the mayor (as auditor) an exact and detailed account, upon oath, of all fines imposed and collected, and all fines imposed and uncollected, since his last report. He shall prepare bonds, justify bail, when the amount has been fixed by either of the city justices or said court, in cases not exceeding one hundred dollars, and may administer oaths. The clerk shall remain at the courtroom of said court during business hours, and during such reasonable times thereafter as may be necessary for discharging his duty. Before receiving his salary, each or any month, he shall make and file with the auditor an affidavit that he has deposited with the city treasurer all moneys that have come to his hands belonging to the city. Any violation of this provision shall be a misdemeanor. He shall give a bond in the sum of five thousand dollars, with at least two sureties to be approved by the mayor, conditioned for the faithful discharge of the duties of his office.

Disposition of moneys.

§ 396. All fines and other moneys collected on behalf of the city in the police court shall be paid into the city treasury on the first Tuesday of each month; and all bills for fees and costs due the officers of said court shall be reported to the city council each month.

Dockets.

§ 397. The city council shall furnish a suitable room for the holding of said court, and shall also furnish the necessary dockets and blanks. One docket shall be styled "The City Criminal Docket," in which all the criminal business shall be recorded, and each case shall be alphabetically indexed; another docket shall be styled "The City Civil Docket," and it shall contain each and every civil case in which the city is a party, or which is prosecuted or defended for her interest, and each case shall be properly indexed. A third docket shall contain all the other business appertaining to the office of said city justice, and in all cases the docket shall contain all such entries as are required by law to be made in justices' dockets; and in any case tried before the court, the docket must show what duties were performed by any officer of the court, and the amount of the fees due to the officer for such services, and what amount of money, if any, collected.

Court, when open.

§ 398. The police court shall be always open, except upon nonjudicial days, and then for such purposes only as by law permitted or required of other courts of this state.

Appeals.

§ 399. Appeals may be taken from any judgment of said police court, to the superior court of the county in which such city may be situated, in the same manner in which appeals are taken from justices' courts in like cases.

Place of imprisonment.

§ 400. In all cases of imprisonment of persons convicted in said police court of any offense committed in the city, the persons so to be imprisoned, or by ordinance required to labor, shall be imprisoned in the city jail, or if required to labor, shall labor in the city.

Seal.

§ 401. Said court shall have a seal, to be furnished by the city.

Monthly report.

§ 402. The city justices shall, on the first Tuesday of each month, make to the city council a full and complete report of all the cases, civil and criminal, in which the city has an interest, or which are required to be entered in the city civil docket, or the city criminal docket; such report to be made upon blanks to be furnished by the city council, and in such form as they may require.

Transcripts and warrants.

§ 403. Certified transcripts of the dockets, made by the clerk of said court, under the seal of said court, shall be evidence in any court of this state of the contents of said docket; and all warrants and other process issued out of said court, and all acts done by said court, and certified under its seal, shall have the same force and validity in any part of this state as though issued or done by any court of record of this state.

ARTICLE VI.—EDUCATIONAL DEPARTMENT.**Board of education.**

§ 410. The government of the school department of the city shall be vested in a board of education, to consist of seven members, to be called school directors. One school director shall be elected from each ward at the regular municipal election, by the vote of the city at large, and shall hold office for the term of four years, and until his successor is elected and qualified; provided, that the first board of education elected under the provisions of this chapter shall, at their first meeting, so classify themselves by lot as that three of their number shall go out of office at the expiration of two years, and four at the expiration of four years.

Organization.

§ 411. The board of education shall meet on the first Monday after their election, and elect one of their number president, and shall hold meetings at least once in each month thereafter at such times as shall be determined by a rule of said board. A majority of all the members elected shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. The board may determine the rules of its proceedings. Its sessions shall be public, and its records shall be open to public inspection. The board shall also have power to fill all vacancies occurring in the board until the next regular municipal election.

Power of board.

§ 412. The board of education shall have sole power:

1. To establish and maintain public schools, and to establish school districts, and to fix and alter the boundaries thereof.

Employees.

2. To employ and dismiss teachers, janitors, and school-census marshals, and to fix, alter, allow and order paid their salaries or compensation, and to employ and pay such mechanics and laborers as may be necessary to carry into effect the powers and duties of the board, and to withhold, for good and sufficient cause, the whole or any part of the salary or wages of any person or persons employed as aforesaid.

Regulation of schools.

3. To make, establish, and enforce all necessary and proper rules and regulations, not contrary to law, for the government and progress of public schools within the city, the teachers thereof, and the pupils therein, and for carrying into effect the laws relating to education; also to establish and regulate the grade of schools, and determine what text-books, courses of study, and mode of instruction shall be used in said schools.

Supplies.

4. To provide for the school department of the city fuel and lights, water, blanks, blank-books, printing and stationery, and to incur such other incidental expenses as may be deemed necessary by said board.

Building and repairs.

5. To build, alter, repair, rent, and provide schoolhouses, and furnish them with proper school furniture, apparatus, and appliances, and to insure any and all such school property.

To hold property in trust.

6. To receive, purchase, lease, and hold in fee, in trust for the city, any and all real estate, and to hold in trust any personal property that may have been acquired, or may hereafter be acquired, for the use and the benefit of the public schools of the city; provided, that no real estate shall be bought, sold, or exchanged, or expenditures incurred for the construction of new schoolhouses without the consent of four members of the board of education and four members of the city council; and provided further, that the proceeds of any such sale or exchange of real estate shall be exclusively applied to the purchase of other lots, or the erection of schoolhouses; and the city council of the city is hereby authorized and required to make over to said board of education, upon application in writing by said board, through its president and secretary, by good and sufficient deeds of conveyance, all property, both real and personal, now held by said city council in trust for the city for the use and benefit of the public schools; and the said board is hereby authorized to defray all expenses attending the same.

To improve property.

7. To grade, fence, and improve all school lots, and in front thereof to grade, sewer, plank, or pave and repair streets, and to construct and repair sidewalks.

To sue and defend.

8. To sue for any and all lots, lands and property belonging to or claimed by the said school department, and to prosecute and defend all actions at law or in equity necessary to recover and maintain the full enjoyment and possession of said lots, lands, and property.

To estimate money needed.

9. To determine annually the amount of money required for the support of the public schools, and for carrying into effect all the provisions of law in reference thereto; and in pursuance of this provision the board shall, on or before the first Monday in Febru-

ary of each year, submit in writing to the city council a careful estimate of the whole amount of money to be received from the state and county, and the amount required from the city for the above purposes, and the amount so found to be required from the city, shall, by the city council, be added to the other amounts to be assessed and collected for city purposes; provided, that the amount to be thus assessed for school purposes shall not exceed thirty cents on each one hundred dollars valuation upon the assessment-roll, but may be increased to forty cents by consent of two-thirds of the city council, and that when collected it shall be immediately paid into the school fund, to be drawn out only upon the order of the board of education.

Disbursements.

10. To establish regulations for the just and equal disbursement of all moneys belonging to the public school fund.

Demands.

11. To examine and allow, in whole and in part, every demand payable out of the school fund, or to reject any such demands for good cause.

Encumbrances.

12. To discharge all legal encumbrances now existing, or which may hereafter exist, upon any school property.

Age limit.

13. To prohibit any child under six years of age from attending the public schools.

Other acts.

14. And generally to do and perform such other acts as may be necessary and proper to carry into force and effect the powers conferred on said board, and to increase the efficiency of the public schools in said city.

Oaths on demands.

§ 413. The president of the board of education shall have power to administer oaths and affirmations concerning any demand upon the treasury payable out of the school fund, or other matters relating to his official duties.

Contracts.

§ 414. All contracts for building shall be given to the lowest bidder therefor offering adequate security, to be determined by the board, after due public notice published for not less than ten days in one daily paper of the city.

No director or superintendent to be a party.

§ 415. No school director or superintendent shall be interested in any contract pertaining in any manner to the school department of said city. All contracts in violation of this section are declared void, and any director or superintendent violating or aiding in violating the provisions of this section shall be deemed guilty of misdemeanor, and shall be punished by fine of not less than one hundred dollars nor more than one thousand dollars.

City board of examiners.

§ 416. No teacher shall be employed in any of the public schools without having a certificate issued under the provisions of this chapter. For the purpose of granting the certificates required, the board of education shall appoint a city board of examination. The city board of examination shall consist of the school superintendent and four other persons, residents of such city, at least two of whom shall be experienced

teachers. The members of the city board of examination shall receive for their services such compensation as may be fixed by the board of education. Such city board of examination shall have power:

Rules.

First. To adopt rules and regulations not inconsistent with the laws of this state for its own government, and for the examination of teachers.

Examination.

Second. To examine applicants, and to prescribe a standard of proficiency which will entitle the person examined to a certificate.

Certificates.

Third. To grant city certificates of three grades:

1. High school certificates, valid for six years, and authorizing the holder to teach any primary, grammar, or high school in such city;

2. City certificates, first grade, valid for four years, and authorizing the holder to teach any primary or grammar school in such city;

3. City certificates, second grade, valid for two years, and authorizing the holder to teach any primary school in such city;

Fourth. Without examination, to grant city certificates and fix the grade thereof to the holders of state life diplomas, state educational diplomas, state normal school diplomas, state university diplomas (when recommended by the faculty of the university), state certificates, city certificates granted in other cities of this state, and life diplomas, and state normal school diplomas of other states;

Fifth. To revoke or suspend for immoral or unprofessional conduct, profanity, intemperance, or evident unfitness for teaching, any certificate granted by them.

Secretary.

§ 417. The school superintendent shall act as secretary and bookkeeper of the board of education, and perform all clerical duties required by such board. In the absence of the superintendent, the board of education may appoint one of their own number to act as secretary. The school superintendent may appoint an assistant at a salary of one hundred dollars per month. The superintendent may, for a good and sufficient cause, provisionally suspend any teacher employed in the schools of such city until the next meeting of the board of education.

Superintendent's reports.

§ 418. The superintendent shall report to the board of education annually, and at such other times as they may require, all matters pertaining to the expenditures, income and condition and progress of the public schools of said city during the preceding year, with such recommendations as he may deem proper.

Duty of superintendent.

§ 419. It shall be the duty of the superintendent to visit and examine each school at least once a month, to observe, and cause to be observed, such general rules for the regulation and government and instruction of the schools, not inconsistent with the laws of the state, as may be established by the board of education; to attend the sessions of the board, and inform them at each session of the condition of the public schools, schoolhouses, school fund, and other matters connected therewith, and to recommend such measures as he may deem necessary for the advancement of education in the city. He shall acquaint himself with all the laws, rules, and regulations govern-

ing the public schools in said city, and the judicial decisions thereon, and give advice on subjects connected with the public schools, gratuitously, to officers, teachers, pupils, and their parents and guardians.

Vacancy.

§ 420. In case of vacancy in the office of superintendent, the board of education shall have power to fill the vacancy until the next ensuing municipal election.

School fund.

§ 421. The school fund of the city shall consist of all moneys received from the state school fund; of all moneys arising from taxes which shall be levied annually by the city council of the city for school purposes; of all moneys arising from the sale, rent, or exchange of any school property, and of such other moneys as may, from any source whatever, be paid into said school fund; which fund shall be kept separate and distinct from all other moneys, and shall only be used for school purposes under the provisions of this chapter. If, at the end of any fiscal year, any surplus remains in the school fund, such surplus money shall be carried forward to the school fund of the next fiscal year, and shall not be, for any purpose whatever, diverted or withdrawn from said fund, except under the provisions of this chapter.

School fund, how expended.

§ 422. The said school fund shall be used and applied by said board of education for the following purposes, to wit:

1. For the payment of the salaries or wages of teachers, janitors, school-census marshals, and other persons who may be employed by said board;
2. For the erection, alteration, repairs, rent, and furnishing of schoolhouses;
3. For the purchase money or rent of any real or personal property purchased or leased by said board;
4. For the insurance of all property;
5. For the discharge of all legal encumbrances on any school property;
6. For lighting schoolrooms, and the offices and rooms of the superintendent and board of education;
7. For supplying the schools with fuel, water, apparatus, blanks, blank-books, and necessary school appliances, together with books for indigent children;
8. For supplying books, printing and stationery for the use of the superintendent and board of education, and for the incidental expenses of the board and department;
9. For the payment of the salary of the superintendent and assistant superintendent;
10. For grading and improving all school lots, and for grading, sewerage, planking, or paving and repairing streets, and constructing and repairing sidewalks in front thereof.

Claims.

§ 423. All claims payable out of the school fund shall be filed with the secretary of the board, and after they shall have been approved by a majority of all the members elect of said board, upon a call of the ayes and noes, which shall be recorded, they shall be signed by the president of the board and by the superintendent, and be sent to the city treasurer. Every demand shall have indorsed upon it a certificate of its approval. All demands for salaries shall be paid monthly.

Debt not to be in excess of income.

§ 424. All demands authorized by this article shall be paid by the city treasurer from the school fund, when the same shall be presented to him, ordered paid, and approved by the board; provided, that the said board shall not have power to contract

any debt or liabilities, in any form whatsoever, against the said city, in contravention of this article, or exceeding in any year the income and revenue provided for the school fund for such year.

Auditor to certify.

§ 425. It shall be the duty of the auditor of the county in which any such city may be situated, upon the first Monday in each month, and at such other times as he may deem proper, to certify in duplicate to the superintendent of schools of such county, the amount of school moneys at that time in the county treasury, and the amount received during the previous month. The county superintendent shall, upon receipt of such certificates, indorse upon one of them the amount of such moneys to which the common schools in such city are entitled. The certificate so indorsed shall at once be returned to said auditor, who shall direct upon the same the county treasurer to pay the sum designated upon such certificate to the treasury of such city for the use of the school fund thereof.

Treasurer to pay.

§ 426. The treasurer of such county shall thereupon pay to the treasurer of such city the sum directed by the auditor as above provided; and when said moneys are placed in such city school fund, they shall be used in precisely the same manner as moneys raised by city school taxes in such city; provided, that the entire revenue derived by such city from the state school fund, and the state school tax, shall be applied by said board of education exclusively to the support of primary and grammar schools.

CHAPTER IV.

MUNICIPAL CORPORATIONS OF THE THIRD CLASS.

(A charter for cities having a population of more than 15,000 and not exceeding 30,000.)

ARTICLE I.—GENERAL POWERS.

Third class.

§ 500. Every municipal corporation of the third class shall be entitled the city of — (naming it), and by such name shall have perpetual succession, may sue and be sued in all courts and places, and all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the city authorities, and may purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of the same for the common benefit.

ARTICLE II.—GENERAL PROVISIONS RELATING TO OFFICERS.

City officers.

§ 501. The government of such city shall be vested in a mayor; a common council, to consist of seven aldermen; a board of education, to consist of seven school directors; a police judge; an assessor; a clerk, who shall be ex-officio auditor; a treasurer; a superintendent of streets; a tax and license collector; a water-rate collector; a city attorney, and such other and inferior officers as the common council may appoint.

Election and tenure.

§ 502. The aldermen, mayor, police judge, city attorney, and assessor shall be elected by the qualified electors of such city, at a general municipal election to be held therein on the second Tuesday in March, in each even-numbered year. The mayor, police judge, city attorney, and assessor shall hold office for the period of two years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified. The members of the common council and board of education shall

hold office for the period of four years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified; provided, that the first common council elected under the provisions of this chapter shall, at their first meeting, so classify themselves by lot as that three of their number shall go out of office at the expiration of two years, and four at the expiration of four years; and provided further, that the first board of education elected under the provisions of this chapter shall, at their first meeting so classify themselves by lots as that three of their number shall go out of office at the expiration of two years, and four at the expiration of four years.

Other officers appointed.

§ 503. All other officers, except as otherwise in this chapter provided, shall be appointed by the common council, upon the nomination of the mayor, and shall hold office for the period of two years from and after the date of such appointment, and until their successors are appointed, elected, and qualified.

Bonds.

§ 504. The common council shall, by ordinance, determine what officers shall give bonds for the faithful performance of their duties, and fix the amount of such bond; and each of such officers shall, before entering upon the duties of his office, execute a bond to such city in such penal sum as the common council by ordinance may determine, conditioned for the faithful performance of his duties, including in the same bond the duties of all offices of which he is made by this chapter ex-officio incumbent. Such bonds shall be approved by the common council. All bonds, when approved, shall be filed with the clerk, except the bond of the clerk, if any, which shall be filed with the mayor. All the provisions of any law of this state relating to the official bonds of officers shall apply to such bonds except as herein otherwise provided. Every officer of such city, before entering upon the duties of his office, shall take and file with the clerk the constitutional oath of office.

Vacancies.

§ 505. Any vacancy occurring in any of the offices provided for in this chapter, except in the office of school director, shall be filled by appointment by the common council upon the nomination of the mayor, but if such office be elective, such appointee shall hold office only until the next regular election, at which time a person shall be elected to serve for the remainder of such unexpired term.

Compensation.

§ 506. The aldermen and school directors shall receive no compensation whatever. The annual salaries of other officers shall be as follows: Mayor, one thousand two hundred dollars; police judge, one thousand eight hundred dollars; assessor, one thousand eight hundred dollars; city attorney, one thousand five hundred dollars; street superintendent, one thousand two hundred dollars; clerk and auditor, one thousand five hundred dollars; tax and license collector, one thousand two hundred dollars; treasurer, one thousand dollars; water-rate collector, one thousand two hundred dollars; school superintendent, one thousand five hundred dollars; all of which salaries shall be paid monthly.

Elections.

§ 507. All elections in such city shall be held in accordance with the general election law of the state, so far as the same may be made applicable; and no person shall be entitled to vote at such election unless he shall be a qualified elector of the county, enrolled upon the great register thereof, and shall have resided in such city for at least thirty days next preceding such election. The common council shall give such

notice of each election as may be prescribed by ordinance, shall appoint boards of election, and fix their compensation, and establish and change election precincts and polling-places; provided, that no part of any ward less than the whole thereof shall be attached to any other ward, or part thereof, in forming election precincts. At any municipal election the last printed great register of the county shall be used, and any elector whose name is not upon such printed register shall be entitled to vote upon producing and filing with the board of election a certificate, under the hand and official seal of the county clerk, showing that his name is registered and uncanceled upon the great register of such county, provided that he is otherwise entitled to vote.

Eligibility to office.

§ 508. No person shall be eligible to or hold any office in such city, whether filled by election or appointment, unless he be a resident and elector therein, and shall have resided in such city for one year next preceding the date of such election or appointment; provided, however, that the provisions of this section shall not apply to school superintendents or school teachers. One alderman and one school director shall be elected from each ward, and the person so elected must be a resident of the ward from which he is so elected, and continue to be such resident during his term of office, and if he shall fail to so continue a resident of such ward, his office shall by reason thereof, immediately become vacant.

Free library.

§ 509. The trustees of any free public library created or existing in such city under the provisions of an act entitled "An act to establish free public libraries and reading-rooms," approved April twenty-sixth, eighteen hundred and eighty, shall be appointed by the council in the same manner as other officers are appointed under the provisions of this chapter, anything in the provisions of said act to the contrary notwithstanding.

ARTICLE III.—LEGISLATIVE DEPARTMENT.

Common council—Meetings.

§ 520. The common council shall meet on the Monday next succeeding the date of said general municipal election, and shall hold regular meetings at least once in each month, at such times as they shall fix by ordinance. Special meetings may be called at any time by the mayor, or by three aldermen, by written notice delivered to each member at least three hours before the time specified for the proposed meeting. All meetings of the common council shall be held within the corporate limits of the city, at such place as may be designated by ordinance, and shall be public.

Mayor to preside.

§ 521. At any meeting of the common council, a majority of the aldermen shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The mayor shall preside at all meetings of the council, and in case of his absence, the council may appoint a president pro tem.; and in case of the absence of the clerk, the mayor or president pro tem. shall appoint one of the members of the council clerk pro tem.

Rules.

§ 522. The common council shall judge of the qualifications of its members, and of all election returns, and determine contested elections of all city officers. They may establish rules for the conduct of their proceedings, and punish any member or other person for disorderly behavior at any meeting. They shall cause the clerk to keep a correct journal of all their proceedings, and, at the desire of any member, shall cause the ayes and noes to be taken on any question, and entered on the journal.

Light and water ordinances.

§ 523. No ordinance, and no resolution or order for the payment of money, for granting any franchise, for lighting or watering streets, or for supplying water for municipal purposes, shall be passed by the common council on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting; and no ordinance, and no such resolution or order, shall have any validity or effect unless passed by the votes of at least four aldermen and approved by the mayor; provided, that if the mayor shall neglect or refuse to approve the same within five days, then the same may be passed by the votes of five aldermen, and shall then take effect as if approved by the mayor.

Powers of council.

§ 524. The common council of such city shall have power:

Ordinances.

1. To pass ordinances not in conflict with the constitution and laws of this state, or of the United States.

Real estate.

2. To purchase, lease, or receive such real estate and personal property as may be necessary or proper for municipal purposes, and to control, dispose of, and convey the same for the benefit of the city; provided, that they shall not have power to sell or convey any portion of any water front.

Water supply.

3. To acquire, construct, repair, and manage pumps, aqueducts, reservoirs, and other works necessary or proper for supplying the city with water.

Streets.

4. To establish, lay out, alter, open, keep open, improve, and repair streets, sidewalks, alleys, bridges, squares, and other public highways and places within the city and to drain, sprinkle, and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, macadamize, gravel, and curb the same in whole or in part, and to construct gutters, culverts, sidewalks and cross-walks therein or upon any part thereof; to cause to be planted, set out, and cultivated, shade trees therein; and generally manage and control all such highways and places.

Sewers.

5. To construct and maintain drains and sewers.

Extinguishment of fires.

6. To provide fire-engines and all other necessary or proper apparatus for the prevention and extinguishment of fire, and to construct and maintain telegraph and telephone lines for fire and police purposes.

Poll-tax.

7. To impose on and collect from every male inhabitant between the ages of twenty-one and sixty years an annual street poll-tax not exceeding two dollars; and no other road poll-tax shall be collected within the limits of such city.

Dog tax.

8. To impose and collect an annual tax, not exceeding two dollars, on every dog owned or harbored within the limits of the city; and no other dog tax shall be collected within the limits of such city.

Property tax.

9. To levy and collect annually a property tax, not exceeding one dollar on each one hundred dollars of the assessed value of all real and personal property within such city, which said tax shall be apportioned as follows: For the general fund, not exceeding fifty cents on each one hundred dollars; for the road fund, not exceeding twenty-five cents on each one hundred dollars; and for the school fund, not exceeding twenty-five cents on each one hundred dollars; each of which funds shall be kept separate from all others.

Licenses.

10. To license, for purposes of regulation and revenue, all and every kind of business authorized by law, and transacted or carried on in such city, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same by suit or otherwise.

Rivers.

11. To improve the rivers and streams flowing through such city, or adjoining the same; to widen, straighten, and deepen the channels thereof, and remove obstructions therefrom; to improve the water front of the city; to construct and maintain embankments and other works to protect such city from overflow; and to bridge any creek or river so as not to interfere with navigation.

Public buildings.

12. To erect and maintain buildings for municipal purposes.

Tracks and pipes.

13. To permit, under restrictions as they may deem proper, the laying of railroad tracks and the running of cars drawn by horses, steam, or other motive power thereon, and the laying of gas and water pipes in the public streets, and the construction and maintenance of telegraph and telephone lines therein.

Ward division.

14. To divide the city, by ordinance, into seven wards as nearly equal in population as may be, to fix the boundaries thereof, and to change the same from time to time; provided, that no change in the boundaries of any ward shall be made within sixty days next before the date of said general municipal election, nor within twenty months after the same shall have been established or altered.

Fire department.

15. To establish and regulate a fire department and a police department, to appoint and remove the officers and employees thereof, and to prescribe their duties and fix and order paid their salaries and compensation.

Subordinate officers.

16. To appoint and remove such subordinate officers as they may deem proper, and to fix their duties and compensation.

Imposition of penalties.

17. To impose fines, penalties, and forfeitures for any and all violations of ordinances; and for any breach or violation of any ordinance, to fix the penalty by fine or imprisonment, or both; but no such fine shall exceed five hundred dollars, nor the term of such imprisonment exceed six months.

Prison labor.

18. To cause all persons imprisoned for violation of any ordinance to labor on the streets or other public property or works within the city.

Other acts.

19. To do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter.

Enacting clause.

§ 525. The enacting clause of all ordinances shall be as follows: "The mayor and common council of the city of — do ordain as follows." Every ordinance shall be signed by the mayor, attested by the clerk, and published at least five times in a newspaper published in such city.

Common council to audit.

§ 526. All demands against such city, except for school purposes, shall be presented to and audited by the common council, in accordance with such regulations as they may by ordinance prescribe; and upon the allowance of any such demand, the mayor shall draw a warrant upon the treasurer for the same, which warrant shall be countersigned by the clerk, and shall specify for what purpose the same is drawn, and out of what fund it is to be paid.

No debt in excess of available money.

§ 527. The common council shall not create, audit, allow, or permit to accrue any debt or liability in excess of the available money in the treasury that may be legally apportioned and appropriated for such purposes; provided, that any city, during the first year of its existence under this act, may incur such indebtedness or liability as may be necessary, not exceeding in all the income and revenue provided for it for such year; nor shall any warrant be drawn, or evidence of indebtedness be issued, unless there be at the time sufficient money in the treasury legally applicable to the payment of the same, except as hereinafter provided.

Indebtedness in excess to be decided by election.

§ 528. If, at any time, the common council shall deem it necessary to incur any indebtedness in excess of the money in the treasury applicable to the purpose for which such indebtedness is to be incurred, they shall give notice of a special election by the qualified electors of the city, to be held to determine whether such indebtedness shall be incurred. Such notice shall specify the amount of indebtedness proposed to be incurred, the purpose or purposes of the same, and the amount of money necessary to be raised annually by taxation for an interest and sinking fund, as hereinafter provided. Such notice shall be published for at least three weeks in some newspaper published in such city; and no other question or matter shall be submitted to the electors at such election. If, upon a canvass of the votes cast at such election, it appear that not less than two-thirds of all the qualified electors voting at such election shall have voted in favor of incurring such indebtedness, it shall be the duty of the common council to pass an ordinance providing for the mode of creating such indebtedness, and of paying the same; and in each ordinance provision shall be made for the levy and collection of an annual tax upon all the real and personal property, subject to taxation within such city sufficient to pay the interest on such indebtedness as it falls due; and also to constitute a sinking fund for the payment of the principal thereof, within a period of not more than twenty years from the time of contracting the same. It shall be the duty of the common council in each year thereafter, at the time at which other taxes are levied, to levy a tax sufficient for such purpose, in addition to the taxes by this chapter authorized to be levied. Such tax, when collected, shall be kept in the treasury as a separate fund, to be inviolably appropriated to the payment of the principal and interest of such indebtedness.

Violation of ordinances.

§ 529. The violation of any ordinance of such city shall be deemed a misdemeanor, and may be prosecuted by the authorities of such city in the name of the people of the state of California, or may be redressed by civil action, at the option of said authorities. Any person sentenced to imprisonment for the violation of an ordinance may be imprisoned in the city jail; or, if the common council by ordinance shall so prescribe, in the county jail of the county in which such city may be situated, in which case the expense of such imprisonment shall be a charge in favor of such county and against such city.

Nuisances.

§ 530. Every act or thing done or being within the limits of such city, which is or may be declared by law or by any ordinance of such city to be a nuisance shall be and is hereby declared to be a nuisance, and shall be considered and treated as such in all actions and proceedings whatever; and all remedies which are or may be given by law for the prevention and abatement of nuisances shall apply thereto.

System of street work.

§ 531. The common council are authorized and empowered to provide, by ordinance, a system for doing any or all work in or upon the streets, highways, and public places of such city, and for making therein street improvements and repairs, and for doing any or all work authorized by subdivisions 4 and 5 of section 524 of this act, and for the payment of the cost and expenses thereof, either by the levy and collection of special assessments therefor, in proportion to benefits, upon the property to be benefited thereby, or by payments made out of the road fund of such city, or by both; provided, that in all cases where more than one-half of the expense of any such improvement, except the construction of a sewer or drain, exceeding in amount the sum of one thousand dollars, is to be defrayed by special assessment, the common council shall first adopt a resolution, which shall be entered upon their journal, declaring their intention to make such improvement, and fixing a time at which objections to the making of such improvement will be considered. Such resolution shall also designate the boundaries of the district to be affected or benefited by such improvement. Upon adopting such resolution, the common council shall give notice of such intention, which notice shall be published for twenty days in a newspaper printed and published in such city. Such notice shall describe the improvement so proposed to be made, and state the estimated cost thereof, and designate the time set for such hearing, and shall refer to such resolution so entered upon the journal for such description of boundaries. If, at or before the time so fixed, written objections to such improvement, signed by the owners of two-thirds in value of the property so to be affected or benefited, as shown by the last preceding city assessment-roll, be not filed with the clerk, the common council shall be deemed to have acquired jurisdiction to order the making of such improvement. Any such special assessment made and levied to defray the cost and expenses of any such work, together with any percentage imposed for delinquency and the costs of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, from and after the date of the order for such assessment; which lien may be enforced by a summary sale of such property, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance, or by an action in any court of competent jurisdiction to foreclose such lien; provided, that any property sold to satisfy any such lien shall be subject to redemption within the time and in the manner provided, or that may hereafter be provided by law for the redemption of property sold for taxes.

Right of way.

§532. The common council are authorized and empowered to provide by ordinance for the establishing, laying out, extending, and widening streets and other public highways and places within the city, and for taking private property therefor, and for taking private property for the purpose of rights of way for drains, sewers, and aqueducts, and for the purpose of widening and straightening the channels of streams, and the improvement of water fronts; but no private property or right of way over or through the same shall be taken without the consent of the owner thereof until a just compensation for the same shall be ascertained and paid to such owner, or into court for his use. If the owner of any parcel of land proposed to be taken for any such improvement shall be dissatisfied with the amount of compensation awarded by said council for the taking of such parcel, he may, within twenty days after the date of such award, commence an action against such city in any court of competent jurisdiction within the city, township, or county, to recover such amount of compensation as he may consider himself entitled to. The amount of compensation ascertained and awarded in such action shall be deemed and taken to be the amount of compensation to which such person will be entitled if such improvement be made. If such person fail to recover in such action a greater amount of compensation than was so awarded by said council, he shall not recover costs but shall pay costs to such city. Any owner of or person interested in any such parcel of land, who shall fail to commence such action within the time herein limited, shall be deemed to have waived his right in that behalf, and to have assented to and ratified the award of said council. The common council shall not acquire jurisdiction to exercise any of the powers hereinbefore in this section enumerated, until a petition in writing therefor is first presented to said council, signed by at least twenty inhabitants of said city, taxable therein for municipal purposes. Such petition must describe generally the street, highway, or public place proposed to be laid out or established, or the proposed alteration by widening or extending the same, or by widening or straightening the channels of streams, or by the improvement of water fronts; or if a right of way is sought for drains, sewers, or aqueducts, such petition shall describe the proposed route for the same. Such petition shall be heard at a regular meeting of the council, notice of such hearing being given by the clerk by publication in a newspaper published in such city, for a period of three weeks before such hearing. Such notice shall be deemed to give said council full jurisdiction over the subject matter, and over the person of every owner of or person interested in any parcel of land to be taken or assessed for any such improvement; and every person interested, from and after the expiration of such publication, shall be deemed to have notice of all subsequent proceedings; provided, that nothing herein contained shall be construed to prevent such council from giving such other or further notice as they may deem proper. At the time fixed in such notice, or at such time to which such hearing may be postponed, the council shall proceed to hear and determine the prayer of such petition pursuant to such rules and regulations as may be prescribed by such ordinance. Such system, so established by ordinance, may provide for the payment of such compensation, either by the levy and collection of special assessments therefor, in proportion to benefits upon the property to be affected or benefited by any such improvement, or by payments made out of the street fund, or river and water front improvement fund of such city, or by both. Any such special assessment made and levied to provide means for the payment of any such compensation and the cost of ascertaining the same, together with any percentage imposed for delinquency and the costs of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, from and after the date of the order for such assessment; which lien may be enforced by a summary sale of such property, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations

as may be prescribed by ordinance, or by an action in any court of competent jurisdiction to foreclose such lien; provided, that any property sold to satisfy any such lien shall be subject to redemption within the time and in the manner provided or that may hereafter be provided by law for the redemption of property sold for taxes.

Taxes and tax sales.

§ 533. The common council shall have power, and it shall be their duty, to provide by ordinance for the assessment, levy, and collection of all city taxes, which shall conform, as nearly as the circumstances of the case may permit, to the provisions of the laws of this state in reference to the assessment, levy, and collection of state and county taxes, except as to the times for such assessment, levy, and collection, and except as to the officers by whom such duties are to be performed. All taxes assessed, together with any percentage imposed for delinquency and the costs of collection, shall constitute liens on the property assessed from and after the first Monday in March in each year; which liens may be enforced by a summary sale of such property, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance, or by actions in any court of competent jurisdiction to foreclose such liens; provided, that any property sold for such taxes shall be subject to redemption within the time and in the manner provided or that may hereafter be provided by law for the redemption of property sold for state or county taxes. All deeds made upon any sale of property for taxes or special assessments under the provisions of this chapter shall have the same force and effect in evidence as is or may hereafter be provided by law for deeds for property sold for nonpayment of state or county taxes.

Laws concerning indebtedness to continue in force.

§ 534. No money shall be expended or drawn out of the street fund for any but street and sewer purposes, and no money shall be expended or drawn out of the school fund for any but school purposes. Whenever any city organizing under this act has a bonded indebtedness contracted or issued under any law of this state, all the provisions of such laws in regard to the levying, collection, and disposition of taxes and revenues for the payment of such indebtedness and the interest thereon, shall continue in force, and the taxes levied and revenues raised for the payment of the interest and principal of such indebtedness shall be in addition to the taxes provided by section 524 of this act, and the common council of said city, organizing under this act, is hereby authorized and empowered to levy and collect such taxes and apportion such revenues for the payment of such indebtedness and interest, in addition to the limit of taxation hereinbefore prescribed in this act; and nothing in this chapter shall be construed to prevent any city from levying and collecting the tax authorized by the act entitled, "An act to establish free public libraries and reading rooms," approved April twenty-sixth, eighteen hundred and eighty, in addition to the taxes herein authorized to be levied and collected. All moneys received from licenses, and from fines, penalties and forfeitures, shall be paid into the general fund.

River improvement.

§ 535. The common council may also levy and cause to be collected, in each year, in addition to the taxes herein authorized to be levied and collected, a tax, not exceeding twenty cents on each one hundred dollars of the assessed value of all real and personal property within such city subject to taxation, the proceeds of which tax shall be known as the "River and Waterfront Improvement Fund," and shall be applied to the improvement of streams, bays and waterfronts, the erection of embankments, and other works to protect the city from overflow, and the construction of works of drainage, and for no other purposes whatever.

Public work to be done by contract.

§ 536. In the erection, improvement, and repair of all public buildings and works, in all streets and sewer work, and in all work in or about streams, bays, or water-fronts, or in or about embankments or other works for protection against overflow, or in furnishing any supplies or materials for the same, when the expenditures required for the same exceeds the sum of five hundred dollars, the same shall be done by contract, and shall be let to the lowest responsible bidder, after due notice, under such regulations as may be prescribed by ordinance; provided, that the common council, or board of education, may reject all bids presented, and re-advertise, in their discretion; and provided further, that in case of any great and unforeseen calamity or emergency the common council, by a resolution, unanimously adopted and approved by the mayor, may dispense with the foregoing provisions of this section, the reason for such action being entered on their minutes. The common council shall, annually, at a stated time, contract for doing all city printing and advertising, which contract shall be let to the lowest bidder, after notice as provided in this section. All advertising shall be done in a newspaper printed and published in such city, and the contract therefor shall be awarded separately from all other printing.

ARTICLE IV.—EXECUTIVE DEPARTMENT.**Mayor.**

§ 550. The mayor shall be at the head of the executive department of the city. It shall be his duty to be vigilant and active in causing the laws and ordinances of the city to be duly executed and enforced; to have the general supervision of the police department; to receive and examine into all complaints preferred against any officer, and to certify the same to the common council; to administer and certify oaths and affirmations in any and all matters and proceedings pertaining to the city; to preside at all meetings of the common council; and to perform such other duties as are or may be prescribed by law or ordinance.

Clerk.

§ 551. It shall be the duty of the clerk to keep a true and correct record of all the proceedings of the common council, and to countersign all warrants; to keep accounts current with every officer charged with the receipt or disbursement of money; to keep the seal of the city and affix the same to all instruments requiring such seal; to perform the duties required of him by the next section; to report to the common council on the first Monday of each and every month a full and detailed statement of the receipts and disbursements of the treasury during the preceding month, and the state of each particular fund, which statement shall be verified by his oath; to administer and certify oaths and affirmations; to perform such duties in and about the assessment, levy, and collection of taxes and assessments as may be prescribed by law or ordinance; to appoint deputies; and to perform such other and further duties as the common council may by ordinance prescribe.

Treasurer.

§ 552. It shall be the duty of the treasurer to receive, upon the order of the clerk, all moneys due or belonging to the city, for which he shall give his receipt, which receipt shall be filed with the clerk by the person making such payment, and the clerk shall give to such persons his receipt therefor, which receipt shall be the only evidence of payment. He shall pay all warrants drawn by authority of and in accordance with law. He shall perform such duties in the collection of taxes or assessments as are or may be prescribed by law or ordinance. He shall, on the first Monday of each and every month, present to the common council a full and detailed statement of the amount of money belonging to the city received by him, and by him disbursed during the pre-

ceding month, and the state of each particular fund, which statement shall be verified by his oath. He may appoint deputies by and with the consent of the common council, and shall perform such other duties as are or may be prescribed by law or ordinance.

Compensation, how fixed.

§ 553. The common council shall, by ordinances not inconsistent with this chapter, prescribe the duties of all officers, and fix their compensation.

ARTICLE V.—JUDICIAL DEPARTMENT.

Police and justices' courts.

§ 560. The judicial power of the city shall be vested in a police court, to be held by the police judge of such city. Said police court shall have jurisdiction, concurrently with the justices' courts, of all criminal actions and proceedings arising within the corporate limits of such city, and which might be tried in such justices' courts; and shall have exclusive jurisdiction of all actions for the recovery of any fine, penalty, or forfeiture prescribed for the breach of any ordinance of such city, of all actions founded upon any obligation or liability created by any ordinance, and of all prosecutions for any violation of any ordinance. The rules of practice and mode of proceeding in said police court shall be the same as are or may be prescribed by law for justices' courts in like cases; and appeals may be taken to the superior court of the county in which such city may be situated from all judgments of said police court, in like manner and with like effect as in cases of appeals from justices' courts. Said court shall be a court of record.

Police judge.

§ 561. The police judge shall be judge of the police court, and shall have the powers and perform the duties of a magistrate. He may administer and certify oaths and affirmations, and take and certify acknowledgments.

When disqualified.

§ 562. In all cases in which the police judge is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the third degree, or is otherwise disqualified, or in case of his sickness or inability to act, the mayor may call in a justice of the peace residing in the city to act in the place and stead of the police judge; or if there be no justice of the peace residing in the city, or if all those so residing are likewise disqualified, then he may call in any justice of the peace residing in the county in which such city may be situated.

Clerk of court.

§ 563. The common council shall appoint, upon the nomination of the mayor, a clerk for said police court. Said clerk shall keep the records of said court and the seal thereof, and perform such other duties as may be required of him by law or ordinance. He shall receive a salary of one hundred dollars per month. The council shall also provide a seal for said police court.

ARTICLE VI.—SCHOOL DEPARTMENT.

Board of education.

§ 570. From and after the organization of each of such cities, the same shall constitute a separate school district, which shall be governed by the board of education of such city.

Vacancies.

§ 571. In case a vacancy shall occur in the office of school director, the board of education shall choose a person to fill such vacancy, who shall serve until the next elec-

tion, when, if the term does not then expire, a person shall be elected to serve for the remainder of such unexpired term.

Meetings.

§ 572. The board of education shall meet on the second Tuesday after such general municipal election, and choose one of its members as president, and another as vice president. Its regular meetings shall thereafter be held as often as twice in each month, and the time and place for holding such meetings shall be fixed by a rule of said board. Special meetings of said board may be held when called by written notice, signed by its president, or three of its members, and delivered personally to each of its members who shall not have signed the same. Four members shall constitute a quorum, and no business shall be transacted by said board of education without the concurrence of four of its members; but a majority of the members present at any meeting may adjourn from time to time. All meetings of said board of education shall be public, and full records of its proceedings shall be kept by the school superintendent, who shall be ex-officio clerk of said board of education.

Powers of board.

§ 573. The board of education shall have power:

To maintain schools.

1. To establish and maintain public schools, and to subdivide the school districts, and to fix and alter the boundaries of such subdivisions.

Superintendent.

2. To appoint a school superintendent, who shall hold office during their pleasure, and to prescribe his duties, and fix his compensation.

Employees.

3. To employ and dismiss teachers, janitors, truant officers, and school census marshals, and to fix, alter, allow, and order paid their salaries or compensation; and to employ and pay such mechanics and laborers as may be necessary to carry into effect the powers hereby conferred.

Regulation of schools.

4. To make, establish, and enforce all necessary or proper rules and regulations, not in conflict with the laws of this state, for the government and management of public schools within such city, the teachers thereof, and the pupils therein, and for carrying into effect the laws relating to education.

Supplies.

5. To provide for the school department of such city fuel and lights, water, printing, and stationery, and to incur such other incidental expenses as may be deemed necessary by said board.

Building and repairs.

6. To build, alter, repair, rent, and provide schoolhouses, and to furnish the same with proper school furniture, apparatus, and appliances, and to insure any and all school property.

Real estate.

7. To purchase, receive, lease, and hold in fee, in trust for such city, any and all real estate and personal property that may have been acquired, or may hereafter be acquired, for the use and benefit of the schools of such city; provided, that no real estate shall be bought, sold, or exchanged, nor any expenditure incurred for the con-

struction of new schoolhouses, without the approval of the common council; and provided further, that the proceeds of any such sale or exchange of real estate shall be exclusively applied to school purposes.

Improvement.

8. To grade, fence, and improve all school lots.

To determine moneys needed.

9. To determine annually the amount of money required for the support of the public schools, and for carrying into effect all the provisions of law in reference thereto; and in pursuance of this provision, the board of education shall, at least ten days before the meeting of the common council at which the annual city taxes are levied, submit in writing to the common council a careful estimate of the whole amount of money to be received from the state and county, and of the amount to be required from such city for the above mentioned purpose; and the amount so found to be required from the city shall, by the common council, be added to the other amounts to be assessed and collected for city purposes, and when collected, the proceeds thereof shall be immediately paid into the school fund of such city, to be drawn out only upon the order of the board of education; provided, that such an annual tax shall not exceed twenty-five cents on each one hundred dollars of the assessed valuation of the real and personal property within such city.

Disbursement regulations.

10. To establish regulations for the just and equal disbursement of all moneys belonging to the school fund.

Encumbrances.

11. To discharge all legal encumbrances existing at the time of the incorporation of such city, or thereafter, on any school property within such city.

Admission of nonresidents.

12. To admit nonresident children, and persons over twenty-one years of age, to any of the departments of the schools of such city, upon the payment, monthly, in advance, to the treasurer of such city, for the school fund, of such tuition fee as said board may establish.

Age limit.

13. To prohibit any children under six years of age from attending the public schools.

Grades and text-books.

14. To establish and regulate the grades of schools in such city, and the course of study, and the mode of instruction to be pursued therein, and to determine what text-books shall be used.

Other acts.

15. To do and perform, in addition to the foregoing powers, such other acts as may be necessary or proper to carry into effect the powers hereby conferred.

Board may sue.

§ 574. The board of education may sue and be sued by their name of office. In any action or judicial proceeding against said board, service of process upon the president, or upon a majority of the members of the board, shall be sufficient to give the court jurisdiction to hear and determine the same.

County treasurer to pay over.

§ 575. All moneys received by the treasurer of the county wherein such city may be situated, on account of the school fund of such city, or the school district consisting of the same, and all sums received into the county treasury, which may be apportioned to said city or district, shall be paid to the treasurer of such city by the treasurer of such county, as soon as received, or as soon as the apportionment shall be made, when apportionment is necessary.

Powers of president.

§ 576. The president of the board of education shall have power to administer oaths and affirmations concerning any demand upon the treasury, payable out of the school fund, and in all other matters relating to the duties of the board of education, and to witnesses examined in any investigation, had by such board of education, or by a committee thereof, duly appointed by it for that purpose.

Same.

§ 577. Said president may issue subpoenas under his hand and the seal of such city, attested by the city clerk, to compel the attendance of witnesses before such board of education, or committee thereof, who shall be entitled to the same fees as witnesses in civil cases, and who may be punished for contempt for nonattendance, or refusal to be sworn, or to answer, by the superior court of the county in which such city may be situated.

Claims.

§ 578. Every claim payable out of the school fund shall be filed with the clerk of the board of education, and after it shall have been approved by the board, a certificate of such approval shall be indorsed thereon, signed by the president and clerk; and a warrant upon the school fund shall be issued thereon for the payment of such claim, which warrant shall be signed by the president of such board, and countersigned by the clerk, and shall specify for what purpose the same is drawn.

Entire revenue for schools.

§ 579. The entire revenue derived by such city from the state school fund and the state school tax shall be applied by said board of education exclusively to the support of primary and grammar schools.

ARTICLE VII.—MISCELLANEOUS PROVISIONS.**Moneys collected.**

§ 590. Every officer collecting or receiving any moneys belonging to or for the use of such city shall settle for the same with the clerk on the first Monday in each month, and immediately pay the same into the treasury, on the order of the clerk, for the benefit of the funds to which such moneys respectively belong.

No officer to be interested in contracts.

§ 591. No officer of such city shall be interested, directly or indirectly, in any contract with such city, or with any of the officers thereof, in their official capacity, or in doing any work or furnishing any supplies for the use of such city or its officers in their official capacity; and any claim for compensation for work done, or supplies or materials furnished, in which any such officer is interested, shall be void, and if audited and allowed shall not be paid by the treasurer. Any willful violation of the provisions of this section shall be a ground for removal from office, and shall be deemed a misdemeanor, and punished as such.

CHAPTER V.

MUNICIPAL CORPORATIONS OF THE FOURTH CLASS.

(Charter for cities having a population of more than 10,000 and not exceeding 15,000.)

ARTICLE I.—GENERAL POWERS.

Fourth class.

§ 600. Every municipal corporation of the fourth class shall be entitled the city of . . . (naming it), and by such name shall have perpetual succession, may sue and be sued in all courts and places, and in all proceedings whatever, and shall have and use a common seal, and the same alter at pleasure; may purchase, receive, have, take, hold, lease, use, and enjoy property of every name or description, and control and dispose of the same for the common benefit.

ARTICLE II.—GENERAL PROVISIONS RELATING TO OFFICERS.

Officers.

§ 601. The officers of such city shall consist of a mayor, twelve councilmen, a collector, who shall also be street commissioner, an assessor, treasurer, city clerk, police judge, city attorney, chief of police, superintendent of public schools, and two school trustees for each ward; and whenever a free public library and reading room is established therein, five trustees thereof; and the council may also provide for the election, by the voters of said city, or by said council, of a superintendent of irrigation. The city council may also elect a city surveyor, harbor-master, poundkeeper, and city jailer, and whenever a paid fire department shall be established in such city, a chief engineer, and one or more assistant engineers, and any other officer necessary to carry out the provisions of this chapter, and for whose election or appointment no provision is made, and may by ordinance prescribe the duties of all city officers, and fix their compensation, subject to the limitations herein contained.

Election under this act.

§ 602. On the first Tuesday after the first Monday of November of each odd-numbered year a municipal election shall be held, at which the qualified voters of such city shall elect one school trustee for each ward, and six councilmen, to be voted for by the wards they may respectively represent, and each to hold office for the term of four years, and until the qualification of his successor; and also a mayor, an assessor, a collector and street commissioner, city attorney, police judge, chief of police, and superintendent of public schools, who shall each hold office for two years, and until the qualification of a successor; provided, that at the first election held after the organization of such city under this act such city shall elect two school trustees for each ward, and twelve councilmen, who shall, at the first meeting of the city council and board of education, respectively, decide by lot their terms of office; six of said councilmen and one-half of the number of school trustees to hold for the term of four years, and the others for the term of two years, and in each case until the qualification of their successors.

Provisions concerning elections.

§ 603. The city council shall call all city elections, designate the time and place of holding the same, giving at least ten days' notice thereof, and shall appoint one inspector or clerk, and two judges of election, for each ward or election precinct in such city, who shall appoint two clerks, and all shall take the oath of office prescribed by law for inspectors, judges, and clerks of state and county elections. All provisions of law regulating elections for state and county officers, not conflicting herewith, shall apply to elections under this chapter. The polls for all city elections shall be open at 8 o'clock a. m., and continue open until 5 o'clock p. m., the same day. If any

officer so appointed shall fail to attend, those attending, with the electors assembled shall fill their places by others from the qualified electors present. All returns of city elections shall be made out and signed by the officers of such election in the usual form, and deposited with the city clerk within two days after the election. The persons having the plurality of the votes cast for each of the respective offices voted for shall be declared elected. No person shall vote at any city election unless he shall be an elector for state and county offices, and shall have actually resided within such city, and in the precinct where he may offer to vote, thirty days preceding such election; provided, that any elector who may remove from one precinct to another within thirty days prior to such election may, if a qualified voter therein at the time of removal, vote in the the precinct from which he may have moved. If any person not having the legal qualifications of an elector at any city election shall fraudulently vote, or attempt to vote, or knowingly hand in two or more ballots folded together, or shall vote, or attempt to vote, more than once at the same election, such person or persons, on conviction thereof, shall be fined in any sum not less than twenty nor more than five hundred dollars, or be imprisoned in the county jail for any period not more than three months, or may be punished by both such fine and imprisonment.

City council to canvass vote.

§ 604. On the Monday following the election, the city council shall convene and publicly canvass the result, and shall issue certificates of election to each person elected by a plurality of votes. When two or more persons have received an equal and highest number of votes for any one of the offices voted for, the city council shall thereafter, at its first regular meeting, decide by vote between the parties which shall be elected. If the city council from any cause fail to meet on the day named, the mayor shall call a special meeting of said council within five days thereafter, and in addition to the notice provided for calling special meetings, shall publish the same on two successive days in some newspaper published in such city. If the mayor fail to call said meeting within said five days, any four councilmen may call it. At such special meeting all elections, appointments, or other business may be transacted that could have been on the day first herein named.

Office, when vacant.

§ 605. Each officer of such city shall take the oath of office, and such as may be required to give bond, file the same, duly approved, within ten days after receiving notice of his election or appointment, or if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed; but if any one, either elected or appointed to office, fail for ten days to qualify as required by law or to enter upon his duties at the time fixed by law or the orders of the city council, then such office shall become vacant; or, if any such officer shall absent himself from such city continuously for ten days without the consent of the city council, or shall openly neglect or refuse to discharge his duties, such office may be by the city council declared vacant; provided, that the penalty for absence from the city shall not apply to such officers as serve without salary or other compensation. Such officers as are elected by the voters of the city shall enter upon their duties on the first Monday of January next succeeding the date of their election; such officers as are appointed or elected by the city council shall enter upon their duties within ten days after receiving notice of their appointment or election.

Unexpired term.

§ 606. When any vacancy occurs in any elective office, except the mayor, the city council may fill the same for the unexpired term, except in case of city councilmen,

or school trustees, which shall be filled until the next city election, and until the qualification of a successor. The city council may, upon written charges, to be entered upon their journal, after notice to the party, and after trial, by a vote of two-thirds of all the members elect, remove any officer.

Official bonds.

§ 607. It shall be the duty of the city council to provide for the accountability of the city assessor, treasurer, clerk, police judge, collector, and street commissioner, city attorney, and all other officers herein provided for, by requiring from them sufficient security for the faithful performance of their duties or trusts, which security shall be given by them before entering on their respective duties. If such security should be or become insufficient, additional security may be required, and if not given within ten days, the council, by a vote of two-thirds of the members, may declare the office vacant, and may thereafter fill the same.

Compensation.

§ 608. The mayor, councilmen, and school trustees shall not receive any salary or compensation for their services; provided, that members of the city council, or a committee thereof for that purpose appointed, may receive for their services, while acting as a board of equalization, a sum to be determined by the council, not to exceed for each one five dollars per day, for each day while actually so engaged, for two weeks in each year, and no longer.

Street commissioner.

§ 609. The collector and street commissioner shall receive a salary, to be fixed by the city council, which shall not exceed the sum of fifteen hundred dollars per annum.

No additional compensation.

§ 610. The city council shall have no power to allow any extra or additional compensation to that in this chapter expressly authorized to any officer for the rendition of services that the city council have power to require the officer to perform by virtue of his office.

Ward division.

§ 611. In case any such city shall, at the time of its organization under this act, be divided into wards, such divisions shall continue, but the city council may, at any time not within three months previous to an annual city election, change the boundaries of such wards, or divide it into others, not exceeding six in number; provided, that such change shall not affect the term of office of any councilman or school trustee, but they shall serve out their term for the ward in which their residence may be; but if more reside within any one ward than the proportion to which it is entitled, those of the shortest unexpired term shall, by the council, be assigned for such unexpired term to a ward where there is a vacancy. The representation of each ward in the city council shall be as near as may be in proportion to its population, but each ward shall have two school trustees.

ARTICLE III.—LEGISLATIVE DEPARTMENT.

City council.

§ 620. The mayor and councilmen of the several wards shall constitute the city council, and at its first meeting in January next after a city election shall elect a city clerk, city treasurer, and one of their own body as president of the city council, and at any time when the mayor and president are both absent, may elect a president pro tem., who shall act during such absence. They shall also, at such time, designate the number of policemen for such city, to be elected as hereinafter provided.

Meetings.

§ 621. A majority of the councilmen elect shall constitute a quorum for the transaction of business. A less number may adjourn from time to time, and they may compel the attendance of absent members. The council may punish their members for disorderly conduct, and upon written charges to be entered on their journal, for such conduct, after trial, may expel a member by a vote of two-thirds of all the members elected. The mayor shall have a vote only in case of a tie in the votes of the other members. They shall determine their rules of proceeding and the qualification of members. The sittings of the council shall be open to the public, except where the interests of the city shall require secrecy. A journal of all their proceedings shall be kept by the clerk under their direction. At any time, at the request of any two members, the ayes and noes on any question shall be taken and entered upon the journal.

Powers of council.

§ 622. The city council shall have power and authority to make and pass all by-laws, ordinances, orders, and resolutions not repugnant to the constitution of the United States or of the state of California, or the provisions of this charter, necessary for the municipal government and the management of the affairs of the city, for the execution of the powers vested in said body corporate, and for carrying into effect the provisions of this chapter; to fix and collect a license tax on and to regulate theaters, melodeons, balls, concerts, dances, and all theatrical, melodeon, circus, or other performances, and all performances where an admission fee is charged, or which may be held in any house or place where wines or liquors are sold to the participators; also all shows, billiard tables, bowling alleys, exhibitions or amusements; to fix and collect a license tax on and to regulate all taverns, hotels, restaurants, saloons, bar-rooms, banks, brokers, manufactories, livery-stable keepers, express companies, and persons engaged in transmitting letters or packages, railroad, stage, and steamboat companies or owners, whose principal place of business is in such city, or who shall have an agency therein; to license and regulate auctioneers; to license, regulate, tax, prohibit, or suppress all tipping-houses, dram-shops, saloons, bars, bar-rooms, raffles, hawkers, peddlers, pawnbrokers, refreshment or coffee stands, booths, or sheds; to prohibit or suppress, or to license and regulate, all dance-houses, fandango-houses, cock-fights, dog-fights, or any exhibition or show of any animal or animals; to license and tax hackney-coaches, cabs, omnibuses, drays, market-wagons, and all other vehicles used for hire, and to regulate their stands, and to fix the rates to be charged for the transportation of persons, baggage, and property; and to license or suppress runners for steamboats, railroads, taverns, or hotels; and to fix and collect a license tax upon all occupations and trades, and all and every kind of business authorized by law, not heretofore specified, and provided, that in the business of selling intoxicating drinks, wines, ales, and beers, in less quantities than one quart, or to be drank on the premises where sold, and on any other business, trade, or calling not provided by law to be licensed for state and county purposes, the amount of license shall be fixed at the discretion of the city council, as they may deem the interests and good order of the city may require; also to prevent and restrain any riot or riotous assemblage, disturbance of the peace, or disorderly conduct, in any place, house, or street in the city; to prevent, remove, and abate nuisances at the expense of the parties creating, causing, or committing, or maintaining the same; to establish, maintain, and regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed and collected of the owners of any animals impounded, and from no other source; to prevent and regulate the running at large of any and all domestic animals within the city limits, or any parts thereof; and to regulate or prevent the keeping of such animals within any part of the city; to control and regulate slaughter-houses, wash houses,

laundries, tanneries, forges, and offensive trades, and to provide for their exclusion or removal from the city limits, or from any part thereof; to provide, by regulation, for the prevention and summary removal of all filth and garbage in the streets, sloughs, alleys, backyards, or public grounds of such city, or elsewhere therein; to establish, alter, and repair city prisons, and to provide for the regulation of the same, and for the safekeeping of persons committed thereto; to provide for the care, feeding, and clothing of the city prisoners; to provide for the formation of a chain-gang for persons convicted of crimes or misdemeanors, and their proper employment and compulsory working for the benefit of the city; and also to provide for the arrest and compulsory working of vagrants; to prohibit and suppress all gaming, and all gambling or disorderly houses, and houses of ill-fame, and all immoral and indecent amusements, exhibitions, and shows; to establish and regulate markets and market-places; to fix and regulate the speed at which railroad cars may run within the city limits, or any portion thereof; to provide for and regulate the commons of the city; to regulate and prohibit fast driving or riding in any portion of the city; to regulate or prohibit the loading or storage of gunpowder and combustible or explosive materials in the city, or transporting the same through its streets or over its waters; to have, purchase, hold, use, and enjoy property of every name or kind whatsoever, and the same to sell, lease, transfer, mortgage, convey, control, or improve; to build, erect, or construct houses, buildings, or structures of any kind needful for the use or purposes of such city; to establish, continue, regulate, and maintain a fire department for such city, to change or reorganize the same, and to disband any company or companies of the said department; also to discontinue and disband said fire department, and to create, organize, establish and maintain a paid fire department for such city; provided, that nothing in this chapter shall be construed to authorize the said city council to disband or discontinue the fire department of any city having, at the time of its organization under this act, a volunteer fire department organized and existing, or to create, establish, and maintain a paid fire department therein, without first submitting the proposition of establishing a paid fire department for such city to the legal voters thereof, at a general city election, for decision, and not after such election, unless thereat a majority of all the votes cast at such election are in favor thereof; and in the event that any time hereafter the volunteer fire department of such city shall be disorganized or disbanded, and a paid fire department established in its stead, then every person who shall have been an active fireman for the space of two years next before the date of such disbanding and establishing shall be entitled to and shall receive an exempt fireman's certificate, and such certificate shall entitle the person to whom it is issued to all the benefits and immunities accorded by the laws of this state in regard to exempt firemen; to institute and perfect any and all measures and means for the prevention or extinguishment of fires; to establish fire limits, and the same to alter at pleasure; to regulate or prevent the erection of wooden or other buildings or structures of combustible materials; to regulate the construction of buildings, sheds, awnings, signs, or any structures of a dangerous or unsafe character; to adopt, enter into, and carry out means for securing a supply of water for the use of such city or its inhabitants, or for irrigating purposes therein; to prevent the overflow of the city, or to secure its drainage; to provide for the numbering of houses; to establish a board of health; to prevent the introduction and spread of disease; to establish a city infirmary, and provide for the indigent sick; and to provide and enforce regulations for the protection of health, cleanliness, peace, and good order of the city; to establish and maintain hospitals within or without the city limits; to control and regulate interments, and prohibit them within the city limits; to build, alter, improve, keep in repair, and control the waterfront; to erect, regulate, and repair wharves and to fix the rate of wharfage and transit wharf, and levy dues upon vessels and commodities; and to provide for the regulation of berths,

landing, stationing, and removing of steamboats, sail vessels, rafts, barges, and all other water craft; to fix the rate of speed at which steamboats and other steam water craft may run along the waterfront of the city; to build bridges so as not to interfere with navigation; to provide for the removal of obstructions to the navigation of any channel or watercourse; to clear out and excavate sloughs and other watercourses or channels; to license steamers, boats, and vessels used in any watercourse in the city, and to fix and collect a license tax thereon; to license ferries and bridges under the law regulating the granting of such license; to determine and impose fines for forfeitures and penalties that shall be incurred for the breach or violation of any city ordinance, and also for a violation of the provisions of this chapter, when no penalty is affixed thereto or provided by law, and to appropriate all such fines, penalties, and forfeitures for the benefit of the city; but no penalty to be enforced shall exceed, for any offense, the amount of five hundred dollars, or three months' imprisonment, or both; and every violation of any lawful order, regulation, or ordinance of the city council of such city is hereby declared a misdemeanor or public offense, and all prosecutions for the same may be in the name of the people of the state of California; to create and establish a city police; to prescribe their duties and their compensation, and to provide for the regulation and government of the same; to provide for conducting elections and establish election precincts, when necessary; to examine, either in open session or by committee, the accounts or doings of all officers or other persons having the care, management, or disposition of moneys, property, or business of the city; to make all appropriations, contracts, or agreements for the use or benefit of the city, and in the city's name; to provide by ordinance for the opening, laying out, altering, constructing, extending, repairing, grading, paving, graveling, macadamizing, or otherwise improving of public streets, avenues, and other public ways, or any portion of either thereof, and for the construction, regulation and repair of sidewalks, and other street improvements, all at the expense of the property to be benefited thereby, without any recourse, in any event, upon the city for any portion of the expense of such work, or any delinquency of the property holders or owners, and to provide for the forced sale thereof for such purposes; to establish a uniform grade for streets, avenues, sidewalks, and squares, and to enforce the observance thereof; to clear, cleanse, alter, straighten, widen, fill up, or close any water-way, drain, or sewer, or any watercourse in such city, when so declared by law to be navigable; to adopt, provide for, establish, and maintain a general system of sewerage, or drainage, or both, and the regulation thereof, the expense thereof to be borne by general taxation upon the taxable property and inhabitants of and in such city; to provide funds for the purpose aforesaid, and to determine manner, terms, and places of connection with main or central lines of pipes, sewers, or drains established with funds derived from general tax, and compel compliance with and conformity to such general system of sewerage, or drainage, or both, and the regulations of said council thereto relating, by the infliction of suitable penalties and forfeitures against person and property, or either, for nonconformity to or failure to comply with the provisions of such system and regulations, or either; to provide for all public buildings, public parks, or squares, necessary or proper for the use of the city; to permit the use of the streets for railroad purposes; to order paid any final judgment against such city; but none of its lands, or property of any kind or nature, taxes, revenue, franchise, or rights, or interest, shall be attached, levied upon, or sold in or under any process whatsoever; to regulate the sale of coal and wood in such city, and may appoint a measurer of wood and weigher of coal for the city, and define his duties, and prescribe his term of office, and the fees he shall receive for his services; provided, that such fees shall, in all cases, be paid by the parties requiring such service.

Indebtedness not to exceed means in the treasury.

§ 623. The city council shall not create, audit, allow, nor permit to accrue any debts or liabilities above the actual revenue and available means in the treasury that may be legally apportioned for such purpose, nor shall any warrant be drawn, or evidence of indebtedness be issued, unless there shall be sufficient money in the treasury justly applicable to meet the same.

Council to audit demands.

§ 624. All accounts and demands that shall lawfully arise against the city shall be submitted to the city council, and if found correct shall be allowed, and an order be made that the demand be paid; upon which (if there be funds in the treasury as in the preceding section provided) the clerk shall draw a warrant, which shall be countersigned by the president of the city council, upon the treasurer, in favor of the owner or owners of the demand, specifying for what purpose and by what authority it is issued, and out of what fund it is to be paid, and the treasurer shall pay the same out of the proper fund. All accounts and demands against such city, other than such as are chargeable to or payable out of the school fund, must be presented to the city council duly itemized and accompanied with an affidavit of the party, or his agent, stating the same to be a true and legitimate claim against such city for the full amount for which the same is presented, and that the same accrued as set forth, and with all necessary and proper vouchers, within one year from the date the same accrued; and any claim or demand not so presented within the time aforesaid shall be forever barred, and said council shall have no authority to allow any account or demand not so presented in manner and time as aforesaid, nor shall any action be maintained against such city for or on account of any demands or claim against the same until such demand or claim shall have first been presented to the city council for action thereon.

Limitation of expenditures.

§ 625. The annual expenses of such city shall not exceed the sum of one hundred thousand dollars, except in cities where one per cent on the valuation of the property therein raises more than the sum of one hundred thousand dollars, and in such cities the annual expenses shall not exceed the sum of one per cent of the valuation of the property therein; provided, however, that moneys authorized to be raised and expended for the payment of the funded or bonded indebtedness of such city, and for school purposes in such city, as provided to be raised by the provisions of this chapter, shall not be considered a portion of said annual expense. If, at any time after the said sum shall have been expended in any year, it shall appear that the interests of such city demand an expenditure of an additional sum, the city council shall make a report of the same, which shall be published for at least three weeks in some newspaper printed and published in such city, particularly specifying the object or objects for which said expenditure is required, and the amount of money necessary to be raised to complete the same. At any time within ten days after the expiration of said publication, the city council shall order an election, giving ten days' notice thereof, at which time those persons who are legal voters of such city may vote for or against a tax to raise such additional sum. The election shall be conducted and returns made and canvassed in all respects as the general elections of such city, and a majority shall determine if such tax be levied or not. If the vote is in favor of such tax, the city council shall forthwith, by an order to be entered on the journal of their proceedings, order the tax to be levied and collected upon the basis of the last municipal assessment, and shall make the proposed expenditure; provided, that the special tax thus to be levied shall, for no one year, be more than one per cent of the valuation of real and personal property in the city, as shown by the last assessment roll. All special taxes to be levied and collected under

the provisions of this section shall be levied and collected in the manner, form, and ways prescribed for the levying and collecting of the general taxes of such city; and as a security for their payment, a lien shall attach to and against each lot of land for the amount assessed against it from the date of the order; and every person, firm, or corporation against whom a tax be thus assessed shall be personally liable to pay the amount to such city. Said lien shall continue until such taxes are paid, or the property become vested in a purchaser under a sale thereof. [Amendment approved March 19, 1889. Stats. 1889, p. 371. In effect immediately.]

Excessive expenditure void.

§ 626. Every appropriation or payment of money made or ordered by the city council in excess of said sum stated in section 625, unless it shall be authorized by a vote of the electors of such city, as provided for in the preceding section, shall be invalid, illegal, and void, and shall be recoverable by the city from the party or parties to whom the same is made, if knowingly taken or received by such party or parties; and the members of the city council who shall have voted for the same shall be individually, jointly, and severally liable for such excess, and it may be recovered from them in any court of competent jurisdiction by the party or parties with whom they have contracted, or by the city, if payment has been actually made. [Amendment approved March 19, 1889. Stats. 1889, p. 371. In effect immediately.]

Public streets.

§ 627. All the streets in such city that have been or shall hereafter be laid out and dedicated by the party or parties owning the land fronting upon the same, or by the authority of such city, and declared to be public streets, and that have been or shall hereafter be used as such, shall be and are hereby declared public streets to the extent that the same may have been or shall hereafter be used, laid out, or dedicated.

Contracts for work and materials.

§ 628. All contracts for work to be performed, or materials to be used, ordered by or for such city, or in which it is interested, may be, and when the cost exceeds five hundred dollars shall be, let to the lowest bidder. A notice, signed by the clerk, soliciting sealed proposals, shall be published a reasonable time, in no case less than ten days, prior to the time fixed for opening such bids. Such notice shall designate the work to be done, and the place and the time in which it may be performed, with such other specifications as may tend to give the bidders a knowledge of the object to be accomplished, and with a reference to the diagram or specifications on file in the clerk's office. On the day limited in said notice for the opening of said bids the council, or a committee therefor appointed, shall, in open meeting, open and declare said bids and award the contract to the lowest responsible bidder; provided, however, that the city council, or its committee, may reject all bids when considered too high or uncertain from any circumstances. The council or committee may, before considering any offer, require security that the party will enter into a contract if awarded to him; and all contracts shall be in writing, and accompanied with a bond satisfactory to the mayor. No officer of such city shall be interested in any contract to which the city is a party, and any contract contrary to the provisions hereof shall be void.

Improvement of public highways.

§ 629. The city council is authorized and empowered to establish, lay out, alter, open, improve, and repair streets, avenues, sidewalks, alleys, bridges, squares, and other public highways and places within the city, and to drain, sprinkle, and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, macadamize, gravel, and curb the same, in whole or in part, and to construct gutters,

culverts, sidewalks, and cross-walks therein, or upon any part thereof; to cause to be planted, set out, and cultivated, shade trees along the lines thereof or therein, and generally to manage and control all such highways and places.

Apportionment of expense.

§ 630. The city council shall have the power to provide by ordinance for doing any or all work in or upon the streets, avenues, highways, and public places of such city, and for making therein street improvements and repairs, or for the preservation thereof, and for doing any or all work thereupon or therein authorized by this chapter; and for the payment of the cost and expenses thereof by the levy and collection of special assessments therefor upon the property to be affected or benefited thereby. That is to say, the expense or cost of any work or improvement upon the streets, avenues, or public ways of such city shall be assessed upon the lots and lands fronting thereon, each lot or portion of a lot being separately assessed for the full debt thereof in proportion to the benefits upon the property to be benefited sufficient to cover the total expense of the work to the center of the street on which it fronts. The expense of all improvements in the space formed by the junction of two or more streets, or where one main street terminates in or crosses another main street, and also all necessary street-crossings or cross-ways, shall be paid by such city. In all the streets constituting the waterfront of such city, or bounded on the one side by the property thereof, the expense of work done on that portion of said streets from the center line thereof to the said waterfront, or to such property of the city bounded thereon, shall be provided for by such city, but no contract for any such work shall be given, except to the lowest responsible bidder, and in the manner hereinbefore provided. When any work or improvement mentioned in this section is done or made on one side of the center line of said streets, avenues, or public ways, the lots or portions of lots fronting on that side only shall be assessed to cover the expenses of said work, according to the provisions of this chapter.

Enacting clause.

§ 631. The style of the city ordinances shall be as follows: "The mayor and city council of the city of — do ordain as follows"; and all ordinances shall be published in one or more of the newspapers published in the city.

Publication of ordinances.

§ 632. By-laws and ordinances shall be passed by the city council and approved by the mayor, or the president of the city council acting in his stead. But before any by-law or ordinance shall have any binding validity, it shall be published in one or more newspapers published in the city, and recorded in the record book to be kept by the clerk. The clerk shall certify on the record the fact of publication, and so certified, the record shall be prima facie evidence of the passage thereof, and may be read as evidence of the by-law or ordinance, and its publication. A printed copy of any ordinance or by-law, or a compilation thereof, printed by authority of the city council, and attested by the clerk, shall be evidence thereof in same manner and with like effect.

Entry on journal.

§ 633. All orders of the city council, to have force and legal validity, shall be entered on the journal of their proceedings, which journal shall be signed by the officer who may preside at such meeting.

Ayes and noes.

§ 634. Upon the passage of all ordinances appropriating money, imposing taxes, abolishing licenses, increasing or lessening the amount to be paid for licenses, the ayes and noes shall be entered upon the journal.

Majority necessary.

§ 635. A majority of all the members elected shall be necessary to pass any ordinance appropriating for any purpose the sum of five hundred dollars or upwards, or any ordinance imposing any assessment, tax or license, or in any wise increasing or diminishing the city revenue.

Free library.

§ 636. The trustees of any free public library, created or existing in such city under the provisions of an act entitled "An act to establish the public libraries and reading-rooms," approved April twenty-sixth, eighteen hundred and eighty, shall be appointed by the city council in the same manner as other officers are appointed under the provisions of this chapter, anything in the provisions of said act to the contrary notwithstanding.

ARTICLE IV.—TAXATION.**Tax levy.**

§ 640. The city council shall have full power and authority to assess, levy, and collect annually taxes upon all the property within the city, taxable for state purposes, not exceeding one per cent upon the assessed value thereof, which shall be paid into the general fund for current expenses. They shall provide for the payment of the principal and interest of the bonded indebtedness, if any, of such city, and for the payment of the other indebtedness of such city not funded; and they shall each year levy, assess, and collect an additional tax upon the taxable property as aforesaid, not exceeding two per cent in any one year, which, when collected, shall be paid into a fund to be disbursed as follows:

1. To pay the interest on said bonds;
2. To a fund for the payment of the principal thereof; and,
3. To meet any indebtedness, as aforesaid, not funded.

And the city council, in making said levy, shall estimate the proportion requisite for each fund, and the same shall be expended, under the direction of the city council, for the purpose aforesaid, and for no other purpose. Said tax shall be levied, assessed, and collected upon all property liable to taxation within such portion and such limits, and so much of the territory of such city as shall be liable therefor under the laws and charters in existence at the time of the organization of such city under this act; and if, by reason of extension of territory, or from any cause, a portion only, or a certain district, of such city be liable, under such laws and charters, for the payment of the bonded and other indebtedness above named, or any portion of either thereof, the city council in levying such tax shall make such levy upon and against the property which is situated and persons who may reside in the territory of such city, liable in each case for the payment of such indebtedness, or any particular class or portion thereof, according to such existing laws and charters. The city council shall also have power to raise annually, by tax upon all the property within the city taxable for state purposes, whatever amount of money may be requisite for the support of free public schools therein, including high schools, and providing and furnishing houses therefor; but the tax provided for in this section shall not exceed thirty-five cents on each one hundred dollars valuation upon the assessment-roll in any one year, and may, in like manner, raise by tax a fund for the establishment and maintenance of a free public library and reading-room; such tax not to exceed, in any one year, the rate of ten cents on each one hundred dollars valuation.

Duty of assessor.

§ 641. It shall be the duty of the city assessor to prepare, between the first day of January and the first Monday in April in each year, and present to the city clerk,

with his certificate of its correctness, a list of all the real and personal property within the city on the first day of January taxable for state and county purposes, with a true valuation thereof on the first day of January, which said assessment-list shall conform as near as practicable, when not inconsistent with the provisions of this chapter, to the assessment list required by law to be made by the county assessor for state and county purposes; also, to make all assessments for the improvements of streets as herein or by ordinance provided; to be present at the sessions of all boards of equalization mentioned in this chapter, and to furnish to said board such information as may be required, and to perform such other services in reference to the assessments of property in the city or otherwise appertaining to his office as the city council by ordinance or resolution may require. During the session of the board of equalization the city assessor shall enter upon the assessment list all the changes and corrections made by the board, and may assess and add to such list any property in such city not previously assessed. In the assessment and listing of property for taxation, and in the collection of tax upon personal property not secured by lien upon real estate, he shall have and may exercise the same powers as are conferred by law upon county assessors, and shall receive therefor the same fees and compensation. He shall receive a salary to be fixed by the city council, which shall not exceed five hundred dollars per annum. [Amendment approved March 19, 1889. Stats. 1889, p. 371. In effect immediately.]

Equalization.

§ 642. The city council, or a committee of their number selected for that purpose by the city council, at a meeting thereof to be held on the first Monday of April of each year, shall constitute a board of equalization, and shall, after the assessor shall have completed and handed in his assessment list to the city clerk, and after five days' notice published in some newspaper in such city, hold meetings to hear and determine all complaints respecting the valuation of property as fixed by the assessor in such list, and shall have power, on their own motion, with or without complaint made, to modify and change such valuation in any way they shall deem just and proper; provided, however, that before making any change in any assessment, the board shall notify the person interested by letter, deposited in the postoffice or express, postpaid, and addressed to such person, at least three days before action taken, of the day fixed when the matter will be investigated; provided, further, that no reduction must be made in the valuation of property, unless the party affected thereby, or his agent, makes and files with the board a written application therefor verified by his oath, showing the facts upon which it is claimed such reduction should be made. Any member of said board shall have power to administer oaths and affirmations in the matters before said board, and the sessions of said board shall be held from time to time, as in its notice specified, for the period of two weeks, and no longer.

Clerk to complete.

§ 643. After the board of equalization shall have completed their duties, the city clerk shall add up the columns of valuation, and enter the total valuation of each description of property in the list, and the total value of all property assessed and listed thereon; and thus equalized and added up, the clerk shall, on the first Monday of May thereafter, deliver it to the city council.

Levy of the tax.

§ 644. On the first Monday in May in every year the city council, by an ordinance, shall levy upon all the property in the city taxable by law for state purposes a tax for school purposes, and for the current and general expenses of the city, and, in conformity to the provisions of this chapter, shall levy any and all other taxes by law directed then to be levied or assessed; and, in conformity with the provisions of

this chapter, shall levy a tax for the payment of the funded debt upon the property liable therefor. Every tax so levied is made a lien, which shall attach on said day in each year to and against all real property assessed for the amount assessed against it; and if said property be assessed to a wrong person, or by a wrong name, said lien shall in no wise be affected or invalidated, and it shall not be satisfied or removed until the taxes are paid, or the property has absolutely vested in a purchaser under and by reason of a sale for such taxes. Every tax assessed upon personal property is a lien upon the real property of the owner thereof from and after the time of the levy of such tax. The fiscal year shall begin on the first day of January; and the terms "real and personal property" shall have the same meaning as the same terms used in the revenue laws of the state.

List to be delivered to collector.

§ 645. As soon as the city council have declared and levied the taxes in any year, as in the preceding section provided, the city clerk shall carry out, in a separate money column in the list, the amount of taxes assessed against each individual, firm, company, corporation, or unknown owner, and add and put down the aggregate of all taxes as shown by the list; and as thus carried out, the city clerk shall certify to its correctness, and on or before the third Monday of May thereafter deliver it to the city collector, and shall charge him with the amount of taxes as footed up, and take his receipt therefor.

Collection.

§ 646. The collector, on receiving the assessment list certified by the clerk, shall proceed to collect the taxes specified therein, and pay over the same into the treasury, taking a receipt thereof. For the purpose of collecting the taxes authorized by this chapter, the city collector shall have such powers as are given by the revenue laws of this state to collectors of state and county taxes, so far as the same are applicable. All taxes unpaid at the close of official business on the third Monday of June shall be deemed delinquent, after which time the collector shall receive no money for taxes; and he shall, on said day, enter upon assessment-roll a levy upon all property therein assessed the taxes upon which remain unpaid, and shall immediately ascertain the total amount of taxes unpaid, and file in the office of the city clerk a list of all persons and property then owing taxes, verified by his oath, which list shall be known as the delinquent list.

Delinquencies.

§ 647. On the third Monday in June of each year, at 6 o'clock p. m., all unpaid taxes are delinquent, and thereafter the collector must collect thereon, for the use of the city, an addition of five per cent.

Delinquent list.

§ 648. On the first Monday in July of each year, the city collector must deliver to the city clerk a complete delinquent list of all persons and property then owing taxes; and in the list so delivered must be set down in numerical or alphabetical order all matters and things contained in the assessment-roll and relating to delinquent persons or property.

Verification.

§ 649. The city clerk must carefully compare such delinquent list with the assessment-roll, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the city collector therewith, and make a final settlement with him of all taxes charged against

him on the assessment-roll; and must require from him the treasurer's receipt for the full amount of taxes collected.

Certification.

§ 650. After the settlement with the city collector, as prescribed in the preceding section, the city clerk must charge the city collector with the amount of taxes due on the delinquent tax list, with the five per cent added thereto, and within three days thereafter deliver the list, duly certified to such city collector.

Publication.

§ 651. On or before the third Monday in July of each year, the city collector must publish the delinquent list, which must contain the names of the persons and a description of property delinquent, and the amount of taxes and costs due, opposite each name and description, with the taxes due on personal property, added to taxes on real estate where the real estate is liable therefor, or the several taxes are due from the same person. To said list must be appended and with it published a notice that unless the taxes delinquent, together with the costs and percentage, are paid, the real property upon which such taxes are a lien will be sold at public auction, and designating therein the time and place of such sale, which must take place in or in front of the city collector's office, and not less than fourteen nor more than twenty-one days from the first publication.

Collector to certify.

§ 652. Said list must be published three times a week for two successive weeks in some newspaper or supplement thereto published in such city, and when such publication is completed, and before commencing the sale, the city collector must file with the city clerk a copy of the publication, with his affidavit attached thereto, that it is a true copy of the same, that the publication was made in a newspaper or a supplement thereto, stating the name and place of publication; such affidavit shall be prima facie evidence of all the facts therein stated. The expense of the publication of the delinquent list to be paid by the city.

Additional amount.

§ 653. The city collector must collect, in addition to the taxes due on the delinquent list, and five per centum added thereto, fifty cents on each lot, piece, or tract of land separately assessed, and on each assessment of personal property, one-half of which must go to the city, and the other to the city collector, in full for preparing the list.

Sale.

§ 654. On the day fixed for the sale, or on some subsequent day to which he may have postponed it, of which he must give notice, the city collector, between the hours of 10 o'clock a. m. and 3 p. m., must commence the sale of the property advertised, commencing at the head of the list, and continuing alphabetically, or in the numerical order of lots and blocks, until completed.

Postponement.

§ 655. He may postpone the day of commencing the sale, or the sale, from day to day; but the sale must be completed within two weeks from the day first fixed.

Owner may designate portion.

§ 656. The owner or person in possession of any real estate offered for sale for taxes due thereon may designate, in writing, to the city collector, prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or the possessor does not, then the collector may designate it, and the person who will take

the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the taxes and costs due, including fifty cents to the city collector for the duplicate certificate of sale, is the purchaser.

Duplicate certificate.

§ 657. After receiving the amount of the taxes and costs, the city collector must make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and year of the assessment, and specifying the time when the purchaser will be entitled to a deed.

Delivery.

§ 658. The certificates must be signed by the collector, and one copy delivered to the purchaser, and the other filed in the office of the county recorder.

Record of sales.

§ 659. The city collector, before delivering any certificate, must in a book enter a description of the land sold, corresponding with the description in the certificate, the date of sale, purchaser's name, and amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection, without fee, during office hours, when not in actual use.

Lien vested in purchaser.

§ 660. On filing the certificate with the county recorder, the lien of the city vests in the purchaser, and is only divested by the payment to him, or to the city treasurer for his use, of the purchase money, and fifty per cent thereon.

Redemption.

§ 661. A redemption of the property sold may be made by the owner, or any party in interest within twelve months from the date of the purchase.

Records of redemption.

§ 662. On receiving the certificate of sale, the recorder must file it, and make an entry in a book similar to that required of the collector. On the presentation of the receipt of the person named in the certificate or of the city treasurer for his use, of the total amount of redemption money, the recorder must mark the word "Redeemed," the date, and by whom redeemed, on the certificate, and in the margin of the book where the entry of the certificate is made.

Purchaser's deed.

§ 663. If the property is not redeemed within the time allowed by law for its redemption, the city collector, or his successor in office, must make to the purchaser, or assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption. The collector shall be entitled to receive from the purchaser three dollars for making such deed.

What the deed proves.

§ 664. The matters recited in the certificate of sale must be recited in the deed, and such deed duly acknowledged or proved is prima facie evidence that:

1. The property was assessed, as required by law;
2. The property was equalized, as required by law;
3. The taxes were levied in accordance with law;

4. The taxes were not paid;
5. At a proper time and place the property was sold, as prescribed by law, and by the proper officer;
6. The property was not redeemed;
7. The person who executed the deed was the proper officer;
8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax.

Deed is evidence of regularity.

§ 665. Such deed, duly acknowledged or proved, is (except as against actual fraud), conclusive evidence of the regularity of all other proceedings, from the assessment by the assessor, inclusive, up to the execution of the deed, and conveys to the grantee the absolute title to the lands described therein, free from all encumbrances.

Assessment-roll a guarantee of regularity.

§ 666. The assessment-roll or delinquent list, or a copy thereof, certified by the city clerk, showing unpaid taxes against any person or property, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.

ARTICLE V.—EXECUTIVE DEPARTMENT.

Duties and powers of mayor.

§ 670. The mayor shall be the chief executive officer of the city. He shall have a general supervision over the several departments of the city government, and over all its interests, shall preside over the city council when present, once in three months submit a general statement of the condition of its various departments, and recommend to the city council such measures as he may deem expedient for the public good, or improvement of the city, its finances, or government. He shall sign all ordinances passed by the city council, if he approves them; if he does not approve, he shall, within eight days after its submission to him, return the same to the city clerk's office, with his objections in writing, and at the first meeting of the city council thereafter the same shall be entered upon their journal, and they shall then reconsider such ordinance, and unless two-thirds of the councilmen elect, vote for its passage, it shall not become a law. If the mayor shall not so return any ordinance within eight days, it shall become a law as if he had signed it. He may call special meetings of the city council at any time; he shall do so at the written request of four councilmen, by notifying each member personally, or by a written notice left at his last and usual place of abode, or at his place of business during business hours, stating the purpose of such meeting.

President of council.

§ 671. The president of the city council shall preside at all its meetings when the mayor is not present; and whenever there is a vacancy in the office of mayor, or he is absent from the city, or unable, from any cause, to discharge the duties of his office, the president shall act as mayor and exercise all his authority and be subject to his duties. He shall countersign all warrants and licenses issued under and by authority of the city, but in his absence or inability to perform said duty, the mayor, or, if he is absent or unable to perform said duty the president pro tem., or if none has been elected the chairman of the finance committee may sign the same.

Deputies.

§ 672. The chief of police, city attorney, city assessor, city clerk, and city collector, and street commissioner may each, with the approval of the city council, only appoint such deputies as may be necessary, by writing, to be filed with the clerk. Each deputy

so appointed shall receive for his services a compensation to be fixed by the city council, not exceeding one hundred dollars per month, and shall perform such duties under the direction of his principal as may by said council be prescribed. The principals shall be each responsible for his deputy, and may revoke the appointment at pleasure.

Chief of police.

§ 673. The chief of police shall receive a salary which shall not exceed the sum of fifteen hundred dollars per annum, to be determined by the city council.

Treasurer.

§ 674. The city treasurer shall receive a salary which shall not exceed the sum of three hundred dollars per annum, to be determined by the city council.

Duties of treasurer.

§ 675. It shall be the duty of the city treasurer to receive and safely keep all moneys belonging to such city, from whatever source derived, to place the same to the credit of the different funds to which they properly belong, in a book kept for that purpose; to disburse said moneys by the direction of the city council, and in accordance with the provisions made by them, and the school fund, by the direction of the board of education, under the provisions of this chapter, and to make a report monthly to the city council of the condition of the treasury.

Clerk.

§ 676. It shall be the duty of the clerk of the city to keep the corporate seal and all papers and documents belonging to the city; to file them in his office, under appropriate heads; to attend the sittings of the city council and to keep a journal of their proceedings and records of all their by-laws, resolutions, and ordinances; to sign all warrants and licenses issued in pursuance of the orders and ordinances of the city council, and to affix the corporate seal on such licenses; to keep an accurate account in a suitable book, under the appropriate heads, of expenditures, of all orders drawn upon the city treasurer, and all warrants issued in pursuance thereof; also, to keep an account in an appropriate book of all licenses issued, with the names of the persons to whom issued, the date of issue, the time for which the same was granted, and the sums paid therefor, and to perform such other duties as he may be required to perform by the provisions of this act, or by ordinance. He shall receive for his services a salary to be fixed by the city council, not exceeding the sum one hundred dollars per month.

Assessor.

§ 677. It shall be the duty of the city assessor to prepare the assessment-rolls, lists, and books, and to make the assessment of persons and property in said city as required by this chapter; also to make and present all assessments for improvement of streets, or other work of like character. He shall receive a salary, to be fixed by the city council, not exceeding five hundred dollars per annum.

Collector and commissioner.

§ 678. The city collector and street commissioner shall collect all taxes, assessments, licenses, wharfage rates, and all other moneys or dues owing, accruing, belonging, or coming to said city, and the same shall pay over monthly to the city treasurer, unless otherwise ordered by the city council. He shall regulate the landing and stationing of all steamers, vessels, boats, or other water craft, and shall make report to the city council each month. As street commissioner, he shall have the general supervision of all streets, public squares, levees, wharves, sloughs, drains, water-ways, bridges, sidewalks, cross-walks, and public buildings, and shall superintend all work, repairs, or improvement thereof or thereon. At the request of the street committee of the city

council, he shall make report to them of any of his doings, and shall do and perform all such other duties as may be required of him by ordinance of the city council. As street commissioner of such city, he is hereby authorized, in his official capacity, to make all written contracts, and receive all bonds authorized in this chapter, and to do any other act, either expressed or implied, that pertains to the street department under this chapter. He shall fix the time for the performance of the work under all contracts entered into by him, in accordance with the notice given by the council; and may extend the time so fixed, from time to time, under the direction of said council. All work upon the street, avenues, or in the matter of sidewalks or bridges, or in the improvement of the public buildings, squares, and places of said city provided for in this chapter, or under the orders or ordinances of the city council of such city, must in all cases be done under the direction and to the satisfaction of the street commissioner, and the materials used shall be such as are required by said commissioner, in accordance with the contracts; and all contracts made therefor must contain this condition, and also express notice that in no case, except when it is otherwise provided in this chapter, will the city be liable for any portion of the expense, and where such expense is defrayed by assessments, in no case for any delinquency of persons or property assessed.

Police force.

§ 679. The police force of such city shall consist of the chief of police, and such number of policemen as shall from time to time be fixed and determined by the city council.

Police, commission to elect.

§ 680. The policemen of such city shall be elected by a police commission, to consist of the mayor, chief of police, and the police judge; and such policemen shall hold office from and after their election to and including the second Monday in January next ensuing after a regular city election, unless sooner removed for cause.

Trial commission.

§ 681. The president of the city council, the chairman of the finance committee, and the chairman of the street committee of the city council shall constitute a police trial commission, and such commission shall have power, under rules of procedure to be prescribed by ordinance of such city, to receive, hear, try, and determine all complaints against policemen of such city for violation of official duty, or of any rule, regulation, by-law, or ordinance of such city, and shall have power in such behalf to condemn or acquit, reprimand, suspend, or remove any policeman.

ARTICLE VI.—JUDICIAL DEPARTMENT.

Police court.

§ 690. A police court is hereby established in such city, which court shall always be open, except upon nonjudicial days, and upon such days may transact criminal business only.

Jurisdiction.

§ 691. The police court of such city shall have jurisdiction of the following public offenses committed within such city:

1. Petit larceny;
2. Assault or battery, not charged to have been committed upon a public officer in the discharge of his official duty or with intent to kill;
3. Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment;

4. Of proceedings respecting vagrants, loud or disorderly persons;

5. Of all proceedings for violation of any ordinance of said city, both civil and criminal; or any and all suits to recover taxes, general or special, levied in such city for city purposes, and of all suits to recover any assessment levied in such city for the improvement of streets, avenues, levees, sidewalks, and public squares, and for the opening or laying out of the same, when the amount of said tax or assessment sought to be collected against the person, firm, or corporation assessed is less than three hundred dollars; provided, no lien upon the property taxed or assessed for the nonpayment of the taxes or assessment is sought to be foreclosed by said suit;

6. Of an action for the collection of money due to such city, or from the city to any person, firm, or corporation, when the amount sought to be collected is less than three hundred dollars;

7. Of an action for the breach or violation of any official bond given by any city officer, and for the breach of any contract, and any action for damages in which the city is a party, or is in any way interested, and on all forfeited recognizances given to or for the benefit or in behalf of such city, and upon all bonds given upon any appeal taken from the judgment of said court in any action above named, when the amount claimed, exclusive of cost, is less than three hundred dollars;

8. Of an action for the recovery of personal property belonging to the city when the value of the property, exclusive of the damages for the taking or detention, is less than three hundred dollars.

9. Of an action for the collection of any license required by any ordinance of the city;

10. The police court shall have exclusive jurisdiction of all proceedings mentioned in this section; and no justice of the peace in such city shall have power to try and decide any cases of the classes mentioned in said section; provided, that any justice of the peace of such city who may be designated in writing by the mayor, or president of the city council thereof, for the purpose, shall have power to preside in and hold the police judge's court of said city in the cases in which the police judge is a party, or in which he is directly interested, or when the judge is related to either party by consanguinity or affinity within the third degree; and also in the case of the sickness or temporary absence of the judge, or his inability to act from any cause; and in all such cases, and during such sickness, temporary absence, or inability, the justice so designated shall act as police judge, and shall have and exercise all the powers, jurisdiction, and authority which are or may be by law conferred upon said court or judge.

Powers of judge.

§ 692. The judge of said court shall also have power to hear cases for examination, and may commit and hold the offender to bail for trial in the proper court, and may try, condemn, or acquit, and carry his judgment into execution, as the case may require, according to law; and to punish persons guilty of contempt of court, and shall have power to issue warrants of arrest in cases of a criminal prosecution for the violation of a city ordinance, as well as in case of the violation of the criminal law of the state; also, all subpoenas and all other processes necessary to the full and proper exercise of his powers and jurisdiction in all criminal trials before the police judge for the violation of a city ordinance, as well as in cases of a violation of the criminal law of the state, made triable before such court; the defendant shall be entitled, if demanded by him, to a jury trial but a trial by jury may be waived by the defendant in all such cases, and upon such waiver the court shall proceed and try the case.

Dockets.

§ 693. The city council shall furnish, for the use of the police court, two dockets; one shall be styled The city criminal docket, in which all the criminal cases shall be recorded, and each case shall be alphabetically indexed; the other shall be styled The

city civil docket, and it shall contain a record of every civil case which is prosecuted before said court, and each case shall be properly indexed, and in all cases the dockets shall contain all such entries as are required by law to be made in the justice's docket; and in any case commenced or tried before the court the docket must show what duties were performed by each officer, and the amount of fees due to the officer for such services, and the amount of money, if any, collected.

Appeals.

§ 694. Appeals from the police court may be taken to the superior court of the county in all cases cognizable by the said police court, and such appeals shall be taken as in case of appeal from a justice's court.

City and district attorney.

§ 695. The city attorney of such city shall prosecute all cases for the violation of any lawful order, regulation, or ordinance of the city council, and shall prosecute, conduct, and control all proceedings in cases mentioned in section 622 of this act, both in the police court and on appeal therefrom to the superior court, but the district attorney shall attend and conduct all proceedings of the nature of a preliminary examination before said police court.

Incarceration.

§ 696. In all cases when the police court is authorized to impose a fine or imprisonment, or both, upon persons convicted in said court of any offense triable therein, the said court may sentence the offender to be imprisoned in the city jail, if there be one established by the city council, if not, then until said council shall designate and establish a city jail or prison, may sentence offenders to be imprisoned in the county jail, and in addition to imprisonment, may sentence offenders to be employed to labor in the city, under the direction of the chief of police, and in the manner prescribed by ordinance, for the benefit of the city, during such time of imprisonment, and may, in case of imposing a fine, embrace as a part of the sentence that, in default of the payment of such fine, the defendants shall be imprisoned and required to labor for the benefit of the city as before provided, at the rate of two dollars a day, till such fine is satisfied. Offenders required to labor under the direction of the chief of police shall, until the establishment of a city jail, be returned to the county jail at the end of each day's labor during their term of imprisonment, until a city jail shall be by the city council established. It is hereby made the duty of the officer having the control or charge of the county jail of the county wherein such city is situated, to receive and safely keep all persons imprisoned by any judgment or order of the police court, in accordance with the order of commitment, and to allow those to be removed from the jail under the charge of the chief of police, who are required to labor for the benefit of the city, or whom the police judge may order brought forth for trial, and the keeper of the jail shall in no way be responsible for the safe-keeping of such prisoners while so under the charge of the chief of police.

Seal.

§ 697. The court shall have a seal, to be provided by the city, and certified transcripts of the police judge's docket and the seal of his court shall be evidence in any court of the state of the contents of the docket; and all warrants, and other processes issued out of said court, and all acts done by said police judge under its seal, shall have the same force and validity, in any part of this state, as though issued or done by any court of record of this state.

Judge's report.

§ 698. The police judge shall, on the last Saturday of each month, make to the city council a full report of all the cases tried in his court for that month, in which the city may be interested, and at the same time shall pay into the city treasury all fines and other moneys collected on behalf of the city for such month.

Salaries.

§ 699. The city council of such city shall allow to the police judge an annual salary which shall not exceed the sum of fifteen hundred dollars, and to the chief of police and the several policemen of such city each a salary which shall be fixed by said council. The salaries of the police judge, and chief of police and policemen shall be paid from time to time as other city officers and as the council may determine. The chief of police, or any policeman of such city, is hereby authorized and empowered to serve, execute, and return any and all warrants of arrest, and all processes directed to him by the police judge of said city, and to arrest all persons accused or guilty of the violation of any city ordinance, or of any public offense, and to do and perform all acts and duties which, in criminal cases, any constable of the county may lawfully do, and receive like fees for such services; provided, the city council may, in their descretion, deduct the amount so received, for fees from the monthly salary of such officers, or order the same paid into the city treasury for the use and benefit of the city, as received by said officers respectively; provided, that nothing in this charter shall be construed as authorizing or entitling such officers to charge or receive from such city, or the county wherein situated, any fees or costs in any case whatever, nor shall such city or county be liable to pay any fees, or costs to such officers for any service they may render in any action or proceeding, either civil or criminal. The chief of police shall attend the session of the police court when required, supervise and direct the police force of the city, and perform such other duties as may be required by the city council appertaining to the government of the city or the management of its affairs, not especially devolved upon some other officer named in this chapter; and the chief of police, or any policeman, at his discretion, shall serve all notices by this chapter provided to be served, in which the city is in any way interested, and the return of the officer serving shall be evidence of the facts in such return stated, but none of such officers shall serve or execute any civil process, except as provided in this chapter.

Powers of justices.

§ 700. The justices of the peace in and for the township embracing such city shall have the same powers as the same officers in any justice's court of the county, and shall have and may exercise like powers and authority; provided, however, that no justice of the peace in such city shall have power to conduct or try and decide any proceedings or cases of the classes mentioned in section 622 of this act; but nothing in this section shall be construed to prevent any of the justices in said city from acting as police judge.

Interested party not disqualified.

§ 701. The interest which any inhabitant of such city may have in a penalty for the breach of a by-law or ordinance of such city shall not disqualify said inhabitant to act as judge, juror, or witness in any prosecution to recover the penalty.

ARTICLE VII.—SCHOOL DEPARTMENT.**Board.**

§ 710. The board of education of such city shall be elected as in this chapter provided, and shall consist of one superintendent and two trustees from each ward in the city.

Superintendent.

§ 711. The superintendent shall be ex-officio secretary of the board of education, and shall receive for his services a salary which shall not exceed eighteen hundred dollars per annum. He shall report to the city council, annually, on or before the first Monday in January, and at such other times as they may require, all matters pertaining to the expenditures, income, condition, and progress of the public schools of the city during the preceding year, together with such accommodations [recommendations], as he may deem proper, and shall, at the regular meeting of the board of education in June of each year, submit to the board a detailed statement of the amount, as near as may be ascertained, of fuel, blanks, blank-books, apparatus, stationery, and such other articles, materials, or supplies, including books for indigent children, as may be necessary for the use of the city schools and the board for one year following. He shall have power to administer oaths and affirmations concerning any demand upon the treasury payable out of the school fund, or other matters relating to his official duties. [Amendment approved March 14, 1885. Stats. 1885, p. 134. In force from and after its passage.]

Advertisement for supplies.

§ 712. The board of education shall, upon the receipt of the statement from the superintendent, as in the preceding section provided, advertise for the space of five successive days in some newspaper published in such city, for sealed proposals for furnishing the articles in said statement specified. Said advertisement shall designate a day after the expiration of the publication aforesaid when said proposals will be considered, at which time the board or a committee thereof by the board for such purpose designated, shall meet and publicly open and declare the proposals received and shall thereupon award the contract therefor to the lowest responsible bidder or bidders, in each case; provided, that all bids may be rejected if deemed too high. Said board may, in their discretion, require a good and sufficient bond with two or more sureties, to be filed by each bidder, in the sum of two hundred dollars, conditioned for the fulfillment of his proposal in case of the acceptance thereof.

Powers of board.

§ 713. Subject to and in accordance with the directions and provisions of this chapter, the board of education shall have full power:

Establish schools.

1. To establish and maintain public schools, including high school, and fix and alter the boundaries of the district thereof.

Employees.

2. To employ and dismiss teachers, janitors, and other necessary help, and to fix, alter, allow, and order paid their salaries or compensation, and to employ and pay such mechanics and laborers as may be necessary to carry into effect the powers and duties of the board, and to withhold, for good and sufficient cause, the whole or any part of the salary or wages of any person or persons employed as aforesaid.

Regulation of schools.

3. To make, establish, and enforce all necessary and proper rules and regulations not contrary to law, for the government and progress of the public schools within the city, the pupils therein and the teachers thereof, and for carrying into effect the laws relating to education; also, to establish and regulate the grade of schools, and determine what course of study and mode of instruction shall be used in said schools.

Building and repairs.

4. To build, alter, repair, rent, and provide schoolhouses, and the same furnish with lights, water, proper school furniture, apparatus, and school appliances, and to insure any and all school property.

Real estate.

5. To receive, purchase, lease, and hold in fee, in trust for such city, any and all real estate; and to hold in trust any personal property that may have been or may hereafter be acquired for the use and benefit of the public schools of such city.

Improvements.

6. To grade, fence, and improve school lots, and in front thereof to grade, sewer, plank, or pave and repave, and to construct and repair sidewalks.

Legal privileges.

7. To sue for any and all lots, lands, and property belonging to or claimed by the said school department; and to prosecute and defend all actions at law or in equity necessary to recover and maintain the full enjoyment and possession of said lots, lands, and property, and to employ and pay counsel in such cases.

To determine amount of money needed.

8. To determine annually the amount of taxation, not exceeding thirty-five cents on each one hundred dollars valuation on the assessment-roll, to be raised upon the real and personal property within the city not exempt from taxation, for the establishment and support of free public schools therein; and for carrying into effect all the provisions of law regarding public schools, and the amount so determined by said board of education shall be reported in writing to the city council on or before the first Monday of April of each year; and the said city council are hereby authorized and required to levy and cause to be collected, at the time and in the manner of levying other city taxes, the amount of taxation so determined and reported to them by the said board of education, as school tax, upon all taxable property in the city; and said tax shall be in addition to all other amounts levied for city purposes.

Disbursements.

9. To establish regulations for the just and equal disbursement of all moneys belonging to the "public-school fund."

Demands.

10. To examine and allow, in whole or in part, every demand payable out of the school fund, or to reject any such demand for good cause, of which the board shall be sole judge.

Encumbrances.

11. To discharge all legal encumbrances now existing, or which may hereafter exist, upon any school property.

Age limit.

12. To prohibit any child under six years of age from attending the public schools.

Other acts.

13. And generally to do and perform such other acts as may be necessary and proper to carry into force and effect the powers conferred on said board.

Fund to be diverted.

14. To use and apply the school fund of the city for the purposes in this section heretofore named, and for no other purpose whatever.

Nonresidents.

15. To admit nonresident children to any of the departments of the schools of such city upon the payment, at such time as said board may direct, of tuition fee, to be fixed by said board.

Board of examination.

§ 714. No teacher shall be employed in any of the public schools of such city without having a certificate of the proper grade, issued under the provisions of this chapter. For the purpose of granting certificates required, the board of education, either as a body or by a board of examination appointed by said board of education, and of which the superintendent shall be president, shall hold examinations of teachers. No certificate shall be issued except to a person who shall have passed a satisfactory examination in such branches as the board may require, and shall have given evidence of good moral character, ability, and fitness to teach. Examinations of teachers must be held semi-annually, at such times as the board may determine.

Revocation and renewal.

§ 715. The board may, in its discretion, renew without re-examination the certificate of any person so employed. It shall have power to revoke the certificate of any teacher upon evidence of immoral or unprofessional conduct or incompetency, and shall always have the power to dismiss any and all teachers, and to alter the amount of salary or compensation paid to either or any of them. The board of education may also, without examination, grant certificates and fix the grade thereof to the holders of life diplomas, state educational diplomas, normal school diplomas, state university diplomas, and to the holders of such state and county certificates as were in full force and effect on the first day of January, eighteen hundred and eighty.

Board must visit.

§ 716. It shall be the duty of the board of education to visit and examine each school at least once each and every month; to observe, and cause to be observed, such general rules for the regulation and government and instruction of the schools, not inconsistent with the laws of the state, as may be established by the board.

School fund, how constituted and applied.

§ 717. The public school fund of such city shall consist of all moneys received from the state and county school fund; of all moneys arising from taxes which shall be levied by the city council for school purposes; of all moneys arising from the sale, rent, or exchange of school property, and of such other moneys as may from any source whatever be paid into said school fund; which fund shall be kept separate and distinct from all other moneys, and shall only be used for school purposes under the provisions of this chapter. No fees or commission shall be allowed or paid for assessing, collecting, keeping, or disbursing of school moneys; and if at the end of the fiscal year any surplus remains in the school fund, such surplus money shall be carried forward to the school fund of the next fiscal year, and no part of the school fund shall be for any purpose or in any manner whatever diverted or withdrawn from said fund, except as in this chapter provided.

Approval of claims.

§ 718. All claims payable out of the school fund shall be filed with the secretary of the board, and shall be approved by a majority of all the members of the board, and certificate of such approval shall be indorsed thereon; whereupon the secretary of said board shall draw a warrant upon the city treasurer for the payment thereof, which war-

rant shall be countersigned by the superintendent. All demands for salaries of teachers and compensation of janitors shall be payable monthly in the same manner without presentation of claims therefor.

Payment of demands.

§ 719. All demands authorized by this article, and by the board approved as aforesaid, shall be paid by the city treasurer from the school fund upon the presentation of the warrants therefor; provided, that the board of education shall not, without the consent of the city council first had, have power to create any debts or liability in any one year to exceed the actual revenue or available means in the city treasury under the control of the board, and justly applicable for school purposes for such year.

CHAPTER VI.

MUNICIPAL CORPORATIONS OF THE FIFTH CLASS.

(A charter for cities having a population of more than 3,000 and not exceeding 10,000.)

ARTICLE I.—GENERAL POWERS.

Fifth class.

§ 750. Every municipal corporation of the fifth class shall be entitled the city of (naming it), and by such name shall have perpetual succession, may sue and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the city authorities, and may purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of the same for the common benefit.

ARTICLE II.—GENERAL PROVISIONS RELATING TO OFFICERS.

Officers.

§ 751. The government of said city shall be vested in a board of trustees, to consist of five members; a board of education, to consist of five members; and whenever a free public library and reading-room is established therein, five trustees thereof; a recorder; a treasurer; a clerk; an attorney; a marshal; an assessor, and such subordinate officers as are hereinafter provided for; provided, that the board of trustees may, in its discretion, by an ordinance adopted, published and recorded as required for general ordinances, at least thirty days before a general city election, at which city officers are to be elected, unite and consolidate certain offices, by declaring:

1. The city marshal elected shall be ex-officio superintendent of streets, and health officer;
2. The city clerk elected shall be ex-officio recorder and assessor;
3. The city treasurer elected shall be ex-officio city tax collector and license tax collector;
4. The city attorney elected shall be ex-officio city clerk. [Amendment approved February 28, 1901. Stats. 1901, p. 70. In effect immediately.]

Election and terms of office.

§ 752. The members of the board of trustees, and of the board of education, and the city clerk, city attorney, assessor, marshal, treasurer, and recorder shall be elected by the qualified electors of said city at a general municipal election, to be held therein on the second Monday in April, nineteen hundred and three, and on the second Monday in April of each fourth year thereafter and shall hold office for the period of four years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified; provided, that a general municipal election shall be held in said city on the second Monday in April, nineteen hundred and five, for the election of successors to the members of the board of trustees and of the board of

education whose terms of office expire during said year, and said successors shall hold office for the period of two years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified. The board of trustees may in their discretion appoint a poundmaster, also a superintendent of streets, and a city engineer, all of whom shall hold office during the pleasure of the board. [Amendment approved February 26, 1903. Stats. 1903, p. 40. In effect immediately.]

This section was also amended March 19, 1889, Stats. 1889, p. 389; March 2, 1891, Stats. 1891, p. 21; March 5, 1895, Stats. 1895, p. 25; March 26, 1895, Stats. 1895, p. 159.

Election on adoption of commission form of government.

§ 752a. The board of trustees may at any time submit to the electors at any municipal or at any special election to be held for that purpose, an ordinance to divide the administration of the municipality into five departments and provide for the assignment of its several members to the heads of such respective departments and to be appointed as the commissioners of such respective departments; provided, that if a department of public health be created the commissioner in charge may be given the powers and duties of the municipal board of health, and such health board be thereby abolished. Such ordinance shall define the duties, powers and responsibilities of each commissioner and may require such commissioner to devote a specified number of hours of each business day to the performance of such duties, in which event such commissioner may receive a compensation, the amount of same to be fixed by said ordinance. The board may, by majority vote, subject to the provisions of this section, assign its several members to be and appoint them as the respective commissioners of such several departments, and may by like vote from time to time change such assignment and appointment. It may assign employees to one or more departments, may require an officer or employee to perform duties in two or more departments, and may make such other rules and regulations as may be necessary or proper to the efficient and economical conduct of the business of the municipality. The substance of the ordinance so proposed shall be printed on the ballots used at such election substantially as follows: Shall the administration of the municipality be divided into five departments as follows: (insert the five departments of government proposed and briefly designate the powers and duties conferred upon each and the compensation each commissioner or head of department shall receive), "Yes" and "No" so printed in connection therewith that the voters may express their choice. The returns of the election shall be canvassed and declared as at other municipal elections and if it appears that a majority of the votes cast at such election were in favor of the ordinance, such ordinance shall take effect and be in force on the tenth day thereafter. [New section approved April 10, 1911. Stats. 1911, p. 842.]

Election on question of appointment of city officers.

§ 752b. The board of trustees may submit to the electors at any municipal election or at a special election to be held for that purpose, the question as to whether the elective officers, or any of them, other than trustees, shall be appointed by said board, instead of being elected as provided in the preceding section. The question so submitted shall be printed on the ballots used at such election substantially as follows: "Shall the board of trustees hereafter appoint the . . . (naming the offices) of the city (or town) of . . .," with the words "Yes" and "No" so printed in connection therewith that the voters may express their choice. The returns of the election shall be canvassed and declared as at other municipal elections, and if it appears that a majority of the votes cast on any such proposition were in favor of the appointment of such officers or any of them, then at the expiration of the terms of office of any such officials then in office, and on the occurrence of a vacancy in any such offices, such elective officers or any of them for the appointment of whom such majority vote was so cast,

shall thereafter be appointed by the board of trustees and hold office during the pleasure of such board. [New section approved April 10, 1911. Stats. 1911, p. 843.]

Official bonds.

§ 753. The clerk, treasurer, city attorney, and marshal shall, respectively, before entering upon the duties of their respective offices, each execute a bond to such city in such penal sum as the board of trustees by ordinance may determine, conditioned for the faithful performance of his duties, including in the same bond the duties of all offices of which he is made by this chapter ex-officio incumbent. Such bonds shall be approved by the board of trustees. All bonds, when approved, shall be filed with the clerk, except the bond of the clerk, which shall be filed with the president of the board of trustees. All the provisions of any law of this state relating to the official bonds of officers shall apply to such bonds except as herein otherwise provided. Every officer of such city, before entering upon the duties of his office, shall take and file with the clerk the constitutional oath of office.

Vacancies.

§ 754. Any vacancy occurring in any of the offices provided for in this act shall be filled by appointment by the board of trustees; but if such office be elective, such appointee shall hold office only until the next regular election, at which time a person shall be elected to serve for the remainder of such unexpired term. In case a member of the board of trustees is absent from the city for the period of ninety days, unless by permission of the board of trustees, his office shall by the board be declared vacant, and the same filled as in case of other vacancies.

Compensation of trustees and other officers.

§ 755. The members of the boards of trustees shall receive no compensation whatever, provided that in all such cities the question of whether the members of such board or any of them shall receive any compensation for his services as such member, and the amount thereof, may be submitted to the qualified electors of said city at any general municipal election held therein, and if the majority of such electors voting at such election shall vote in favor thereof, then such trustee or trustees shall receive the compensation specified in the call submitting such question at such municipal election; such compensation to begin on the first day of the next month succeeding the canvass of the return of such election, and the amount so fixed shall from such date be a charge against such city; payable the same as other fixed salaries are paid. Said compensation may be increased or diminished at any general municipal election thereof, by submission of such question in the same manner and by the same vote as herein provided, for the original creation of such compensation.

The treasurer, assessor, marshal, clerk and recorder shall severally receive at stated times a compensation to be fixed by ordinance by the board of trustees, which compensation shall not be increased or diminished after their election or during their several terms of office.

Nothing herein contained shall be construed to prevent the board of trustees from fixing such several amounts of compensation in the first instance during the term of office of any such officer or after his election. The compensation of all other officers shall be fixed from time to time by the board of trustees. [Amendment of March 1, 1911. Stats. and Amdts. 1911, p. 253. In effect immediately.]

This section was also amended March 19, 1889, Stats. 1889, p. 390.

Election regulations.

§ 756. All elections in such city shall be held in accordance with the general election laws of the state, so far as the same may be made applicable, and no person shall be

entitled to vote at such election unless he shall be a qualified elector of the county, enrolled upon the great register thereof, and shall have resided in such city for at least thirty days next preceding such election. The board of trustees shall give such notice of each election as may be prescribed by ordinance, shall appoint boards of election, and fix their compensation, and establish election precincts and polling-places, and may change the same; provided, that no part of any ward less than the whole thereof shall be attached to any other ward, or part thereof, in forming election precincts. At any municipal election the last printed great register of the county shall be used, and any elector whose name is not upon such printed register shall be entitled to vote, upon producing and filing with the board of election a certificate, under the hand and official seal of the county clerk, showing that his name is registered and uncanceled upon the great register of such county, provided that he is otherwise entitled to vote.

Eligibility to office.

§ 757. No person shall be eligible to hold the office of trustee in such city, unless he be a resident and elector therein, and shall have resided in such city for one year next preceding the date of his election. [Amendment approved April 16, 1913. Stats. 1913, p. 34. In effect August 10, 1913.]

Free library.

§ 758. The trustees of any free public library created or existing in such city under the provisions of an act entitled "An act to establish free public libraries and reading-rooms," approved April twenty-sixth, eighteen hundred and eighty, shall be elected by the qualified electors of said city, at a general municipal election to be held therein on the second Monday in April next succeeding the passage and approval of this act, and shall hold office for the period of four years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified. In case a vacancy shall occur in the office of trustee of such free public library and reading-room, the board of trustees of said free public library and reading-room shall choose a person to fill such vacancy, who shall serve until the next general municipal election, when, if the term does not then expire, a person shall be elected to serve for the remainder of such unexpired term. [Amendment approved April 1, 1897. Stats. 1897, p. 403. In effect immediately.]

This section was also amended March 19, 1889, Stats. 1889, p. 390.

ARTICLE III.—LEGISLATIVE DEPARTMENT.

Board of trustees.

§ 760. The board of trustees shall meet on the Monday next succeeding the date of said general municipal election, shall take the oath of office, shall choose one of their number president, and shall hold regular meetings at least once in each month, at such times as they shall fix by ordinance. Special meetings may be called at any time by the president of the board or by three trustees, by written notice delivered to each member at least three hours before the time specified for the proposed meeting. All meetings of the board of trustees shall be held within the corporate limits of the city, at such place as may be designated by ordinance, and shall be public.

Meetings.

§ 761. At any meeting of the board of trustees, a majority of the trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The president of the board shall preside at all meetings of the board, and in case of his absence, the board may appoint a president pro tem.; and in case of the absence of the clerk, the president or president pro tem. shall appoint one of the members of the board clerk pro tem.

Rules.

§ 762. The board of trustees shall judge of the qualifications of its members and of all election returns, and determine contested elections of all city officers. They may establish rules for the conduct of their proceedings, and punish any member, or other person, for disorderly behavior at any meeting. They shall cause the clerk to keep a correct journal of all their proceedings, and, at the desire of any member, shall cause the ayes and noes to be taken on any question, and entered on the journal.

Limitation on passage of ordinances.

§ 763. No resolution granting any franchise, and no ordinance for any purpose, shall be passed by the board of trustees on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting, or an adjourned regular meeting, and no such resolution and no ordinance granting any franchise shall be passed without being first submitted to the city attorney. No resolution or order for the payment of money shall be passed at any other than a regular meeting, or an adjourned regular meeting, and no resolution or order for the payment of money, no resolution granting a franchise, and no ordinance for any purpose, shall have any validity or effect unless passed by the affirmative vote of at least three trustees. In cases of urgency the board of trustees by a four-fifths vote may adopt any ordinance or resolution affecting the health and safety of the public on the day of its introduction or at any regular or special meeting. [Amendment of May 5, 1919. Stats. 1919, p. 311. In effect July 22, 1919.]

This section was also amended March 19, 1889, Stats. 1889, p. 389.

Powers of board of trustees of city.

§ 764. The board of trustees of such city shall have power:

1. To pass ordinances not in conflict with the constitution and laws of this state, or of the United States.

2. To purchase, lease, or receive such real estate and personal property as may be necessary or proper for municipal purposes, and to control, dispose of, and convey the same for the benefit of the city; provided, that they shall not have any power to sell or convey any portion of any waterfront; but may rent such waterfront for a term not exceeding ten years for the purpose of erecting bath houses thereon.

3. To contract for supplying the said city with water, and gas, and electric lights or other lights for municipal purposes; to purchase, lease, construct or otherwise acquire water works, electric plants, and gas works or plants or any of same, and all machinery, conductors, lands, appliances and all other things needed therefor, and to supply said city with, and to sell to the inhabitants of said city, gas, electric light or other light, and heat, and power; provided, that no such purchase or lease shall be made unless the question of acquiring such property is submitted to the voters of such city in the same manner as other propositions, at a general or special municipal election, and a majority of the electors, voting at such election shall vote in favor of such proposition.

4. To establish, build and repair bridges; to establish, lay out, alter, keep open, open, improve and repair streets, sidewalks, alleys, squares, and other public highways and places within the city, and to drain, sprinkle, oil, and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, macadamize, gravel and curb the same in whole or in part, and to construct gutters, culverts, sidewalks, and crosswalks therein, or upon any part thereof; to cause to be planted, set out, and cultivated, shade trees therein; and generally to manage and control all such highways and places. •

5. To establish, construct and maintain drains and sewers, and to provide by ordinance for a general system of sewers, and the expense of building and maintaining the same.

6. To provide fire engines and all other necessary or proper apparatus for the prevention and extinguishment of fires.

7. To impose and collect from every male inhabitant between the ages of twenty-one and sixty years, an annual street poll tax, not exceeding two dollars, and no other road poll tax shall be collected within the limits of such city; provided, that any member of a volunteer fire company in such city shall be exempt from such tax.

8. To impose and collect an annual license, not exceeding two dollars on every dog owned or harbored within the limits of the city.

9. To levy and collect annually a property tax, which shall be apportioned as follows: For the general fund, not exceeding sixty cents on each one hundred dollars; for street fund, not exceeding thirty cents on each one hundred dollars; for school fund, not exceeding twenty-five cents on each one hundred dollars; for sewer fund, not exceeding ten cents on each one hundred dollars. The levy for all purposes for any one year for all purposes to which such funds are applicable shall not exceed one dollar on each one hundred dollars of the assessed value of all real and personal property within such city.

10. To license, for purposes of regulation and revenue, all and every kind of business, including the sale of intoxicating liquors, authorized by law and transacted or carried on in such city, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of licenses upon the same, and to provide for the collection of the same by suit or otherwise.

11. To improve the rivers and streams flowing through such city, or adjoining the same; to widen, straighten, and deepen the channels thereof, and to remove obstructions therefrom; to improve the waterfront of the city, and to construct and maintain embankments and other works to protect such city from overflow.

12. To erect and maintain buildings for municipal purposes.

13. To permit, under such restrictions as they may deem proper, the laying of railroad tracks and the running of cars drawn by horses, steam, electricity, or other power thereon, and the laying of gas or water pipes in the public streets, and to construct and maintain, and to permit the construction and maintenance of telephone, telegraph and electric light lines therein.

14. In its discretion to divide the city, by ordinance, into a convenient number of wards, not exceeding five, to fix the boundaries thereof, and to change the same from time to time; provided, that no change in the boundaries of any ward shall be made within sixty days next before the date of said general municipal election, nor within twenty months after the same shall have been established or altered. Whenever such city shall be divided into wards, the board of trustees shall designate by ordinance the number of trustees to be elected from each ward, apportioning the same in proportion to the population of such ward; and thereafter the trustees so designated shall be elected by the qualified electors resident in such ward, or by the general vote of the whole city, as may be designated in such ordinance.

15. To appoint and remove such policemen and such other subordinate officers as they may deem proper, and to fix their duties and compensation.

16. To impose fines, penalties, and forfeitures for any and all violations of ordinances, and for any breach or violation of any ordinance to fix the penalty by fine or imprisonment, or both, but no such fine shall exceed three hundred dollars, nor the term of such imprisonment exceed three months.

17. To cause all persons imprisoned for violation of any ordinance to labor on the streets, or other property or works within the city.

18. To establish fire limits, and the same to alter at pleasure; to regulate or prevent the erection of wooden or other buildings or structures of combustible materials; to regulate the construction of all buildings, shades, awnings, signs, or any structure of a dangerous or unsafe character; to provide, by regulation, for the prevention and summary removal of all filth and garbage in the streets, sloughs, alleys, backyards or public grounds of such city, or elsewhere therein; to regulate or prohibit the storage of gunpowder and combustible or explosive materials of every kind and nature within the city limits, and to prescribe the limits in which the same may be kept or stored.

19. To do and perform any and all other acts and things necessary and proper to carry out the provisions of this chapter, and to exact and enforce within the limits of such city all other local, police, sanitary, and other regulations as do not conflict with general laws.

20. To levy and collect a property tax in addition to that now authorized by law for the purpose of improving, repairing, and maintaining any and all streets, avenues, lanes, alleys, courts, places and sidewalks of said municipality, which have heretofore been accepted by said municipality, under and pursuant to the provisions of any street improvement act, providing for the acceptance of streets by said municipality, which such tax shall not exceed thirty cents on each one hundred dollars of the assessed value of all real and personal property within such municipality. [Amendment of June 1, 1917. Stats. 1917, p. 1663. In effect July 31, 1917.]

This section was also amended March 19, 1889, Stats. 1889, p. 391; March 27, 1897, Stats. 1897, p. 196; March 23, 1901, Stats. 1901, p. 656; March 3, 1905, Stats. 1905, p. 45; April 16, 1909, Stats. 1909, p. 937.

Enacting clause of ordinances.

§ 765. The enacting clause of all ordinances shall be as follows: "The board of trustees of the city (or town) of do ordain as follows:". Every ordinance must be signed by the president of the board of trustees, attested by the clerk, and must be published by said board at least three times in a newspaper of general circulation published in such city or town, or if there be none published in such city or town, then every ordinance must be posted in at least three public places therein; provided, that emergency ordinances subject to the referendum must be published at least one time. [Amendment of June 1, 1917. Stats. 1917, p. 1663. In effect July 31, 1917.]

This section was also amended March 19, 1889, Stats. 1889, p. 389.

Board to audit demands.

§ 766. All demands against such city, except as otherwise by law provided, shall be presented to and audited by the board of trustees, in accordance with such regulations as they may by ordinance prescribe; and upon the allowance of any such demand, the president of the board shall draw a warrant upon the treasurer for the same, which warrant will be countersigned by the clerk, and shall specify for what purpose the same is drawn, and out of what fund it is to be paid. [Amendment approved March 19, 1889. Stats. 1889, p. 389. In effect immediately.]

Indebtedness not to exceed moneys provided.

§ 767. The board of trustees shall not create, audit, allow, or permit to accrue any debt or liability in excess of the available money in the treasury that may be legally apportioned and appropriated for such purposes, except in the manner provided by law for incurring indebtedness; provided, that any city during the first year of its existence under this act may incur such indebtedness or liability as may be necessary, not exceeding in all the income and revenue provided for it for such year; nor shall any warrant

be drawn, or evidence of indebtedness be issued, unless there be at the time sufficient money in the treasury legally applicable to the payment of the same, except as herein-before provided. [Amendment approved March 19, 1889. Stats. 1889, p. 389. In effect immediately.]

Incurring of excess decided at an election.

§ 768. [Amended March 4, 1887. Stats. 1887, p. 12; March 19, 1889. Stats. 1889, pp. 371, 397. Repealed April 16, 1913. Stats. 1913, p. 33. In effect August 10, 1913.]

Imprisonment.

§ 769. The violation of any ordinance of such city shall be deemed a misdemeanor, and may be prosecuted by the authorities of such city in the name of the people of the state of California, or may be redressed by civil action, at the option of said authorities. Any person sentenced to imprisonment for the violation of an ordinance may be imprisoned in the city jail, or, if the board of trustees shall by ordinance so prescribe, in the county jail of the county in which such city may be situated; in which case the expense of such imprisonment shall be a charge in favor of such county against such city. [Amendment approved March 7, 1905. Stats. 1905, p. 72. In effect in sixty days.]

This section was also amended March 19, 1889, Stats. 1889, p. 389.

Nuisances.

§ 770. Every act or thing done or being within the limits of such city, which is or may be declared by law or by any ordinance of such city to be a nuisance, shall be and is hereby declared to be a nuisance, and shall be considered and treated as such in all actions and proceedings whatever; and all remedies which are or may be given by law for the prevention and abatement of nuisances shall apply thereto.

Repairs assessed on fronting property.

§ 771. [Repealed April 16, 1913. Stats. 1913, p. 33. In effect August 10, 1913.]

Right of way.

§ 772. Whenever it shall become necessary for the city to take or damage private property for the purpose of establishing, laying out, extending and widening streets and other public highways and places within the city, or for the purpose of rights of way for drains, sewers and aqueducts, and for the purpose of widening, straightening, or diverting the channels of streams, and the improvement of waterfronts, and the board of trustees can not agree with the owner thereof as to the price to be paid, the trustees may direct proceedings to be taken under section 1237, and the following sections, to and including section 1263 of the Code of Civil Procedure, to procure the same.

City tax levy.

§ 773. The board of trustees shall have the power, and it shall be their duty, to provide by ordinance a system for the assessment, levy and collection of all city taxes not inconsistent with the provisions of this chapter. All taxes shall be collected by the marshal or treasurer, as may be determined by the board of trustees by ordinance. All taxes assessed, together with any percentage imposed for delinquency and the costs of collection, shall constitute liens on the property assessed; every tax upon the personal property shall be a lien upon the real property of the owner thereof. The liens provided for in this section shall attach as of the first Monday in March of each year, and may be enforced by a sale of the real property affected, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance, or by action in any court of competent jurisdiction to foreclose such liens; provided, that any property sold for such taxes shall be subject to redemp-

tion within five years and upon the terms provided or that may hereafter be provided for the redemption of property sold for state taxes. All deeds made upon any sale of property for taxes or special assessments under the provisions of this chapter shall have the same force and effect in evidence as is or may hereafter be provided by law for deeds for property sold for nonpayment of state taxes. [Amendment approved March 8, 1905. Stats. 1905, p. 88. In effect in sixty days.]

This section was also amended March 19, 1889, Stats. 1889, p. 394. See note to § 871, post.

Equalization.

§ 774. The board of trustees shall meet at their usual place of holding meetings on the second Monday of August of each year, at 10 o'clock in the forenoon of said day, and sit as a board of equalization, and shall continue in session from day to day until all the returns of the assessor have been rectified. They shall have power to hear complaints, and to correct, modify or strike out any assessment made by the assessor, and may, of their own motion, raise any assessment, upon notice to the party whose assessment is to be raised. The corrected list for each tax shall be the assessment roll for said tax for said year. It shall be certified by the city clerk, who shall act as clerk of the board of equalization, as being the assessment roll for said tax, and shall be the assessment roll upon which such tax is to be levied in said year.

Construction of act.

§ 775. Nothing in this chapter contained shall be construed to prevent any city having a bonded indebtedness, contracted under laws heretofore passed, from levying and collecting such taxes for the payment of such indebtedness, and the interest thereon, as are provided for in such laws, in addition to the taxes herein authorized to be levied and collected; nor to prevent any city from levying and collecting the tax authorized by the act entitled "An act to establish free public libraries and reading rooms," approved April twenty-sixth, eighteen hundred and eighty, in addition to the taxes herein authorized to be levied and collected. All moneys received from licenses, street poll tax, and from fines, penalties and forfeitures, shall be paid into the general fund.

Waterfront fund.

§ 776. The board of trustees may also levy, and cause to be collected in each year, in addition to the taxes herein authorized to be levied and collected, a tax, not exceeding ten cents on each one hundred dollars of the assessed value of all real and personal property within such city subject to taxation, the proceeds of which tax shall be known as the "River and Waterfront Improvement Fund," and shall be applied to the improvement of streams, bays and waterfronts, and the erection of embankments and other works to protect the city from overflow, and for no other purposes whatever.

Work in cities of fifth class costing \$300 done by contract. By day labor. In case of calamity.

§ 777. In the erection, improvement, and repair of all public buildings and works, in all street and sewer work, and in all work in or about streams, bays or waterfronts, or in or about embankments, or other works for protection against overflow, and in furnishing any supplies or materials for the same, when the expenditures required for the same exceed the sum of three hundred dollars, the same shall be done by contract, and shall be let to the lowest responsible bidder, after notice by publication in a newspaper of general circulation, printed and published in such city or town, for at least two weeks, or if there be no newspaper printed or published therein, by printing and posting the same in at least four public places therein for the same period; such notice shall distinctly and specifically state the work contemplated to be done; provided, that

the board of trustees may reject any and all bids presented and re-advertise, in their discretion; provided, further, after rejecting bids, the board of trustees may declare and determine by a four-fifths vote of all its members that in its opinion the work in question may be performed more economically by day labor or the materials or supplies furnished at a lower price in the open market, and after the adoption of a resolution to this effect they may proceed to have the same done in the manner stated without further observance of the foregoing provisions of this section; and provided, further, that in case of a great public calamity such as an extraordinary fire, flood, storm, epidemic or other disaster, the board of trustees may, by resolution passed by vote of four-fifths of all its members declare and determine that public interest and necessity demands the immediate expenditure of public money to safeguard life, health or property and thereupon they may proceed to expend or enter into a contract involving the expenditure of any sum required in such emergency. The board of trustees shall annually, at a stated time, contract for doing all city printing and advertising, which contract shall be let to the lowest responsible bidder, after notice as provided in this section. [Amendment of June 8, 1915. In effect August 8, 1915. Stats. 1915, p. 1304.]

This section was also amended March 10, 1891, Stats. 1891, p. 54.

Powers of president.

§ 778. The president of the board of trustees shall preside over all meetings of the board at which he is present. In his absence a president pro tem. may be chosen. The president, and in his absence the the president pro tem., shall sign all warrants drawn on the city treasurer, and, unless otherwise provided by said board, shall sign all written contracts entered into by said city, as such president or president pro tem. The authority and power of the president pro tem. shall continue only during the day on which he is chosen. The president and president pro tem. shall have power to administer oaths and affirmations, and take affidavits and certify the same under their hands. The president or president pro tem. shall sign all conveyances made by said city, and all instruments which shall require the seal of the city. The president is authorized to acknowledge the execution of all instruments executed by said city that require to be acknowledged. He shall have power to administer oaths and affirmations concerning any demand upon the treasury, and in all matters relating to the duties of the board of trustees, and to witnesses examined in any investigation had by said board, or by any committee thereof duly authorized to make such investigation. Said president may issue subpoenas under his hand and the seal of such city, attested by the city clerk to compel the attendance of witnesses before such board of trustees or committee thereof. [Amendment approved March 19, 1889. Stats. 1889, p. 389. In effect immediately.]

ARTICLE IV.—EXECUTIVE DEPARTMENT.

Treasurer.

§ 786. It shall be the duty of the treasurer to receive and safely keep all moneys which shall come into his hands as city treasurer, for all of which he shall give duplicate receipts, one of which shall be filed with the city clerk. He shall pay out said money on warrants signed by the proper officers, and not otherwise, except interest coupons on bonds. He shall make quarterly settlements with the city clerk. He shall collect all taxes levied by the board of trustees, if so required by ordinance. [Amendment approved March 19, 1889. Stats. 1889, p. 389. In effect immediately.]

Assessor.

§ 787. It shall be the duty of the assessor, between the first day of May and the first day of August in each year, to make out a true list of all the taxable property within the city. The mode of making out of said list, and proceedings relating thereto, shall be in conformity with laws now in force regulating county assessors, except as the

same may be otherwise provided in this act, or by ordinance. Said list shall describe the property assessed and the value thereof, and shall contain all other matters required to be stated in such lists by county assessors. Said assessor shall verify said list by his oath, and shall deposit the same with the city clerk on or before the first Monday of August in each year. The assessor shall, during said time, also make a list of all male persons residing within the limits of such city over the age of twenty-one years, and shall verify said list by his oath, and shall, on or before the first Monday of August in each year, deposit the same with the city clerk. Said assessor and his deputy shall have power to administer all oaths and affirmations necessary in the performance of his duties.

City clerk, duties of.

§ 788. It shall be the duty of the city clerk to keep a full and true record of all the proceedings of the board of trustees and of the board of equalization. The proceedings of the board of trustees shall be kept in a book, marked "Records of the Board of Trustees." The proceedings of the board of equalization shall be kept in a separate book, marked "Records of the Board of Equalization." He shall keep a book, which shall be marked "City Accounts," in which shall be entered as a credit all moneys received by the city for licenses, the amount of any tax when levied, and all other moneys received; and in which shall be entered upon the debtor side all commissions deducted, and all warrants drawn on the treasury. He shall also keep a book, marked "Marshal's Account," in which he shall charge the city marshal with all the tax lists, if any, delivered to him, and all licenses delivered to him. He shall credit the marshal with the delinquent lists returned by him. He shall also keep a book marked "Treasurer's Account," in which he shall keep a full account of the transactions of the city with the treasurer. He shall also keep a book, marked "City Licenses," in which he shall enter all licenses delivered by him to the marshal, and the amount thereof. He shall also keep a book, marked "City Ordinances," into which he shall copy all city ordinances, with his certificate annexed to said copy, stating the foregoing ordinance is a true and correct copy of an ordinance of such city, and giving the number and title of said ordinance, and stating that the same has been published or posted according to law. Said record copy, with said certificate, or the original ordinance, shall be prima facie evidence of the contents of the ordinance and of the due passage and publication of the same, and shall be admissible as such evidence in any court or proceeding. Said records shall not be filed in any case, but shall be returned to the custody of the city clerk. Nothing herein contained shall be construed to prevent the proof of the passage and publication of ordinances in the usual way. Each of the foregoing books, except the records of the board of trustees and the board of equalization, shall have a general index, sufficiently comprehensive to enable a person readily to ascertain matters contained therein. The city clerk shall also keep a book, marked "Demands and Warrants," in which he shall note every demand against the city, and file the same. He shall state therein, under the note of the demands, the final disposition made of the same; and if the same is allowed and a warrant is drawn, he shall also state the number of the warrant, with sufficient dates. This book shall contain an index, in which reference shall be made to each demand. Upon the completion of the assessment roll for any of the taxes of the city, and levying of the tax thereon, the city clerk shall apportion the taxes upon such assessment roll, and shall deliver it to the officer charged with the duty of collecting taxes. It shall not be necessary to make a duplicate assessment roll. He may appoint a deputy, for whose acts he and his bondsmen shall be responsible; and he and his deputy shall have power to administer oaths and affirmations, to take affidavits and depositions to be used in any court or proceeding in the state, and to certify the same. He and his deputies shall take all necessary affidavits to demands

against the city, and certify the same without charge. He shall be the custodian of the seal of such city. He shall make a quarterly statement, in writing, showing the receipts and expenditures of the city for the preceding quarter, and the amount remaining in the treasury. He shall, at the end of every fiscal year, make a full and detailed statement of the receipts and expenditures of the preceding year, and a full statement of the financial condition of the affairs of the city, which shall be published. He shall perform such other services as this act and the ordinances of the board of trustees shall require. [Amendment approved March 19, 1889. Stats. 1889, p. 389. In effect immediately.]

Duties of city attorney in fifth class cities.

§ 789. It shall be the duty of the city attorney to appear and represent the city in all actions pending in any court in which the city is a party, or in which it is interested, and he shall also appear and represent the people in all actions prosecuted in any court for the violation of any of the ordinances of said city, or involving the validity of any municipal ordinances or acts of said city, and in all actions or proceedings to which said city may be a party. He shall advise the city authorities and officers in all legal matters pertaining to the business of said city and render such other services in the line of his profession as may be required of him by the board of trustees. [Amendment of April 23, 1915. In effect August 8, 1915. Stats. 1915, p. 170.]

This section was also amended March 19, 1889, Stats. 1889, p. 396.

Police department under control of city marshal.

§ 790. The department of police of said city shall be under the direction and control of the city marshal; and for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities in the lawful exercise of their functions, he shall have the powers that are now or may hereafter be conferred upon sheriffs by the laws of the state, and shall, in all respects, be entitled to the same protection; and his lawful orders shall be promptly executed by deputies, police officers and watchmen in said city, and every citizen shall also lend him aid, when required, for the arrest of offenders and maintenance of public order. He shall and is hereby authorized to execute and return all process issued and directed to him by any legal authority. It shall be his duty to prosecute before the recorder all breaches or violations of or noncompliance with the city ordinance which shall come to his knowledge. He shall collect all taxes levied by the board of trustees, except as is herein provided. He shall, at the expiration of any month, pay to the city treasurer all taxes and other funds of said city collected by him during said month. He shall, upon payment of the money, file with the treasurer an affidavit, stating that the money so paid is all the taxes or funds that he has collected or received during the preceding month. He shall, upon the receipt of any tax list, give his receipt for the same to the city clerk, and shall, upon depositing with the city clerk the delinquent tax list, take his receipt therefor. He shall receive from the clerk all city licenses and collect the same. He shall have charge of the city prison and prisoners, and of any chain gang which may be established by the board of trustees. He shall, for service of any process, receive the same fees as constables. He may appoint, subject to the approval of the board of trustees, one or more deputies, for whose acts he and his bondsmen shall be responsible, whose only compensation shall be fees for the service of process, which shall be the same as those allowed to the city marshal. He may also, with the concurrence of the president of the board of trustees, when the same may be by them deemed necessary for the preservation of public order, appoint additional policemen, who shall discharge the duties assigned them for one day only. He shall perform such other services as this act and the ordinances of the board of trustees shall require, and shall receive such compensation from

the city as shall be fixed by ordinance, in addition to such mileage and fees as he shall receive in the service of process of the courts of this state, other than the recorder's court of such city, which mileage and fees shall be the same as is allowed by law to constables in the county in which such city is situated. [Amendment approved March 23, 1893. Stats. 1893, p. 299.]

This section was also amended March 19, 1889, Stats. 1889, p. 396.

Board to fix compensation.

§ 791. The board of trustees shall, by ordinances not inconsistent with the provisions of this chapter, prescribe the additional duties of all officers, and fix their compensation.

ARTICLE V.—SCHOOL DEPARTMENT.

School district.

§ 795. From and after the organization of each of such cities, the same shall constitute a separate school district, which shall be governed by the board of education of such city; provided the board of supervisors may include more territory in such school district than that included in such city, and in that case such outside territory shall be deemed a part of such city for the purpose of holding the general municipal election, and shall be an election precinct by itself and its qualified electors shall vote only for the board of education, and said outside territory shall be deemed to be a part of said city for all matters connected with the school department, and the annual levying and collecting of the property tax for the school fund. [Amendment approved March 10, 1891. Stats. 1891, p. 28.]

Vacancy in board.

§ 796. In case a vacancy shall occur in the office of school director, the board of education shall choose a person to fill such vacancy, who shall serve until the next election, when, if the term does not then expire, a person shall be elected to serve for the remainder of such unexpired term.

Meetings.

§ 797. The board of education shall meet on the second Tuesday after such general municipal election, and choose one of its members as president, and shall appoint a secretary, who shall hold at the pleasure of said board. The regular meetings of said board shall thereafter be held as often as once in each month, in the place provided for the board of trustees, and the time for holding such meetings shall be fixed by the board of education. Special meetings of said board may be held when called by written notice, signed by its president, or three of its members, and delivered personally to each of its members who shall not have signed the same. Three members shall constitute a quorum, and no business shall be transacted by said board of education without the concurrence of three of its members; but a majority of the members present at any meeting may adjourn from time to time. All the meetings of said board of education shall be public, and full records of its proceedings shall be kept by the secretary of said board. The members of the board of education shall receive no compensation for their services as school directors. [Amendment approved March 7, 1891. Stats. 1891, p. 114.]

Powers of board.

§ 798. The board of education shall have power:

1. To establish and maintain public, primary, kindergarten, grammar, and evening schools, and to subdivide the school districts, and to fix and alter the boundaries of such subdivisions.

2. To employ and dismiss a superintendent of schools, teachers, janitors, truant officers, and school census marshals, and to fix, alter, allow and order paid their salaries or compensations; and to employ and pay such mechanics and laborers as may be necessary to carry into effect the powers hereby conferred.

3. To make, establish, and enforce all necessary or proper rules and regulations, not in conflict with the laws of this state, for the government and management of public schools within such city, the teachers thereof, and the pupils therein, and for carrying into effect the laws relating to education.

4. To provide for the school department of such city, fuel and lights, water, printing, and stationery, and to incur such other incidental expenses as may be deemed necessary by said board.

5. To build, alter, repair, rent and provide schoolhouses, and to furnish the same with proper school furniture, apparatus, and appliances, and to insure any and all school property.

6. To purchase, receive, lease, and hold in fee, in trust for such city, any and all real estate and personal property that may have been acquired, or may hereafter be acquired, for the use and benefit of the schools of such city; provided, that no real estate shall be bought, sold, or exchanged, nor any expenditure incurred for the construction of new schoolhouses, without the approval of the board of trustees; and provided further, that the proceeds of any such sale or exchange of real estate shall be exclusively applied to the purchase of other lots for the erection of schoolhouses.

7. To grade, fence, and improve all school lots.

8. To determine annually the amount of money required for the support of the public schools, and for carrying into effect all the provisions of law in reference thereto; and in pursuance of this provision, the board of education shall, at least ten days before the meetings of the board of trustees at which the annual city taxes are levied, submit in writing to the board of trustees a careful estimate of the whole amount of money to be received from the state and county, and of the amount to be required from such city for the above mentioned purposes; and the amount so found to be required from the city shall, by the board of trustees, be added to the above amounts to be assessed and collected for city purposes, and when collected, the proceeds thereof shall be immediately paid into the school fund of such city, to be drawn out only upon the order of the board of education; provided, that such annual tax shall not exceed twenty-five cents on each one hundred dollars of the assessed valuation of the real and personal property within such city.

9. To establish regulations for the just and equal disbursement of all moneys belonging to the school fund.

10. To discharge all legal encumbrances existing at the time of the incorporation of such city, or thereafter, on any school property within such city.

11. To admit nonresident children, and persons over twenty-one years of age, to any of the departments of the schools of such city, upon the payment monthly, in advance, of such tuition fee as said board may establish.

12. To prohibit any children under six years of age from attending the public schools.

13. To establish and regulate the grades of schools in such city, and the course of study, and the mode of instruction to be pursued therein, and determine what textbooks shall be used.

14. To do and perform, in addition to the foregoing powers, such other acts as may be necessary or proper to carry into effect the powers hereby conferred. [Amendment adopted March 14, 1899. Stats. 1899, p. 98.]

Board may sue and be sued.

§ 799. The board of education may sue and be sued by their name of office. In any action or judicial proceeding against said board, service of process upon the president, or upon a majority of the members of the board shall be sufficient to give the court jurisdiction to hear and determine the same.

Treasurer custodian of moneys.

§ 800. All moneys received by the treasurer of the county wherein such city may be situated, on account of the school fund of such city, or the school district consisting of the same, and all sums received into the county treasury, which may be apportioned to said city or district, shall be paid to the treasurer of such city, by the treasurer of such county, as soon as received, or as soon as the apportionment shall be made, when apportionment is necessary, upon the order of the board of education.

Demands.

§ 801. The president of the board of education shall have power to administer oaths and affirmations concerning any demand upon the treasury, payable out of the school fund, and in all other matters relating to the duties of the board of education, and to witnesses examined in any investigation had by such board of education, or by a committee thereof, duly appointed by it, for that purpose.

President may compel witnesses.

§ 802. Said president may issue subpoenas under his hand and the seal of such city, attested by the city clerk, to compel the attendance of witnesses before such board of education, or committee thereof, who shall be entitled to the same fees as witnesses in civil cases, and who may be punished for contempt for nonattendance, or refusal to be sworn, or to answer, by the superior court of the county in which such city may be situated.

Warrants.

§ 803. Every claim payable out of the school fund shall be filed with the secretary of the board of education, and after it shall have been approved by the board a certificate of such approval shall be indorsed thereon, signed by the president and secretary, and a warrant upon the school fund shall be issued thereon for the payment of such claim, which warrant shall be signed by the president of such board, and countersigned by the secretary and shall specify for what purpose the same is drawn.

Duties of secretary.

§ 804. The secretary shall report to the board annually, and at such other times as they may require, all matters pertaining to the expense, income, condition, and progress of the public schools of said city during the preceding year, with such recommendations as he may deem proper. He shall observe, and cause to be observed, such general rules and regulations for the government of and instruction in the schools, not inconsistent with the laws of the state, as may be established by the board of education. He shall attend the sessions of the board, and inform them at each session of the condition of the public schools, schoolhouses, school funds, and other matters connected therewith, and recommend such measures as he may deem necessary for the advancement of education in the city, and shall perform such other duties as may be required of him by the board. He shall receive as compensation for his services, payable out of the school fund, such sum as the board of education from time to time may allow.

Fund shall not be diverted.

§ 805. The entire revenue derived by such city from the state school fund and the state school tax shall be applied by said board of education exclusively to the support of primary and grammar schools.

ARTICLE VI.—JUDICIAL DEPARTMENT.

Recorder's court.

§ 806. A recorder's court is hereby established in such city, to be held by the recorder of such city; provided, that the provisions of this section as to the establishment of the recorder's courts and recorders in such city shall not apply to any such city in which a city justice's court or a city justice of the peace is now or may hereafter be established, and any recorder's court now existing in any such last mentioned city is hereby abolished. The justice of the peace of any city wherein said recorder's court shall have been abolished or which may hereafter be abolished is the successor of the recorder of such city whose court has been abolished as aforesaid; and all records, registers, dockets, books, papers, causes, actions, and proceedings lodged, deposited, or pending before said recorder's court or before the recorder of said city, are transferred to the justice's court of said city, which shall have the same power and jurisdiction over them as if they had been in the first instance lodged, deposited, filed, or commenced therein. Said recorder's court shall have jurisdiction, concurrently with the justice's court, of all actions and proceedings, civil and criminal, arising within the corporate limits of such city, and which might be tried in such justice's court; and shall have exclusive jurisdiction of all actions for the recovery of any fine, penalty, or forfeiture prescribed for the breach of any ordinance of such city, of all actions founded upon any obligation or liability created by any ordinance, and of all prosecutions for any violation of any ordinance. In all civil actions for the recovery of any fine, penalty, or forfeiture prescribed for the breach of any ordinance of such city, where the fine, penalty or forfeiture imposed by the ordinance is not more than fifty dollars, the trial must be by the court, in civil actions where the fine, penalty or forfeiture prescribed for the breach of any ordinance of such city is over fifty dollars, the defendant is entitled to a jury. Except as in this section otherwise provided, the rules of practice and mode of proceeding in said recorder's court shall be the same as are or may be prescribed by law for justices' courts in like cases, and appeals may be taken to the superior court of the county in which such city may be situated, from all judgments of said recorder's court in like manner and with a like effect as in cases of appeals from justices' courts. [Amendment approved March 15, 1907. Stats. 1907, p. 272. In effect immediately.]

This section was also amended March 7, 1905, Stats. 1905, p. 72.

Powers of recorder as judge.

§ 807. The recorder shall be judge of the recorder's court, and shall have the powers and perform the duties of a magistrate. He may administer and certify oaths and affirmations, and take and certify acknowledgments. He shall be entitled to charge and receive for his services such fees as are or may be allowed by law to justices of the peace for like services, except that for his services in criminal prosecution for violation of ordinances he shall be entitled to receive only such monthly salary as the board of trustees shall by ordinance prescribe; which compensation when once fixed, shall not be altered within two years.

Recorder, when disqualified as judge.

§ 808. In all cases in which the recorder is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the third degree, or is otherwise disqualified, or in case of sickness or inability to act, the recorder may call in a justice of the peace residing in the city, to act in his place and stead; or if there be no justice of the peace residing in the city, or if all those so residing are likewise disqualified, then he may call in any justice of the peace residing in the county in which such city may be situated.

ARTICLE VII.—MISCELLANEOUS PROVISIONS.

Collection of moneys.

§ 810. Every officer collecting or receiving any moneys belonging to or for the use of such city shall settle for the same with the clerk on the first Monday in each month, and immediately pay the same into the treasury, on the order of the clerk, for the benefit of the funds to which such moneys respectively belong.

No officer to be interested in contract.

§ 811. No officer of such city shall be interested, directly or indirectly, in any contract with such city, or with any of the officers thereof, in their official capacity, or in doing any work or furnishing any supplies for the use of such city or its officers in their official capacity; and any claim for compensation for work done, or supplies or materials furnished, in which any such officer is interested, shall be void, and if audited and allowed shall not be paid by the treasurer. Any willful violation of the provisions of this section shall be a ground for removal from office, and shall be deemed a misdemeanor, and punished as such.

Nuisances.

§ 812. Every act or thing done or being within the limits of such city, which is or may be declared by law or by any ordinance of such city to be a nuisance, shall be and is hereby declared to be a nuisance, and shall be considered and treated as such in all actions and proceedings whatever; and all remedies which are or may be given by law for the prevention and abatement of nuisances shall apply thereto.

Fire departments.

§ 813. The fire department of a city of the fifth class shall consist of companies of volunteer or paid firemen, as the board of trustees may determine, organized into engine, hose, or hook-and-ladder companies. Such fire department, except where the same comprises one or more companies of paid firemen, and such companies of volunteer firemen, shall elect their own officers; but the board of trustees shall appoint the chief and other officers of such department, where the same comprises one or more companies of paid firemen. The election of any person as chief of any such volunteer fire department shall be forthwith certified by the secretary of said department to the board of trustees of such city, and by them, at their next regular meeting, confirmed. The chief of the fire department shall give a bond to the chairman of the board of trustees of such city, in the sum of one thousand dollars; the chief of every fire department shall inquire into the cause of every fire occurring in the city, and keep a record thereof. He shall have exclusive control of the working of the fire department in time of conflagration or fire. He must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violation of ordinances relating to the prevention and extinguishment of fires when directed by the proper authorities, and institute proceedings therefor, and shall have general control, management, and direction of the fire companies, hose, hook-and-ladder companies, and engine, and fire departments of such city, and shall perform such other duties as may be by the ordinances of said city, or by law, imposed upon him. His compensation, which shall not be less than ten dollars per month, must be fixed and paid by the board of city trustees. [Amendment approved February 20, 1905. Stats. 1905, p. 16. In effect immediately.]

This section was added March 27, 1897, Stats. 1897, p. 183.

CHAPTER VII.

MUNICIPAL CORPORATIONS OF THE SIXTH CLASS.

(A charter for cities and towns having a population of not exceeding 3,000.)

ARTICLE I.—GENERAL POWERS.

Sixth class.

§ 850. Every municipal corporation of the sixth class shall be entitled the city (or town) of . . . (naming it), and by such name shall have perpetual succession, may sue and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the city or town authorities, and may purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of the same for the common benefit.

ARTICLE II.—GENERAL PROVISIONS RELATING TO OFFICERS.

Municipal officers.

§ 851. The government of such city or town shall be vested in a board of trustees, to consist of five members; a clerk, who shall be ex-officio assessor; a treasurer; a marshal, to be appointed by the board of trustees, who shall be ex-officio tax and license collector; a recorder to be appointed by the board of trustees; and such subordinate officers as are hereinafter provided for. [Amendment approved March 9, 1911. Stats. 1911, p. 316.]

This section was also amended March 27, 1895, Stats. 1895, p. 267.

Elections. Term of trustees. Appointive officers.

§ 852. The members of the board of trustees and the clerk and treasurer shall be elected by the qualified electors of said city or town at a general municipal election. Such a general municipal election shall be held therein on the second Monday in April in each even numbered year. Members of the board of trustees and the clerk and the treasurer shall hold office for the period of four years from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified. The respective terms of the members of the first board of trustees elected under the provisions of this section shall be determined as follows: the two members elected by the highest number of votes shall hold office for four years, and the three members elected by the lowest number of votes shall hold office for two years. In the event that two or more persons should be elected by the same number of votes, the respective terms of each shall be decided by lot. The board of trustees shall appoint the marshal and the recorder; they may also, in their discretion, appoint an attorney, a superintendent of streets, a civil engineer, and such other subordinate officers as in their judgment may be deemed necessary, and fix their compensation. Said officers shall hold office during the pleasure of said board. [Amendment of April 4, 1919. Stats. 1919, p. 19. In effect July 22, 1919.]

This section was also amended March 9, 1911, Stats. 1911, p. 316, and April 16, 1913. In effect August 10, 1913. Stats. 1913, p. 31.

Election on adoption of commission form of government.

§ 852a. The board of trustees may at any time submit to the electors at any municipal or at any special election to be held for that purpose, an ordinance to divide the administration of the municipality into five departments and provide for the assignment of its several members to be the heads of such respective departments and to be appointed as the commissioners of such respective departments; provided, that if a department of public health be created the commissioner in charge may be given the powers and duties of the municipal board of health, and such health board be thereby abolished. Such ordinance shall define the duties, powers and responsibilities of each

commissioner and may require such commissioner to devote a specified number of hours of each business day to the performance of such duties, in which event such commissioner may receive a compensation, the amount of same to be fixed by said ordinance. The board may, by majority vote, subject to the provisions of this section, assign its several members to be and appoint them as the respective commissioners of such several departments and may by like vote from time to time change such assignment and appointment. It may assign employees to one or more departments, and may make such other rules and regulations as may be necessary or proper to the efficient and economical conduct of the business of the municipality. The substance of the ordinance so proposed shall be printed on the ballots used at such election substantially as follows: Shall the administration of the municipality be divided into five departments as follows: (insert the five departments of government proposed and briefly designate the powers and duties conferred upon each and the compensation each commissioner or head of department shall receive), "Yes" and No" so printed in connection therewith that the voters may express their choice. The returns of the election shall be canvassed and declared as at other municipal elections and if it appears that a majority of the votes cast at such election were in favor of the ordinance, such ordinance shall take effect and be in force on the tenth day thereafter. [New section approved April 10, 1911. Stats. 1911, p. 844.]

Election on question of appointment of city officers.

§ 852b. The board of trustees may submit to the electors at any municipal election, or at a special election to be held for that purpose, the question as to whether the elective officers, or any of them, other than trustees, shall be appointed by said board, instead of being elected as provided in the preceding section. The question so submitted shall be printed on the ballots used at such election substantially as follows: "Shall the board of trustees hereafter appoint the — (naming the offices) of the city (or town) of —," with the words "Yes" and "No," so printed in connection therewith that the voters may express their choice. The returns of the election shall be canvassed and declared as at other municipal elections, and if it appears that a majority of the votes cast on any such proposition were in favor of the appointment of such officers or any of them, then at the expiration of the terms of office of any such officials then in office, and on the occurrence of a vacancy in any such offices, such elective officers or any of them, for the appointment of whom such majority vote was so cast, shall thereafter be appointed by the board of trustees and hold office during the pleasure of such board. [New section approved April 10, 1911. Stats. 1911, p. 844.]

Official bonds.

§ 853. The clerk, treasurer, and marshal shall, respectively, before entering upon the duties of their respective offices, each execute a bond to such city or town in such penal sum as the board of trustees by ordinance may determine, conditioned for the faithful performance of his duties, including in the same bond the duties of all offices of which he is made by this chapter ex-officio incumbent; such bonds shall be approved by the board of trustees. All bonds, when approved, shall be filed with the clerk except the bond of the clerk, which shall be filed with the president of the board of trustees. All the provisions of any law of this state relating to the official bonds of officers shall apply to such bonds, except as herein otherwise provided. Every officer of such city, before entering upon the duties of the office, shall take and file with the clerk the constitutional oath of office.

Vacancy in office; how filled. Absence.

§ 854. Any vacancy occurring in any of the offices provided for in this act shall be filled by appointment by the board of trustees; but in the event of said board of

trustees failing to fill such vacancy by appointment within thirty days after vacancy occurs, they must, if said office be an elective one, immediately after the expiration of said thirty days cause an election to be held to fill said vacancy, provided, however, that any person appointed or elected to fill such vacancy shall hold office only until the next regular election, at which time a person shall be elected to serve for the remainder of such unexpired term. In case a member of the board of trustees is absent from the city for the period of ninety days, unless by permission of the board of trustees, his office shall by the board be declared vacant, and the same filled as in case of other vacancies. [Amendment approved February 15, 1911. Stats. 1911, p. 58.]

Trustees, compensation may be granted by electors.

§ 855. The members of the board of trustees shall receive no compensation whatever; provided, that in all such cities, the question of whether the members of such board or any of them shall receive any compensation for his services as such member and the amounts thereof, may be submitted to the qualified electors of such cities at any general election, and if a majority of such electors voting at such election shall vote in favor thereof, then such trustee or trustees shall receive the compensation specified in the call submitting such question at such election; such compensation to begin on the first day of the month next succeeding the canvass of the return of such election and the amount so fixed shall, from such date, be a regular charge against such city, payable the same as other fixed salaries are paid. Such compensation may be increased or diminished at any general election thereafter, by submission of such question in the same manner and by the same vote as herein provided for the original creation of such compensation.

The clerk, treasurer, marshal, and recorder shall severally receive, at stated times, a compensation, to be fixed by ordinance by the board of trustees, which compensation shall not be increased or diminished after their election, or during their several terms of office. Nothing herein contained shall be construed to prevent the board of trustees from fixing such several amounts of compensation in the first instance, during the term of office of any such officer, or after his election. The compensation of all other officers shall be fixed from time to time by the board of trustees. [Amendment approved March 6, 1909. Stats. 1909, p. 148. In effect immediately.]

Election provisions.

§ 856. All elections in such city or town shall be held in accordance with the general election laws of the state, so far as the same may be made applicable; and no person shall be entitled to vote at such election unless he shall be a qualified elector of the county, enrolled upon the great register thereof, and shall have resided in such city for at least thirty days next preceding such election. The board of trustees shall give such notice of each election as may be prescribed by ordinance, shall appoint boards of election, and fix their compensation, and establish election precincts and polling-places, and may change the same. At any municipal election the last printed great register of the county shall be used, and any elector whose name is not upon such printed register shall be entitled to vote upon producing and filing with the board of election a certificate, under the hand and official seal of the county clerk, showing that his name is registered and uncanceled upon the great register of such county; provided, that he is otherwise entitled to vote.

Eligibility to office.

§ 857. No person shall be eligible to hold the office of trustee in such city, unless he be a resident and elector therein, and shall have resided in such city for one year next preceding the date of his election. [Amendment approved April 16, 1913. Stats. 1913, p. 34. In effect August 10, 1913.]

This section was also amended March 14, 1901, Stats. 1901, p. 293.

ARTICLE III.—LEGISLATIVE DEPARTMENT.

Meetings, organization, etc., of trustees.

§ 858. The board of trustees shall meet on the Monday next succeeding the date of said general municipal election, shall take the oath of office, shall choose one of their number president, and shall hold regular meetings at least once in each month at such time as they shall fix by ordinance, and may adjourn any regular meeting to a date certain, which shall be specified in the order of adjournment, and when so adjourned, such adjourned meeting shall be a regular meeting for all purposes. Special meetings may be called at any time by the president of the board or by three trustees by written notice delivered to each member at least three hours before the time specified for the proposed meeting; all meetings of the board of trustees shall be held within the corporate limits of the city at such place as may be designated by ordinance and shall be public. [Amendment approved June 3, 1913. Stats. 1913, p. 375. In effect August 10, 1913.]

Meetings of the board of trustees. Notice of adjourned meeting.

§ 859. At any meeting of the board of trustees a majority of the trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance; and in the absence of all of the trustees from any meeting the clerk may declare the same postponed and adjourned to a stated day and hour, and must thereupon give to each of the trustees written notice of the time to which the meeting has been adjourned, which notice may be delivered personally to the trustee or may be left at his known residence or place of business at least six hours before the time to which the meeting has been postponed. The president of the board shall preside at all meetings of the board, and in case of his absence the board may appoint a president pro tempore; and in case of the absence of the clerk, the president or president pro tempore shall appoint one of the members of the board clerk pro tempore. [Amendment of April 30, 1919. Stats. 1919, p. 158. In effect July 22, 1919.]

Rules.

§ 860. The board of trustees shall judge of the qualifications of its members and of all election returns, and determine contested elections of all city officers. They may establish rules for the conduct of their proceedings, and punish any member or other person for disorderly behavior at any meeting. They shall cause the clerk to keep a correct journal of all their proceedings, and at the desire of any member shall cause the ayes and noes to be taken on any question, and entered on the journal.

Franchises and resolutions to pay money.

§ 861. No ordinance, and no resolution granting any franchise for any purpose, shall be passed by the board of trustees on the day of its introduction, nor within five days thereafter nor at any other than a regular meeting. No resolution or order for the payment of money shall be passed at any other time than at a regular meeting. And no such ordinance, resolution, or order shall have any validity or effect unless passed by the votes of at least three trustees.

Powers of city trustees.

§ 862. The board of trustees of said city shall have power:

Pass ordinances.

1. To pass ordinances not in conflict with the constitution and laws of this state or of the United States.

Acquire real estate.

2. To purchase, lease, or receive such real estate situated inside or outside of the city limits and personal property as may be necessary or proper for municipal purposes, and to control, dispose of, and convey the same for the benefit of the city or town; provided, they shall not have power to sell or convey any portion of any waterfront.

Supply water for city use.

3. To contract for supplying the city or town with water for municipal purposes, or to acquire, construct, repair and manage pumps, aqueducts, reservoirs, or other works necessary or proper for supplying water for the use of such city or the inhabitants, or for irrigating purposes therein.

Manage highways.

4. To establish, build and repair bridges; to establish, lay out, alter, keep open, improve, and repair streets, sidewalks, alleys, and other public highways, squares and parks, and places within the city or town, and to drain, sprinkle, oil, and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, macadamize, gravel, and curb the same, in whole or in part, and to construct gutters, culverts, sidewalks, and cross-walks therein, or on any part thereof; to cause to be planted, set out, and cultivated, shade trees therein; and generally to manage and control all such highways and places; and in the exercise of the powers herein granted to expend, in their discretion, the ordinary annual income and revenue of the municipality in payments of the costs and expenses of the whole or any part of such work or improvement.

Open streets.

4a. To acquire property required for the opening and laying out of any street, alley or lane from the point where the continuity of such street, alley or lane ceases, to the point where such street, alley or lane again commences, to lay out and improve said street, alley or lane; and to pay the cost and expense incurred in the acquisition of the required property out of the general fund of the city.

Sewers.

5. To construct, establish, and maintain drains and sewers.

Fire protection.

6. To provide fire engines and all other necessary and proper apparatus for the prevention and extinguishment of fires.

Collect street poll tax.

7. To impose on and collect from every male inhabitant between the ages of twenty-one and sixty years, an annual street poll tax, not exceeding two dollars; and no other road poll tax shall be collected within the limits of the city.

Dog tax.

8. To impose and collect an annual license not exceeding two dollars on every male dog, and four dollars on every female dog owned or harbored within the limits of the city.

Property tax.

9. To levy and collect annually a property tax, which shall not, without the assent of two-thirds of the qualified electors of such city or town voting at an election to be held for that purpose exceed one dollar on each one hundred dollars; provided, however, that in cities which have constructed or may hereafter construct embankments, sea

walls, or other works to protect such cities from overflow, said board of trustees may levy and collect annually, a property tax which shall not exceed twenty cents on each one hundred dollars, which, when collected, shall be kept in a separate fund and used for the construction and maintenance of embankments, sea walls, or other works to protect such city from overflow and for no other purpose.

License business.

10. To license, for the purpose of revenue and regulation, all and every kind of business authorized by law and transacted and carried on in such city or town, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same by suit or otherwise.

Improve rivers and streams.

11. To improve the rivers and streams flowing through such city or adjoining the same; to widen, straighten, and deepen the channels thereof, and remove obstructions therefrom; to improve the waterfront of the city; including the ocean front thereof, and to build and construct breakwaters, jetties, and sea walls; to construct and maintain embankments and other works, to protect such city from overflow; and to acquire, own, construct, maintain, and operate on any lands bordering on any navigable bay, lake, inlet, river, creek, slough, or arm of the sea within the corporate limits of such city or contiguous thereto, wharves, chutes, piers, breakwaters, bathhouses, and life-saving stations.

Municipal buildings.

12. To erect and maintain buildings for municipal purposes, and to acquire and maintain cemeteries, situated inside or outside of said city.

Acquire public utilities.

13. To acquire, own, construct, maintain, and operate street railways, telephone and telegraph lines, gas and other works for light, power, and heat; public libraries, museums, gymnasiums, parks, and baths, and to grant franchises for the construction of public utilities as they may deem proper, the laying of railroad tracks and the running of cars drawn by horses, steam, or other power thereon, and the laying of gas and water pipes in the public streets, and to permit the construction and maintenance of telegraph and telephone lines therein.

Impose fines.

14. To impose fines, penalties, and forfeitures for any and all violations of ordinances; and for any breach or violation of any ordinance; to fix the penalty by fine or imprisonment, or both; but no such fine shall exceed three hundred dollars, nor the term of imprisonment exceed three months.

Compel labor of prisoners.

15. To cause all persons imprisoned for violation of any ordinance to labor on the streets, or other public property, or works within the city.

Fire limits.

16. To establish and maintain fire limits, and regulate building and construction and removal of buildings within the municipality.

Regulate construction of buildings.

16a. To regulate the construction of and the materials used in all buildings, chimneys, stacks and other structures; to prevent the erection and maintenance of insecure or unsafe building walls, chimneys, stacks, or other structures, and to provide for their

Acquire real estate.

2. To purchase, lease, or receive such real estate situated inside or outside of the city limits and personal property as may be necessary or proper for municipal purposes, and to control, dispose of, and convey the same for the benefit of the city or town; provided, they shall not have power to sell or convey any portion of any waterfront.

Supply water for city use.

3. To contract for supplying the city or town with water for municipal purposes, or to acquire, construct, repair and manage pumps, aqueducts, reservoirs, or other works necessary or proper for supplying water for the use of such city or the inhabitants, or for irrigating purposes therein.

Manage highways.

4. To establish, build and repair bridges; to establish, lay out, alter, keep open, improve, and repair streets, sidewalks, alleys, and other public highways, squares and parks, and places within the city or town, and to drain, sprinkle, oil, and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, macadamize, gravel, and curb the same, in whole or in part, and to construct gutters, culverts, sidewalks, and cross-walks therein, or on any part thereof; to cause to be planted, set out, and cultivated, shade trees therein; and generally to manage and control all such highways and places; and in the exercise of the powers herein granted to expend, in their discretion, the ordinary annual income and revenue of the municipality in payments of the costs and expenses of the whole or any part of such work or improvement.

Open streets.

4a. To acquire property required for the opening and laying out of any street, alley or lane from the point where the continuity of such street, alley or lane ceases, to the point where such street, alley or lane again commences, to lay out and improve said street, alley or lane; and to pay the cost and expense incurred in the acquisition of the required property out of the general fund of the city.

Sewers.

5. To construct, establish, and maintain drains and sewers.

Fire protection.

6. To provide fire engines and all other necessary and proper apparatus for the prevention and extinguishment of fires.

Collect street poll tax.

7. To impose on and collect from every male inhabitant between the ages of twenty-one and sixty years, an annual street poll tax, not exceeding two dollars; and no other road poll tax shall be collected within the limits of the city.

Dog tax.

8. To impose and collect an annual license not exceeding two dollars on every male dog, and four dollars on every female dog owned or harbored within the limits of the city.

Property tax.

9. To levy and collect annually a property tax, which shall not, without the assent of two-thirds of the qualified electors of such city or town voting at an election to be held for that purpose exceed one dollar on each one hundred dollars; provided, however, that in cities which have constructed or may hereafter construct embankments, sea

walls, or other works to protect such cities from overflow, said board of trustees may levy and collect annually, a property tax which shall not exceed twenty cents on each one hundred dollars, which, when collected, shall be kept in a separate fund and used for the construction and maintenance of embankments, sea walls, or other works to protect such city from overflow and for no other purpose.

License business.

10. To license, for the purpose of revenue and regulation, all and every kind of business authorized by law and transacted and carried on in such city or town, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same by suit or otherwise.

Improve rivers and streams.

11. To improve the rivers and streams flowing through such city or adjoining the same; to widen, straighten, and deepen the channels thereof, and remove obstructions therefrom; to improve the waterfront of the city; including the ocean front thereof, and to build and construct breakwaters, jetties, and sea walls; to construct and maintain embankments and other works, to protect such city from overflow; and to acquire, own, construct, maintain, and operate on any lands bordering on any navigable bay, lake, inlet, river, creek, slough, or arm of the sea within the corporate limits of such city or contiguous thereto, wharves, chutes, piers, breakwaters, bathhouses, and life-saving stations.

Municipal buildings.

12. To erect and maintain buildings for municipal purposes, and to acquire and maintain cemeteries, situated inside or outside of said city.

Acquire public utilities.

13. To acquire, own, construct, maintain, and operate street railways, telephone and telegraph lines, gas and other works for light, power, and heat; public libraries, museums, gymnasiums, parks, and baths, and to grant franchises for the construction of public utilities as they may deem proper, the laying of railroad tracks and the running of cars drawn by horses, steam, or other power thereon, and the laying of gas and water pipes in the public streets, and to permit the construction and maintenance of telegraph and telephone lines therein.

Impose fines.

14. To impose fines, penalties, and forfeitures for any and all violations of ordinances; and for any breach or violation of any ordinance; to fix the penalty by fine or imprisonment, or both; but no such fine shall exceed three hundred dollars, nor the term of imprisonment exceed three months.

Compel labor of prisoners.

15. To cause all persons imprisoned for violation of any ordinance to labor on the streets, or other public property, or works within the city.

Fire limits.

16. To establish and maintain fire limits, and regulate building and construction and removal of buildings within the municipality.

Regulate construction of buildings.

16a. To regulate the construction of and the materials used in all buildings, chimneys, stacks and other structures; to prevent the erection and maintenance of insecure or unsafe building walls, chimneys, stacks, or other structures, and to provide for their

summary abatement, destruction, or removal; to provide for the abatement, destruction or removal of unsightly or partially destroyed buildings; to regulate the materials used in and the method of construction of foundations and foundation walls, the manner of construction and location of drains and sewers, the materials used in wiring buildings or other structures for the use of electricity for lighting, power, heat or other purposes and materials used for piping buildings or other structures for the purpose of supplying the same with water, gas, or electricity, and the manner of so doing; to prohibit the construction of buildings and structures which do not conform to such regulations.

Regulate advertising, etc.

16b. To regulate the exhibition, posting or carrying of banners, placards, posters, cards, pictures, signs or advertisements in or on the street, or on or upon buildings, fences, billboards or other structures; or on or upon any pole in any sidewalk, alley, street, lane, court, park or other public place; to regulate the suspension of banners, flags, signs, advertisements, posters, pictures, or cards across or over any sidewalk, alley, street, lane, court, park, or other public place, or such suspension from fences, poles, houses, or other structures; to prohibit and prevent encroachments upon or obstruction in or to any sidewalk, street, alley, lane, court, park or other public place, and to provide for the removal of such encroachment or obstruction.

Compel removal of dirt, weeds, etc.

16c. To compel the owner, lessee or occupant of buildings, grounds, or lots to remove dirt, rubbish, weeds and rank growths from the sidewalk opposite thereto, and from the building or grounds, and on his default, after such notice as the board of trustees may prescribe, to authorize the removal or destruction thereof by some officer of the city at the expense of such owner, lessee or occupant, and by such procedure as the board of trustees may prescribe, to make such expense a lien upon such buildings or grounds.

Issue subpoenas.

17. To issue subpoenas for the attendance of witnesses, or the production of books or other documents, for the purpose of producing evidence or testimony in any action or proceeding pending before the board of trustees, which subpoenas must be signed by the president of the board of trustees, and attested by the city clerk and may be served in the same manner as subpoenas are served in civil actions. Whenever any person duly subpoenaed to appear and give evidence, or to produce any books or any documents as herein provided, shall neglect or refuse to appear, or to produce such books or documents, as required by such subpoena, or shall refuse to testify before such board, or to answer any questions which a majority thereof shall decide to be proper and pertinent, it shall be the duty of the president of the board to report the fact to the judge of the superior court of the county, who shall thereupon issue an attachment in the form usual in the court of which he shall be judge, directed to the sheriff of the county where such witness was required to appear and testify, commanding the said sheriff to attach such person, and forthwith bring him before the judge by whose order such attachment was issued. On the return of the attachment and the production of the body of the defendant, the said judge shall have jurisdiction of the matter, and the person charged may purge himself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

Music and promotion.

18. To expend such sum as the board of trustees shall deem proper, not to exceed five per cent of the property tax levy in any one fiscal year, for music and promotion.

Other acts.

19. To do and perform any and all other acts and things necessary or proper to carry out the provisions of this act. [Amendment of June 1, 1917. Stats. 1917, p. 1528. In effect July 31, 1917.]

This section was also amended March 14, 1885, Stats. 1885, p. 127; March 31, 1891, Stats. 1891, p. 233; March 18, 1897, Stats. 1897, p. 175; February 20, 1901, Stats. 1901, p. 18; March 9, 1903, Stats. 1903, p. 93; March 19, 1909, Stats. 1909, p. 420, and May 25, 1915, Stats. 1915, p. 828.

Powers of trustees in cities of sixth class.

§ 862a. In any city of the sixth class the board of trustees shall have power:

(a) To establish and maintain a municipal hospital.

(b) To prescribe rules for the government and management thereof and the terms upon which patients may be admitted thereto.

(c) To appoint and fix the compensation of physicians, surgeons and other necessary officers and employees of the hospital who shall hold their positions during the pleasure of the board of trustees.

(d) To acquire any and all property, real or personal, by purchase or donation, and construct and equip such buildings as the board may deem necessary and suitable for the proper conduct of the hospital. In receiving any donation of money, the city may agree to pay the donor or donors interest upon the principal at a rate not exceeding seven per cent per annum during the lifetime of the donors, or of any of them, or of the survivor, but not exceeding a period of forty years, and without repayment of the principal or any part thereof. In the case of the incurring of such indebtedness in favor of donors, the indebtedness shall be incurred and means for the payment thereof shall be provided in the manner prescribed by the provisions of the act entitled, "An act authorizing the incurring of indebtedness by cities, towns and municipal corporations for municipal improvements, and regulating the acquisition, construction, and completion thereof," in effect February 25, 1901, as amended, so far as the same may be applicable; provided, however, that the ordinance calling the election shall not contain any statement as to bonds that are to be issued, but shall in general terms describe the proposed donation, the purpose for which it is to be used, and the terms upon which the same is to be made and accepted.

(e) To levy and collect annually a property tax for the maintenance of the hospital which shall not in any one year exceed the cost of the care of indigent patients and the interest charge upon any donation accepted in accordance with the provisions of subdivision (d) of this section. [New section added May 21, 1919. In effect July 22, 1919. Stats. 1919, p. 761.]

Enacting clause of ordinances.

§ 863. The enacting clause of all ordinances shall be as follows: "The board of trustees of the city (or town) of do ordain as follows:" Every ordinance must be signed by the president of the board of trustees and attested by the clerk and must be published by said board at least once in a newspaper of general circulation published and circulated in such city or town; provided, that if there be no such newspaper published and circulated in such city or town, then all ordinances must be posted in at least three public places therein; provided, further, that in all cities or towns which have been incorporated less than one year, all ordinances may be either published or posted as aforesaid, as the board of trustees may determine; and provided, further, that in no case shall the price charged for such publication of any ordinances exceed the customary rate charged by such newspaper for the publication of legal notices of a private character. [Amendment of June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1666.]

Demands.

§ 864. All demands against such city or town shall be presented to and audited by the board of trustees, in accordance with such regulations as they may by ordinance prescribe; and upon the allowance of any such demand, the president of the board shall draw a warrant upon the treasurer for the same, which warrant shall be countersigned by the clerk, and shall specify for what purpose the same is drawn, and out of what fund it is to be paid.

Indebtedness not to exceed available funds.

§ 865. The board of trustees shall not create, audit, allow, or permit to accrue, any debt or liability in excess of the available money in the treasury that may be legally apportioned and appropriated for such purposes; provided, that any city or town during the first year of its existence under this act may incur such indebtedness or liability as may be necessary, not exceeding in all the income and revenue provided for it in such year; nor shall any warrant be drawn, or evidence of indebtedness be issued, unless there be at the time sufficient money in the treasury legally applicable to the payment of the same, except as hereinafter provided.

Incurring excess decided by vote.

§ 866. [Repealed April 16, 1913. Stats. 1913, p. 33. In effect August 10, 1913.]

Incarceration.

§ 867. The violation of any ordinance of such city or town shall be deemed a misdemeanor, and may be prosecuted by the authorities of such city or town in the name of the people of the state of California, or may be redressed by civil action, at the option of said authorities. Any person sentenced to imprisonment for the violation of an ordinance may be imprisoned in the jail for such city or town; or if the board of trustees by ordinance shall so prescribe, in the county jail of the county in which such city or town may be situated, in which case the expense of such imprisonment shall be a charge in favor of such county and against such city or town.

Power of board of trustees to abate nuisances. Power to require grass, etc., removed from sidewalk.

§ 868. The board of trustees shall have the power to declare what constitutes a nuisance, and to provide for the summary abatement of any nuisance at the expense of the persons creating, causing, committing or maintaining such nuisance, and shall have the power by ordinance to make the expense of abatement of nuisances a lien against the property on which a nuisance is maintained, as well as to make such expense a personal obligation against the owner of such property. Said board of trustees shall also have power by ordinance to require and provide for the removal of grass, weeds or other obstructions from the sidewalks, parkings or streets and to make the cost thereof a lien or charge upon the abutting property and to make provision for the enforcement of such lien by the sale of property or otherwise; and said board likewise shall have power by ordinance to require or provide for the removal from property, lands or lots of all weeds, rubbish or other material which may endanger or injure neighboring property or the health or welfare of residents of the vicinity, and to make the cost thereof a lien and charge upon such property, lands or lots and to make provision for the enforcement of such lien by the sale of such property, lands or lots or otherwise. [Amendment of May 4, 1915. In effect August 8, 1915. Stats. 1915, p. 331.]

Cost of street work assessed on fronting property.

§ 869. [Repealed April 16, 1913. Stats. 1913, p. 33. In effect August 10, 1913.]

Right of way.

§ 870. Whenever it shall become necessary for the city or town to take or damage private property for the purpose of establishing, laying out, extending and widening streets and other public highways and places within the city or town, or for the purpose of rights of way for drains, sewers and aqueducts, and for the purpose of widening, straightening or diverting the channels of streams, or the improvement of waterfronts, or the acquisition or maintenance of public harbors, the trustees may direct proceedings to be taken under section 1237 and following sections, to and including section 1263 of the Code of Civil Procedure, to procure the same. [Amendment approved February 20, 1901. Stats. 1901, p. 12. In effect immediately.]

Bridge connecting city with road district.

§ 870a. Whenever the city trustees shall deem it necessary for the city or town to construct a bridge connecting the municipal corporation with an adjoining road district and it shall become necessary in constructing such bridge to take or damage private property within or without or within and without the corporate limits of said city or town, the trustees of said city or town may, by resolution, declare the necessity thereof and direct and maintain proceedings for that purpose under title VII of part III of the Code of Civil Procedure. [New section approved February 4, 1913. Stats. 1913, p. 10. In effect immediately.]

[Section 2 of the act amending section 870 is as follows:]

Urgency measure; declaration of facts.

§ 2. This act is hereby declared to be an urgency measure within the meaning of section one of article four of the constitution of the state of California, and shall take effect immediately. The following is a statement of the facts constituting such urgency: Many municipal corporations governed by the act of which this act is amendatory, have their exterior boundaries on banks of rivers and streams which during the winter months become so swollen by rains and floods as to render it dangerous to public safety to cross such streams, and as the provisions of title VII, part III of the Code of Civil Procedure, or the act of which this act is amendatory, do not enumerate among the public uses for which the right of eminent domain may be exercised, the taking of private property necessary for the construction, by cities of the sixth class, of bridges across streams forming the exterior boundaries of such cities and the construction of such bridges being necessary for the public safety for travel to and from such cities, this act is hereby declared to be an urgency act within the meaning of the section and article of the constitution of the state of California above in this section mentioned.

Levy of taxes.

§ 871. The board of trustees shall have the power, and it shall be their duty, to provide by ordinance a system for the assessment, levy, and collection of all city or town taxes not inconsistent with the provisions of this chapter. All taxes shall be collected by the marshal or treasurer, as may be determined by the board of trustees by ordinance. All taxes assessed, together with any percentage imposed for delinquency and the costs of collection, shall constitute liens on the property assessed; every tax upon personal property shall be a lien upon the real property of the owner thereof. The liens provided for in this section shall attach as of the first Monday in March of each year, and may be enforced by a sale of the real property affected, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance, or by action in any court of competent jurisdiction to foreclose such liens; provided, that any property sold for such taxes shall be

subject to redemption within five years and upon the terms provided or that may hereafter be provided for the redemption of property sold for state taxes. All deeds made upon any sale of property for taxes or special assessments under the provisions of this chapter shall have the same force and effect in evidence as is or may hereafter be provided by law for deeds for property sold for nonpayment of state taxes. [Amendment approved March 8, 1905. Stats. 1905, p. 89.]

[Section 3 of the act amending this section and section 773 is as follows:]

§ 3. This act shall not repeal, or in any manner affect, modify, or interfere with the provisions of an act entitled "An act to provide for the levy and collection of taxes by and for the use of municipal corporations and cities incorporated under the laws of the state of California, except municipal corporations of the first class, and to provide for the consolidation and abolition of certain municipal offices, and to provide that their duties may be performed by certain officers of the county, and fixing the compensation to be allowed for such county officers for the services so rendered to such municipal corporations," approved March 27, 1895; or any of the provisions of an act entitled "An act to provide for the levy and collection of taxes by and for the use of municipal corporations and cities incorporated under the laws of the state, except municipal corporations of the first, second, third and fourth classes, and cities operating under a charter framed under section 8, article 11, of constitution," approved March 2, 1891.

Equalization.

§ 872. The board of trustees shall meet at their usual place of holding meetings on the second Monday of August of each year, at 10 o'clock in the forenoon of said day, and sit as a board of equalization, and shall continue in session from day to day until all the returns of the assessor have been rectified. They shall have power to hear complaints, and to correct, modify, or strike out any assessment made by the assessor, and may, of their own motion, raise any assessment, upon notice to the party whose assessment is to be raised. The corrected list for each tax shall be the assessment-roll for said tax for said year. It shall be certified by the clerk, who shall act as clerk of the board of equalization, as being the assessment-roll for said tax, and shall be the assessment-roll upon which such tax is to be levied in said year.

Construction of act.

§ 873. Nothing in this chapter contained shall be construed to prevent any city or town having a bonded indebtedness, contracted under laws heretofore passed, from levying and collecting such taxes for the payment of such indebtedness, and the interest thereon, as are provided for in such laws, in addition to the taxes herein authorized to be levied and collected. All moneys received from licenses, street poll tax, and from fines, penalties, and forfeitures, shall be paid into the general fund.

Public work to be done by contract. By day labor. Emergency expenditures. City printing.

§ 874. In the erection, improvement, and repair of all public buildings and works, in all street and sewer work, and in all work in or about streams, bays, or waterfronts, or in or about embankments, or other works for protection against overflow, and in furnishing any supplies or materials for the same, when the expenditures required for the same exceed the sum of three hundred dollars, the same shall be done by contract, and shall be let to the lowest responsible bidder, after notice by publication in a newspaper of general circulation, printed and published in such city or town, for at least two weeks, or if there be no newspaper printed or published therein, by printing and posting the same in at least four public places therein for the same period; such

notice shall distinctly and specifically state the work contemplated to be done; provided, that the board of trustees may reject any and all bids presented and re-advertise, in their discretion; provided, further, after rejecting bids, the board of trustees may declare and determine by a four-fifths vote of all its members that in its opinion the work in question may be performed more economically by day labor or the materials or supplies furnished at a lower price in the open market, and after the adoption of a resolution to this effect they may proceed to have the same done in the manner stated without further observance of the foregoing provisions of this section; and provided further, that in case of a great public calamity such as an extraordinary fire, flood, storm, epidemic or other disaster, the board of trustees may, by resolution passed by vote of four-fifths of all its members declare and determine that public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property, and thereupon they may proceed to expend or enter into a contract involving the expenditure of any sum required in such emergency.

The board of trustees shall annually, at a stated time, contract for doing all city printing and advertising, which contract shall be let to the lowest responsible bidder, after notice, as provided in this section. [Amendment approved April 16, 1913. Stats. 1913, p. 32. In effect August 10, 1913.]

This section was also amended March 10, 1891, Stats. 1891, p. 55; March 9, 1897, Stats. 1897, p. 89.

Cities of sixth class. Powers of president and president pro tem. of board of trustees.

§ 875. In the absence of the president of the board of trustees from any meeting of said board, or in the event of his inability to act, a president pro tem. may be chosen by the board. The president or the president pro tem. shall preside at the meetings of the board of trustees, shall sign all warrants drawn on the treasurer, and shall sign all written contracts entered into by said city or town. The president pro tem. may sign or approve any ordinance with the same force and effect as if signed by the president. The president or president pro tem. shall have power to administer oaths and affirmations, to take affidavits and to testify the same under their hands. The president or president pro tem. shall sign all conveyances made by said city or town, and all instruments which shall require the seal of the city or town. The president or president pro tem. is authorized to acknowledge the execution of all instruments executed by said city or town that require to be acknowledged. [Amendment of May 4, 1915. In effect August 8, 1915. Stats. 1915, p. 331.]

This section was also amended April 4, 1913, Stats. 1913, p. 15.

ARTICLE IV.—EXECUTIVE DEPARTMENT.

Treasurer's duty.

§ 876. It shall be the duty of the treasurer to receive and safely keep all moneys which shall come into his hands as treasurer, for all of which he shall give duplicate receipts, one of which shall be filed with the city clerk. He shall pay out said money on warrants signed by the proper officers, and not otherwise, except interest on coupon bonds. He shall make quarterly settlements with the city clerk. He shall collect all taxes levied by the board of trustees, if so required by ordinance. [Amendment approved April 16, 1913. Stats. 1913, p. 33. In effect August 10, 1913.]

This section was also amended March 20, 1903, Stats. 1903, p. 336.

Assessor.

§ 877. It shall be the duty of the assessor, between the first day of May and the first day of August in each year, to make out a true list of all the taxable property within the city or town. The mode of making out of said list, and proceedings relating thereto, shall be in conformity with laws now in force regulating county assessors,

except as the same may be otherwise provided in this act, or by ordinance. Said list shall describe the property assessed, and the value thereof, and shall contain all other matters required to be stated in such lists by county assessors. Said assessor shall verify said list by his oath, and shall deposit the same with the clerk on or before the first Monday of August of each year. The assessor shall, during said time, also make a list of all male persons residing within the limits of the city or town, over the age of twenty-one years, and shall verify said list by his oath, and shall, on or before the first Monday of August in each year, deposit the same with the clerk. Said assessor and his deputy shall have power to administer all oaths and affirmations necessary in the performance of his duty.

Clerk.

§ 878. It shall be the duty of the clerk to keep a full, true record of all the proceedings of the board of trustees and of the board of equalization. The proceedings of the board of trustees shall be kept in a book, marked "Records of the Board of Trustees." The proceedings of the board of equalization shall be kept in a separate book, marked "Records of the Board of Equalization." He shall keep a book, which shall be marked "City or Town Accounts," in which shall be entered as a credit all moneys received by the city or town for licenses, the amount of any tax when levied, and all other moneys when received, and in which shall be entered upon the debtor side all commissions deducted and all warrants drawn on the treasury. He shall also keep a book, marked "Marshal's Account," in which he shall charge the marshal with all the tax lists delivered to him, and all licenses delivered to him. He shall credit the marshal with the delinquent lists returned by him, and with his commission for collecting. He shall also keep a book, marked "Treasurer's Account," in which he shall keep a full account of the transactions of the city or town with the treasurer. He shall also keep a book marked "Licenses," in which he shall enter all licenses issued by him, the date thereof, to whom issued, for what, the time when it expires, and the amount paid. He shall also keep a book marked "Attorney's Account," and shall therein charge said attorney with all delinquent tax lists delivered to him, and shall credit him with money paid and delinquent tax lists returned. He shall keep a book, marked "Ordinances," into which he shall copy all city or town ordinances, with his certificate annexed to said copy stating the foregoing ordinance is a true and correct copy of an ordinance of the city or town, and giving the number and title of said ordinance, and stating that the same has been published or posted according to law. Said record copy, with said certificate, shall be prima facie evidence of the contents of the ordinance and of the passage and publication of the same, and shall be admissible as such evidence in any court or proceeding. Such records shall not be filed in any case, but shall be returned to the custody of the clerk. Nothing herein contained shall be construed to prevent the proof of the passage and publication of ordinances in the usual way. Each of the foregoing books, except the records of the board of trustees and the board of equalization, shall have a general index, sufficiently comprehensive to enable a person readily to ascertain matters contained therein. The clerk shall also keep a book, marked "Demands and Warrants," in which he shall note every demand against the city or town, and file the same. He shall state therein, under the note of the demands, the final disposition made of the same; and if the same is allowed, and a warrant drawn, he shall also state the number of the warrant, with sufficient dates. This book shall contain an index, in which reference shall be made to each demand. Upon the completion of the assessment-roll of any of the taxes of the city or town, and the levying of the tax thereon, the clerk shall apportion the taxes upon such assessment-roll, and make out and deliver to the marshal a tax list in the usual form, taking his receipt therefor. He may appoint a deputy, for whose acts

he and his bondsmen shall be responsible; and he and his deputy shall have power to administer oaths or affirmations, to take affidavits and depositions to be used in any court or proceeding in the state, and to certify the same. He and his deputy shall take all necessary affidavits to demands against the city or town, and certify the same without charge. He shall be the custodian of the seal of the city or town. He shall make a quarterly statement in writing, showing the receipts and expenditures of the city or town for the preceding quarter, and the amount remaining in the treasury. He shall at the end of every fiscal year make a full and detailed statement of the receipts and expenditures of the preceding year, and a full statement of the financial conditions of the affairs of the city or town, which shall be published. He shall perform such other services as this act and the ordinances of the board of trustees shall require.

Attorney.

§ 879. It shall be the duty of the attorney to advise the city or town authorities and officers in all legal matters pertaining to the business of said city or town. He shall receive the delinquent list and receipt therefor; he is authorized to bring suit in the name of the city or town, in the proper court, for the collection of any tax; he shall receive for collecting taxes such per cent on the amount collected as may be provided by ordinance, which said per cent shall be collected of the delinquent taxpayers as provided by ordinance. In case a suit shall be brought in the superior court upon a tax upon real estate to sell such real estate for the purpose of paying such tax and costs, he shall be allowed, in addition to the said per cent, twenty-five dollars for each suit brought, to be taxed as costs in such suit, and not to be paid to said attorney unless collected of the defendant in such suit. Said attorney shall receive such other compensation as may be allowed by the board of trustees.

Marshal.

§ 880. The department of police of said city or town shall be under the direction and control of the marshal; and for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities in the lawful exercise of their functions, he shall have the powers that are now or may hereafter be conferred upon sheriffs by laws of the state, and shall in all respects be entitled to the same protection; and his lawful orders shall be promptly executed by deputies, police officers, and watchmen in said city or town, and every citizen shall also lend his aid, when required, for the arrest of offenders and maintenance of public order. He shall, and is hereby authorized to, execute and return all process issued and directed to him by any legal authority. It shall be his duty to prosecute before the recorder all breaches or violations of or noncompliance with any ordinance which shall come to his knowledge. He shall collect all taxes levied by the board of trustees, except as is herein provided. He shall, at the expiration of any month, pay to the treasurer all taxes and other funds of said city or town collected by him during said month. He shall, upon payment of the money, file with the treasurer an affidavit, stating that the money so paid is all the taxes or funds that he has collected or received during the preceding month. He shall, upon the receipt of any tax list, give his receipt for the same to the clerk, and shall, upon depositing with the clerk the delinquent tax list, take his receipt therefor. He shall receive from the clerk all licenses, and collect the same. He shall have charge of the prison and prisoners, and of any chain-gang which may be established by the board of trustees. He shall for service of any process receive the same fees as constables, but his fees for services in any criminal action or proceeding upon process issued from the recorder's court shall not be a charge against the county. He may appoint, subject to the approval of the board of trustees, one or

more deputies, for whose acts he and his bondsmen shall be responsible, whose only compensation shall be fees for the service of process, which shall be the same as those allowed to the marshal. He may also, with the concurrence of the president of the board of trustees, when the same may be by them deemed necessary for the preservation of public order, appoint additional policemen, who shall discharge the duties assigned them for one day only. He shall perform such other services as this act and the ordinances of the board of trustees shall require, and shall receive such compensation as shall be fixed by ordinance. [Amendment approved March 13, 1903. Stats. 1903, p. 135. In effect immediately.]

Compensation fixed by board.

§ 881. The board of trustees shall, by ordinances not inconsistent with the provisions of this chapter, prescribe the additional duties of all officers, and fix their compensation.

ARTICLE V.—JUDICIAL DEPARTMENT.

Recorder's court.

§ 882. A recorder's court is hereby established in such city or town, to be held by the recorder of such city or town. Such recorder's court shall have jurisdiction, concurrently with the justice's courts, of all actions and proceedings, civil and criminal, arising within the corporate limits of such city or town, and which might be tried in such justice's court; and shall have exclusive jurisdiction of all actions for the recovery of any fine, penalty, or forfeiture prescribed for the breach of any ordinance of such city or town, of all actions founded upon any obligation created by any ordinance, and of all prosecutions for any violation of any ordinance. In all civil actions for the recovery of any fine, penalty, or forfeiture prescribed for the breach of any ordinance of such city or town, where the fine, penalty or forfeiture imposed by the ordinance is not more than fifty dollars, the trial must be by the court, in civil actions where the fine, penalty or forfeiture prescribed for the breach of any ordinance of such city or town is over fifty dollars, the defendant is entitled to a jury. Except as in this section otherwise provided, the rules of practice and mode of proceeding in said recorder's court shall be the same as are or may be prescribed by law for justices' courts in like cases; and appeals may be taken to the superior court of the county in which such city or town may be situated, from all judgments of said recorder's court, in like manner and with like effect as in cases of appeals from justices' courts. [Amendment approved March 7, 1905. Stats. 1905, p. 73. In effect in sixty days.]

Powers of recorder as judge.

§ 883. The recorder shall be judge of the recorder's court, and shall have the powers and perform the duties of a magistrate. He may administer and certify oaths and affirmations, and take and certify acknowledgments. He shall be entitled to charge and receive for his services such fees as are or may be allowed by law for justices of the peace for like services, except that for his services in criminal prosecutions for violation of ordinances he shall be entitled to receive only such fees as the board of trustees shall by ordinance prescribe; but his fees for services in any criminal case shall not be a charge against the county. [Amendment became a law under constitutional provision without governor's approval March 12, 1901. Stats. 1901, p. 269. In effect immediately.]

Recorder disqualified as judge in certain cases.

§ 884. In all cases in which the recorder is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the third

degree, or is otherwise disqualified, or in case of sickness or inability to act, the recorder may call in a justice of the peace, residing in the city or town to act in his place and stead; or if there be no justice of the peace residing in the city or town, or if all those so residing are likewise disqualified, then he may call in any justice of the peace residing in the county in which such city or town may be situated.

ARTICLE VI.—MISCELLANEOUS PROVISIONS.

Collection of moneys.

§ 885. Every officer collecting or receiving any moneys belonging to or for the use of such city or town shall settle for the same with the clerk on the first Monday in each month, and immediately pay the same into the treasury, on the order of the clerk, for the benefit of the funds to which such moneys respectively belong.

No officer to be interested in any public contract.

§ 886. No officer of such city or town shall be interested, directly or indirectly, in any contract with such city or town, or with any of the officers thereof in their official capacity, or in doing any work or furnishing any supplies for the use of such city or town, or its officers in their official capacity; and any claim for compensation for work done, or supplies or materials furnished, in which any such officer is interested, shall be void, and if audited and allowed shall not be paid by the treasurer. Any willful violation of the provisions of this section shall be a ground for removal from office, and shall be deemed a misdemeanor, and punished as such.

I. CONSTITUTIONALITY.

1. Legislature can not prevent the adoption of freeholders' charters.
2. Not special legislation, § 862.
3. Section 862 is general law.
4. Section 870, agreement with owners of property to be condemned—Special legislation—Discriminatory.
5. Delegation of power to relieve city officers of duties—Destruction of offices.
6. Gas rates in fifth-class city.
7. Same—Prosecution of agents of corporation.
8. Same—Same—Enforcement of payment of fine.

19. Creating indebtedness under municipal indebtedness act.
20. Special charter cities continue to exist until reorganization.
21. Same—Not controlled by general laws.
- 22, 23. Act permissive, and becomes mandatory only on acceptance of its terms.
24. Los Angeles charter—Act never applied.
25. Municipal indebtedness act of 1889 controlling—Section 885.
26. Section 865 has no application to proceedings under municipal indebtedness act.
27. Conflict between sections 4 and 352—Term of office.
28. City school district—Separate and independent of municipality.
29. Same—Organization and control not a "municipal affair."
30. "Municipal affairs" amendment—Applies only to cities organized under the general law.
31. "Municipal affair"—Imposition of license tax for revenue.
32. Special charter municipalities, not reorganized, not controlled by general laws in "municipal affairs."

II. CONSTRUCTION.

9. Sanitary districts—Absorption by municipalities.
10. Same—Sanitation not "local" or "municipal."
11. Act does not apply to freeholders' charter cities.
12. Repealed—Section 771, by the Vrooman act.
13. Repeal of section 866 by improvement act of 1901, not decided.
14. Sections 862 and 874 to be construed together and harmonized.
15. Same—Bids for public works costing more than \$100.
16. "All other printing"—Section 777.
17. Same—Publication of freeholders' charter.
18. "Advertising"—Printing freeholders' charter.

III. INCORPORATION, ORGANIZATION, ETC.

33. Effect of act of incorporation.
34. Same—Creation a legislative act and may be done without the consent of the people.
35. Same—Filing copy of order with secretary of state necessary to complete.

36. Same—Same—Filing equivalent to passage of law.
37. Formation of municipalities, a political question.
38. Reorganization of special chartered cities under the act.
- 38a. Chartered city—Manner of reorganization.
39. Same—Same—Manner of submission of question.
40. Same—Same — Same — Petition — Pasting signatures.
41. Same—Same—May be submitted at general municipal election.
42. Same—Same—Election — Majority of electors voting.
43. Same—Same—Same—Count of ballots.
44. Change from one class to another.
45. Annexed sanitary districts retain powers.
46. Class of city at formation—Federal census.
47. Judicial notice of incorporation.
48. Petition—Presentation before publication of notice.
49. Same—Proof of genuineness of signatures essential.
50. Same—Publication sufficient.
51. Same—Affidavit—Prima facie evidence—Jurisdiction of board.
52. Petition for reorganization held insufficient—Consolidating petition by pasting.
53. Petition for incorporation—Recital as to existence of "town" within proposed boundaries not required.
54. Petition—Qualification of signers—Determination of board conclusive.
55. Same—Filing and publication before presentation not an irregularity.
56. Same—Clerical error in date of presentation.
57. Same—Presentation on day after date named in notice at adjourned meeting—Sufficient.
58. Same—Affidavit, defective — No evidence of genuineness of signatures.
59. Same—Defects in affidavit not jurisdictional—Filing of proper affidavit.
60. Same—Affidavit sufficient—Status presumed to continue to exist.
61. Same—"As nearly as may be."
62. Same—Board acts judicially in determining sufficiency — Reviewable.
63. Same — Necessary signatures of qualified persons required.
64. Same—Jurisdiction to inquire into fraud in signing.
65. Same—Hearing—Adjournment for more than two months after presentation.
66. Same — Same — Order—Failure to publish as ordinance.
67. Same—Same—Posting and publication of notice — Discretion of board.
68. Boundaries, power to determine, legislative law mandatory and vested no discretion—Not reviewable.
69. Jurisdiction of board—Prior organization of proposed municipality.
70. Same—Not lost by adjournment without specifying hour of special meeting.
71. Review—Finding as to sufficiency of petition, part of record.
72. Notice of election—Posting fifth notice outside territory does not vitiate proceedings.
73. Same—Given without jurisdiction and without authority is no notice.
74. Same—Sufficient.
75. Election—Voting of five non-residents, through mistake, not fraud—Result not affected—Not material.
76. Same—Not invalid because held on admission day.
77. Same—Marking ballots.
78. Same—Same—Use of pencil instead of stamp.
79. Same—Same—Same — Distinguishing mark.
80. Same—Same—Blurred stamp.
81. Same—Same—Stamp below line.
82. "Majority of electors voting"—Phrase construed.
83. Submission of question of reorganization—"General election."
84. Certified copy of order declaring incorporation—Filing essential to complete.
85. Inhabitants and territory.
86. Same—Determination of board conclusive.
87. Power of determining boundaries—Rescission of order.
88. Orders establishing boundaries and providing for submission to people, not ordinances.
- 88a. Pending annexation proceedings.
- 88b. Same—Supervisors without jurisdiction in organization proceedings.
89. Quo warranto—Municipality a necessary party.
90. Same—Real facts on judicial count of ballots may be shown.
91. Same—Same—Certifying and filing entries in the minutes.

IV. POWERS.

1. In general.

92. Police power—Only limitation—Must not conflict with general law.
93. Same—Same—Speed regulation of motor vehicle.
94. Same—Incidental effect on constitutional rights.

95. Same—Includes power to prohibit dramshops.
96. Same—Same—Ordinance not in conflict with constitution or laws.
97. Construction of charter.
98. Scope of power under section 862.
- 98a. Issue of bonds in excess of revenue—Subsequent authorization.
- 98b. Estoppel to deny recitals of municipal bonds.
- 98c. Same—Not estopped when bonds issued without authority.
- 98d. Incur indebtedness—Section 18, article XI, constitution—Measure of power.
- 98e. Same—Same—Power, where vested.
99. Bridges across private canals.
100. Purchase of electric light plant—Issue of bonds for cost in excess of ordinary revenue.
101. Lighting streets with arc lights—Not "street work" under section 777.
102. Power to light city implies power to use necessary means.
- 102a. Street lighting procedure.
103. Ordinance prohibiting visiting houses of prostitution.
104. Franchise for use of streets by railroad company—Manner of granting.
- 104a. Same—Same—No right obtained.
105. Same—Same—No estoppel against city.
106. Franchises to lay railroad tracks—Legislative not contractual.
107. Same—Same—Extraterritorial power—Void condition.
108. Construction of sewers costing over \$100—Section 862 limited and modified by section 874.
109. Sewer connections—Municipal monopoly—Uniform charge.
110. Disposition of sewage outside city.
111. Same—Sewage farm.
- 112-114. Same—Same—Contract in futuro.
115. Local management of highways, subject to existing grants.
116. Power of regulating use of streets.
117. Fee of streets—Right of owner to use of subsurface.
118. Same—Same—Excavations.
119. Require franchise for telephone poles and wires in streets.
120. Water companies—Regulation of service connections—Railroad commission amendments.
121. Construction of wharves—Infringement on rights of persons.
122. Same—Section 862 merely confers same right that natural persons possess.
123. Eminent domain—Jurisdiction of superior court not affected.
124. Same—Condemnation of right of way for sewer—Right of municipality does not depend upon its incorporation.
125. Same—Same—Jurisdiction of superior court not affected by section 870.
126. Same—Same—Same—Jurisdiction derived from constitution.
127. Same—Manner of exercising is subject of general law.
128. Same—Same—Legislature can not discriminate.
- 128a. Void transfer of city property.
2. Legislature.
129. Legislative body—Rescission of previous votes or orders.
130. Board of education—First five classes—No legislative power.
- 130a. Use of school house for other than school purposes.
131. Ordinances may be passed on day of introduction—Act of 1889.
132. Ordinance, passed within five days after introduction, void—Section 801.
133. Ordinance—Rejection of invalid, does not affect valid portion.
134. Ordinance has force of statute.
135. Ordinances passed under implied powers.
136. Referendum election on franchise ordinance—Resolution not an ordinance.
137. County ordinance is not a general law—Does not supersede a municipal ordinance.
138. Municipal supersede county ordinances.
139. Same—Sale of liquor.
140. Adoption of code provisions by reference—Taxation.
- 140a. Same—Same—Section 871.
141. Same—Same.
142. Ordinance—"Law of this state."
143. Same—Classification of business occupations by amount of business.
144. Same—Same—License taxes.
145. Ordinances under municipal indebtedness act not governed by section 861.
- 145a. Special meeting of board—Proceedings void for want of notice.
- 145b. Same—Same—No power of ratification.
146. President of board of trustees—Duty to authenticate ordinances—Ministerial—City of fifth class.

V. TAXATION.

- 147, 148. Section 871 does not forbid selection of usual time for collection of taxes.
149. Same—Lien not affected.
150. Time of delinquency.
151. Agricultural land subject to.
152. Section 862—Street poll tax of sixth class city belongs to city and not to state.
153. High school tax levy—Duty of board of trustees.
154. Same—High school district including city deemed part of city.
155. School taxes—Subdivision 8, section 798, directory only.

156. Same—Fifth class cities—Limitations as to amount of levy not applicable to high school taxes.
157. Power to impose license tax for revenue—Section 3366, Political Code, repealed by section 862.
158. Occupation taxes—Practice of law—Repeal of section 862 by section 3366, Political Code.
159. License tax on delivery wagons.
160. Liquor dealers licenses—Payment of city does not exempt from payment of county license.
161. Equalization—Notice of increase of assessment held insufficient.
162. Same—Same—Advance notice is jurisdictional.
163. Same—Same—Must be notice of intended action, not action already taken.
164. Same—Same—Arbitrary increase without notice.
165. In case of reincorporation in lower class.
166. An incorporated town may exist without officers.
167. Qualifications of members of board of trustees of sixth class city—Jurisdiction of board.
168. Same—Same—Election contests—Sections 1111, et seq., C. C. P., not applicable.
169. Same—Same—Same—Mandamus to compel action of board.
170. Same—Same—Same—Section 860 not unconstitutional.
171. Same—Same—Same—No loss of jurisdiction by postponing action.
172. Same—Same—Same—Prohibition to superior court will not lie.

VI. OFFICES AND OFFICERS.

173. Consolidation of offices—Section 571.
- 174, 175. Power to change salary.
176. Same—Officer entitled to salary fixed by law.
177. City attorney—Compensation under section 879 and under ordinances.
178. City marshal—Compensation for service of process.
179. Same—Compensation in criminal cases.
180. Same—Compensation same as constables—Section 790.
181. Fees for serving justice court process chargeable to county.
182. Same—Power of board to fix compensation—Limited by section 855.
183. Same—Same—Same—Discretion of board—Courts will not interfere.
184. Same—Compensation fixed by charter is for all services—Sections 855, 880.
185. Same—Same—Same—Duty to collect licenses.
186. Same—Action for compensation—Requirement as to allegations of complaint.

187. Chief of fire department—City of fifth class—Authority and rights.
188. Same—Tenure of office.
189. City recorder—Jurisdiction—Justice of the peace as to some matters.
190. Same—Same—Concurrent.
191. Same—Same—Exclusive.
192. Same—Acting as justice of the peace.
- 192a. Forfeiture of cash bail in felony cases.
193. Justice of the peace of city of the fourth class.
194. City treasurer—Percentage entitled.
195. Offices—Duration—Temporary character of employment.
- 195a. Lawful acts of de facto officer, binding effect of.
- 195b. "Executive of the municipality"—Cities of sixth class.
- 195c. Compensation of members of board of equalization—Section 773.
- 195d. Removal of officers—Power of amotion does not exist in California.
- 195e. Same—Exclusive method.
- 195f. Same—Act repealed by section 811.

VII. CONTRACTS.

196. Contract for purchase of lands governed by rules of private contracts—Estoppel.
197. Contract for electric light and power plant—Notice and bids.
198. Contract for public improvements—Irregularity in bidding—Not ground for relief unless injury result.
199. Same—Entry of reasons for rejecting bids in record of board not required.
200. Same—Bid of city official, rejection authorized.
201. Same—Payment to city officials under contract forbidden by section 811.
202. No liability under unauthorized contract.
203. Invalid contract between city and school trustee.
204. "Public Utilities Act" applies to municipal contracts with public utility.
205. Contract for water not invalid for want of mutuality.
206. Same—Inconsistency.
207. Same—Contract authorized.
208. Presentation of demands—Claims for torts.

VIII. ACTIONS.

209. Penalty of liquor bond—Recorder's jurisdiction not exclusive—Section 806.
210. For the recovery of funds illegally expended.
211. Same—Demand unnecessary.
212. Same—Municipality proper party.
213. Action of ejectment—Public high way.

I. CONSTITUTIONALITY.

1. Legislature can not prevent adoption of freeholders' charters.—The legislature has no power to prevent the cities having a certain population to change their form of government by the adoption of a freeholders' charter.—*People v. Bagley*, 85 Cal. 343, 24 Pac. 716.

2. Not special legislation—Section 862.—The amendment of 1903 to section 862 of the municipal incorporation act is not unconstitutional as a special law on the ground that it applies to cities of only one class.—*Ex parte Jackson*, 143 Cal. 564, 77 Pac. 457.

3. Section 862 is general law.—Section 862 of the municipal corporation act is not unconstitutional as being special legislation because applicable only to cities of the sixth class, but is a general law within the meaning of section 6 of article XII of the constitution.—*Carey v. Blodgett*, 10 Cal. App. 463, 102 Pac. 668.

4. Section 870—Agreement with owners of property to be condemned—Special legislation—Discriminatory.—The provisions of section 870 of the municipal government act requiring cities of the fifth and sixth classes to make an effort to agree with the owners of land sought to be condemned for a public purpose before instituting condemnation proceedings, is held to be a special law, making a discrimination against two classes of municipal corporations and imposing upon them alone a burdensome condition to the exercise of a right common to all public and private corporations and all natural persons who are exempt therefrom by the general law, and is void.—*Pasadena v. Stimson*, 91 Cal. 238, 27 Pac. 604.

5. Delegation of power to relieve city officers of duties—Destruction of offices.—The legislature is not inhibited by any constitutional provision from delegating to the board of trustees of a municipality authority to relieve one city officer of a certain ministerial executive duty and transfer the same to another officer, where the effect of such action is not to destroy the first office or to contravene any general law, but the legislation is in furtherance with the general scheme to clothe the local governing body with a large measure of authority in the determination of the extent and character of the duties to be examined by subordinate executive officers.—*City of Woodland v. Leech*, 20 Cal. App. 15, 127 Pac. 1040.

6. Gas rates in fifth-class city.—An ordinance of a fifth-class city establishing a maximum rate and regulating gas rates, is constitutional and valid; and if not authorized by the general grant of police power contained in section 11, article XI, of the constitution, it is authorized by section 19 of article XI of the constitution construed in connection with the municipal incorporation act providing for ordinances and empowering cities of the fifth class to impose fines, penalties and forfeitures for the violation of ordinances.—*Denninger v.*

Recorder's Court, 145 Cal. 629, 79 Pac. 360; *Denninger v. Recorder's Court*, 145 Cal. 638, 79 Pac. 364.

7. Same—Prosecution of agents of corporations.—The fact that a defendant in a prosecution for violation of a municipal ordinance of a city of the fifth class establishing gas rates and fixing penalties for its violation was an agent of a corporation, does not render the complaint for misdemeanor insufficient inasmuch as the corporation must act through natural persons.—*Denninger v. Recorder's Court*, 145 Cal. 629, 79 Pac. 360; *Denninger v. Recorder's Court*, 145 Cal. 638, 79 Pac. 364.

8. Same—Same—Enforcement of payment of fine.—A municipal corporation of the fifth class is empowered under the municipal government act to enforce the payment of a fine imposed for violation of a municipal ordinance by imprisonment, and such method of enforcement is not in conflict with any general law.—*Ex parte Green*, 94 Cal. 387, 29 Pac. 783.

II. CONSTRUCTION.

9. Sanitary districts—Absorption by municipality.—A sanitary district preserves its identity and obtains its powers over its entire territory in all cases unless entirely absorbed by a municipality.—*Pixley v. Saunders*, 168 Cal. 152, 148 Pac. 815.

10. Same—Sanitation not "local" nor "municipal."—Sanitation is not a "local" nor "municipal" affair within the inhibition of sections 12 and 13 of article XI of the constitution.—*Pixley v. Saunders*, 168 Cal. 152, 160, 141 Pac. 815.

11. Act does not apply to freeholders' charter cities.—The general municipal incorporation act has no application to cities organized under freeholders' charters, although such cities may be of the classes referred to in such act.—*Edwards v. Brockway*, 16 Cal. App. 626, 117 Pac. 787.

12. Repealed—Section 771 by the Vrooman act.—Section 771 of the municipal corporation act has been repealed by the Vrooman act in so far as it is inconsistent with that act.—*Millsap v. Balfour*, 154 Cal. 303, 97 Pac. 668.

13. Repeal of section 866 by improvement act of 1901 not decided.—The question as to whether section 866 of the municipal corporation act was repealed by the municipal improvement act of 1901, was not decided.—*Redlands v. Brook*, 151 Cal. 474, 91 Pac. 150.

14. Sections 862 and 874 to be construed together and harmonized.—Sections 862 and 874 of the municipal corporation act are parts of one act relating to a particular subject and are to be construed together and harmonized, if possible.—*Matthews v. Livermore*, 156 Cal. 294, 104 Pac. 303.

15. Same—Bids for public work costing more than \$100.—Construing sections 862 and 874 of the municipal corporation act together, it is held that the provisions of the former are modified by the provision of the latter, requiring work to be done by contract and to be laid to the lowest re-

sponsible bidder where cost of such work exceeds the sum of \$100; and where the board of trustees of a city of the sixth class are proceeding to employ labor and purchase materials for a general sewer system costing many thousands of dollars without letting the same to the lowest bidder or acting in excess of their powers and will be enjoined at the suit of a taxpayer.—*Matthews v. Livermore*, 156 Cal. 294, 104 Pac. 303.

16. "All other printing"—Section 777.—The phrase "all other printing" in section 777 of the municipal corporation act has reference to all city printing not included in the word "advertising."—*Arthur v. Petaluma*, 27 Cal. App. 782, 151 Pac. 183.

17. Same—Publication of freeholders' charter.—The publication of proposed freeholders' charter is an obligation imposed by law and not within the inhibition of section 18 of article II of the constitution.—*Arthur v. Petaluma*, 27 Cal. App. 782, 151 Pac. 183.

18. "Advertising"—Printing freeholders' charter.—The printing of a freeholders' charter constituted "advertising" as that term is used in the general municipal act.—*Arthur v. Petaluma*, 27 Cal. App. 782, 151 Pac. 183.

19. Creation of indebtedness under municipal indebtedness act.—Section 865 has no application to a proceeding under the municipal indebtedness act of 1889, and the provisions of the latter act control in the cases provided for therein.—*Rice v. Board of Trustees*, 107 Cal. 398, 40 Pac. 551.

20. Special charter cities continue to exist until reorganization.—A municipality organized under a special charter prior to the constitution of 1879 continues to exist under such charter until it reorganizes under the general law or adopts a freeholders' charter.—*Ex parte Helm*, 143 Cal. 553, 77 Pac. 453.

21. Same—Not controlled by general laws.—A municipal corporation, operating under a special charter granted prior to the constitution of 1879, and authorized under such charter to impose license taxes for revenue, is not, since the "municipal affairs" amendment was adopted, controlled by general laws in such affairs.—*Ex parte Helm*, 143 Cal. 553, 77 Pac. 453; *Ex parte Lemon*, 143 Cal. 558, 77 Pac. 455, 65 L. R. A. 946.

22. Act permissive, and becomes mandatory only on acceptance of its terms.—The provisions of the general corporation act of 1883 are permissive only and do not become mandatory until its terms are accepted and an organization has been created under it, and such a municipality can not be extinguished until it has been changed into a different class under the terms of the act itself or by consolidation with another municipality or by the adoption of a freeholders' charter.—*People v. Bagley*, 85 Cal. 343, 24 Pac. 716.

23. Same.—The general municipal incorporation act of 1883 is permissive only. But when its terms are accepted, that act becomes mandatory and governs the mu-

nicipality until it is consolidated with some other municipality or is incorporated under section 8 of article II of the constitution.—*People v. Bagley*, 85 Cal. 343, 24 Pac. 716.

24. Los Angeles—Act never applied.—The municipal incorporation act of 1883 never applied to Los Angeles because that city never organized thereunder.—*Postal, etc., Co. v. Los Angeles County*, 160 Cal. 129, 116 Pac. 566.

25. Municipal indebtedness act of 1889 controlling—Section 865.—Section 865 of the municipal incorporation act has no application to a proceeding under the municipal indebtedness act of 1889, and the latter act is controlling in the cases therein provided for.—*Rice v. Board of Trustees*, 107 Cal. 398, 40 Pac. 551.

26. Section 865 has no application to proceedings under municipal indebtedness act.—The provisions of section 865 of the municipal incorporation act have no application to a proceeding under the municipal indebtedness act of 1889, which permits the expenditure of an amount in excess of that allowed by an annual tax levy for a public improvement.—*Rice v. Board of Trustees*, 107 Cal. 398, 40 Pac. 551.

27. Conflict between sections 4 and 352—Term of office.—In order to reconcile the conflict between provisions of section 4 of the general municipal incorporation act as to the term of office of officials of a reorganized municipality of the fifth class and the proviso of section 352 relative to the same subject, it is held that the words "this act" in the proviso be construed as though written "this section" or "this chapter" so as to conform with the evident intention of the legislature that all the elective officers of such a city should be chosen at the same time and enter upon their respective offices at the same time.—*Ruggles v. Board of Supervisors*, 88 Cal. 430, 26 Pac. 520.

28. City school district—Separate and independent of municipality.—The legislative declaration contained in section 1576 of the Political Code that every incorporated city is a school district, does not import into the organization of a school district the provisions of the city charter or limit the powers and functions of such district, and the city of San Diego, a municipal corporation operating under a freeholders' charter, is distinct from the corporation known as the San Diego School District.—*Kennedy v. Miller*, 97 Cal. 429, 32 Pac. 558.

29. Same—Organization and control not a "municipal affair."—The organization and control of school districts was not a municipal affair, and the municipal incorporation act as it stood at the time of the incorporation of Hillsboro, a city of the sixth class, was silent upon the subject of the formation, existence or government of school districts within cities or towns of that particular class.—*Scott v. San Mateo County*, 27 Cal. App. 708, 151 Pac. 33.

30. "Municipal affairs" amendment—Ap-

plies only to cities organized under the general law.—Under section 6 of article XII of the constitution as amended in 1895 general laws relating to "municipal affairs" apply only to cities which have organized under the general municipal incorporation act of 1883, and does not apply to San Francisco.—*Popper v. Broderick*, 123 Cal. 456, 56 Pac. 53.

31. "Municipal affair"—The imposition of a license tax for revenue is a municipal affair.—*Ex parte Jackson*, 143 Cal. 564, 77 Pac. 457.

32. Special charter municipalities, not reorganized, not controlled by general laws in "municipal affairs."—A municipal corporation organized by special charter prior to adoption of the present constitution continues to exist under said charter until it elects to organize under general laws or obtains a freeholders' charter, and such city is not, since the adoption of the 1896 amendment to section 6 of article XI of the constitution, controlled by general laws in the matter of "municipal affairs."—*Ex parte Helm*, 143 Cal. 553, 77 Pac. 453.

III. INCORPORATION, ORGANIZATION, ETC.

33. Effect of act of incorporation.—An act of incorporation declaring that certain territory shall hereafter constitute an incorporated town, and providing, without further condition, that it shall take effect from and after its passage, creates a body corporate and politic, whether the town government is thereafter organized or not.—*People v. California Fish Co.*, 166 Cal. 576, 610, 138 Pac. 79.

34. Same.—Creation a legislative act and may be done without the consent of the people.—The creation of a municipal corporation is a legislative act, and under the constitution of 1849 the legislature could incorporate a given territory into a municipality by a mere act of legislative will, without the consent or the acceptance of the inhabitants thereof.—*People v. California Fish Co.*, 166 Cal. 576, 610, 138 Pac. 79.

35. Same.—Filing copy of order with secretary of state necessary to complete.—Under the municipal corporation act of 1883, the legislative act of incorporation did not become complete until the filing in the office of the secretary of state of a certified copy of the order of the supervisors declaring the incorporation of the territory.—*People v. Banning Co.*, 166 Cal. 635, 638, 138 Pac. 101.

36. Same.—Same.—Filing equivalent to passage of law.—The filing with the secretary of state of a certified copy of the order of the board of supervisors declaring the incorporation, is equivalent to the passage of a law within the meaning of the provisions of the federal constitution as to impairment of obligations of contracts.—166 Cal. 635, 638, 138 Pac. 101.

37. Formation of municipalities a political question.—The propriety of establishing a municipality and of including a particu-

lar territory is in general a political question for the legislative department of the government; and if the course pursued in establishing that municipality be substantially such as is pointed out by the law-making department, courts do not interfere.—*People ex rel. Bettner v. Riverside*, 70 Cal. 461, 9 Pac. 662, 11 Pac. 759.

38. Reorganization of special chartered cities under act.—A municipality existing under a special charter granted prior to the adoption of the present constitution, can be reorganized under the general incorporation act of 1883, only in the manner and after a compliance with all of the conditions therein prescribed.—*People v. Berkeley*, 102 Cal. 298, 36 Pac. 591, 23 L. R. A. 838.

38a. Chartered city.—Manner of reorganization.—A chartered municipality of the state of California can only be reorganized in the manner and by compliance with all the conditions prescribed in the general act of 1883.—*People v. Berkeley*, 102 Cal. 298, 36 Pac. 591, 23 L. R. A. 838.

39. Same.—Same.—Manner of submission of question.—Application for the reorganization of municipal corporation under the act of 1883 must be signed by the requisite number of electors, and unless so signed, the board of trustees has no jurisdiction to submit the question of reorganization to the voters, and the latter have no right to vote on it.—*People v. Berkeley*, 102 Cal. 298, 36 Pac. 591, 23 L. R. A. 838.

40. Same.—Same.—Same.—Petition.—Pasting signatures.—Where the signatures of two or more petitions for the reorganization of a municipal corporation are cut off of the petitions to which they were originally attached and pasted onto a petition which was signed by a less number of electors than is required by the act, the board of trustees are without jurisdiction to order an election for reorganization.—*People v. Berkeley*, 102 Cal. 298, 36 Pac. 591, 23 L. R. A. 838.

41. Same.—Same.—May be submitted at general municipal election.—The question of the reorganization of a municipal corporation may be submitted at the election provided by law for municipal officers.—*People v. Berkeley*, 102 Cal. 298, 36 Pac. 591, 23 L. R. A. 838.

42. Same.—Same.—Election.—Majority of electors voting.—Under the provisions of the general act for the reorganization of municipalities thereunder a majority of all the electors voting at the election is required and not merely a majority of those who vote on the measure, although a majority of the latter may have been in favor of reorganization.—*People v. Berkeley*, 102 Cal. 298, 36 Pac. 591, 23 L. R. A. 838.

43. Same.—Same.—Same.—Count of ballots.—The board of supervisors are not required actually to count the ballots cast at an organization election, but it is sufficient if the returns are canvassed.—*People v. Sausalito*, 106 Cal. 500, 39 Pac. 937.

44. Change from one class to another.—The rule that municipal corporations are

subject to the control of general laws does not prevent the change from an incorporation under the general act of 1883 to a freeholders' charter.—*People v. Bagley*, 85 Cal. 343, 24 Pac. 716.

45. Annexed sanitary districts retain powers.—In enacting the sanitary district acts, the legislature had in mind the sanitation of any territory which might conveniently be served by a single system, whether wholly unincorporated or not, and that a sanitary district formed under said act preserves its identity and retains its powers over the whole territory, except in the event of its complete absorption by a municipality.—*Pixley v. Saunders*, 168 Cal. 152, 160, 141 Pac. 815.

46. Class of city at formation—Federal census.—The court will take judicial knowledge of the federal census enumeration showing the population of a municipality in the state of California, in the absence of a special enumeration, and will determine therefrom to what class a municipality belonged at the time of its formation under the general act.—*In re Baxter*, 3 Cal. App. 716, 86 Pac. 998.

47. Judicial notice of incorporation.—The courts take judicial notice of the fact of the incorporation of a town or city.—*Pasadena v. Stimson*, 91 Cal. 238, 27 Pac. 604.

48. Petition—Presentation before publication of notice.—Under a proper construction of section 2 of the municipal corporation act the petition need not be presented to the board before publication of notice, and thereafter published with the notice, affidavit, etc., by order and under the sanction of the board for the statutory time before its presentation to the board for further action.—*People ex rel. Boardman v. Linden*, 107 Cal. 94, 40 Pac. 115.

49. Same—Proof of genuineness of signatures essential.—It is of the very essence of the proceeding and absolutely essential to the jurisdiction of the court to make the order declaring the establishment of a municipal corporation that a proper petition signed by the requisite number of qualified electors should be laid before them, and this involved proof of the genuineness of the signatures to such petition to less than the citizenship and residence of the persons whose names are attached thereto.—*People ex rel. Boardman v. Linden*, 107 Cal. 94, 40 Pac. 115.

50. Same—Publication sufficient.—Where the publication of the petition reciting that it would be presented on September 20th, was published September 13th and September 20th, in a weekly newspaper, it was sufficient under the requirements of the statute.—*Hoffecker v. Board of Supervisors*, 23 Cal. App. 405, 138 Pac. 371.

51. Same—Affidavit—Prima facie evidence—Jurisdiction of board.—An affidavit of three qualified electors accompanying the petition and certifying as to the genuineness of the signatures of more than fifty of the qualified electors residing within the limits of the proposed municipality, is prima facie evidence of the requisite num-

ber of signers; and in the absence of any other evidence, the board of supervisors is bound to determine that it has jurisdiction to make its order so far as such jurisdiction depends upon the number of qualified electors signing the petition. — *Hoffecker v. Board of Supervisors*, 23 Cal. App. 405, 138 Pac. 371.

52. Petition for reorganization held insufficient—Consolidating petition by pasting.—Where a petition for reorganization under the general law was signed by only forty-seven electors and it was necessary that it should be signed by at least two hundred and eleven electors, it was held insufficient, and that the signatures originally attached to the other petitions and cut off and pasted to the petition presented could not be counted so as to make up a requisite number.—*People v. Berkeley*, 102 Cal. 298, 36 Pac. 591, 23 L. R. A. 838.

53. Petition for incorporation—Recital as to existence of "town" within proposed boundaries not required.—The provisions of the municipal incorporation act for the organization of municipalities thereunder do not require that the petition for incorporation should recite that there is any "town" within the proposed boundaries of such municipality.—*People v. ex rel. Russell v. Loyalton*, 147 Cal. 774, 82 Pac. 620.

54. Petition—Qualifications of signers—Determination of board conclusive.—The decision of the board of supervisors as to the qualifications of the signers of the petition and as to the number of inhabitants in the district proposed to be incorporated is conclusive in an action by quo warranto to determine the validity of the incorporation, and such determination could be vacated only upon grounds which would justify the vacating of a judgment rendered by a court of record, as upon an allegation that the decision was induced by extrinsic collateral fraud.—*People ex rel. Russell v. Loyalton*, 147 Cal. 774, 82 Pac. 620.

55. Same—Filing and publication before presentation not an irregularity.—The fact that a petition for the organization of a municipal corporation was filed with the clerk of the board of supervisors and notice thereof given the board that it was filed and duly published for the statutory period before its presentation to the board, does not constitute an irregularity sufficient to invalidate the action of the board thereon.—*People ex rel. Escalle v. Larkspur*, 16 Cal. App. 169, 116 Pac. 702.

56. Same—Clerical error in date of presentation.—An error in the notice of time for presenting a petition for the formation of a municipality under the general act of 1883 by describing such date as Tuesday, April 5th, is not fatal, although April 5th was Wednesday.—*Cole v. Board of Supervisors*, 27 Cal. App. 528, 150 Pac. 784.

57. Same—Presentation on day after date named in notice at adjourned meeting—Sufficient.—Where a petition for the formation of a municipality under the June act of 1883 was not presented to the board on the date named in the notice but was

presented on the following date at a session of the board adjourned from the day before the date named in the notice, such petition was held to be entitled to a hearing, the adjournment being in the nature of a recess.—*Cole v. Board of Supervisors*, 27 Cal. App. 528, 150 Pac. 784.

58. Same—Affidavit, defective—No evidence of genuineness of signatures.—An affidavit attached to the petition which merely showed that the names attached to the petition were names of qualified electors resident within the limits of the proposed corporation, and did not show that their signatures were genuine, was radically defective and where no evidence of the genuineness of such signatures was afforded before the board, the findings of the board that such petition had been signed by fifty qualified petitioners, was not supported by the evidence.—*People ex rel. Boardman v. Linden*, 107 Cal. 94, 40 Pac. 115.

59. Same—Defects in affidavit not jurisdictional—Filing of proper affidavit.—Defects in the affidavit accompanying the petition do not go to the jurisdiction of the board and where the hearing was continued and a proper affidavit of publication was presented before the final determination, it is sufficient.—*Borchard v. Supervisors*, 144 Cal. 10, 77 Pac. 708.

60. Same—Affidavit sufficient — Status presumed to continue to exist.—Where the affidavit attached to the petition was dated March 13, 1903, the petition was not filed until April 7, 1903, which is not objectionable on the ground that it only establishes the conditions existing on the first named date; and in the absence of proof that the number of inhabitants had been reduced below the requisite number by death or departure from the district, it will be presumed that the state of facts shown to exist on the 13th of March continued to exist.—*Borchard v. Supervisors*, 144 Cal. 10, 77 Pac. 708.

61. Same—"As nearly as may be."—A petition reciting that "more than five hundred and not to exceed three thousand persons resided within the proposed boundaries and that the number of inhabitants therein, according to the best knowledge, information and belief of your petitioners, is about two thousand," sufficiently complies with the terms of the act requiring that the population be stated "as nearly as may be."—*Borchard v. Supervisors*, 144 Cal. 10, 77 Pac. 708.

62. Same—Board acts judicially in determining sufficiency—Reviewable.—For the purposes of this case it is conceded that the board of supervisors in determining that a proper petition has been presented supported by proper affidavit that notice was published, acts judicially, or at least quasi-judicially, and that its determination upon these matters is subject to review.—*Borchard v. Supervisors*, 144 Cal. 10, 77 Pac. 708.

63. Same—Necessary signatures of qualified persons required.—A petition of incorporation of a municipality under the

general act of 1883 must be signed by the number of qualified persons required by the act, and if not so signed, the organization of a municipality thereunder is absolutely void and a favorable vote of the people can not cure the defect or authorize the board of supervisors to issue the necessary certificate for the exercise of a municipal franchise.—*Page v. Board of Supervisors*, 85 Cal. 50, 24 Pac. 607.

64. Same—Jurisdiction to inquire into fraud in signing.—When the board of supervisors discover that a fraud has been perpetrated in the signing of a petition for the organization of a municipal corporation under the general law of 1883 and that less than the required number of qualified signers have signed the same, it has jurisdiction to inquire into the fraud and to refuse to canvass the election returns or to take any further proceedings in the matter.—*Page v. Board of Supervisors*, 85 Cal. 50, 24 Pac. 607.

65. Same—Hearing—Adjournment for more than two months after presentation.—The provision of the municipal incorporation act that after the presentation to the board of supervisors of a petition for the organization of a municipality the board may adjourn the hearing from time to time not exceeding two months, is not mandatory; and where the board adjourned the hearing from time to time for two months and one week after its first publication, it will be presumed that the continuances were for a reasonable period and for good cause.—*People ex rel. Escalle v. Larkspur*, 16 Cal. App. 169, 116 Pac. 702.

66. Same—Same—Order—Failure to publish order as ordinance.—Where the order of the board was otherwise valid the failure to publish it as an ordinance does not invalidate it.—*People ex rel. Boardman v. Linden*, 107 Cal. 94, 40 Pac. 115.

67. Same—Same—Posting and publication of notice—Discretion of board.—The manner of giving notice whether by publication or by posting and the length of time that the notice is to be published or posted, are matters committed to the discretion of the board and can not be delegated to the discretion of the clerk; and it is held that in the present case, the notice was not a substantial compliance with the statute and was not a reasonable or sufficient notice.—*People ex rel. Boardman v. Linden*, 107 Cal. 94, 40 Pac. 115.

68. Boundaries, power to determine, legislative—Law mandatory and vested no discretion—Not reviewable.—Power of the board to determine the boundaries of a proposed municipal corporation is legislative; in canvassing the returns and in announcing their result its duties are ministerial, and the law which operated from the moment of the determination of the sufficiency of the petition and the boundaries established was mandatory and vested in them no discretion; and if the board in doing these things was guilty of irregularities and misconduct such as would vitiate the election, no relief can be granted

by certiorari.—*Borchard v. Supervisors*, 144 Cal. 10, 77 Pac. 708.

69. Jurisdiction of board—Prior organization of proposed municipality.—The board of supervisors of Los Angeles county had jurisdiction upon the hearing of a petition for the incorporation of the town of Wilmington under the general incorporation act of 1883 to hear and determine the fact as to whether there had been any prior organization of the town under the act of 1872.—*McConnell v. Board of Supervisors*, 7 Cal. App. 385, 94 Pac. 391.

See *People v. McConnell*, 151 Cal. 649, 91 Pac. 524.

70. Same—Not lost by adjournment without specifying hour of special meeting.—Failure of the orders of adjournment to specify the hour of the day to which the adjournment was taken, does not result in any loss of jurisdiction by the board over a proceeding under the general corporation act of 1883 to organize a municipal corporation.—*People ex rel. Boardman v. Linden*, 107 Cal. 94, 40 Pac. 115.

71. Review—Findings of supervisors as to sufficiency of petition a part of record.—The findings of the supervisors at the hearing as to the sufficiency of the petition, being a part of the record certified upon the return of the writ of review, may be resorted to in aid of the determination of the question.—*Borchard v. Supervisors*, 144 Cal. 10, 77 Pac. 708.

72. Notice of election—Posting of fifth notice outside territory does not vitiate proceedings.—Where four notices of election to organize a municipal corporation were posted within the boundaries of the proposed municipality, the error of the board of supervisors in requiring the posting of a fifth notice at a place subsequently discovered to be outside of such boundaries, would not vitiate the proceeding.—*People ex rel. Russell v. Loyalton*, 147 Cal. 774, 82 Pac. 620.

73. Same—Given without jurisdiction and without authority, is no notice.—A notice of an election to determine whether the people would incorporate as a municipality under the general law of 1883, given without jurisdiction and without authority of law, is no notice, and an election held thereunder is without authority of law and can give no title to an office or franchise.—*Page v. Board of Supervisors*, 85 Cal. 50, 24 Pac. 607.

74. Same—Sufficient.—A notice of election for the incorporation of a municipality reciting that the "petition particularly set forth the boundaries of the proposed corporation and stated the number of inhabitants therein to be about three thousand," was sufficient to indicate to the voters that the proposed city would be of the sixth class.—*People ex rel. Bettner v. Riverside*, 70 Cal. 461, 9 Pac. 662, 11 Pac. 759.

75. Election—Voting of five non-residents, through mistake, not fraud—Result not affected—Not material.—Where in an election to organize a proposed municipality owing to misconception as to the precise

location of the boundary line thereof five non-residents voted, that fact would not be material, in the absence of fraud, and where the rejection of such votes would not affect the result of the election.—*People ex rel. Russell v. Loyalton*, 147 Cal. 774, 82 Pac. 620.

76. Same—Not invalid because held on Admission Day.—An election to organize a municipal corporation under the act of 1883 is not invalidated because held on Admission Day, section 134 of the Code of Civil Procedure, forbidding the transaction merely of certain "judicial business" on holidays therein mentioned.—*People ex rel. Russell v. Loyalton*, 147 Cal. 774, 82 Pac. 620.

77. Same—Marking ballots.—In an election to determine as to the incorporation of a municipality, blank ballots without any marks to indicate the elector's wish in any particular, are not to be deemed "votes cast" for any purpose.—*People v. Sausalito*, 106 Cal. 500, 39 Pac. 937.

78. Same—Same—Use of pencil instead of stamp.—Ballots marked with the pencil and not with the official stamp are invalid and not entitled to be counted.—*People v. Sausalito*, 106 Cal. 500, 39 Pac. 937.

79. Same—Same—Same—Distinguishing mark.—A ballot upon which the words "against incorporation" written in pencil entirely below the printed matter, the same being the only mark of any kind thereon, is invalid and should not be counted.—*People v. Sausalito*, 106 Cal. 500, 39 Pac. 937.

80. Same—Same—Blurred stamp.—A ballot stamped at the proper place but having the cross marks blurred, is valid and should be counted.—*People v. Sausalito*, 106 Cal. 500, 39 Pac. 937.

81. Same—Same—Stamp below line.—A ballot properly stamped but on which the cross marks extended slightly below the line, is held to be valid and entitled to be counted.—*People v. Sausalito*, 106 Cal. 500, 39 Pac. 937.

82. "Majority of electors voting"—Phrase construed.—The requirement of the constitution that "a majority of the electors voting" shall determine the question of the reorganization of a municipality, implies that a majority of all those voting at the elections must be in favor of such reorganization, in order to carry the proposition.—*People v. Town of Berkeley*, 102 Cal. 298, 36 Pac. 591, 23 L. R. A. 838.

83. Submission of question of reorganization—"General election."—The provisions of the general incorporation act as to submission of the question of reorganization to the electors at the "general election," are satisfied by a submission of the question at the election provided by law for the election of municipal officers.—*People v. Town of Berkeley*, 102 Cal. 298, 36 Pac. 591, 23 L. R. A. 838.

84. Certified copy of order declaring incorporation—Filing of essential to complete.—The filing of a certified copy of the order of the board of supervisors declaring the

city duly incorporated in the office of the secretary of state, is essential to the completion of the incorporation, and until such filing, there is no corporation.—*People ex rel. Boardman v. Linden*, 107 Cal. 94, 40 Pac. 115.

85. Inhabitants and territory.—The board of supervisors of a county are authorized under the municipal incorporation act to incorporate a district containing a village of less than five hundred inhabitants and including fifty square miles of farming land, with a population of seven hundred altogether.—*People ex rel. Russell v. Loyaltown*, 147 Cal. 774, 82 Pac. 620.

86. Same—Determination of board conclusive.—The question as to whether the territory proposed to be included in a municipal incorporation act should be brought under municipal control is left by the general act of 1883 to be finally determined by the board of supervisors of the county in which such territory is situated.—*People ex rel. Russell v. Loyaltown*, 147 Cal. 774, 82 Pac. 620.

See, also, *People v. Riverside*, 70 Cal. 461, 11 Pac. 759; *People v. Linden*, 107 Pac. 94, 100, 40 Pac. 115.

87. Power of determining boundaries—Rescission of order.—The power to determine the boundaries of the proposed town given boards of supervisors under sections 2 and 3 of the municipal corporation act is legislative and not delegated, and in the absence of any limitation by statute or rule, includes the power of repealing and rescinding its previous acts while the proceedings are in fieri and before rights have become vested under the act or the town declared duly incorporated.—*Vernon v. Board of Supervisors*, 142 Cal. 513, 76 Pac. 253.

88. Orders establishing boundaries and providing for submission to people, not ordinances.—Orders establishing boundaries and providing for the submission to the people of the question of municipal incorporation, are not ordinances governed as to their enactment by the provisions of the county government act, but are orders to be entered on the minutes of the board in accordance with the provisions of the statute regulating this particular meeting.—*People ex rel. Boardman v. Linden*, 107 Cal. 94, 40 Pac. 115.

88a. Pending annexation proceedings.—The board of supervisors have no jurisdiction to entertain and act upon a petition calling for proceedings to organize a city including a part of the same territory while proceedings to annex such territory are pending.—*People ex rel. Pasadena v. Monterey Park*, 40 Cal. App. 715, 181 Pac. 825.

88b. Same—Supervisors without jurisdiction in organization proceedings.—Where pending annexation proceedings are void the supervisors are authorized to entertain and act upon a petition to incorporate the same territory.—*People ex rel. Pasadena v. Monterey Park*, 40 Cal. App. 715, 181 Pac. 825.

89. Quo warranto—Municipality a necessary party.—The putative municipality is a necessary party to any proceeding to test or determine the validity of its municipal charter.—*People v. Gunn*, 85 Cal. 238, 24 Pac. 718.

90. Same—Real facts on judicial count of ballots may be shown.—In an action to determine the validity of an incorporation, any uncertainty arising from recital in the record of the board of supervisors in reference to the canvass of the returns may be explained by showing the real facts upon a judicial count of the ballots.—*People v. Sausalito*, 106 Cal. 500, 39 Pac. 937.

91. Same—Same—Certifying and filing of entries in record of board.—The act does not require or necessitate the certifying and filing of all the entries made in the minutes of the board of supervisors at the time of the canvass of the returns of an incorporation election.—*People v. Sausalito*, 106 Cal. 500, 39 Pac. 937.

IV. POWERS.

1. In general.

92. Police power—Only limitation—Must not conflict with general law.—The only limitation upon the exercise of the power to make and enforce local police, sanitary and other regulations given municipalities by section 11 of article XII of the constitution is subject only to the limitation that such regulations shall not be in conflict with general laws.—*Ex parte Roach*, 104 Cal. 272, 37 Pac. 1044.

93. Same—Same—Speed regulation of motor vehicles.—A city of the sixth class has no authority to make a police regulation which is in conflict with general laws, and an ordinance of such a city, which reasonably construed can be held to have been intended to supplant all other legislation upon the subject of the regulation of the speed of motor vehicles within its limits, both state and local, is invalid.—*In re Smith*, 26 Cal. App. 116, 146 Pac. 82.

94. Same—Incidental effect on constitutional rights.—Laws or ordinances enacted under the police power, reasonably adopted to their ends, are not unconstitutional because they may incidentally operate to deprive individuals of their property, or interfere with their personal liberty, nor because they may create a monopoly of a certain business or occupation.—*California, etc., Co. v. Sanitary, etc., Co.*, 126 Fed. 29, 61 C. C. A. 91; *Ex parte Lemon*, 143 Cal. 558, 77 Pac. 455, 65 L. R. A. 946; *Harter v. Barkley*, 158 Cal. 742, 112 Pac. 556.

95. Includes power to prohibit dramshops.—A city of the sixth class is empowered by section 11, article XI of the constitution to prohibit tippling houses, dramshops and barrooms.—*Ex parte Campbell*, 74 Cal. 20, 15 Pac. 318, 5 Am. St. Rep. 418.

96. Same—Same—Ordinance—Not in conflict with constitution or laws.—An ordinance of the city of Pasadena, a sixth-class city, prohibiting the maintenance of tippling houses, dramshops and barrooms

within its limits, is not in conflict with the constitution or general laws of the state.—*Ex parte Campbell*, 74 Cal. 20, 15 Pac. 318, 5 Am. St. Rep. 418.

97. Construction of charter.—A city has no powers not expressly given by the terms of its charter or necessarily implied therefrom, and all of a charter is to be considered in arriving at the meaning of any part of it, wherever it appears that the context aids or controls such meaning, and if, with the aid of the context or the application of other correct rules of interpretation, the conclusion is reached that the power is granted, the rule first stated is satisfied.—*Hayne v. San Francisco*, 174 Cal. 185, 196, 162 Pac. 625.

98. Scope of power under section 862.—The power given to municipal corporations of the sixth class contained in section 862 of the municipal corporation act to acquire certain public utilities, necessarily implies the power to furnish its inhabitants with such utilities for private as well as the general public.—*Carey v. Blodgett*, 10 Cal. App. 463, 102 Pac. 668.

98a. Issue of bonds in excess of revenue.—Subsequent authorization.—Where a municipality assumed certain water bonds as a part of the purchase price of the works, and such bonds were in excess of its debt limit at that time, but after the city had acquired the right to raise its debt limit, and thereafter the question of refunding such bonds was submitted and granted by a unanimous majority, such vote was held to have amounted to a ratification of the indebtedness and a validation of the bonds.—*Santa Cruz v. Wykes*, 202 Fed. 357, 120 C. C. A. 485.

See, also, *Waite v. Santa Cruz*, 184 U. S. 302, 22 Sup. Ct. 327, 46 L. ed. 552.

98b. Estoppel to deny recitals of municipal bonds.—Where municipal bonds recite that they have been issued in pursuance of and in conformity with statutes and ordinances authorizing their issue, the city is estopped to deny that they were so issued.—*Santa Cruz v. Wykes*, 202 Fed. 357, 120 C. C. A. 485.

98c. Same.—Not estopped when bonds issued without authority.—Where bonds contain no sufficient recital as to their issuance in conformity with the constitution, laws, or ordinances, or if the issuance is beyond the power of the municipality to authorize, then it is not estopped to controvert their validity.—*Santa Cruz v. Wykes*, 202 Fed. 357, 120 C. C. A. 485.

98d. Incur indebtedness.—Section 18, article XI, constitution.—Measure of power.—The exception in section 18 of article XI of the constitution to the inhibition against municipalities incurring any indebtedness or liability for any purpose exceeding the revenue for that year, is held to be the measure of the city's power in this respect.—*Santa Cruz v. Wykes*, 202 Fed. 357, 120 C. C. A. 485.

98e. Same.—Same.—Power, where vested.—The power of a municipality under section 18, article XI, of the constitution, to

incur indebtedness in excess of its revenues for the year, does not with the municipality, nor with its common council alone, but with the assent of two-thirds of the electors.—*Santa Cruz v. Wykes*, 202 Fed. 357, 120 C. C. A. 485.

99. Bridges across private canals.—A municipality of the sixth class was authorized by the municipal corporation act to establish, build and repair bridges across canals, and where it opens or establishes a street or highway across a canal previously constructed by its owner, the duty of erecting the necessary bridge across the canal on the line of the street, devolves upon the municipality and not upon the canal owner.—*South Yuba, etc., Co. v. Auburn*, 16 Cal. App. 775, 118 Pac. 101.

100. Purchase of electric lighting plant.—Issue of bonds for.—Cost in excess of ordinary revenue.—A city of the sixth class is authorized by section 862 and 866 to purchase an electric lighting plant from a private company and to issue bonds for so much of the cost thereof as could not be paid out of the ordinary annual revenue of the municipality.—*Redlands v. Brook*, 151 Cal. 474, 91 Pac. 150.

101. Lighting streets with arc lights.—Not "street work" under section 777.—Lighting streets with arc lights suspended at a considerable height above the street is not "street work" within the meaning of section 777, and that section does not authorize such lighting by contract where the expenditure exceeds \$100.—*Electric, etc., Co. v. San Bernardino*, 100 Cal. 348, 34 Pac. 819.

102. Power to light city implies power to use necessary means.—Power given by the municipal corporation act to light the city, implies the use of means necessary to accomplish that object.—*Hammond v. San Leandro*, 135 Cal. 450, 67 Pac. 692.

102a. Street lighting procedure.—Where a municipal charter confers power to adopt a complete procedure for the creation of a system of street lighting, and itself does not contain such procedure, the city has power to provide a scheme, and if it does not do it it is governed by the general law in that respect and may follow the provisions of the improvement act of 1911.—*Park v. Pacific, etc., Co.*, 37 Cal. App. 112, 173 Pac. 615.

103. Ordinance prohibiting visiting houses of prostitution.—The city council of the city of Stockton was empowered by the municipal incorporation act of 1883 to enact an ordinance prohibiting any person to visit any building kept for the purpose of prostitution, and the same is not in conflict with the general laws of the state.—*Ex parte Johnson*, 73 Cal. 228, 15 Pac. 43.

104. Franchise for use of streets by railroad company.—Manner of granting.—The authority of the board of trustees of a city of the sixth class to grant a franchise for the use of the streets of such a city for railroad tracks is in sections 465 and 470 of the Civil Code, and the method of granting such a franchise is to be found in section

861 of the municipal corporation act, qualified and limited by the provisions of section 470 of the Civil Code.—*San Pedro, etc., Co. v. Long Beach*, 172 Cal. 631, 158 Pac. 204.

104a. Same—Same—No right obtained.—Where an application was made for permission to construct a turn-out or spur in the streets of a sixth-class city and on motion the "matter was referred to the board as committee of the whole with power to act" and nothing further was ever done by the council with respect to this application, no right whatever to lay or to maintain such turn-out was obtained.—*San Pedro, etc., Co. v. Long Beach*, 172 Cal. 631, 158 Pac. 204.

105. Same—Same—No estoppel against city.—Where a railroad company expended money and laid tracks in city streets in reliance not upon the supposed legality of franchises claimed therefor but upon what its officers and agents expected by way of favor, indulgence, neglect or apathy of the city officials and the committee, no estoppel would arise against the municipality by subsequent use and operation by the company, no matter how long continued in the absence of any showing of hardship or detriment on account thereof.—*San Pedro, etc., Co. v. Long Beach*, 172 Cal. 631, 158 Pac. 204.

106. Franchises to lay railroad tracks—Legislative not contractual.—The power given cities of the sixth class by section 862 to permit the laying of railroad tracks, etc., "under such restrictions as they deem proper," is legislative, and not contractual, and unless the restriction imposed is within the city's legislative power it can not be supported as a contract.—*City of Arcata v. Green*, 156 Cal. 759, 106 Pac. 86.

107. Same—Same—Extraterritorial power—Void condition.—A grant to a railroad company of the right to construct an electric railroad through a sixth-class city, upon condition that such railroad be completed within a certain period between such city and another, is an attempt by the city to exercise extraterritorial power, and such attempt vitiated the condition and avoided the undertaking given by the grantee as a consideration therefor.—*City of Arcata v. Green*, 156 Cal. 759, 106 Pac. 86.

108. Construction of sewers costing over \$100.—Section 862 limited and modified by section 874.—The general power to construct sewers in cities of the sixth class given by section 862 is limited and modified with regard to the sewers costing more than \$100, by the provisions of section 874; and the board of trustees of such a city acts in excess of its powers where it provides for the construction of a general sewer system costing many thousands of dollars by the direct employment of labor and purchase of materials without letting the same to the lowest bidder.—*Matthews v. Livermore*, 156 Cal. 294, 104 Pac. 303.

As to the same subject in freeholders' charter cities, see *Perry v. Los Angeles*, 157 Cal. 146, 106 Pac. 410.

109. Sewer connections—Municipal monopoly—Uniform charge.—A city of the sixth class is empowered to construct drains and sewers, to make a uniform charge for connections, whether the lengths of such connections are uniform or not, and to provide for a municipal monopoly for making such connections, by denying the issuance of permits for private contracts and imposing a penalty for violation of any provisions of the ordinance.—*Harter v. Barkley*, 158 Cal. 742, 112 Pac. 556.

110. Disposition of sewage outside city.—A city of the fifth class has power to contract for the disposition of sewage outside of the city, and may contract for a sewer from outside such limits.—*McBean v. Fresno*, 112 Cal. 159, 44 Pac. 358, 53 Am. St. Rep. 191, 31 L. R. A. 794.

111. Same—Sewage farm.—A contract entered into by the board of trustees of a fifth-class city for the purchase of a sewer farm for the reception and treatment of the sewage of the city, and to pay therefor a specified sum annually is a valid contract binding on the city.—*McBean v. Fresno*, 112 Cal. 159, 44 Pac. 358, 53 Am. St. Rep. 191, 31 L. R. A. 794.

112. Same—Same—Contract in futuro.—Contracts in futuro entered into by municipalities will not be upheld without a clear showing of a reasonable necessity for their execution.—*McBean v. Fresno*, 112 Cal. 159, 44 Pac. 358, 53 Am. St. Rep. 191, 31 L. R. A. 794.

113. Same—Same—Same.—When a contract in futuro entered into by a municipality was, at the time it was entered into, fair and reasonable, and appeared then to have been prompted by the necessities of the case, it will not be construed as an unreasonable restraint upon the powers of succeeding boards, it will be upheld, when there is no express limitation as to time.—*McBean v. Fresno*, 112 Cal. 159, 44 Pac. 358, 53 Am. St. Rep. 191, 31 L. R. A. 794.

114. Same—Same—Same.—In the case of contracts in futuro entered into by a municipality, extending over a period of one year, if the revenues for any one year are not sufficient and available for the payment of the contractor's claim for that year, such claim becomes mere waste paper and is not carried over as a charge against the revenue for a succeeding year.—*McBean v. Fresno*, 112 Cal. 159, 44 Pac. 358, 53 Am. St. Rep. 191, 31 L. R. A. 794.

115. Local management of highways, subject to existing grants.—Upon its incorporation a city of the sixth class is given the management of the highways therein, subject to an existing grant by the state to a city of the right to use the same for a pipe line for a water supply.—*City of Beverly Hills v. Los Angeles*, 175 Cal. 311, 314, 165 Pac. 924.

116. Power of regulating use of streets.—As to the power of a municipality to regulate the use of the public streets, see *Ex parte Casinello*, 62 Cal. 541; *Ex parte Fiske*, 72 Cal. 125, 13 Pac. 310; *Ex parte Taylor*, 87 Cal. 94, 25 Pac. 258; *De Baker v.*

Southern Cal. Railroad Co., 106 Cal. 282, 46 Am. St. Rep. 237, 39 Pac. 610; Mutual, etc., Co. v. Ashworth, 118 Cal. 6, 50 Pac. 10; Vanderhurst v. Tholcke, 113 Cal. 150, 45 Pac. 266, 35 L. R. A. 267; In re Johnston, 137 Cal. 120, 69 Pac. 973; Dobbins v. Los Angeles, 139 Cal. 179, 96 Am. St. Rep. 95, 72 Pac. 970; Merced Falls, etc., Co. v. Turner, 2 Cal. App. 720, 84 Pac. 239.

117. Fee of streets—Right of owner to use of subsurface.—An ordinance of a city requiring a franchise to lay pipes in a public street does not import to be a regulation as to the manner of doing the work, and to the extent that it requires such franchise as a condition precedent to its occupation at all, it does apply to the owner of the soil so long as occupation does not in any manner conflict with the public use.—Colegrove, etc., Co. v. Hollywood, 151 Cal. 425, 90 Pac. 1053, 13 L. R. A. (N. S.) 904.

118. Same—Same—Excavations.—The owner of the fee has the right to the use of the soil below the surface and may make such excavations not inconsistent with the public use of the street, subject to such reasonable municipal or police regulations as the city may impose, to enable him to enjoy his right to such use.—Colegrove, etc., Co. v. Hollywood, 151 Cal. 425, 90 Pac. 1053, 13 L. R. A. (N. S.) 904.

119. Require franchise for telephone poles and wires.—A municipal corporation is empowered by ordinance to require a telephone company doing an interstate business and using and occupying exclusively certain portions of the public streets with its lines and poles, to pay for such use a fixed sum per annum for each and every pole maintained thereon unless it shall have or secure a franchise or a privilege therefor.—Sunset, etc., Co. v. Pasadena, 161 Cal. 265, 118 Pac. 796.

120. Water companies—Regulation of service connections—Railroad commission amendments.—At the time of the adoption of the railroad commission amendment to the constitution cities of the sixth class had power to establish by ordinance and to enforce a regulation requiring water companies to lay service connections to the property line of consumers without charge, such power being conferred by section 549 of the Civil Code, taken in connection with section 11 of article XII of the constitution and with subdivision 14 of section 862 of the municipal corporation act.—Title, etc., Co. v. Railroad Commission, 168 Cal. 295, Ann. Cas. 1916A, 738, 142 Pac. 878.

121. Construction of wharves—Infringement on rights of persons.—A city of the sixth class is given no right nor power under § 862 of the act to prevent a person who has the right to do so from constructing a wharf, so long as such person does not infringe upon its rights by doing so.—San Pedro v. Southern Pacific R. Co., 101 Cal. 333, 35 Pac. 993.

122. Same—Section 862 merely confers same right that natural persons possess.—Section 862 is intended to confer upon a

municipality of the sixth class the same right to construct wharves, etc., as a natural person would have, and not to confer such right irrespective of the rights of others.—San Pedro v. Southern Pacific R. Co., 101 Cal. 333, 35 Pac. 993.

123. Eminent domain—Jurisdiction of superior court not affected.—The jurisdiction of a superior court in controversies between the parties in a condemnation proceeding by a municipality, is not affected by the provisions of section 870 of the municipal corporation act of 1883, although the right of the municipality to maintain the action and to secure the relief sought may be effected under the provisions of that section by failure to agree or to bring the suit as therein provided.—Bishop v. Superior Court, 87 Cal. 226, 25 Pac. 435.

124. Same—Condemnation of right of way for sewer—Right of municipality does not depend upon its incorporation.—The right of a municipality to condemn a right of way for a sewer does not depend upon whether it is incorporated or not, and proof of that fact is unnecessary although alleged in the complaint.—Pasadena v. Stimson, 91 Cal. 238, 27 Pac. 604.

125. Same—Same—Jurisdiction of superior court not affected by section 870.—The provisions of section 870 of the municipal government act may affect the question of the right of a municipality to maintain an action to condemn a right of way for a sewer, but they do not affect the jurisdiction of the superior court to hear and determine all questions that may arise between the parties in such a proceeding.—Bishop v. Superior Court, 87 Cal. 226, 25 Pac. 435.

126. Same—Same—Same—Jurisdiction derived from constitution.—The jurisdiction of the superior court to hear and determine all questions arising in connection with the attempt of a municipality to condemn a right of way for a sewer, is derived from the constitution and the provisions of the code, and not from the municipal government.—Bishop v. Superior Court, 87 Cal. 226, 25 Pac. 435.

127. Same—Manner of exercising is subject of general law.—The manner of exercising the right of eminent domain is no part of municipal organization but is the subject of general laws applicable to every person alike.—Pasadena v. Stimson, 91 Cal. 238, 27 Pac. 604.

128. Same—Same—Legislature can not discriminate.—The legislature has no power to make arbitrary discriminations between different classes of persons in fixing the manner of exercising the right of eminent domain.—Pasadena v. Stimson, 91 Cal. 238, 27 Pac. 604.

128a. Void transfer of city property.—A colorable transfer of city property for a pretended consideration conveys no title and is void, notwithstanding the fact that the land conveyed was reconveyed to the city for park purposes.—Fort Bragg v. Brandon, 41 Cal. App. 227, 182 Pac. 454.

2. Legislature.

129. Legislative body—Rescission of previous votes or orders.—The legislative body of a municipal corporation may rescind previous votes or orders at any time where the rights of third persons have not vested; and so far as may be consistent with the laws of its creation and the rules of action, such rescission may take place at any subsequent meeting.—*McConoughey v. Jackson*, 101 Cal. 265, 35 Pac. 863, 40 Am. St. Rep. 53.

130. Board of education — First five classes—No legislative power.—In cities of the first five classes the educational department has no legislative power, the same being vested in the legislative body of a city.—*Board of Education v. Board of Trustees*, 129 Cal. 599, 62 Pac. 173.

130a. Use of school house for other than school purposes.—Section 798 is not limited by subdivision 18, section 1617 of the Political Code.—*McClure v. Board of Education*, 38 Cal. App. 500, 176 Pac. 711.

131. Ordinances may be passed on day of introduction—Act of 1889.—Ordinances passed under the authority of the act of 1889 are specially governed by the provisions of that act and may be passed on the day of their introduction without reference to the provisions of section 801 of the municipal government act.—*Derby v. City of Modesto*, 104 Cal. 515, 38 Pac. 892.

See, also, *Santa Barbara v. Davis*, 6 Cal. App. 342, 92 Pac. 308.

132. Ordinance, passed within five days after introduction, void—Section 801.—An ordinance granting a franchise for the use of a street to a railroad company to construct and maintain railroad tracks thereon, is void where it was passed on the day of its introduction or within five days thereafter, as in contravention of section 861 of the municipal corporation act.—*San Pedro, etc., Co. v. Long Beach*, 172 Cal. 631, 153 Pac. 204.

133. Ordinance — Rejection of invalid, does not affect valid portion.—The invalidity of a portion of an ordinance may be rejected without affecting that portion which is distinctly separable, remaining.—*San Luis Obispo v. Pettit*, 87 Cal. 499, 25 Pac. 694.

134. Ordinance has force of statute.—A municipal corporation can exercise only such powers as have been expressly or by necessary implication conferred upon it by law, and these powers are to be found in its charter or in some provision of the statute or constitution of the state under which it is organized; and any ordinance passed by it within the scope of the authority expressly conferred upon it, has the same force within the corporate limits as a statute passed by the legislature itself has throughout the state.—*Ex parte Roach*, 104 Cal. 272, 37 Pac. 1044.

135. Ordinances passed under — Implied powers.—A municipal ordinance passed pursuant to the implied power of the municipality must be consonant with the general powers and purposes of the corporation and
If Gen. Laws—29

not be inconsistent with the laws or policy of the state.—*Ex parte Green*, 94 Cal. 337, 29 Pac. 783.

136. Referendum election on "franchise ordinance"—Resolution not an ordinance.—Where an ordinance calling a referendum election on a "franchise ordinance" was passed at an adjourned meeting of the board of trustees and the hour of assembling at such adjourned meeting had not been specified in the motion made at the regular meeting to adjourn the same, such ordinance is void; and such election can not be validated by treating the ordinance as a resolution since the election must be called by ordinance under the provisions of the municipal corporation act.—*Reed v. Wing*, 168 Cal. 706, 144 Pac. 964.

137. County ordinance is not a general law—Does not supersede municipal ordinance.—A county ordinance is not a general law within the meaning of section 11, article XII of the constitution and does not for that reason supersede a city ordinance. (Principle applied in the case of a conflict between county and city ordinances in relation to licensing the sale of intoxicating liquors.)—*Ex parte Roach*, 104 Cal. 272, 37 Pac. 1044.

138. Municipal supersede county ordinances.—Ordinances passed by a municipality whose territory is included within the county will supersede any ordinance of the county upon the same subject.—*Ex parte Roach*, 104 Cal. 272, 37 Pac. 1044.

139. Same—Sale of liquor.—In case of conflict a police regulation of a municipality will supersede any county ordinance within the territory of the city, and a county ordinance making it unlawful to sell liquor between the hours of 10 o'clock p. m. and 5 o'clock a. m. is inoperative in a municipal corporation within the county which has previously passed an ordinance licensing the sale of liquor without such restriction.—*Ex parte Roach*, 104 Cal. 272, 37 Pac. 1044.

140. Adoption of code provisions by reference—Taxation.—An ordinance of the city of Escondido adopting the provisions of the Political Code relating to the assessment, levy and collection of city taxes, except as to the time, manner, mode and presents provided for in the municipal corporation act, did not adopt any provision of the Political Code, the subject matter of which was covered by the municipal corporation act, as the same are made applicable to cities and towns of the sixth class.—*Escondido v. Wohlford*, 153 Cal. 40, 94 Pac. 232.

140a. Same—Same — Section 871.—Sections of the Political Code relating to the assessment, levy and collection of taxes may be adopted by reference to number in an ordinance passed under the provisions of section 871 of the municipal corporation act of 1883.—*San Luis Obispo v. Pettit*, 87 Cal. 499, 25 Pac. 694.

141. Same.—A reference in a special municipal charter to code sections for powers and provisions, is an appropriation of sec-

tions and makes them a part of the charter.—*Ex parte Lemon*, 143 Cal. 558, 77 Pac. 455, 65 L. R. A. 946.

142. Ordinance—"Law of this state."—A city ordinance is a "law of this state" within the meaning of section 435 of the Penal Code.—*Ex parte Bagshaw*, 152 Cal. 701, 93 Pac. 864.

143. Same.—Classification of business occupations by amount of business.—A license tax ordinance which grades the tax upon occupations by the amount of business done is proper, and such an ordinance must be clearly oppressive or unlawfully discriminative before it will be declared invalid.—*Ex parte Lemon*, 143 Cal. 558, 77 Pac. 455, 65 L. R. A. 946.

144. Same.—Same.—License taxes.—A municipal license tax ordinance which imposes a higher license tax upon restaurants where the meals are not prepared by the proprietor or the members of his family than those where so prepared, is not unlawfully discriminatory, and is valid.—*Ex parte Lemon*, 143 Cal. 558, 77 Pac. 455, 65 L. R. A. 946.

145. Ordinances under municipal indebtedness act not governed by section 861.—Ordinances passed under the act of 1889 under the municipal indebtedness act of 1889 (see Act 3049) with reference to the issue of bonds under that act, are specially governed thereby and may be passed on the day on which they are introduced, without regard to the general provisions of section 861 of the municipal government act.—*Derby v. Modesto*, 104 Cal. 515, 38 Pac. 892.

145a. Special meeting of board.—Proceedings void for want of notice.—Where no written notice of a special meeting of a board of trustees was delivered to any member of the board, and one member was absent from such meeting, the meeting and all the proceedings were void.—*City of Orange v. Clement*, 41 Cal. App. 497, 183 Pac. 189.

145b. Same.—Same.—No power of ratification.—A board of trustees of a municipality have no power to ratify and make valid its action at a previous special meeting providing for the purchase of land, where such action was absolutely void because of failure to give written notice of such meeting and one member was absent therefrom.—*City of Orange v. Clement*, 41 Cal. App. 497, 183 Pac. 189.

146. President of board of trustees.—Duty to authenticate ordinances.—Ministerial.—City of fifth class.—The duty imposed upon the president of a board of trustees of a city of the fifth class to authenticate the municipal ordinance passed under the police power, is purely ministerial and may be enforced by mandamus.—*City of San Buena Ventura v. McGuire*, 8 Cal. App. 497, 97 Pac. 526.

V. TAXATION.

147. Section 871 does not forbid selection of usual time for collection of taxes.—The provisions of section 871 of the municipal

corporation act of 1883 relating to the assessment levy and collection of taxes, does not forbid the city council from selecting the time fixed by law for the collection of other taxes, but merely leaves the selection of the time to its discretion.—*San Luis Obispo v. Pettit*, 87 Cal. 499, 25 Pac. 694.

148. Same.—Prior to its amendment in 1905 section 871 of the municipal corporation act authorized a municipal corporation of the sixth class to fix the time for the assessment levy and collection of taxes and could provide that the assessment should be fixed according to the status of the property at 12 o'clock m. of May 1 instead of first Monday in March.—*Escondido v. Escondido, etc., Co.*, 8 Cal. App. 435, 97 Pac. 197.

149. Same.—Lien not affected.—The provision of 1871 of the municipal corporation act allowing tax liens, is not inconsistent with power given the board to fix a day other than the first Monday in March to which the assessment should relate.—*Escondido v. Escondido, etc., Co.*, 8 Cal. App. 435, 97 Pac. 197.

150. Time of delinquency.—Under the municipal corporations act of 1883 a municipal tax does not become delinquent, and no action for its recovery can be maintained until the board of trustees has fixed the time when it must be paid by ordinance.—*Dixon v. Mayes*, 72 Cal. 166, 13 Pac. 471.

151. Agricultural land subject to.—Land used solely for agricultural purposes situated within the limits of a municipal corporation organized under the general law of 1883, is subject to taxation for municipal purposes.—*Dixon v. Mayes*, 72 Cal. 166, 13 Pac. 471.

152. Section 862.—Street poll tax of sixth-class city belongs to city and not state.—Under the provisions of section 862 of the municipal corporation act, money levied and collected by a city of the sixth class as a street poll tax, belongs to the municipality and not to the state, and the state has no interest therein within the meaning of section 428 of the Penal Code.—*Ex parte Sam Wah*, 91 Cal. 510, 27 Pac. 766.

153. High school tax levy.—Duty of board of trustees.—It is the duty of the board of trustees of a city of the fifth class to levy a special tax for the support of the high school therein upon an estimate furnished by the high school board whose duty it is to make such estimate annually.—*Brown v. Visalia*, 141 Cal. 372, 74 Pac. 1042.

154. Same.—High school district including city deemed part of city.—By the amendment of 1891 to section 795 a school district which includes a city and additional territory is to be deemed part of the city, and the high school board of such a district must report the estimate required by section 1670 of the Political Code to the legislative body of the city which alone is authorized to levy such a tax for high school purposes.—*Chico High School Board*

v. Board of Supervisors, 118 Cal. 115, 50 Pac. 275.

155. School taxes—Subdivision 8, section 798, directory only.—The provisions of subdivision 8 of section 798 of the municipal corporation act are to be construed as directory only and not as restricting the legislative functions of the board of trustees as to the amount of money to be raised by taxation for school purposes.—Board of Education v. Board of Trustees, 129 Cal. 599, 62 Pac. 173.

156. Same—Fifth-class cities—Limitations as to amount of levy not applicable to high school taxes.—A city of the fifth class was limited in the matter of establishing schools by the proceedings of the municipal incorporation act, to primary and grammar schools, but sections 1669, 1670 and 1671 of the Political Code granted the additional power of such cities to establish and maintain high schools within such city; and the limitations of the municipal corporation act as to the amount of the school levy, has no application to the maintenance of the high school thus established.—Brown v. Visalia, 141 Cal. 372, 74 Pac. 1042.

157. Power to impose license tax for revenue—Section 3366, Political Code, repealed by section 862.—A municipal corporation of the sixth class was empowered by section 862 of the municipal corporation act as amended in 1903 to impose license taxes for revenue, and that amendment operated to repeal by implication section 3366 of the political act so far as it applied to cities of the sixth class.—Ex parte Jackson, 143 Cal. 564, 77 Pac. 457.

158. Occupation taxes—Practice of law—Repeal of section 852 by section 3366, Political Code.—The board of trustees of a city have no power to regulate the practice of the law; but under the provisions of subdivision 10, section 852 of the municipal corporation act, it may impose a license tax upon the business or occupation of an attorney for purposes of revenue; but this provision was repealed by implication by section 3366 of the Political Code, which limited the imposition of licensed taxes for the purpose of regulation in the exercise of police power "and not otherwise."—Sonora v. Curtin, 137 Cal. 583, 70 Pac. 674.
See, also, Santa Monica v. Guidinger, 137 Cal. 658, 70 Pac. 732.

159. License tax on delivery wagons.—In view of section 11, article XI of the constitution, and under subdivision 10, section 862 of the municipal incorporation act, a city of the sixth class was authorized to impose a license tax on persons operating or maintaining delivery wagons on its streets.—The Emporium v. San Mateo, 177 Cal. 622, 623, 171 Pac. 434.

160. Liquor dealers' licenses—Payment of city does not exempt from payment of county license.—A liquor dealer is not exempt from payment of a license tax levied by the county by reason of having paid a similar tax to the municipality.—In re Lawrence, 69 Cal. 608, 11 Pac. 217.

161. Equalization—Notice of increase of assessment held insufficient.—A notice to the owner of property, dated subsequent to the actual increase of the assessment thereof, that the assessment has been increased, and that "the board of equalization will be in session" on a date named "to adjust all assessments where cause is shown," is insufficient to give the board jurisdiction to make such increase.—Huntley v. City of Auburn, 165 Cal. 298, 300, 131 Pac. 859.

162. Same—Same—Advance notice is jurisdictional.—Advance notice to the owner of property of a proposed increase in its assessment is a jurisdictional prerequisite, and the board of trustees of a city of the sixth class has no jurisdiction, as a board of equalization to increase an assessment, either under section 872, of the municipal corporation act, or under a municipal ordinance, without such notice.—Huntley v. City of Auburn, 165 Cal. 298, 299, 131 Pac. 859.

163. Same—Same—Must be notice of intended action, not of action already taken.—A notice, to give jurisdiction to increase an assessment, must be notice "of the intended action of the board," not that it has acted; and, in the absence of a controlling statute on the subject fixing the time of the notice, the owner must be given time to have and must have a full and fair hearing.—Huntley v. City of Auburn, 165 Cal. 298, 304, 131 Pac. 859.

164. Same—Same—Arbitrary increase without notice.—The board of trustees of a city of the sixth class have no power under section 872 of the municipal corporation act, acting as a board of equalization, to arbitrarily increase an assessment of property, made and returned by the assessor, without first giving the present assessed notice of the proposed action.—Huntley v. Board of Trustees, 165 Cal. 298, 131 Pac. 859.

165. In case of reincorporation in lower class.—Where a city is reincorporated under the general act of 1883 in a lower class, the assessment, equalization and levy of taxes for the year of reincorporation must be made as provided for the cities of such lower class; and if not so made, they are invalid.—Dranga v. Rowe, 127 Cal. 506, 59 Pac. 944.

166. An incorporated town may exist without officers.—People v. California Fish Co., 166 Cal. 576, 610, 138 Pac. 79.

167. Qualifications of members of board of trustees of sixth-class city—Jurisdiction of board.—Section 860 of the municipal corporation act vests in the board of trustees of cities of the sixth class the right to judge of the qualifications of its members and determine contested elections of all city officers and to inquire and decide whether, notwithstanding a tie vote upon the face of the returns one or another of the candidates in fact received a plurality.—McGregor v. Board of Trustees, 159 Cal. 441, 114 Pac. 566; McGregor v. Buck, 159 Cal. 441, 114 Pac. 566.

168. Same—Same—Election contests — Sections 1111, et seq., Code of Civil Procedure, not applicable.—The provisions of the Code of Civil Procedure (§§ 1111, et seq.) limiting the scope of contested election proceedings in the superior court to cases where the "right of any person declared elected to an office" was involved, has no application to the board and general grant of power contained in section 860 of the municipal corporation act authorizing the board of trustees to "determine contested elections" of municipal officers.—*McGregor v. Board of Trustees*, 159 Cal. 441, 114 Pac. 566; *McGregor v. Buck*, 159 Cal. 441, 114 Pac. 566.

169. Same—Same—Same — Mandamus to compel action of board.—Where the board of trustees of a city of the sixth class refuse to inquire and decide whether a member of the board was elected, although it appeared on the face of the returns that a tie vote had been cast, a writ of mandate will issue to compel them to proceed to determine the contest instituted by such trustee.—*McGregor v. Board of Trustees*, 159 Cal. 441, 114 Pac. 566; *McGregor v. Buck*, 159 Cal. 441, 114 Pac. 566.

170. Same—Same—Same—Section 860 — Not unconstitutional.—The provisions of section 860 of the municipal corporation act vesting in the board of trustees of a city of the sixth class power to determine contested elections of city officers are not in conflict with the constitutional declaration that the judicial power shall be vested in certain courts.—*McGregor v. Board of Trustees*, 159 Cal. 441, 114 Pac. 566; *McGregor v. Buck*, 159 Cal. 441, 114 Pac. 566.

171. Same—Same—Same—No loss of jurisdiction by postponing action.—Where a board of trustees indefinitely postponed a hearing in an election contest for the office of trustee out of deference to a ruling of the superior court that it had exclusive jurisdiction, it did not lose jurisdiction or its right to have the contest decided, were it in the manner provided by law.—*McGregor v. Board of Trustees*, 159 Cal. 441, 114 Pac. 566; *McGregor v. Buck*, 159 Cal. 441, 114 Pac. 566.

172. Same—Same—Same—Prohibition to superior court will not lie.—In view of the fact that section 860 of the municipal corporation act does not declare "with unequivocal certainty" or with any degree of certainty that the legislature intended to divest the superior court of its jurisdiction to proceed with a contest instituted before it, a writ of prohibition will not lie to arrest such proceedings.—*McGregor v. Board of Trustees*, 159 Cal. 441, 114 Pac. 566; *McGregor v. Buck*, 159 Cal. 441, 114 Pac. 566.

VI. OFFICES AND OFFICERS.

173. Consolidation of offices—Section 571.—The board of trustees of the city of Woodland were authorized under the provisions of section 571 of the municipal corporation act as amended in 1901, to enact an ordinance prior to a city election, making the city treasurer to be elected thereat

ex officio city tax collector and license tax collector.—*City of Woodland v. Leech*, 20 Cal. App. 15, 127 Pac. 1040.

174. Power to change salary.—The power of a municipality to fix or change the salary of its officers rests entirely upon statute, and the exercise of this power is subject to all the limitations contained in the statute.—*Marquis v. Santa Ana*, 103 Cal. 661, 37 Pac. 650.

175. Same.—A municipality could not directly, by express ordinance for that purpose, diminish the amount of salary of one of its officers nor could it accomplish that result indirectly either by accepting the provisions of the act of March 2, 1891 (Stats. 1891, p. 22), or by doing away with the necessity for his services through its adoption of an ordinance abolishing the street poll tax.—*Marquis v. Santa Ana*, 103 Cal. 661, 37 Pac. 650.

176. Same — Officer entitled to salary fixed by law.—The right of an officer of a municipality to the salary fixed by law for his office, is not impaired by any change that may be made in the duties of his office or even by an entire cessation of those duties so long as the office itself remains in existence.—*Marquis v. Santa Ana*, 103 Cal. 661, 37 Pac. 650.

177. City attorney—Compensation under section 879 and under ordinance.—Where the salary and compensation of a city attorney was fixed by an ordinance providing that such salary shall be in full compensation for all services rendered, it is held that the provisions of the ordinance are to be deemed supplementary to section 879 of the municipal corporation act, which provides the duty of such an officer and that the compensation covered not merely advances to be given to the city officers but also any other services as an attorney for which no extra compensation was definitely or directly agreed to be paid, and in the absence of official action by the board of trustees, such attorney can not recover for services claimed to have been out of the line of his regular employment.—*Bridges v. Sierra Madre*, 27 Cal. App. 93, 148 Pac. 965.

178. City marshal—Compensation for service of process.—The marshal of a city of the sixth class is not entitled to services in serving and executing process in criminal cases unless the board of trustees have fixed by ordinance his compensation; and in an action by such marshal for such services, the complaint must allege the class to which the municipality belongs, the ordinance fixing his compensation and that his claim for services is in accord with the provisions of the ordinance.—*Pritchett v. Stanislaus County*, 73 Cal. 310, 14 Pac. 795.

179. Same — Compensation in criminal cases.—The marshal of a municipal corporation of the sixth class is not entitled to compensation or service of process in criminal cases in the absence of an ordinance fixing his compensation.—*Pritchett v. Stanislaus County*, 73 Cal. 310, 14 Pac. 795.

180. Same—Compensation same as constables—Section 790.—Under the provisions

of section 790 the city marshal of a city of the fifth class was entitled to receive for the service of any process issued and directed to him by any legal authority, in addition to the same fees and mileage received by constables in the state courts, such additional compensation as might be fixed by the city.—*Carlisle v. Tulare County*, 5 Cal. Unrep. 701, 49 Pac. 3.

181. Fees for serving justice's court process chargeable to county.—The fees of a city marshal of a city of the fifth class in serving process issuing out of the justice's court of the township in which the city is situated, are chargeable to the county.—*Carlisle v. Tulare*, 5 Cal. Unrep. 701, 49 Pac. 3.

182. Same—Power of board to fix compensation—Limited by section 855.—It is the absolute right of the board of trustees of a municipality under section 855 of the general incorporation act to fix the compensation of the city marshal at any sum it deems proper, free from supervision or review on the part of the courts, subject to the single limitation that there shall be some compensation provided and that the office itself can not be practically destroyed by fixing so low a figure that no one would discharge the duties of the office for the compensation fixed.—*De Merritt v. Weldon*, 154 Cal. 545, 98 Pac. 537, 16 Ann. Cas. 955.

183. Same—Same—Same—Discretion of board—Courts will not interfere.—The question of the reasonableness of the amount of the compensation to be paid a city marshal is a question solely for the board of trustees and not for the courts, and the court will not interfere in the absence of fraud or bad faith.—*De Merritt v. Weldon*, 154 Cal. 545, 98 Pac. 537, 16 Ann. Cas. 955.

184. Same—Compensation fixed by charter is for all services—Sections 855, 880.—Under sections 855 and 880 of the municipal corporation act, the compensation of a city marshal is for all the duties imposed on the marshal by the act, and he can not recover from the city for services in connection with the arrest of offenders, and summoning witnesses and jurors.—*Mundell v. Pasadena*, 87 Cal. 520, 25 Pac. 1061.

185. Same—Same—Same—Duty to collect licenses.—The effect of an ordinance enacted by the board of trustees of the city of Woodland under the authority of section 571 of the municipal incorporation act, as amended in 1901, was to relieve the city marshal from the duty imposed upon him by section 790 of that act to receive all city licenses from the city clerk and to collect the same.—*City of Woodland v. Leech*, 20 Cal. App. 15, 127 Pac. 1040.

186. Same—Action for compensation—Requirement as to allegations of complaint in action for.—In an action by the marshal of a sixth-class city for compensation or service of process in a criminal case, the complaint must allege the class to which the municipality belongs, the ordinance fixing compensation and that the claim accords with the provisions of the

ordinance.—*Pritchett v. Stanislaus County*, 73 Cal. 310, 14 Pac. 795.

187. Chief of fire department—City of fifth class—Authority and rights.—The chief of the fire department of a municipality of the fifth class organized under the general incorporation law of 1883 has no right or authority except that given him by the ordinances of the city.—*Higgins v. Cole*, 100 Cal. 260, 34 Pac. 678.

188. Same—Tenure of office.—The provision of an ordinance that the chief of the fire department should be appointed for one year or until his successor should be appointed and qualified, is construed as declaring the term of office of such chief to continue until the successor is elected and qualified, and not necessarily for a full year; and a statute which empowers the board of trustees of such city to appoint and remove subordinate officers at their pleasure, is not limited by such ordinance and the term of office of such chief must be held to be at the pleasure of the appointing power by virtue of section 16 of article XX of the constitution, his term of office not being fixed by the constitution nor declared by law.—*Higgins v. Cole*, 100 Cal. 260, 34 Pac. 678.

189. City recorder—Jurisdiction—Justice of the peace as to some matters.—Under the municipal corporation act a city recorder may be a justice of the peace as to the same matters, and a recorder as to others.—*Prince v. Fresno*, 88 Cal. 407, 26 Pac. 606.

190. Same—Same—Concurrent.—The jurisdiction of the recorder of a city of the sixth class in the classes of cases mentioned in section 882 of the act was not intended to be exclusive or to deprive the justice's court of jurisdiction of offenses against state law, but to make such jurisdiction as to that class of cases simply concurrent with that of the justice's court.—*Ex parte Bagshaw*, 152 Cal. 701, 93 Pac. 864.

191. Same—Same—Exclusive.—The violations of ordinances declared by section 882 to be within the exclusive jurisdiction of the recorder are those which are crimes solely because made so by ordinance supplemented by the municipal corporation act.—*Ex parte Bagshaw*, 152 Cal. 701, 93 Pac. 864.

192. Same—Acting as justice of the peace.—The fees of a city marshal of a city of the fifth class in the service of process issued by the city recorder are chargeable to the county in excess where the recorder is acting as justice of the peace.—*Carlisle v. Tulare*, 5 Cal. Unrep. 701, 49 Pac. 3.

192a. Forfeiture of cash bail in felony cases—Money belongs to state.—Cash bail to answer to a felony charge forfeited by a city recorder acting as a magistrate belongs to the county and not to the city.—*Tulare Co. v. Fenn*, (Cal. App.) 190 Pac. 855.

193. Justice of the peace of city of the fourth class.—Under the municipal incorporation act of 1883 the office of justice

of the peace of a city of the fourth class had a legal existence and could be legally filled.—*Ex parte Fedderwitz*, 6 Cal. Unrep. 562, 62 Pac. 935.

194. City treasurer—Percentage entitled.—A city treasurer is not entitled under section 876 of the municipal corporation act to a percentage on moneys received, and also on moneys paid, but his percentage should be computed solely upon the amount paid out by him from that which he had received.—*Sierra Madre v. Lehmer*, 20 Cal. App. 377, 129 Pac. 287.

195. Offices—Duration—Temporary character of employment.—The mere hiring of a driver of a street wagon belonging to a city at a monthly salary and for no specified period under a resolution of the board of trustees, does not create an office which would continue without regard to service until the rescission or amendment of the resolution but creates the relation of master and servant under a monthly salary for the service performed, if it is performed.—*White v. Alameda*, 124 Cal. 95, 56 Pac. 795.

195a. Lawful acts of de facto officer, binding effect of.—The lawful acts of an officer de facto of a municipal corporation formed within the scope and by the apparent authority of his office are as valid and binding so far as the rights of third persons are concerned as if he were a legally elected and qualified officer de jure and in full possession of the office.—*Susanville v. Long*, 144 Cal. 362, 72 Pac. 987.

195b. "Executive of the municipality"—Cities of sixth class.—In cities of the sixth class the president of the board of trustees is "executive of the municipality" within the requirements of the act of 1901 (Stats. 1901, p. 27).—*Redondo Beach v. Barkley*, 151 Cal. 176, 90 Pac. 452.

195c. Compensation of members of board of equalization—Section 773.—The ordinance of the board of trustees of the city of Woodland fixing the compensation of the members of the board of equalization, is not inconsistent with the grant of power by the legislature to the board of equalization, and is authorized by section 773 of the municipal corporation act.—*White v. Mitchell*, 11 Cal. App. 202, 104 Pac. 333.

195d. Officers—Power of amotion does not exist in California.—The power of amotion of municipal officers recognized by the common law is not an incident of the powers of a municipal corporation in this state, and, in the absence of a charter provision, municipalities do not possess the power to remove elective officers.—*Legault v. Board of Trustees*, 161 Cal. 197, 118 Pac. 706, 39 L. R. A. (N. S.) 519.

195e. Same—Exclusive method.—The exclusive method of removal of elective officers of a municipality is found in sections 758-772 of the Penal Code.—*Legault v. Board of Trustees*, 161 Cal. 197, 118 Pac. 706, 39 L. R. A. (N. S.) 519.

195f. Same—Act repealed by section 811.—The act of March 30, 1874 (Stats. 1873-4, p. 911), providing for a judgment of removal from office and a judgment in favor

of the complainant for \$100 was repealed by section 811 of the municipal incorporation act.—*Crossman v. Kenniston*, 97 Cal. 379, 32 Pac. 448.

VII. CONTRACTS.

196. Contract for purchase of land governed by rules of private contracts—City may plead estoppel.—The private contract of a municipality in the acquisition of land by purchase, is governed in its construction by the same rules that the contracts of private persons in similar cases are governed, and in such cases the municipality may plead estoppel and its adversary may plead estoppel against it.—*Brown v. Sebastopol*, 153 Cal. 704, 96 Pac. 363, 19 L. R. A. (N. S.) 178.

197. Contract for electric light and power plant—Notice and bids.—A contract entered into between a municipality and an electric light and power plant to furnish current to the city which call for the expenditure by the latter of a sum in excess of \$100 without notice and without bidding as required by section 874 of the municipal corporation act, is invalid.—*Ukiah v. Snow Mountain, etc., Co.*, 4 R. C. D. 293.

198. Contract for public improvement—Irregularity in bidding—Not ground for relief unless injury result.—Directions given to the city engineer by individual members of the governing board of a municipality to inform bidders that no bids will be received for a public improvement unconnected by bids for the purchase of the bonds, is not sufficient ground for relief against the contract for such improvement in the absence of any injury resulting from the irregularity of or of any evidence that any one was deterred by the same from bidding on the contract or that the bids were higher by reason of such condition than they would otherwise have been or that there was any fraud or bad faith.—*Rice v. Board of Trustees*, 107 Cal. 398, 40 Pac. 551.

199. Same—Entry of reasons for rejecting bids in record of board not required.—The board of trustees of a municipality is not required to make an entry in their record of their reasons for rejecting bids for public improvements; and if such statement is made in such records, the board is not precluded from showing in court the actual reasons for their action and evidence thereof is admissible.—*Rice v. Board of Trustees*, 107 Cal. 398, 40 Pac. 551.

200. Same—Bid of city official, rejection of authorized.—The governing board of a municipality is justified in rejecting or refusing to consider a bid for a public improvement by a city official who is not lawfully authorized to make a contract therefor.—*Rice v. Board of Trustees*, 107 Cal. 398, 40 Pac. 551.

201. Payment of claims under contract to city officials forbidden by section 811.—Section 811 of the municipal corporation act, which applies to cities of the fifth class, prohibits a contract by the city under which moneys are to be paid with its of-

officials, and forbids the payment of claims arising under them.—*Osburn v. Stone*, 170 Cal. 480, 150 Pac. 367.

202. No liability under unauthorized contract.—No implied liability can arise for benefits received under a contract made by a board or municipality made in violation of the particularly prescribed statutory mode, the statutory mode, in such cases, being the measure of power.—*Reams v. Cooley*, 171 Cal. 150, Ann. Cas. 1917A, 1260, 152 Pac. 293.

203. Contract between city and school trustee.—A contract between a city and one of its school trustees for street work, is void under section 328 of the municipal corporation act of 1883, and furnishes no basis for a valid assessment therefor.—*Capron v. Hitchcock*, 98 Cal. 427, 33 Pac. 431.

204. "Public utilities act" applies to municipal contract with public utility.—The principle that a public utility can not contract with its customers in such a way as to preclude the state acting through the railroad commission from inquiring into the reasonableness of the rates named in the contract and direct the removal of discrimination caused by the contract or otherwise completely supervising and regulating the utility, applies to a contract between a public utility and a municipality, unless the state has expressly given to the municipality the right to contract away the state's right under the police power to regulate and supervise public utilities, and the state has not given this right to the town of Ukiah.—*Ukiah v. Snow Mountain, etc., Co.*, 4 R. C. D. 293.

205. Contract for water not invalid for want of mutuality.—A provision in such a contract whereby the water company agrees to "use due diligence to maintain its pipes" in good condition, and employ its best endeavors to cause an adequate supply of water to flow through its conduits, and in case of deficiency to prorate its supply between the city and its other customers is not invalid for want of mutuality.—*Marin, etc., Co. v. Sausalito*, 168 Cal. 587, 599, 143 Pac. 767.

206. Same—Inconsistency.—In a contract under the authority of subdivision 3, section 6, municipal corporation act, between a city of the sixth class and a water company to furnish water for the inhabitants of the city, there is no inconsistency between a paragraph obligating the city to pay 30 cents per thousand for not to exceed 200,000 gallons per day, and one by which the city obligates itself to take 150,000 gallons a day for the first year of the contract and not less than 200,000 gallons a day thereafter.—*Marin, etc., Co. v. Sausalito*, 168 Cal. 587, 598, 143 Pac. 767.

207. Same—Contract authorized.—Subdivision 3, section 862, of the municipal incorporation act, authorizes cities of the

sixth class to enter into a contract with a water company to furnish a bulk supply of water to its inhabitants for ten years, and the terms and duration of such a contract are within the sound discretion of the city authorities, and such a contract will not be overthrown except for fraud, abuse of discretion, excess of authority, or inequity in the terms.—*Marin, etc., Co. v. Sausalito*, 168 Cal. 587, 598, 143 Pac. 767.

208. Presentation of demands—Claims for tort.—The requirement of section 864 as to the presentation of demands against cities of the sixth class was not intended to apply to claims arising from tort.—*Adams v. Modesto*, 131 Cal. 501, 63 Pac. 1083.

VIII. ACTIONS.

209. Penalty of liquor bond—Recorder's jurisdiction not exclusive—Section 806.—An action to recover the penalty of a bond secured as a condition of granting a license to sell liquors by a municipality is not an action to recover a fine, penalty or forfeiture for breach of a municipal ordinance, nor is it founded upon any obligation or liability created by ordinance nor is it a prosecution for the violation of an ordinance, within the provisions of section 806 of the municipal incorporation act, giving exclusive jurisdiction to the city recorder's court in such cases.—*City of Tulare v. Hevren*, 126 Cal. 226, 58 Pac. 530.

210. For the recovery of funds illegally expended.—An action may be maintained by a taxpayer against the mayor and members of the city council of a municipality to recover from them moneys illegally expended from the funds of the city.—*Osburn v. Stone*, 170 Cal. 480, 150 Pac. 367.

211. Same—Demand unnecessary.—It is fundamental that where a demand would be unavailing, it is unnecessary; and where this is shown in a case by a taxpayer against the mayor and city council of a municipality to recover funds of the city illegally expended, a demand is not necessary.—*Osburn v. Stone*, 170 Cal. 480, 150 Pac. 367.

212. Same—Municipality proper party.—While the municipality is a proper party in an action by a taxpayer against the mayor and council for the recovery of funds of the city illegally expended, it is error to sustain without relief to amend a demurrer to the complaint in such action, upon the ground that the municipality was not made a party.—*Osburn v. Stone*, 170 Cal. 480, 150 Pac. 367.

213. Action of ejectment—Public highway.—Under the provisions of section 850 of the general corporation act an unchartered municipal corporation of the sixth class had the right to commence in its own name an action of ejectment for land claimed as a public highway and to recover damages for its use and occupation.—*Daly City v. Holbrook*, 39 Cal. App. 289, 178 Pac. 725.

TABLE OF MUNICIPALITIES

That are now operating, or that heretofore have operated, under the general incorporation act:

Alameda City.—Incorporated as a city of the fifth class under the general law of 1883. Now operating under a freeholders' charter. See Act 104.

Albany.—Incorporated September 22, 1908, under the name of Ocean View. Name changed to Albany by election held October 30, 1909.

Alhambra.—Incorporated under general law of 1883, in 1903, sixth class. Territory annexed in 1908. Now operating under a freeholders' charter. See Act 147.

Alturas.—Name originally Dorris Bridge. Changed to Alturas in 1876 (Stats. 1875-76, p. 513). City of sixth class.

Alviso.—Originally incorporated in 1852 (Stats. 1852, p. 222). City of sixth class.

Amador City.—City of sixth class.

Anaheim.—Originally incorporated in 1870 (Stats. 1869-70, p. 66). This act was repealed and the city discontinued in 1872 (Stats. 1871-72, p. 273). It was incorporated again in 1876 under an order of the board of supervisors of Los Angeles county in 1876. This incorporation was legalized by the legislature in 1878 (Stats. 1877-78, p. 27). It was again incorporated by an act of the legislature in 1878 (Stats. 1877-8, p. 309). This act was superseded by incorporating in 1888 under the municipal incorporation act of 1883.

Angels.—Incorporated in 1912, under general law of 1883, sixth class.

Antioch.—Incorporated as a city of the sixth class in 1890 under the municipal corporation act of 1883.

Arcadia.—Incorporated under general law of 1883, in 1903, sixth class. Territory annexed in 1904 and excluded in 1908.

Arcata.—Incorporated as the town of Union (Stats. 1858, p. 7. Statute amended 1869-70, p. 414; 1873-4, p. 280). Its name was changed to Arcata in 1874. It was incorporated under the general law in 1903, as a city of the sixth class.

Arroyo Grande.—Incorporated July 10, 1911, sixth class.

Auburn.—Incorporated in 1860 (See, ante, Act 380). Incorporated under the general law of 1883, in 1888.

Avalon.—City of sixth class.

Azusa.—Incorporated under general law of 1883, in 1898, sixth class.

Bakersfield.—Incorporated under general law of 1883, in 1898, fifth class. Territory annexed in 1909 including city of Kern. Freeholders' charter. See Act 387.

Banning.—City of sixth class.

Beaumont.—City of the sixth class.

Belvedere.—Incorporated under general law of 1883, in 1896, sixth class.

Benicia.—Originally incorporated in 1850 (Stats. 1850, p. 119). Act repealed in 1851 (Stats. 1851, p. 348). This act was supplemented in 1854 (Stats. 1854, p. 206). It was repealed in 1859 (Stats. 1859, p. 314), and reincorporated by the same act. This act was supplemented in 1860 (Stats. 1860, p.

118) and in 1861 (Stats. 1861, p. 17). It was amended in 1862 (Stats. 1862, p. 231); in 1868 (Stats. 1867-68, pp. 3, 206); in 1870 (Stats. 1869-70, p. 854); in 1874 (Stats. 1873-74, p. 777); and as was incorporated as a city of the sixth class under the general act in 1886.

Beverly Hills.—Incorporated under the general law of 1883 as a city of the sixth class, January 26, 1914.

Biggs.—Incorporated under general law of 1883, in 1903, sixth class.

Bishop.—Incorporated under general law of 1883, in 1903, sixth class. Territory annexed in 1907.

Blue Lake.—Incorporated under the general law of 1883, in 1910, sixth class.

Blythe.—City of sixth class.

Bravley.—Incorporated under the general law of 1883, in 1908, sixth class.

Brea.—City of the sixth class.

Burbank.—Incorporated July 12, 1911, under general laws, sixth class.

Burlingame.—Incorporated under general laws in 1908. Territory annexed January 3, 1911, and February 28, 1911. Name changed to city of Burlingame, June 9, 1911. Sixth class.

Calxico.—Incorporated under general law of 1883, in 1908, sixth class.

Calipatria.—City of sixth class.

Calistoga.—Incorporated under general law of 1883, in 1886, sixth class.

Carmel-by-the-Sea.—City of the sixth class.

Ceres.—City of the sixth class.

Chico.—Incorporated January 8, 1872 (Stats. 1871-72, p. 11); amended in 1872 (Stats. 1871-72, p. 248); amended and supplemented in 1876 (Stats. 1875-76, p. 22); in 1878 (Stats. 1877-78, p. 456); in 1887 (Stats. 1887, p. 63). Incorporated in 1895 under general law of 1883. City of the fifth class.

Chino.—Incorporated under general law of 1883, in 1910, sixth class.

Chula Vista.—Incorporated October 17, 1911, under general law of 1883, sixth class.

Claremont.—City of sixth class.

Cloverdale.—Originally incorporated in 1872 (Stats. 1871-72, p. 164); amended in 1872 (Stats. 1871-72, p. 550); in 1876 (Stats. 1875-76, p. 171). City of the sixth class.

Clovis.—Incorporated under general law of 1883, February 27, 1912, sixth class.

Coalinga.—Incorporated under general law of 1883, in 1906. Annexation of territory and change of boundary, April 5, 1910. Sixth class.

Colfax.—Incorporated under the general law of 1883, in 1910, sixth class.

Colton.—Incorporated under general law of 1883, in 1887, sixth class.

Colusa.—Incorporated April 4, 1870 (Stats. 1869-70, p. 809). Again incorporated April 1, 1876 (Stats. 1875-76, p. 669). Incorporated under general law in 1908, as city of sixth class.

Compton.—Incorporated under general law of 1883, in 1888, sixth class. Territory excluded in 1909.

Concord.—Incorporated under general law of 1883, in 1905, sixth class.

Corcoran.—City of the sixth class.

Corning.—Incorporated under general law of 1883, in 1907, sixth class.

Corona.—Incorporated under general law of 1883, in 1896, sixth class. Territory excluded in 1900 and in 1911.

Coronado.—Incorporated under general law of 1883, in 1890, sixth class. Territory annexed in 1912.

Corte Madera.—City of sixth class.

Covina.—Incorporated under general law of 1883, in 1901, sixth class.

Crescent City.—Incorporated April 13, 1854 (Stats. 1854, p. 68). See, ante, Act 1145. Incorporated under general act of 1883, in 1885.

Culver City.—City of the sixth class.

Daly City.—Incorporated under general law of 1883, March 22, 1911, sixth class.

Davis.—City of the sixth class.

Delano.—Incorporated under general law of 1883, in 1910, sixth class.

Dinuba.—Incorporated under general law of 1883, in 1906, sixth class.

Dixon.—Incorporated March 30, 1878 (Stats. 1877-78, p. 712). Incorporated under general law of 1883, in 1884.

Dorris.—Incorporated under general law of 1883, in 1908. Territory excluded August 15, 1912. Sixth class.

Dunsmuir.—Incorporated under general law of 1883, in 1909, sixth class.

Eagle Rock.—Incorporated under general law of 1883, March 3, 1911, sixth class.

East San Diego.—Incorporated under general law of 1883, November 7, 1912, sixth class.

El Cajon.—City of the sixth class.

El Centro.—Incorporated under general law of 1883, in 1908, sixth class.

El Cerrito.—City of the sixth class.

El Monte.—City of the sixth class.

El Paso de Robles.—Incorporated under general law of 1883, in 1889, sixth class.

El Segundo.—City of the sixth class.

Elsinore.—Incorporated under general law of 1883, in 1891, sixth class. Territory annexed in 1891 and excluded in 1894.

Emeryville.—Incorporated under general law of 1883, in 1896, sixth class.

Escondido.—Incorporated under general law of 1883, in 1888, sixth class.

Etna.—Originally Rough and Ready. Name changed to Etna, March 13, 1874 (Stats. 1873-74, p. 346). Incorporated March 13, 1878 (Stats. 1877-78, p. 261). Incorporated under general law of 1883, in 1904.

Exeter.—Incorporated March 2, 1911, under general law of 1883, sixth class.

Fairfield.—Incorporated under general law of 1883, in 1903, sixth class.

Ferndale.—Incorporated under general law of 1883, in 1893, sixth class. Territory excluded in 1898.

Fillmore.—City of sixth class.

Firebaugh.—City of sixth class.

Fort Bragg.—Incorporated under general law of 1883, in 1889, sixth class.

Fort Jones.—Incorporated March 16, 1872 (Stats. 1871-72, p. 387). Incorporated in 1904, under general law of 1883, as a city of the sixth class.

Fortuna.—Incorporated under general law of 1883, in 1906, sixth class.

Fowler.—Incorporated under general law of 1883, in 1908, sixth class.

Fresno.—Originally incorporated as a city of the fifth class in 1885, under the general law of 1883. Incorporated under a freeholders' charter adopted January 28, 1901 (Stats. 1901, p. 832). See Act 1629.

Fullerton.—Incorporated under general law of 1883, in 1904, sixth class.

Glendale.—Incorporated under general law of 1883, 1906, sixth class.

Glendora.—Incorporated under general law of 1883, October 31, 1911, sixth class.

Grass Valley.—Originally incorporated in 1861 (Stats. 1861, p. 153). This act was amended in 1862 (Stats. 1862, p. 98); in 1864 (Stats. 1863-64, p. 57); in 1866 (Stats. 1865-66, p. 363); in 1870 (Stats. 1869-70, pp. 16, 47); in 1878 (Stats. 1877-78, p. 192). Incorporated under a freeholders' charter voted for and ratified February 28, 1893, adopted March 13, 1893 (Stats. 1893, p. 628); amended October 8, 1908; adopted March 11, 1909 (Stats. 1909, p. 1282).

(Note: By an oversight the above was omitted from the first volume where it should have appeared in the text.)

Gridley.—Incorporated under general law of 1883, in 1905, sixth class.

Gustine.—City of the sixth class.

Hanford.—Incorporated under general law of 1883, in 1891, sixth class.

Hayward.—Incorporated March 11, 1876 (Stats. 1875-76, p. 215). Incorporated in 1892 under the general law of 1883, as a city of the sixth class.

Healdsburg.—Incorporated under the act of 1850, in 1850 (Stats. 1850, p. 114, G. ed.). Incorporation legalized March 16, 1863 (Stats. 1867-68, p. 170). The original charter was amended March 20, 1874 (Stats. 1873-74, p. 665); March 2, 1876 (Stats. 1875-76, p. 90); April 8, 1876 (Stats. 1875-76, p. 891). Superseded by incorporation in 1883 under general law of that year. Reorganized and reincorporated under the same law in 1884.

Hemet.—Incorporated under general law of 1883, in 1910, sixth class.

Hercules.—Incorporated under general law of 1883, in 1900, sixth class.

Hermosa Beach.—Incorporated under general law of 1883, in 1907, sixth class.

Hillsborough.—Incorporated under general law of 1883, in 1910, sixth class.

Hollister.—Incorporated March 26, 1874 (Stats. 1873-74, p. 675). Incorporated in 1901 under the general law of 1883.

Holtville.—Incorporated under general law of 1883, in 1908, sixth class.

Huntington Beach.—Incorporated under general law of 1883, in 1909, sixth class.

Huntington Park.—Incorporated under general law of 1883, in 1906, sixth class.

Imperial.—Incorporated under general law of 1883, in 1904, sixth class.

Inglewood.—Incorporated under general law of 1883, in 1908, sixth class. Territory excluded March 8, 1909.

Jackson.—Incorporated under general law of 1883, in 1905, sixth class.

Kennett.—Incorporated in 1911, under the general law as a city of the sixth class.

King City.—Incorporated under general law of 1883, February 6, 1911, sixth class.

Kingsburg.—Incorporated under general law of 1883, in 1908, sixth class.

Lakeport.—Incorporated under general law of 1883, in 1888, sixth class.

La Mesa.—Incorporated under general law of 1883, in 1912, sixth class.

Larkspur.—Incorporated under general law of 1883, in 1908, sixth class.

La Verne.—City of the sixth class.

Lemoore.—Incorporated under general law of 1883, in 1900, sixth class.

Lincoln.—Incorporated under general law of 1883, in 1890, sixth class.

Lindsay.—Incorporated under general law of 1883, in 1910, sixth class.

Livermore.—Originally incorporated in 1876 (Stats. 1875-76, p. 913). Incorporated under the general law in 1900, as a city of the sixth class.

Lodi.—Incorporated under the general law in 1906, as a city of the sixth class. Formerly Mokelumne Hill. Name changed in 1874 (Stats. 1873-74, p. 690).

Lompoc.—Incorporated under general law of 1883, in 1888, sixth class.

Long Beach.—Originally incorporated as a city of the sixth class under the general law in 1888. Disincorporated in 1896. Reincorporated in the same class in 1897. Incorporated under a freeholders' charter in 1907 (Stats. 1907, p. 1176).

Los Banos.—Incorporated under general law of 1883, in 1907, sixth class.

Los Gatos.—Incorporated under general law of 1883, in 1887, sixth class.

Loyalton.—Incorporated under general law of 1883, in 1901, sixth class.

Madera.—Incorporated under general law of 1883, in 1907, sixth class.

Manhattan Beach.—City of the sixth class.

Manteca.—City of the sixth class.

Maricopa.—Incorporated under general law of 1883, in 1911, sixth class. Amended limits to city December 19, 1912.

Martinez.—Originally incorporated in 1876 (Stats. 1875-76, p. 822). Incorporated under the general law in 1884, as a city of the sixth class.

Marysville.—Originally incorporated in 1851 (Stats. 1851, p. 330); amended in 1851 (Stats. 1851, p. 338); supplemented in 1852 (Stats. 1852, p. 247); in 1853 (Stats. 1853, p. 141); in 1854 (Stats. 1854, pp. 135, 173, 188); repealed in 1855, p. 33; and immediately reincorporated (Stats. 1855, p. 40). This last act was amended in 1857 (Stats. 1857, p. 257); in 1859 (Stats. 1859, p. 319); in 1861 (Stats. 1861, p. 281); in 1866 (Stats. 1865-66, p. 69); in 1868 (Stats. 1867-68, p. 34); in 1872 (Stats. 1871-72, p. 588); repealed in 1876 (Stats. 1875-76, p. 151), and reincorporated by the same act, which was amended in 1878 (Stats. 1877-78, p. 593). Incorporated under a freeholders' charter February 25, 1919, filed April 5, 1919 (Stats. 1919, p. 1467).

(Note: By an oversight the above was omitted from the text of the first volume, and is inserted here, although Marysville was never incorporated under the general law.)

Mayfield.—Incorporated under general law of 1883, in 1903, sixth class.

McKittrick.—City of the sixth class.

Merced City.—Incorporated under general law of 1883, in 1889, sixth class.

Mill Valley.—Incorporated under general law of 1883, in 1900, sixth class.

Modesto.—Incorporated under general law of 1883, in 1884, sixth class. Reincorporated in 1911. Territory annexed in 1912. Now under freeholders' charter. Commission form of government. See Act 2925.

Monrovia.—Incorporated under general law of 1883, in 1887, sixth class.

Montague.—Incorporated under general law of 1883, in 1909, sixth class.

Monterey.—Incorporated under the general law in 1889; under a freeholders' charter in 1911, commission form of government (Stats. 1911, p. 1742). See Act 2974.

Monterey Park.—City of the sixth class.

Morgan Hill.—Incorporated under general law of 1883, in 1906, sixth class.

Mountain View.—Incorporated under general law of 1883, in 1902, sixth class.

Napa.—Incorporated in 1872 (Stats. 1871-2, p. 542). Reincorporated 1874 (Stats. 1873-4, p. 140). This act was amended 1875-6, p. 550; 1877-78, p. 1011. Now operating under a freeholders' charter. See Act 3111.

National City.—Incorporated under general law of 1883, in 1887, sixth class.

Needles.—City of the sixth class.

Newman.—Incorporated under general law of 1883, June 5, 1908, sixth class.

Newport Beach.—Incorporated under general law of 1883, in 1906, sixth class.

Oakdale.—Incorporated under general law of 1883, in 1906, sixth class.

Oceanside.—Incorporated under general law of 1883, in 1888, sixth class. Territory annexed in 1911.

Ontario.—Incorporated under general law of 1883, in 1891, sixth class. Territory annexed in 1911.

Orange.—Incorporated under general law of 1883, in 1888, sixth class.

Orland.—Incorporated under general law of 1883, in 1909, sixth class.

Oroville.—City of the fifth class. Incorporated March 14, 1857 (Stats. 1857, p. 77). Act of incorporation repealed February 18, 1859 (Stats. 1859, p. 32). Incorporated under the general law of 1883, in 1906.

Oxnard.—Incorporated under general law of 1883, in 1903, sixth class.

Pacific Grove.—Incorporated under general law of 1883, in 1883, sixth class.

Palo Alto.—Incorporated in 1894 as a city of the sixth class under the general law. Now under freeholders' charter. See Act 3397.

Pasadena.—Incorporated in 1886 as a city of the sixth class under the general law. Now under freeholders' charter. See Act 3421.

Paso De Robles.—See El Paso De Robles

Perlis.—Incorporated under general law of 1883, April 24, 1911, sixth class.

Petaluma.—Incorporated under the general law as a city of the sixth class in 1884. Now under freeholders' charter. See Act 3450.

Piedmont.—Incorporated under general law of 1883, in 1907, sixth class.

Pinole.—Incorporated under general law of 1883, in 1903, sixth class.

Pittsburg.—Incorporated under general law of 1883, in 1904, sixth class. Name changed from Black Diamond to Pittsburg, March 22, 1911.

Placerville.—Originally incorporated in 1854 (Stats. 1854, p. 140); amended in 1857 (Stats. 1857, p. 244); repealed in 1859 (Stats. 1859, p. 77); amended in 1860 (Stats. 1860, p. 188); in 1861 (Stats. 1861, p. 291); in 1862 (Stats. 1862, p. 290). The reincorporating act was repealed in 1863, p. 220. It was reincorporated in 1863 (Stats. 1863, p. 211). This act was amended in 1864 (Stats. 1863-64, p. 493); and in 1872 (Stats. 1871-72, p. 431). It was incorporated under the general laws in 1903 as a sixth-class city. Prior to incorporation under the general laws it had been acting for some time under the act of 1885 (Stats. 1885, p. 136), through a commission appointed by the governor.

Pleasanton.—Incorporated under general law of 1883, in 1894, sixth class.

Plymouth.—City of the sixth class.

Point Arena.—Incorporated under general law of 1883, in 1908, sixth class.

Pomona.—Incorporated under general law as a sixth-class city. Now operating under a freeholders' charter. See Act 3558.

Porterville.—Incorporated under general law of 1883, in 1902, sixth class. Territory annexed in 1911.

Potter Valley.—Incorporated under general law of 1883, in 1890, sixth class. Territory excluded in 1892.

Red Bluff.—Originally incorporated in 1876 (Stats. 1875-76, p. 637); amended in 1878 (Stats. 1877-78, p. 116); and in 1891 (Stats. 1891, p. 108). Incorporated in 1895 under the general law, as a sixth-class city. Name changed from town to city of Red Bluff December 19, 1911.

Redding.—Incorporated under general law of 1883, in 1887, sixth class. Name changed by act of 1874 (Stats. 1873-74, p. 32) to Reading; but the act was repealed in 1880 (Stats. 1880, p. 24).

Redlands.—Incorporated under general law of 1883, in 1888, sixth class. Territory excluded in 1904.

Redondo Beach.—Incorporated under general law of 1883, in 1892, as city of the sixth class.

Redwood City.—Originally incorporated in 1868 (Stats. 1867-68, p. 411); amended in 1870 (Stats. 1869-70, p. 364); in 1872 (Stats. 1871-72, pp. 712, 714). Incorporated under the general law of 1897, as a sixth-class city.

Redley.—City of the sixth class.

Rialto.—Incorporated under general law of 1883, October 31, 1911, sixth class.

Richmond.—Incorporated under the gen-

eral law in 1905, as a sixth-class city. Now operating under a freeholders' charter. See Act 3954.

Rio Vista.—Incorporated under general law of 1883, in 1894, sixth class. Name changed from Brazos del Rio in 1861 (Stats. 1861, p. 12).

Riverside.—Originally incorporated under the general laws in 1883 as a sixth-class city. Now operating under a freeholders' charter. See Act 3965.

Rocklin.—Incorporated under general law of 1883, in 1893, sixth class.

Roseville.—Incorporated under general law of 1883, in 1909, sixth class.

Ross.—Incorporated under general law of 1883, in 1908, sixth class. Territory annexed September 14, 1911.

San Anselmo.—Incorporated under general law of 1883, in 1907, sixth class.

San Bernardino City.—Originally incorporated in 1854 (Stats. 1854, p. 200). This act was repealed in 1863 (Stats. 1863, p. 36). The city was incorporated in 1886 under the general law as a city of the fifth class. Now operating under a freeholders' charter. See Act 4067.

San Bruno.—City of the sixth class.

San Buenaventura.—Originally incorporated in 1866 (Stats. 1865-66, p. 216). This act was superseded by reincorporating in 1874 (Stats. 1873-74, p. 54); which was superseded by reincorporating in 1876 (Stats. 1875-76, p. 634); amended in 1878 (Stats. 1877-78, p. 537). Incorporated under the general law in 1905. A city of the fifth class.

San Diego.—Reorganized as a city of the fifth class under the general law in 1886. Now operating under a freeholders' charter. See Act 4094.

San Fernando.—Incorporated under general law of 1883, August 31, 1911, sixth class.

San Gabriel.—A city of the sixth class.

Sanger.—Incorporated as a city of the sixth class May 9, 1911. Charter dated May 23, 1911.

San Jacinto.—Incorporated under general law of 1883, in 1888, sixth class.

San Juan.—Originally incorporated in 1870 (Stats. 1869-70, p. 245). Incorporated under the general law in 1896, as a city of the sixth class.

San Leandro.—Originally incorporated in 1872 (Stats. 1871-72, p. 458). This act was repealed by a revisory act in 1874 (Stats. 1873-74, p. 63). Incorporated under the general law in 1883, as a city of the sixth class.

San Luis Obispo.—Incorporated under the general law in 1884, as a city of the sixth class. Now operating under a freeholders' charter. See Act 4360.

San Marino.—A city of the sixth class.

San Mateo.—Incorporated under general law of 1883, in 1894, sixth class. Territory annexed in 1910.

San Rafael.—Originally incorporated in 1874 (Stats. 1873-74, p. 111); amended in 1878 (Stats. 1877-78, p. 767). Incorporated under the general law in 1889, as a city of

the sixth class. Now operating under a freeholders' charter. See Act 4405.

Santa Ana.—Incorporated under general law of 1883, in 1886, as a town of the sixth class. Reorganized under the general law in 1888 as a city of the fifth class. Territory annexed in 1888.

Santa Maria.—Incorporated under general law of 1883, in 1905, sixth class.

Santa Monica.—Originally incorporated under the general law in 1886 as a city of the sixth class. Reorganized as a city of the fifth class in 1902. Now operating under a freeholders' charter. See Act 4485.

Santa Paula.—Incorporated under general law of 1883, in 1902, sixth class.

Sausalito.—Incorporated under general law of 1883, in 1893, sixth class.

Seal Beach.—A city of the sixth class.

Sebastopol.—A city of the sixth class.

Selma.—Incorporated under general law of 1883, in 1893, sixth class.

Sierra Madre.—Incorporated under general law of 1883, in 1907, sixth class.

Sisson.—Incorporated under general law of 1883, in 1905, sixth class.

Sonoma, City of.—Originally incorporated in 1850 (Stats. 1850, p. 150). Repealed in 1862 (Stats. 1862, p. 460). Incorporated under the general law in 1883, as a city of the sixth class.

Sonora.—Originally incorporated in 1851 (Stats. 1851, p. 375). This act was amended in 1854 (Stats. 1854, p. 160), and repealed in 1860 (Stats. 1860, p. 17). It was reincorporated in 1862 (Stats. 1862, p. 228). This act was amended in 1863 (Stats. 1863, p. 38); in 1870 (Stats. 1869-70, pp. 394, 406); in 1876 (Stats. 1875-76, p. 524). This act was repealed in 1878 (Stats. 1877-78, p. 23). The city was reincorporated in 1878 (Stats. 1877-78, p. 23). This act was supplemented in 1878 (Stats. 1877-78, p. 467). Incorporated under the general law of 1890 as a city of the sixth class.

South Pasadena.—Incorporated under general law of 1883, in 1888, sixth class. Territory annexed in 1889 and 1909.

South San Francisco.—Incorporated under general law of 1883, in 1908, sixth class.

St. Helena.—Originally incorporated in 1876 (Stats. 1875-76, p. 444); amended in 1878 (Stats. 1877-78, p. 791). Incorporated under the general law in 1887, as a city of the sixth class. Reorganized in 1888 and 1889.

Stanton.—Incorporated under general law of 1883, in 1911, sixth class.

Stockton.—Incorporated under the general law in 1889 and reincorporated as a freeholders' charter city the same year. See Act 4910.

Suisun.—Incorporated under general law of 1883, in 1884, sixth class.

Sunnyvale.—A city of the sixth class.

Susanville.—Incorporated under general law of 1883, in 1900, sixth class.

Sutter Creek.—Originally incorporated in 1874 (Stats. 1873-74, p. 887). This act was

repealed in 1876 (Stats. 1875-76, p. 40). Incorporated under the general law as a city of the sixth class.

Taft.—Incorporated under general law of 1883, in 1910, sixth class.

Tehachapi.—Incorporated under general law of 1883, in 1909, sixth class.

Tehama.—Incorporated under general law of 1883, in 1906, sixth class.

Tracy.—Incorporated under general law of 1883, in 1910, sixth class.

Tulare City.—Incorporated under general law of 1883, in 1888, fifth class.

Turlock.—Incorporated under general law of 1883, in 1908, sixth class.

Ukiah.—Originally incorporated in 1876 (Stats. 1875-76, p. 162). Incorporated under the general law in 1885 as a city of the sixth class. Reincorporated under the general law in 1886.

Upland.—Incorporated under the general law of 1883, in 1906, sixth class.

Vacaville.—Incorporated under general law of 1883, in 1892, sixth class.

Venice.—Incorporated February 17, 1904. City of Ocean Park included in new boundaries May 31, 1911. Annexation of territory August 19, 1911.

Vernon.—Incorporated under general law of 1883, in 1905. Territory excluded in 1910.

Visalia.—Originally incorporated in 1874 (Stats. 1873-74, p. 171); amended in 1876 (Stats. 1875-76, p. 119). Incorporated under the general law in 1900, as a city of the fifth class.

Walnut Creek.—A city of the sixth class.

Watts.—Incorporated under general law of 1883, in 1907, sixth class.

Wheatland.—Originally incorporated in 1874 (Stats. 1873-74, p. 351); amended in 1876 (Stats. 1875-76, p. 19); and in 1878 (Stats. 1877-78, p. 441). Incorporated under the general law in 1891 as a city of the sixth class.

Whittier.—Incorporated under general law of 1883, in 1898, sixth class. Territory excluded in 1901 and annexed in 1907.

Willits.—Incorporated under general law of 1883, in 1888, sixth class. Territory excluded in 1906.

Willows.—Incorporated under general law of 1883, in 1886, sixth class.

Winters.—Incorporated under general law of 1883, in 1898, sixth class.

Woodland.—Originally incorporated in 1874 (Stats. 1873-74, p. 557). Amended and supplemented in 1876 (Stats. 1875-76, p. 818). Amended in 1878 (Stats. 1877-78, pp. 84, 447). Incorporated under the general law in 1900, as a city of the fifth class.

Yreka.—Originally incorporated in 1857 (Stats. 1857, p. 222). This act was amended in 1860 (Stats. 1860, p. 313). Incorporated under the general law in 1888 as a city of the sixth class.

Yuba City.—Originally incorporated in 1878 (Stats. 1877-78, p. 783). This act was repealed in 1907 (Stats. 1907, p. 113). Incorporated under the general law as a sixth-class city.

MUNICIPAL WATER BONDS.

See tits. "Bonds"; "Municipal Water Districts."

CHAPTER 237.

MUNICIPAL WATER DISTRICTS.

References: See, generally, tits. "Municipal Corporations"; "Public Utilities"; "Water Districts."

CONTENTS OF CHAPTER.

- ACT 3100. ORGANIZATION ACT OF 1909.
- 3101. ORGANIZATION ACT OF 1911.
- 3102. MUNICIPAL WATER DISTRICT BONDS DECLARED LEGAL INVESTMENTS.
- 3103. MUNICIPAL WATER DISTRICT BONDS LEGALIZED.
- 3104. "MARIN MUNICIPAL WATER DISTRICT."
- 3105. "RICHMOND MUNICIPAL WATER DISTRICT."

ORGANIZATION ACT OF 1909.

ACT 3100—An act to provide for the incorporation, organization and management of municipal water districts.

History: Approved April 26, 1909, Stats. 1909, p. 1097. Later act of May 1, 1911, Stats. 1911, p. 1290, amended December 24, 1911, Stats. 1911 (ex. sess.), p. 92; and May 29, 1915; in effect August 8, 1915; Stats. 1915, p. 921, contains a recital in § 30 to the effect that that act is amendatory of the present act, and it was apparently intended to supersede the present act entirely except as to water districts already formed thereunder. See Act 3101.

See later act on same subject, post, Act 3101.

ORGANIZATION ACT OF 1911.

ACT 3101—An act to provide for the incorporation and organization and management of municipal water districts.

History: Approved May 1, 1911, Stats. 1911, p. 1290. Amended December 24, 1911, Stats. 1911 (ex. sess.), p. 92; May 29, 1915; in effect August 8, 1915; Stats. 1915, p. 921. Former act of April 26, 1909, Stats. 1909, p. 1097, was probably superseded by the present act. See Act 3100, historical note, and § 30 of present act.

The title was amended as follows:

AN ACT to provide for the incorporation and organization and management of municipal water districts, and to provide for the acquisition or construction by said districts of waterworks and for the acquisition of all property necessary therefor, and also to provide for the distribution and sale of water by said districts. [Amendment of December 24, 1911, Stats. 1911 (ex. sess.), p. 107.]

Municipal water district.

§ 1. A municipal water district may be organized and incorporated and managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

Territory which may be included.

§ 2. The people of any city and county, or of one or more municipal corporations in any county with or without unincorporated territory in such county, in the state of California, may organize a municipal water district under the provisions of this act by proceeding as herein provided. [Amendment of December 24, 1911, Stats. 1911 (extra session), p. 92.]

Petition for organization, supplemental petition. Election. Renewal of proposition to organize.

§ 3. A petition, which may consist of any number of separate instruments, shall be presented to the county clerk of the county in which the proposed water district is located, signed by qualified electors residing within the boundaries of the proposed water district equal in number to at least ten per centum of the number of such qualified electors voting for all candidates for the office of governor of this state at the last general election prior to the presentation of such petition; provided, that where one or more municipal corporations are included in such proposed water district, such petition must be signed by at least ten per centum of the qualified electors of each such municipal corporation so voting at such election. Such petition shall set forth and describe the boundaries of such proposed water district, and shall contain a prayer that such proposed water district be incorporated under the provisions of this act; and the text of such petition shall be published for at least two weeks before the time at which the same is to be presented in at least one, but not to exceed three, newspapers printed and published in such county, together with a notice stating the time of the meeting at which same will be presented. When contained upon more than one instrument, one copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated. Within ten days of the date of the presentation of such petition, the county clerk shall examine the same and ascertain whether or not said petition is signed by the requisite qualified electors; and if requested by the county clerk, the board of supervisors shall authorize him to employ persons specially for that purpose, in addition to the persons regularly employed in his office, and shall provide for their compensation. When the county clerk has completed his examination of the petition, he shall attach to the same his certificate, properly dated, showing the result of such examination; and if from such examination he shall find that said petition is signed by the requisite number of qualified electors residing within the boundaries of such proposed water district, or is not so signed, he shall certify that the same is sufficient or insufficient, as the case may be. If by the certificate of the county clerk the petition is found to be insufficient, he shall also certify to the number of qualified electors required to make such petition sufficient, and it may be amended by filing a supplemental petition or petitions within ten days from the date of such certificate. The county clerk shall, within ten days after the filing of such supplemental petition or petitions, make like examination of the same and certify to the result of such examination as hereinbefore provided. If his certificate shall show any such petition, or such petition as amended, to be insufficient, it shall be filed by him with the board of supervisors and kept as a public record, without prejudice, however, to the filing of a new petition to the same effect. But if, by the certificate of the county clerk, such petition, or such petition as amended, is shown to be sufficient, the county clerk shall present the same to the board of supervisors without delay. The sufficiency or insufficiency of such petition shall not be subject to review by the board of supervisors.

If any supplemental petition be filed, all the signatures appended to the petition and to the supplemental petition or petitions shall be considered in determining the number of qualified electors signing the petition. After an election for the incorporation of such proposed water district, the sufficiency of such petition in any respect shall not be subject to judicial review or be otherwise questioned. If the county in which such proposed water district is located shall have a registrar of voters other than the county clerk, upon the presentation of the petition herein mentioned to the county clerk, he shall forthwith deliver the same to such registrar of voters, who shall perform the duties herein required to be performed by the county clerk respecting the examination and certification of such petition; and said registrar of voters shall return said petition,

immediately upon the completion of such examination, together with his certificate showing the result of such examination, to the county clerk, who shall thereupon present such petition, together with the certificate of the registrar of voters attached thereto to the board of supervisors. When such petition is presented, the board of supervisors shall give notice of an election to be held in said proposed water district for the purpose of determining whether or not the same shall be incorporated. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words "..... municipal water district"), and such notice shall be published at least four weeks prior to such election in at least one, but not to exceed three, newspapers printed and published in said county. At such election the proposition to be submitted shall be: "Shall the proposition to organize municipal water district under (naming the chapter containing this act) of the acts of the extra session of the thirty-ninth session of the California legislature be adopted?" And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of electors under the general election laws of the state. Within four days after such election the vote shall be canvassed by the board of supervisors. If a majority of the votes cast at such election shall be in favor of organizing such municipal water district, said board shall by an order entered on its minutes declare the territory included within the proposed boundaries duly organized as a municipal water district under the name theretofore designated, and the county clerk shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county in which said district is situated, each, a certificate stating that such a proposition was adopted. Upon the receipt of such last mentioned certificate the secretary of state shall, within ten days, issue his certificate reciting that the municipal water district (naming it) has been duly incorporated according to the laws of the state of California. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such municipal water district is situated. From and after the date of filing said certificate with the secretary of state, the district named therein shall be deemed incorporated as a municipal water district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor of said proposition the organization fails, but without prejudice to renewing proceedings at any time after six months from date of said election. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 92.]

Board of directors to be elected. Additional directors. Term of office. Time of election.

§ 4. At an election to be held within such water district under the provisions of this act and the laws governing general elections not inconsistent herewith, the municipal water district thus organized shall proceed within ninety days after its formation to the election of a board of directors consisting, if there are no municipalities within the boundaries of said district, of five members. In all cases where the boundaries of such water district include any municipality or municipalities, said board of directors, in addition to said five directors to be elected as aforesaid, shall consist of one additional director for each one of said municipalities within such municipal water district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed; and if there be any unincorporated territory within said water district, of one additional director, to be appointed by the said board of supervisors. Any director so appointed need not be an elector or resident of said

district. All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors. The term of office of directors elected under the provisions of this act shall be four years from and after their election; provided, that the directors first elected after the passage of this act shall hold office only until the election and qualification of their successors as hereinafter provided. The term of office of directors appointed by said mayor or mayors or by said board of supervisors shall be six years from and after the date of appointment. Directors to be first appointed under the provisions of this act shall be appointed within ninety days after the formation of the district. The election of directors of such municipal water district shall be in every fourth year after its organization, on the fourth Tuesday in March, and shall be known as the general water district election. A second election shall be held, when necessary, as hereinafter provided, on the third Tuesday after such general election, and shall be known as the second water district election. All other elections which may be held by authority of this act, or of the general laws, shall be known as special water district elections. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 95.]

Mode of selection of directors. Petition for nomination. Verification, deputies. Withdrawals. Elections. Failure to qualify.

§ 5. (1) The mode of nomination and election of all elective officers of such water district to be voted for at any water district election and the mode of appointment of a director or directors by said mayor or mayors or by said board of supervisors shall be as follows and not otherwise.

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.

(3) The petition of nomination shall consist of not less than twenty-five individual certificates, which shall read substantially as follows:

PETITION OF NOMINATION.
Individual Certificate.

State of California, }
County of..... } ss.

Precinet No.....

I, the undersigned, certify that I do hereby join in a petition for the nomination of, whose residence is at No.street, for the office of of the municipal water district to be voted for at the water district election to be held in the municipal water district on the day of, 19...; and I further certify that I am a qualified elector residing within said district, and am not at this time a signer of any other petition nominating any other candidate for the above named office, or, in case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No., street,, and that my occupation is

State of California, }
County of..... } ss.

(Signed)

..... being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed)

Subscribed and sworn to before me this day of, 19...

Notary Public or Verification Deputy.

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned toat No.,street, , California.

(4) It shall be the duty of the county clerk to furnish upon application a reasonable number of forms of individual certificates of the above character.

(5) Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector residing within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, nor, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public or a verification deputy, as provided for in this section. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

(6) Verification deputies, under this section, must be qualified electors of such municipal water district, and shall be appointed by the county clerk or clerks upon application in writing, signed by not less than five qualified electors of such municipal water district. The application shall set forth that the signers thereto desire to procure the necessary signatures of electors for the nomination of candidates for office in said municipal water district at an election therein specified, and that the applicants desire the person or persons whose names and addresses are given appointed as verification deputies, who shall upon appointment be authorized and empowered to take the oath of verification of the signers of petitions of nomination. Such verification deputies need not use a seal, and shall not have power to take oaths for any other purposes whatsoever, and their appointments shall continue only until all petitions of nomination, under this section, shall have been filed by the county clerk.

(7) A petition of nomination, consisting of not less than twenty-five individual certificates, for any one candidate, may be presented to the county clerk not earlier than forty-five days nor later than thirty days before the election. The county clerk shall endorse thereon the date upon which the petition was presented to him.

(8) When a petition of nomination is presented for filing to the county clerk, he shall forthwith examine the same, and ascertain whether or not it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing designate on said petition the defect or omission or reason why such petition can not be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk as in the first instance. The clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the board of supervisors shall provide extra help to enable the clerk to perform satisfactorily and promptly the duties imposed by this section.

(9) Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county clerk a verified revocation of his signature before the filing of the petition by the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

(10) Any person whose name has been presented under this section as a candidate may, not later than twenty-five days before the day of election, cause his name to be withdrawn from nomination by filing with the county clerk a request therefor in writ-

ing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not equal the number to be selected, then other nominations may be made by filing petitions therefor not later than twenty days prior to such election.

(11) If either the original or amended petition of nomination be found sufficiently signed as hereinbefore provided, the clerk shall file the same twenty days before the date of the election. When a petition of nomination shall have been filed by the clerk it shall not be withdrawn or added to and no signature shall be revoked thereafter.

(12) The county clerk shall preserve in his office for a period of two years, all petitions of nomination and all certificates belonging thereto, filed under this section.

(13) Immediately after such petitions are filed, the clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of supervisors shall cause said certified list of names and the offices to be filled to be published in the proclamation calling the election at least ten successive days before the election in at least one but not more than three newspapers of general circulation published in the county in which such municipal water district is located. Such proclamation shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

(14) The county clerk shall cause the ballots to be printed and bound and numbered as provided by said general state law, except as otherwise required in this act. The ballots shall contain the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

GENERAL (OR SPECIAL) DISTRICT ELECTION,
..... Municipal Water District,
(Inserting date thereof.)

Instructions to Voters: To vote, stamp or write a cross (X) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the inspector of election, and obtain another.

(15) All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right-hand side for questions to be voted upon at municipal water district elections, as provided for under this act. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

(16) The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided, shall be omitted from the ballot.

(17) The offices to be filled shall be arranged in the following order: "For director vote for (giving number)."

(18) Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

(19) Half-inch spaces shall be left below the printed names of candidates for each office equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

(20) The county clerk shall cause to be printed sample ballots, identical with the ballot to be used at the election, and shall furnish copies of the same on application

to registered voters at his office at least five days before the date fixed for such election, and shall mail one such ballot to each voter entitled to vote at such election, so that all of the said sample ballots shall have been mailed at least three whole days before said election.

(21) In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office shall be declared elected; in case there are two or more persons to be elected to an office, as that of director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected; provided, however, that no person shall be declared elected to any office at such first election unless the number of votes received by him shall be greater than one-half the number of ballots cast at such election.

(22) If at any election held as above provided there be any office to which the required number of persons was not elected, then as to such office the said first election shall be considered to have been a primary election for the nomination of candidates, and a second election shall be held to fill said office. The candidates not elected at such first election, equal in number to twice the number to be elected to any given office, or less if so there be, who receive the highest number of votes for the respective offices at such first election, shall be the only candidates at such second election; provided, that if there be any person, who, under the provisions of this subdivision, would have been entitled to become a candidate for any office, except for the fact that some other candidate received an equal number of votes therefor, then all such persons receiving such equal number of votes shall likewise become candidates for such office. The candidates equal in number to the persons to be elected who shall receive the highest number of votes at such second election shall be declared elected to such office.

(23) The said second election, if necessary to be held, shall be held three weeks after the first election.

(24) All the provisions and conditions above set forth as to the conduct of an election, so far as they may be applicable, shall govern the second election, except that notice of election need be published twice only; and provided, also, that the same precincts and polling places shall, if possible, be used.

(25) If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as hereinafter provided.

(26) The mode of appointment of director or directors by the mayor or mayors, or by the board of supervisors, shall be by certificate of appointment signed by said mayor or mayors, or issued by said board of supervisors, and transmitted to the board of directors of said water district.

(27) No informality in conducting municipal water district elections shall invalidate the same, if they have been conducted fairly and in substantial conformity to the requirements of this act. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 95.]

Conduct of elections. Canvass of returns.

§ 6. The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all water district elections, except as in this act otherwise provided; provided, that the board of supervisors shall canvass the returns of the election or elections held to select the first board of directors, as herein provided, and that thereafter, except as herein provided, the board of directors shall meet as a canvassing board and duly proceed to canvass the returns within four days after any water district election, including any water district bond election. [Amendment approved December 24, 1911, Stats. 1911, extra session, p. 100.]

Recall.

§ 7. Every incumbent of an elective office, whether elected by popular vote for a full term, or elected by the board of directors to fill a vacancy, or appointed by a mayor or mayors or by said board of supervisors for a full term, is subject to recall by the voters of any municipal water district organized under the provisions of this act, in accordance with the recall provisions of the general laws of the state with reference to municipal corporations. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 100.]

Directors to be governing body. President. Conduct of meetings of board.

§ 8. The board of directors shall be the governing body of such municipal water district. It shall hold its first meeting on the sixth Monday after the first general election for the election of directors as herein provided; it shall choose one of its members president, and shall thereupon provide for the time and place of holding its meetings and the manner in which its special meetings may be called. All legislative sessions of the board of directors whether regular or special shall be open to the public. A majority of the board of directors shall constitute a quorum for the transaction of business. The board of directors shall establish rules for its proceedings. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 101.]

Method of transacting business. Compensation of directors. Vacancies in board, how filled.

§ 9. The board of directors shall act only by ordinance or resolution. The ayes and noes shall be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. No ordinance or resolution shall be passed or become effective without the affirmative votes of at least a majority of the members of the board. The enacting clause of all ordinances passed by the board shall be in these words: "Be it ordained by the board of directors of municipal water district as follows:" All resolutions and ordinances shall be signed by the president of the board of directors and attested by the secretary. Each of the members of the board of directors shall receive for each attendance at the meetings of the board ten dollars, and shall receive no other compensation. No director, however, shall receive pay for more than three meetings in any calendar month. Any vacancy in the board of directors, whether the vacant office is elective or appointive, shall be filled by the remaining directors and the person so chosen shall hold office for the remainder of the unexpired term. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 101.]

Officers of district elected by directors.

§ 10. The board of directors shall at its first meeting, or as soon thereafter as practicable, appoint, by a majority vote, a general manager, a secretary, and an auditor. No director shall be eligible to the office of general manager, secretary, or auditor. The general manager, secretary, and auditor shall receive such compensation as the board of directors shall determine, and each shall serve at the pleasure of the board. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 101.]

Informality not to invalidate.

§ 11. No informality in any proceeding or informality in the conduct of any election, not substantially affecting adversely the legal rights of any citizen, shall be held to invalidate the incorporation of any municipal water district, and any proceedings, wherein the validity of such incorporation is denied, shall be commenced within three months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said municipal water district and all proceedings in respect thereto shall be held to be valid and in every respect legal and incontestable.

General powers of district.

§ 12. Any municipal water district incorporated as herein provided, shall have power:

1. To have perpetual succession;
2. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;
3. To adopt a seal and alter it at pleasure;
4. To take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers;
5. To acquire, or contract to acquire, waterworks or a waterworks system, waters, water rights, lands, rights and privileges, and construct, maintain and operate conduits, pipe lines, reservoirs, works, machinery and other property useful or necessary to store, convey, supply or otherwise make use of water for a waterworks plant or system for the benefit of the district, and to complete, extend, add to, repair, or otherwise improve any waterworks or waterworks system acquired by it as herein authorized;
6. To lease of and from any person, firm, or public or private corporation, with the privilege of purchasing or otherwise, existing waterworks or a waterworks system, and to carry on and conduct waterworks or a waterworks system; also to sell water under the control of the district to municipalities, and to other public corporations within the district, and to the inhabitants of such municipalities and of other territory within the district, for use within said district, without any preference, and it may, whenever there is a surplus of water above that which may be required by such consumers within said district, sell or otherwise dispose of such surplus water to any persons, firms, public or private corporations or other consumers;
7. To have and exercise the right of eminent domain and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to supply the district or any portion thereof with water, whether such property be already devoted to the same use, or otherwise, and may condemn any existing waterworks or system, or any portion thereof, or any waters or water rights owned by any person, firm or private corporation. In proceedings relative to the exercise of such right, the district shall have the same rights, powers and privileges as a municipal corporation;

8. To borrow money and incur indebtedness and to issue bonds or other evidences of such indebtedness; also to refund or retire any indebtedness or lien that may exist against the district or property thereof;

9. To cause taxes to be levied for the purpose of paying any obligation of the district in the manner hereinafter provided;

10. To make contracts, to employ labor, and do all acts necessary for the full exercise of the foregoing powers.

11. In case of condemnation proceedings the board shall proceed in the name of the district. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 102.]

Powers of directors.

§ 13. The powers herein enumerated shall, except as herein otherwise provided, be exercised by the board of directors above provided for and elected and appointed as prescribed herein. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 103.]

Duties of president. Duties of secretary. Duties of general manager. Duties of auditor. Depository of district funds. Bonds of officers and employees.

§ 14. The president shall sign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The secretary shall countersign all contracts on behalf of the district and perform such other duties as may

be imposed by the board of directors. The secretary shall give his full time during office hours to the affairs of the district. The general manager shall have full charge and control of the maintenance, operation and construction of the waterworks or waterworks system of said water district, with full power and authority to employ and discharge all employees and assistants at pleasure, prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform such other duties as may be imposed upon him by the board of directors. The general manager shall report to the board of directors in accordance with such rules and regulations as they may adopt. The auditor shall be charged with the duty of installing and maintaining a system of auditing and accounting that shall completely and at all times show the financial condition of the district. He shall draw warrants to pay demands made against the district when such demands have been first approved by at least three of the members of the board of directors and by the general manager. The board of directors shall also designate a depository or depositaries to have the custody of the funds of the district, all of which depositories shall give security sufficient to secure the district against possible loss, and who shall pay the warrants drawn by the auditor for demands against the district under such rules as the directors may prescribe. The general manager, secretary and auditor, and all other employees or assistants of said district who may be required so to do by the board of directors, shall give such bonds to the district conditioned for the faithful performance of their duties as the board of directors from time to time may provide. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 103.]

Creation of bonded indebtedness, and election therefor. Notice of election and conduct thereof.

§ 15. Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness, it shall, by resolution, so declare and state the proposition to be submitted to the electors, the purpose for which the proposed debt is to be incurred, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty years, and the maximum rate of interest to be paid, which shall not exceed five per cent per annum. The board of directors shall fix a date upon which an election shall be held for the purpose of authorizing said bonded indebtedness to be incurred. It shall be the duty of the board of directors to provide for holding such special election on the days so fixed and in accordance with the general election laws of the state so far as the same shall be applicable, except as herein otherwise provided. Such board of directors shall give notice of the holding of such election, which notice shall contain the resolution adopted by the board of directors of the water district, boundaries of precincts, the location of polling places, and the names of the officers selected to conduct the election, who shall consist of one judge, one inspector and two clerks in each precinct. Such notice shall be published for two weeks in at least one newspaper, and not more than three newspapers, published in such water district, which newspaper or newspapers shall be designated by the board of directors; and if there is no newspaper printed in such water district, then by posting such notice in three public places therein. All the expenses of holding such election shall be borne by the district. The returns of such election shall be made, the votes canvassed by said board of directors on the first Monday following said election, and the results thereof ascertained and declared in accordance with the general election laws of the state so far as they may be applicable, except as herein otherwise provided. The secretary of the board of directors, as soon as the result is declared, shall enter in the records of such board a statement of such results. No irregularities or informalities in conducting such election shall invalidate the same, if the election shall have otherwise been fairly conducted. In all respects not otherwise provided for herein said election shall be called, managed and directed

as is by law provided for general elections in this state applicable thereto, except as herein otherwise provided. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 103.]

Proposition submitted to electors. Election. Notice to be published.

§ 16. [Repealed December 24, 1911, Stats. 1911 (extra session), p. 104.]

Directors to issue bonds, if proposition receives necessary vote.

§ 17. If from such returns it appears that more than two-thirds of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner, either for cash in lawful money of the United States or its equivalent, as it may deem to be to the public interest. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 104.]

Bonds exempt from taxation.

§ 18. Any bonds issued by any district are hereby given the same force, value and use as bonds issued by any municipality and shall be exempt from all taxation within the state of California.

Crossings and intersections. Rights of way.

§ 19. The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said works may intersect or cross; provided, such works are constructed in such manner as to afford security for life and property, and said board of directors shall restore the crossings and intersections to their former state as near as may be, or in a manner not to have impaired unnecessarily their usefulness. Every company whose right of way shall be intersected or crossed by said works shall unite with said board of directors in forming said intersections and crossings and grant the rights therefor. The right of way is hereby given, dedicated and set apart to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state, and to have the same rights and privileges appertaining thereto as have been or may be granted to the municipalities within the state. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 104.]

Water rates and collection thereof.

§ 20. The board of directors shall fix all water rates and through the general manager collect the charges for the sale and distribution of water to all consumers. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 105.]

Estimate of water needed by each municipality.

§ 21. [Repealed December 24, 1911, Stats. 1911 (extra session), p. 105.]

Basis for determination of water rates.

§ 22. The board of directors in the furnishing of water shall fix such rate as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and, so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due; it being the intention of this section to require the district to pay the interest and principal of its bonded debt from the revenues of the district. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 105.]

Tax levy to meet deficiency.

§ 23. If, from any cause, the revenues of the district shall be inadequate to pay the principal or interest on any bonded debt as it becomes due, then the board of directors may cause a tax to be levied for that purpose as herein provided.

Tax for district purposes, manner of levy and collection. Tax to be lien on property.

§ 24. The board of directors shall determine the amount necessary to be raised by taxation and shall fix a rate of tax to be levied which will raise the amount of money required by the district, and within a reasonable time previous to the time when the board of supervisors is required by law to fix its tax rate, certify to the board of supervisors the rate so fixed with a direction that at the time and in the manner required by law for the levying of taxes for county purposes, such board of supervisors shall levy and collect a tax in addition to such other tax as may be levied by such board of supervisors at the rate so fixed and determined, and it is made the duty of the officer or body having authority to levy taxes within each county to levy the tax so required. And it shall be the duty of all county officers charged with the duty of collecting taxes to collect such tax in time, form, and manner as county taxes are collected, and when collected to pay the same to the district ordering its levy and collection. Such tax shall be a lien on all property within the territory comprising the district and of the same force and effect as other liens for taxes, and its collection may be enforced by the same means as provided for the enforcement of liens for state and county taxes. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 105.]

Ordinances may be passed by electors.

§ 25. Ordinances may be passed by the electors of any municipal water district organized under the provisions of this act in accordance with the methods provided by the general laws of the state for direct legislation in municipal corporations.

Ordinances may be vetoed by electors.

§ 26. Ordinances may be disapproved and thereby vetoed by the electors of any such municipal water district by proceeding in accordance with the methods provided by the general laws of the state for protesting against legislation in municipal corporations.

Annexation of additional territory.

§ 27. Any portion of a county or any municipality, or both, may be added to any water district organized under the provisions of this act, at any time, upon petition presented in the manner herein provided for the organization of such water district, which petition may be granted by ordinance of the board of directors of such water district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such water district, and in the proposed addition, at a general or special election held as herein provided, within seventy days after the adoption of such ordinance. If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county or counties in which such water district is located. Upon the receipt of such last mentioned certificate the secretary of state shall, within ten days, issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk in which such municipal water district is situated. From and after the date of such certificate the territory named therein shall be deemed added to and form a part of said municipal water district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 106.]

Petition to disorganize water district. Certificate of examination by clerk. Supplemental petitions. Sufficiency of petition not subject to review after election.

§ 27a. A municipal water district organized under the terms of this act may be disorganized or disincorporated in the following manner:

A petition shall be presented to the board of supervisors of the county in which such district is located, signed by at least twenty-five per cent of the qualified registered electors of the district praying for the disorganization and disincorporation of such district and briefly stating the reasons therefor. Upon the presentation of such petition the county clerk shall examine the same within ten days after such presentation and ascertain whether or not said petition is signed by the requisite number of qualified electors. When the county clerk has completed his examination of the petition he shall attach to the same his certificate properly dated, showing the result of such examination, and if from such examination he shall find that said petition is signed by the requisite number of qualified registered electors residing within the boundaries of such proposed water district, or is not so signed, he shall certify that the same is sufficient or insufficient, as the case may be. If the same is found insufficient by him, supplemental petitions may be filed at the times and in the manner and for the same purpose as supplemental petitions to the original petition for the incorporation of a district, as set forth in section 3 of this act. The sufficiency or insufficiency of such petition shall not be subject to review by the board of supervisors. After an election for the disincorporation of a water district hereunder the sufficiency of such petition in any respect shall not be subject to judicial review or be otherwise questioned.

Notice of election. Publication. Mailed to directors. Manner of holding election. Canvass of vote. Order of disincorporation. Time of taking effect.

If by the certificate of the county clerk such petition, or such petition as amended or supplemented, is shown to be sufficient, the county clerk shall present the same to the board of supervisors without delay. When such petition is presented by the county clerk as aforesaid, the board of supervisors shall give notice of an election to be held in said proposed water district for the purpose of determining whether or not the same shall be disincorporated and dissolved; provided, however, that in the event the said district shall have issued bonds, the board of supervisors shall not consider said petition or take any action hereunder until evidence shall be furnished showing said bonds to have been fully satisfied. Said notice of election shall be published in a newspaper published in said district and determined by said board most likely to give notice to those interested in said hearing, at least once a week for a period of three weeks; said notice shall state that the question of disincorporating said corporation shall be submitted to the legal voters of said district at the time appointed for such election, and electors shall be invited thereby to vote upon such proposition by placing upon their ballots the cross as provided by law after the words "For Disincorporation" or "Against Disincorporation." The board of supervisors shall cause a copy of said notice to be mailed by the clerk of said board to each of the directors of said municipal water district, within five days after the date of the first publication thereof, and no election shall be had until proof of such mailing is furnished by affidavit of the clerk of said board. Such election shall be held and conducted in the same manner as the election on the organization of said district, as nearly as practicable in conformity with the general election laws of the state of California, in so far as said general laws may be applicable, except as in this act otherwise provided. At the first regular meeting next after the date of said election, the board of supervisors shall proceed to canvass the vote cast thereat; if it be found by the canvass of said votes that less than a majority of the votes cast were in favor of disincorporation, said board of supervisors shall declare the petition for disincorporation denied. In case it shall appear from

said canvass that a majority of all the votes cast were in favor of disincorporation, said board of supervisors shall under their hands make and file in their office, and cause to be entered upon the records of their proceedings an order that the petition for such disincorporation be granted, and declaring that such municipal water district be disincorporated; said order to take effect at the time hereinafter provided. Said board of supervisors shall in case said municipal water district is so disincorporated, forthwith cause its clerk, or other officer performing the duties of clerk, by an order entered in its minutes, to make and transmit to the secretary of state a certified copy of the notice of election hereinbefore provided for, the whole number of electors voting for said disincorporation and the number of electors voting against said disincorporation. Twenty days from and after the holding of the election, in case a majority of said votes were cast in favor of said disincorporation, said municipal water district shall be forever disincorporated. [New section added May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 921.]

Settlement of indebtedness. Property turned over to supervisors. Warrants for indebtedness. If funds insufficient to pay indebtedness. If funds show surplus. Supervisors may ascertain indebtedness, etc., if directors fail to act.

§ 27b. Upon the disincorporation of any water district in the manner hereinbefore provided for, the board of supervisors shall forthwith, after ascertaining by said canvass that the disincorporation has been carried, determine the amount of the indebtedness of said municipal corporation, the amount of money in the treasury thereof and all indebtedness due or coming due the said municipal water district, and the directors of said district shall furnish the said board of supervisors with a statement showing said amount of indebtedness, the said amount of money in the treasury and all indebtedness due or coming due said district, and said municipal water district shall before the expiration of thirty days turn over to the treasurer of said county all moneys of said water district in his possession, and said county treasurer shall place said money in a special fund to be drawn upon as hereinafter provided for. Upon the disincorporation of said district every public officer of said district shall immediately turn over to the board of supervisors of the county in which said district is situated, all public property of every nature and description in their possession, and including all public records and data of every nature and description. Nothing contained in this act shall be held to relieve said municipal water district, or the territory included within it, from any liability or any debt contracted by said district prior to its disincorporation. All warrants for said indebtedness shall be drawn on order of the board of supervisors of the county in which said municipal water district is situated, on the fund hereinabove provided for in the county treasury. All moneys paid into the county treasury under the provisions of this act shall be placed in the special fund hereinbefore provided for. If, at any time after the disincorporation of said district it shall be found that there is not sufficient money in the treasury to the credit of the fund hereinbefore provided, with which to pay any indebtedness of said water district, said board of supervisors shall have the power, and it shall be their duty, to levy and there shall be collected from the territory formerly included within said district, a tax or taxes sufficient in amount to pay the said indebtedness as the same shall become due; such tax or taxes, assessments and collections shall be made in the same manner and at the same time that other taxes of the county are levied and collected, and they shall be an additional tax within said territory for the payment of said debts. If after payment of all debts of said district there shall remain any surplus in the hands of said county treasurer to the credit of the fund hereinbefore mentioned, the board of supervisors shall appropriate said surplus and declare a dividend pro rata to the taxpayers of said district duly paid, and said taxpayers shall have the right to have the amount of such pro rata dividends refunded to them on demand, and the said board of

supervisors shall refund such pro rata to said taxpayers and each thereof. The board of supervisors of the county in which any such water district has been disincorporated, shall have the power and it shall be the duty of said board, if the board of directors of such municipal water district shall fail or refuse to return to said board the statement of said amounts as hereinbefore in this act provided, to ascertain the indebtedness, other than the bonded indebtedness, of said district at the time of its disincorporation, the amount of money in its treasury and the amount due it at the said time; said board of supervisors shall make provision for the collection of the amounts due to said district, for the closing up of its affairs, and any act or acts necessary for said purposes not otherwise herein provided for, shall upon the order of said board of supervisors directing the same, be as fully done and performed and with as full effect as if the same had been performed by the proper officers of said district before disincorporation, and said county shall succeed to and possess all the right of said district in and to said indebtedness, and shall have the power to sue for or otherwise collect any such debts in the name of said county, and all costs and expenses of ascertaining the facts hereinbefore mentioned, and all other costs and expenses incurred by the board of supervisors in the execution of the orders and duties of said board of supervisors provided for in this act, shall be paid out of the special fund in this act provided for.

Intention of act.

It is the intention that no municipal water district shall be disincorporated until all bonded indebtedness shall have been fully paid, and by the word "indebtedness" as used herein is meant all indebtedness other than said bonded indebtedness unless the latter is expressly used. [New section added May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 923.]

Application of act. Definitions.

§ 28. Nothing in this act shall be so construed as repealing or in anywise modifying the provisions of any other act relating to water or the supply of water to, or the acquisition thereof, by municipalities within this state. The term "municipality," as used in this act, shall include a consolidated city and county, city or town, and shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing and those hereafter organized for municipal purposes within such water districts. In municipalities in which there is no mayor the duty imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees or other chief executive of the municipality. The word "district" shall apply, unless otherwise expressed or used, to a water district formed under the provisions of this act, and the word "board" and the words "board of directors" shall apply to the board of directors of such district. [Amendment approved December 24, 1911, Stats. 1911 (extra session), p. 106.]

Duty of registrar of voters.

§ 29. If there shall be a registrar of voters, other than the county clerk, in any county or city and county in which any water district proposed to be incorporated, or incorporated under the provisions of this act, is situated, the duties required by this act to be performed by the county clerk respecting the nomination of candidates for offices of such water district, and the holding of elections in such water district shall be performed by such registrar of voters. [New section added December 24, 1911, Stats. 1911 (extra session), p. 106.]

Continuance of proceedings under former act.

§ 30. Any and all proceedings had or taken under the provisions of the act of which this act is amendatory, already commenced and pending at the time this act takes

effect, may be continued under the provisions of the act of which this act is amendatory with the same force and effect as if this act had not been enacted. [New section added December 24, 1911, Stats. 1911 (extra session), p. 106.]

§ 31. The title of said act is hereby amended so as to read as follows:

An act to provide for the incorporation and organization and management of municipal water districts, and to provide for the acquisition and construction by said districts of water works and for the acquisition of all property necessary therefor, and also to provide for the distribution and sale of water by said districts. [New section added December 24, 1911 (extra session), p. 107.]

The old section of this number was repealed December 24, 1911, Stats. 1911 (ex. sess.), p. 106.

See earlier act on same subject, ante, Act 3100.

1. Constitutionality—Fourteenth amendment.—The act is not violative of the fourteenth amendment of the federal constitution, or of section 13, of article I, of the California constitution.—*Henshaw v. Foster*, 176 Cal. 507, 513, 169 Pac. 82.

2. Same—Not violative of section 19, article XI, of the constitution.—There is nothing in section 19, article XI, of the constitution to prohibit the legislature from authorizing the formation of water districts as in statutes 1911, p. 1290, and Stats. 1911 (ex. sess.), p. 92.—*Henshaw v. Foster*, 176 Cal. 507, 508, 169 Pac. 82.

3. Same—Not violative of sections 12 and 13 of article XI of the constitution.—The act is not violative of sections 12 and 13 of article XI of the constitution.—*Henshaw v. Foster*, 176 Cal. 507, 512, 169 Pac. 82.

4. Same—The provisions of section 13, article XX, of the constitution does not apply to a water district.—The provisions of section 13, article XX, of the constitution as to a plurality vote applies to state elections, elections in cities, counties, cities and counties, and other political subdivisions exercising governmental functions, and not to a municipal water district, created for a limited purpose and for the accomplishment of a useful but not a political or a governmental end.—*Martinelli v. Morrow*, 172 Cal. 472, 156 Pac. 1017.

5. Auditor of district is a purely ministerial officer.—The auditor of a municipal water district is a purely ministerial officer of the district, and he must obey the orders of the board of directors, regardless of his views.—*Marin Municipal Water Dist. v. Dolge*, 72 Cal. 724, 726, 158 Pac. 187.

MUNICIPAL WATER DISTRICT BONDS DECLARED LEGAL INVESTMENTS.

ACT 3102—An act making bonds of municipal water districts legal investments for certain purposes.

History: Approved April 20, 1917. In effect July 27, 1917, Stats. 1917, p. 158.

Municipal water district bonds legal investments.

§ 1. All bonds heretofore or hereafter issued by any municipal water district under and in pursuance of the provisions of an act entitled "An act to provide for the incorporation and organization and management of municipal water districts, and to provide for the acquisition or construction by said districts of waterworks, and for the acquisition of all property necessary therefor, and also to provide for the distribution and sale of water by said districts," approved May 1, 1911, as subsequently amended, shall be legal investments for all trust funds, and for the funds of all insurance companies, banks, both commercial and savings, and trust companies, and for the state school funds, and whenever any moneys or funds may, by law now or hereafter enacted, be invested in bonds of cities, cities and counties, counties, school districts, or municipalities in the state of California, such moneys or funds may be invested in the said bonds of municipal water districts; provided, however, no bank shall invest or loan more than five per centum of its assets on any one such bond issue.

[Legislative intent.]

§ 2. This act is intended to be, and shall be considered, the latest enactment upon the matters herein contained, and is supplemental to any and all other acts regulating, relating to and declaring what shall be, legal investments.

MUNICIPAL WATER DISTRICT BONDS LEGALIZED.

ACT 3103—An act to legalize bonds heretofore issued and sold, or to be issued and sold, by municipal improvement districts where authority for such issuance has already been given by a vote of not less than two-thirds of the electors of such districts voting upon the question of incurring such indebtedness.

History: Approved May 7, 1919. In effect July 22, 1919, Stats. 1919, p. 331.

Municipal improvement district bonds legalized.

§ 1. In all cases where the legislative branch of any municipality in this state has called an election under the provisions of an act entitled "An act to provide for the formation of districts within municipalities for the acquisition or construction of public improvements, works and public utilities therein; for the issuance, sale and payment of bonds of such districts to meet the cost of such improvements; and for the acquisition or construction of such improvements," approved April 20, 1915, for the purpose of submitting to the qualified electors of any municipal improvement district formed in such municipality the question whether an indebtedness shall be incurred for any of the purposes authorized by said act, and where at such election not less than two-thirds of all the voters voting thereat shall have voted in favor of incurring such indebtedness, and the mode of creating such indebtedness has been by the proposed issuance of the bonds of such municipal improvement district, the power to issue such bonds and all the acts and proceedings of such municipality leading up to and including the issuance and sale or the proposed issuance and sale of such bonds are hereby legalized, ratified, confirmed and declared valid to all intents and purposes; and all such bonds, sold either before or after the passage of this act for not less than their par value are hereby legalized and declared to be legal and valid obligations of and against such municipal improvement district of the municipality so issuing and selling the same, and the faith and credit of such municipal improvement district of such municipality is hereby pledged for the prompt payment and redemption of the principal and interest of said bonds.

Exception.

§ 2. This act shall not operate to legalize any bonds of any municipal improvement district of a municipality that have not, at the time of the passage of this act, been authorized by the vote of not less than two-thirds of the qualified electors of such municipal improvement district voting at any such election, or any bonds which have been sold for less than their par value.

"MARIN MUNICIPAL WATER DISTRICT."

ACT 3104—An act legalizing and validating the formation and organization of Marin municipal water district in the county of Marin, state of California; declaring the same created; fixing, defining and establishing the boundaries thereof; providing for its management and control subject to the provisions of the laws of the state of California relative to municipal water districts; and repealing all acts and parts of acts inconsistent therewith.

History: Approved April 16, 1915. In effect August 8, 1915, Stats. 1915, p. 84.

Marin municipal water district validated.

§ 1. The formation and organization of the "Marin municipal water district" in the county of Marin, state of California, by the board of supervisors of the county of Marin, state of California, is hereby approved, confirmed, ratified, validated, legalized and declared valid, and the said Marin municipal water district is hereby declared to be created as a public corporation.

Boundaries.

§ 2. The exterior boundaries of the Marin municipal water district in the county of Marin, state of California, are hereby fixed, defined, established, determined and declared to be as follows:

That portion of the county of Marin, state of California, situate, lying and being within the following described boundaries, to wit:

Beginning at the southeast corner of the town of Sausalito as established by order of the board of supervisors of Marin county dated August 28, 1893, and entered in the proceedings of the board of supervisors in liber H, page 473; thence westerly and northerly along the westerly corporate limits of the town of Sausalito to the most southerly corner of ranch B, as shown and delineated on map No. 3 of Tamalpais Land and Water Company, filed in the office of the county recorder of Marin county on the twelfth day of December, 1898, in volume 1, record of maps, page 104;

Thence northwesterly along the southwesterly boundary lines of ranches B, F, E, O, 6 and 5, as shown on said Tamalpais Land and Water Company's map No. 3, to the southwesterly boundary line of the lands of the North Coast Water Company;

Thence westerly and northerly along the southerly and westerly boundary lines of the lands of the North Coast Water Company as described in a deed dated the twenty-fourth day of September, 1904, and recorded in the office of said recorder in book 89 of deeds, page 154, to the northwesterly boundary line of the Rancho Saucelito, described in a patent from the United States to Guillelmo Antonio Richardson, dated the seventh day of August, 1879, and recorded in the office of said recorder in liber A of patents, page 429;

Thence southwesterly along said boundary line to the northeasterly boundary line of the Rancho Las Baulines described in a patent from the United States to Gregorio Briones, dated January 9, 1866, and recorded in the office of said recorder, in liber A of patents, page 146;

Thence northwesterly along said northeasterly boundary line to the most easterly corner of the tract of land conveyed to C. H. McMaster by a deed dated the fifteenth day of June, 1910, and recorded in the office of said recorder in book 129 of deeds, at page 139;

Thence northwesterly along the most easterly boundary of said tract to the most northerly corner thereof, said point being in the southwesterly boundary line of the Rancho Tomales y Baulines, described in a patent from the United States to Bethuel Phelps, dated the twenty-sixth day of February, 1866, and recorded in the office of said recorder in liber A of patents, page 134;

Thence northerly and easterly along the westerly and northerly boundary line of said Rancho Tomales y Baulines, to the Arroyo San Geronimo;

Thence ascending said arroyo to the westerly boundary line of the Rancho San Geronimo, described in a patent from the United States to Jose W. Revere, dated April 4, 1860, and recorded in the office of said recorder in liber A of patents, at page 10;

Thence northerly and easterly along the westerly and northerly boundary lines of said Rancho San Geronimo, to the northeast corner thereof;

Thence easterly along the southerly boundary line of the Rancho San Pedro Santa Margarita y Las Gallinas, described in the patent from the United States to Timothy Murphy, dated February 21, 1866, and recorded in the office of said recorder in liber A of patents, page 392, to the southeast corner of the tract of land conveyed to Manuel T. Freitas by deed dated the fifth day of December, 1896, and recorded in the office of said recorder in book 43 of deeds, page 376;

Thence northeasterly along the easterly line of said tract to the southeast corner of the tract of land conveyed to Marin county for a poor farm, by a deed dated the twenty-third day of June, 1880, and recorded in the office of said recorder in liber U of deeds, at page 582;

Thence northerly along the easterly line of said poor farm tract to the most southerly corner of the Cat ranch, so called, owned by P. W. Riordan and described in a deed dated the twenty-fourth day of March, 1865, and recorded in the office of said recorder in liber E of deeds, at page 405;

Thence easterly along the southerly boundary line of said Cat ranch to the center of the county road leading from San Rafael to Petaluma;

Thence southerly along said center line to the northerly boundary line of the tract of land conveyed by Emma L. Code to Martin V. B. Miller by a deed dated the twenty-eighth day of March, 1870, and recorded in the office of said recorder in liber I of deeds, at page 64;

Thence easterly along said northerly boundary line to the exterior boundary line of said Rancho San Pedro Santa Margarita y Las Gallinas;

Thence southerly along said easterly boundary line to the north fork of the Gallinas slough or canal;

Thence due south to the center of said slough or canal;

Thence easterly along the center line of said Gallinas slough to San Pablo bay;

Thence due east to the easterly boundary line of Marin county;

Thence southerly along said easterly boundary line to Raccoon straits;

Thence southwesterly through Raccoon straits to the most easterly corner of the town of Belvedere as established by order of the board of supervisors of Marin county, dated the twenty-first day of December, 1896, and entered in the record of the proceedings of the board of supervisors in liber I, at page 327;

Thence southwesterly along the southeasterly boundary line of said town of Belvedere to the most southerly corner thereof;

Thence southwesterly in a straight line to the southeast corner of the town of Sausalito, the point of beginning.

Control.

§ 3. The management and control of said Marin municipal water district in the county of Marin, state of California, is hereby made subject to all acts and laws of the state of California relative to municipal water districts.

§ 4. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

RICHMOND MUNICIPAL WATER DISTRICT.

ACT 3105—An act to recognize and declare valid all proceedings in Richmond municipal water district.

History: Approved March 28, 1913. In effect August 10, 1913, Stats. 1913, p. 12.

Richmond water district validated.

§ 1. The Richmond municipal water district as formed by the board of supervisors of Contra Costa county, state of California, and as now existing, is hereby recognized and declared valid, and all proceedings on organization and formation are hereby approved and declared valid.

CHAPTER 238.

NAMES.

CONTENTS OF CHAPTER.

ACT 3106. REGISTRATION OF FARM, RANCH, AND VILLA NAMES.

REGISTRATION OF FARM, RANCH AND VILLA NAMES.

ACT 3106—An act to provide for the registration of farm, ranch and villa names in California.

History: Approved March 1, 1911, Stats. 1911, p. 255.

Registration of farm, ranch and villa names.

§ 1. Any farm, ranch or villa owner in this state, may upon the payment of one dollar to secretary of state, have the name of his farm, ranch or villa duly registered in a register which the secretary of state shall keep for said purpose, and shall be furnished a certificate, issued under seal, and setting forth the name and location of the farm, ranch or villa, and name of the owner; provided, that when any name shall have been recorded as the name of any farm, ranch or villa, such name shall not be recorded as the name of any other farm, ranch or villa in this state, except by prefixing or adding of designating words thereto. The secretary of state shall register such name only for the person entitled thereto.

Penalty for registering name of another.

§ 2. Any person who shall register as his own, any such name already in use in this state, knowing such name to be adopted as the name of a farm, ranch or villa therein, or shall make use of such name when regularly registered and in use by any other person entitled thereto under the provisions of this act shall be guilty of a misdemeanor.

CHAPTER 239.

NAPA CITY.

CONTENTS OF CHAPTER.

ACT 3111. FREEHOLDERS' CHARTER.

FREEHOLDERS' CHARTER.

ACT 3111—Freeholders' Charter of the city of Napa.

History: Voted for and ratified at an election held December 16, 1914; filed with the secretary of state January 28, 1915, Stats. 1915, p. 1591. Former charters, act of March 23, 1872, Stats. 1871-72, p. 542. Reincorporated by the act of February 24, 1874, Stats. 1873-74, p. 140, which was superseded by the freeholders' charter voted for and adopted at an election held March 9, 1893; approved by the legislature March 13, 1893, Stats. 1893, p. 641. Amended March 6, 1903, Stats. 1903, p. 689, and superseded by the present charter.

CHAPTER 240.

NAPA COUNTY.

References: Boundaries, see Kerr's Cyc. Political Code, § 3936.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 3117. LEGALIZING BONHAM NOTARIAL ACKNOWLEDGMENTS.
 3119. COURTHOUSE AND JAIL.
 3123. TRESPASSING ANIMALS.
 3127. TRANSCRIBING RECORDS.
 3128. PRESERVATION OF RECORDS

LEGALIZING BONHAM NOTARIAL ACKNOWLEDGMENTS.

ACT 3117—An act legalizing certain notarial acknowledgments.

History: Approved March 30, 1876, Stats. 1875-76, p. 572.

This act legalized acknowledgments taken by one N. M. Bonham.

COURTHOUSE AND JAIL.

ACT 3119—An act providing for the building and furnishing of a courthouse and jail in.

History: Approved March 27, 1878, Stats. 1877-78, p. 569.

This act provided for the issuance of bonds to the amount of \$80,000, to mature in twenty years.

TRESPASSING ANIMALS.

ACT 3123—An act applying provisions of act of 1874 (Stats. 1873-74, p. 50), as to trespassing of animals to Napa county.

History: Approved March 27, 1874, Stats. 1873-74, p. 705.

This act made the provisions of the act of 1874 as to the trespassing of animals in Fresno, Tulare, Kern, Ventura, Santa Barbara, San Luis Obispo, and Monterey counties (Act 5246a) applicable to Napa county. The code commissioners are of the opinion that it was repealed by the general estray law of 1897; but see editor's note to chapter on "Estrays."

TRANSCRIBING RECORDS.

ACT 3127—An act to provide for the transcribing and transferring certain records in Sonoma and Solano counties to the county of Napa.

History: Approved March 16, 1858, Stats. 1858, p. 65.

This act provided for the transcribing of all records affecting title to lands, including the records made by former officers under the Mexican law.

PRESERVATION OF RECORDS.

ACT 3128—An act for the better preservation of certain records of Napa county.

History: Approved April 4, 1864, Stats. 1863-64, p. 500.

This act provided for the better preservation of certain records in Napa county.

CHAPTER 241.

NAPA LADIES SEMINARY.

CONTENTS OF CHAPTER.

ACT 3138. GRANT OF DIPLOMAS.

GRANT OF DIPLOMAS.

ACT 3138—An act authorizing the granting of diplomas by.

History: Approved April 1, 1872, Stats. 1871-72, p. 801.

CHAPTER 242.

NATIONAL CITY.

References: Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.

ACT 3145. TIDELAND GRANT.

CHAPTER 243.

NATIONAL GUARD.

References: See, generally, tits. "Arms"; "Armory"; "Military Academies"; "Naval Battalion"; "War."

Duties of inspectors of rifle practice, see Kerr's Cyc. Political Code, § 2008.

CONTENTS OF CHAPTER.

- ACT 3151. CAMP OF INSTRUCTION.
 3152. ORGANIZATIONS OF THE UNITED STATES VOLUNTEER SERVICE IN THE SPANISH-AMERICAN WAR.
 3153. EXPENSES OF MUSTERING IN OF ORGANIZATIONS IN THE UNITED STATES VOLUNTEER SERVICE IN THE SPANISH-AMERICAN WAR.
 3154. ENCAMPMENTS AT STATE CAMP OF INSTRUCTION.
 3157. SAN FRANCISCO ARMORY SITE.
 3158. EXPENSES IN INSURRECTION, ETC.
 3160. LOS ANGELES ARMORY.
 3161. SACRAMENTO ARMORY.
 3162. SAN DIEGO ARMORY.
 3164. REVOLVING FUND FOR ADJUTANT GENERAL'S OFFICE.
 3165. RETURN OF OFFICERS AND MEMBERS TO STATE ORGANIZATIONS FROM UNITED STATES VOLUNTEER SERVICE.

CAMP OF INSTRUCTION.

ACT 3151—An act to establish a camp of instruction for the national guard of the state of California, and to authorize the acquisition, by donation, of a site for the same.

History: Approved March 24, 1899, Stats. 1899, p. 65. Prior act of March 9, 1893, Stats. 1893, p. 123, superseded if not repealed by the present act.

Established at Santa Cruz.

§ 1. There is hereby established, at or near the city of Santa Cruz, county of Santa Cruz, state of California, a camp of instruction for the national guard of California.

Commissioners to select site.

§ 2. The adjutant-general, major-general, and the senior brigadier-general of the national guard of the state of California, are hereby appointed commissioners for the purpose of selecting a suitable site for said camp of instruction, at or near said city of Santa Cruz. They shall, within ninety days after the passage of this act, examine the different tracts of land offered by the city of Santa Cruz and the county of Santa Cruz, or the citizens thereof, for the location of said camp of instruction, and shall select therefrom, if in their judgment practicable, a suitable site for said camp of instruction.

Donation of site.

§ 3. After the selection of said site by the commissioners named in the preceding section, and their action meeting the approval of the governor, the said commissioners shall have the power to procure by donation the site so selected for said camp of instruction. The deed or deeds therefor shall be duly executed to the people of the state of California and delivered to the controller, after examination and approval by the attorney-general.

Name of.

§ 4. Said camp of instruction shall be known as and called, the State Camp of Instruction for the National Guard of California.

§ 5. This act shall take effect immediately.

ORGANIZATIONS OF THE UNITED STATES VOLUNTEER SERVICE IN THE
SPANISH-AMERICAN WAR.

ACT 3152—An act regarding organizations, officers, and members of the national guard who entered the United States volunteer service in the Spanish-American war; their privileges, and exemptions, and retirements, and providing for the return to the national guard of such organizations, officers and members.

History: Approved March 21, 1899, Stats. 1899, p. 185.

Leave of absence. Return. Officers whose terms expired. Continuous service granted.

§ 1. Each and all of the officers and members of the regiments and companies of the national guard of the state of California who were mustered into the United States volunteer service in the Spanish-American war of eighteen hundred and ninety-eight and have been discharged therefrom are hereby granted leave of absence from the time of their mustering into the United States volunteer service until being mustered out of the same, and that within one hundred and fifty days from their being so mustered out they may report for duty to the brigadier-general of the brigade from which they went, if a regiment; or to the commanding officer of the regiment or battalion from which they went, if a company or division; and they shall at once be recognized as belonging to the national guard and returned to duty as a company, division, battalion, or regiment, which they were at the time they entered said volunteer service, and any company or division not having the minimum number required by law shall recruit up to the requisite number within the time above specified.

All officers of such companies, divisions, battalions, and regiments as entered said volunteer service, and shall return to the national guard as above provided for, shall continue to serve under the commissions held by them at the time they entered the said volunteer service for the unexpired portion of their respective commissions, the same as if they had not entered such volunteer service, and had remained continuously in the national guard.

Those officers of the national guard who entered said volunteer service, but whose term of office would have expired had they remained in the national guard, are hereby granted all the privileges, exemptions, and retirements up to the date of their being mustered out of said volunteer service, the same as if they had remained in the national guard, and, should they return to duty within the time herein provided, and be re-elected to any commissioned office, as provided by law, their time shall be continuous for all purposes, as if their said terms had not expired.

Officers and members of the regiments, battalions, companies, and divisions of the national guard, who did enter the said volunteer service with their respective commands, if they report for duty with such commands, provided they resume their places in the national guard, as above provided for, are granted continuous service, as in the national guard, for all purposes up to such time as they so report; those who do not so report are hereby granted honorable discharge from the national guard, as of the date of the mustering into said volunteer service of their respective organizations.

Computing term of service.

§ 2. In computing the term of service for any purpose regarding privileges and exemptions and retirements provided by law for officers and members of the national guard, the time which any officer or enlisted man has served or may hereafter serve in said volunteer service shall be computed and allowed for as continuous service, the same as if such service had been in the national guard, and including such time not exceeding one hundred and fifty days to those already mustered out of such service, and such time as may be provided under this act for those not yet mustered out of such service to the time when he shall report for duty in the national guard as hereinbefore

provided; and the same shall apply to any volunteer whose term of service in the national guard expires before being mustered out of said volunteer service, or who re-enters the national guard within the time provided for in this act.

Governor to prescribe time of re-entry.

§ 3. The governor is hereby authorized and empowered to prescribe the time for the re-entry into the national guard of those organizations, officers, and members who entered in said volunteer service but have not yet been discharged therefrom, after they shall have been so discharged, and they may re-enter the national guard upon the terms and conditions, except as to time, provided in this act, and they are hereby granted leave of absence for the entire period they have been or may be in said volunteer service.

Pay and allowances.

§ 4. No organization, officer, or member hereby granted leave of absence shall draw or be allowed any pay, allowance, money, or property from the state of California for the time or any portion of the time they are hereby granted leave of absence, but all organizations shall be entitled to all military allowances provided by law as soon as they are recruited up to the minimum required by law, and that fact is reported to and approved by the governor.

§ 5. This act shall take effect immediately.

EXPENSES OF MUSTERING IN OF ORGANIZATIONS IN THE UNITED STATES VOLUNTEER SERVICE IN THE SPANISH-AMERICAN WAR.

ACT 3153—An act to ascertain and pay armory rents, armorers' wages, and other expenses arising out of the mustering in of portions of the national guard and naval militia into the United States volunteer service; also, the expenses incurred in reorganizing the national guard and to result therefrom; and making an appropriation to pay the same.

History: Approved March 8, 1899, Stats. 1899, p. 80.

Detail of officers to ascertain and pay armory rent, wages and other expenses.

§ 1. The governor is hereby authorized and empowered to detail one or more officers of the national guard, as he may deem necessary, to ascertain and determine what, if any, rents for armories, wages of armorers, and any other proper expenses should be paid in consequence of the mustering in of any of the national guard or naval militia who were mustered into the United States volunteer service during the year eighteen hundred and ninety-eight, and also the claims existing or which may have arisen, or which may arise by reason of the said national guard and naval militia having been so mustered in, and also any and all proper charges and expenses against the state on account of the companies, or any of them, which were so mustered in, and by reason of the use of armories for the care and custody of the property left therein, and any proper expenses which have been incurred, or which may be incurred, in the reorganization of said guard.

Pay.

§ 2. Any officer or officers so detailed shall have and receive the same pay and allowances as an officer of like rank in the United States army for the time actually employed, together with reasonable traveling expenses.

Claims.

§ 3. Any and all claims so adjusted by said appointed officers shall be transmitted through regular military channels to the governor, who shall submit the same to the board of military auditors, and, if approved by it, the controller is directed to draw

his warrant in favor of the respective parties, to whom or in whose favor the claims have been allowed, and also his warrant for the pay and expenses of such detailed officer or officers, and for the amounts thereof, and the treasurer is directed to pay the same.

Appropriation.

§ 4. The unexpended balance of the appropriation for "armory rents and other expenses, national guard of California," for the forty-ninth and fiftieth fiscal years, or so much thereof as may be necessary, is hereby appropriated for the purposes of this act.

§ 5. This act shall take effect immediately.

ENCAMPMENTS AT STATE CAMP OF INSTRUCTION.

ACT 3154—An act providing that all encampments of the national guard shall be held at the state camp of instruction, unless otherwise ordered.

History: Approved March 20, 1899, Stats. 1899, p. 148.

Annual encampments at state camp.

§ 1. The commander-in-chief may annually order an encampment for discipline and drill, either by division, brigade, regiment, battalion, or unattached company. All encampments shall be held at the state camp of instruction for the national guard of California, unless otherwise ordered by the commander-in-chief.

§ 2. This act shall take effect immediately.

SAN FRANCISCO ARMORY SITE.

ACT 3157—An act to provide a site for an armory for the national guard in the city and county of San Francisco and making available and re-appropriating certain moneys for the purchase of said site and the erection, equipment, completion and furnishing of said armory.

History: Approved March 22, 1909, Stats. 1909, p. 640. Later act of June 7, 1913; in effect August 10, 1913; Stats. 1913, p. 928, made an additional appropriation for completion and partial furnishing.

EXPENSES IN INSURRECTIONS, ETC.

ACT 3158—An act making an appropriation for the expenses of the national guard in case of insurrection, invasion, tumult, riot, or imminent danger thereof.

History: Approved April 12, 1909, Stats. 1909, p. 850.

LOS ANGELES ARMORY.

ACT 3160—An act to provide for the building, equipping and furnishing of an armory to be used for the national guard and national guard purposes, in the city of Los Angeles, and to make an appropriation for the same.

History: Approved March 25, 1909, Stats. 1909, p. 718.

The act appropriated \$100,000 for the purposes indicated.

The act of April 5, 1911, Stats. 1911, p. 637, made an additional appropriation of a like amount for the purposes of the act.

SACRAMENTO ARMORY.

ACT 3161—An act providing for the acquisition of a site for an armory and state arsenal for the national guard, at the city of Sacramento, California; providing for the appointment of a commission to select and acquire by donation said site, and providing for the erection of an armory and arsenal on said site, and appropriating money therefor.

History: Approved April 22, 1911, Stats. 1911, p. 1080.

Commission to select site for Sacramento armory.

§ 1. A commission is hereby appointed to consist of four persons who shall be known as the "commissioners for the selection and acquisition by donation of a site for and the erection of an armory and state arsenal for the national guard, at Sacramento, California," and said commission shall consist of the following persons, each of whom shall be and is hereby appointed as a member of said commission, viz., the governor of the state of California, who shall be the president of said commission; the secretary of state; the attorney general of the state, and the adjutant general of the state; said adjutant general shall be secretary of said commission. Said commissioners shall hold office until they have performed the duties hereinafter provided for. They shall receive no compensation.

Selection of site.

§ 2. Immediately after the appointment of said commissioners they shall organize and proceed to select and receive by donation a site in the city of Sacramento, state of California, for an armory and state arsenal for the use of the national guard. Said site shall be of such size as in the judgment of such commissioners may be necessary for the purposes desired; provided, however, that it shall be not less than the area of two full city lots of said city.

Deed.

§ 3. The deed for said site shall, when the said site shall be received by said commission, be taken in the name of, and the deed shall be to the state of California.

Construction of armory.

§ 4. Immediately upon obtaining possession of said site, said commission shall proceed in accordance with "An act to regulate contracts on behalf of the state in relation to the erection, construction, alteration, repair or improvement of any state structure building, road or other state improvement of any kind" approved March 22, 1909, and acts amendatory thereof and supplemental thereto, to have constructed thereon an arsenal and armory for the use of the national guard, of such size and arrangement as in the judgment of said commission shall be deemed best; provided, however, that said building must contain a drillroom at least seventy-five feet wide by one hundred and forty feet long, and said building shall also be used as a state arsenal. The expense of constructing said building shall be paid out of the sum hereby appropriated, upon claims presented by said commission to and allowed by the said board of examiners, and warrants for such claims, when allowed, shall be drawn by the said controller payable out of the sum hereby appropriated and shall be paid by the state treasurer.

Appropriation.

§ 5. The sum of one hundred thousand dollars is hereby appropriated out of any moneys in the general fund of the state treasury, not otherwise appropriated, for the purposes of this act. The commission hereinabove provided for is hereby authorized to use any balance remaining in said fund, after the construction of said armory and state arsenal thereon, in the furnishing of said armory.

§ 6. This act shall take effect and be in force from and after its passage.

SAN DIEGO ARMORY.

ACT 3162—An act to provide for the purchase by the state of California of the armory building and wharf located on the bay of San Diego and making available and reappropriating certain moneys for the purchase of said armory and wharf.

History: Approved June 14, 1913. In effect August 10, 1913, Stats. 1913, p. 928.

Appropriation: purchase naval reserve armory and wharf, San Diego.

§ 1. The sum of thirty-five hundred dollars now remaining in the appropriation made by chapter 364 of the Statutes of 1911 (approved April 5, 1911) is hereby reappropriated and made available, and is to be paid to the adjutant general of the state of California, ex-officio quartermaster general, to be expended by him in the purchase of the armory building and wharf and all parts thereof known as the naval reserve armory and wharf, located on the bay of San Diego at the foot of Twenty-Eighth Street of the city of San Diego, California, for the use of the naval militia of the state of California.

Conditions.

§ 2. Before the payment or payments are made for the said building and wharf it must be shown to the quartermaster general that the building has been finished in a workmanlike manner, properly painted, and electric wired, and that the piling of said wharf has been concreted in a proper manner; and further, provided, that the said city of San Diego is hereby authorized to and shall recede and convey to the state of California the tide land now occupied by the said naval reserve amory and wharf located on the bay of San Diego at the foot of Twenty-Eighth Street of the city of San Diego, California, for the use of the naval militia of the state of California; the said city reserving the rights of way for the necessary street or streets across said wharf.

Governor authorized to receive deed.

§ 3. The governor of the state of California is hereby authorized to receive delivery on behalf of the state from the city of San Diego conveyance of the aforesaid tide lands when made by the said city to the state of California.

Controller authorized to draw warrant.

§ 4. The state controller is hereby authorized and directed to draw his warrant or warrants in favor of the person or persons at such times and in such sums as said adjutant general shall present claims for, and the treasurer is directed to pay the same.

The present act reappropriated the money appropriated for the same purpose by the act of April 5, 1911, Stats. 1911, p. 638.

REVOLVING FUND FOR ADJUTANT GENERAL'S OFFICE.**ACT 3164—An act appropriating money to provide a cash revolving fund for the use of the adjutant general and defining its use and the liability therefor.**

History: Approved June 7, 1913. In effect immediately. Stats. 1913, p. 890.

Appropriation: cash revolving fund, adjutant general. How drawn. Bond.

§ 1. The sum of three thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated to provide the adjutant general with a cash revolving fund to facilitate the work of the adjutant general's department. All or any part of said money may be drawn from the state treasury without the submission of receipts, vouchers or itemized statements and may be used by the adjutant general in advancing cash payments for ordnance, equipment, material, labor, supplies and incidental expenses requiring cash payments in advance, where such payments are necessary for the proper conduct of the business of the department, said bills to be subsequently paid out of the appropriation against which they are a proper charge, upon itemized claims accompanied by proper vouchers and receipts, and the money returned to the cash revolving fund. The adjutant general shall be liable on his bond for the money so advanced to him and may, to protect himself, require sufficient bond of the different employees under him in case it should be necessary to delegate any of them to disburse money from the revolving fund. The adjutant general must account

for the money herein appropriated at any time upon demand of the state board of control or state controller.

Current expenses.

§ 2. This act, inasmuch as it provides for an appropriation for the usual current expenses of the state, shall, under the provisions of section 1 of article IV of the constitution, take effect immediately.

RETURN OF OFFICERS AND MEMBERS TO STATE ORGANIZATIONS FROM UNITED STATES VOLUNTEER SERVICE.

ACT 3165—An act providing for the return to the national guard of the state of all those organizations, officers, and members of the national guard who entered the service of the United States in 1917 in the war against Germany, and relating to their privileges, exemptions and retirements.

History: Approved May 7, 1919. In effect July 22, 1919, Stats. 1919, p. 380.

Federal service considered as continuous state service.

§ 1. Each and all of the officers and members of the national guard and the naval militia of the state of California who were called into service by the call of the president and who were on the fifth day of August, 1917, drafted into federal service are hereby granted leave of absence from the state forces from the time of call or draft into federal service as national guard and until they shall have been mustered out from the federal service, and while serving as federal troops their time shall be considered as continuous in so far as it pertains to their service as state troops; provided, they re-enter the national guard of this state within ninety days of muster out from federal service.

Privileges, exemptions, and retirements.

§ 2. All members of the national guard who entered federal service or whose term of office or enlistment would have expired had they remained in the national guard of the state, are hereby granted all privileges, exemptions and retirements up to the date of being mustered out of said federal service, the same as if they had remained in the national guard of the state. In computing the term of service for any members regarding privileges, exemptions or retirements, provided by law, for officers and members of the national guard, the time which any officer or enlisted man has served in the army or navy of the United States shall be computed and allowed for as continuous service in so far as it pertains to state service; provided, that they re-enter the national guard of the state within a period of ninety days from the date of muster out of federal service.

Preference in reorganization.

§ 3. When reorganizing the national guard of the state, those units who have or may be in federal service shall be first considered in such reorganization; provided, they shall request such re-entry into state service within the ninety days from the period of discharge from federal service.

Rank.

§ 4. In compliance with the national defense act, all officers must be recommissioned and all enlisted men re-enlisted. All officers will be commissioned with the same rank as that held by them upon their entrance into federal service, or such rank as they may have attained while in federal service; provided, that in all cases officers must be commissioned in accordance with the table of organization provided by the war department of the United States government.

Pay not allowed during leave of absence.

§ 5. No organization, officer or member hereby granted leave of absence shall draw or be allowed any pay, allowance, money or property from the state of California, during the said leave of absence, but organizations shall be entitled to all military allowances provided by law as soon as they are recruited up to the minimum required by law and accepted as national guard and that fact is reported and approved by the government.

NATURALIZATION.

See tit. "Aliens."

CHAPTER 244.**NAUTICAL SCHOOL.**

References: See, generally, tits. "Military Academies"; "National Guard."

CONTENTS OF CHAPTER.**ACT 3170. ESTABLISHMENT.****ESTABLISHMENT.**

ACT 3170—An act to establish a nautical school at the port of San Francisco, to provide for the conduct and maintenance thereof, to make an appropriation therefor, and to authorize the governor to request and to receive aid from the United States in compliance with the provisions of an act of congress approved March 4, 1911.

History: Approved May 14, 1917. In effect July 27, 1917, Stats. 1917, p. 527.

"California state nautical school" established.

§ 1. There is hereby established at the port of San Francisco a nautical school to be known as "the California state nautical school," for the instruction of pupils in navigation, steamship-marine engineering, and all matters pertaining to the proper construction, equipment and sailing of vessels, or any particular branch thereof.

School board.

§ 2. The governor, the president of the state board of education, and the president of the state board of harbor commissioners shall constitute the nautical school board, which shall be the governing body of the school hereby established. The expenses incurred by the members of said board while engaged in the business of the nautical school shall be refunded to them from the appropriation herein provided.

Duties of board.

§ 3. The said nautical school board shall provide and maintain at the nautical school, for the instruction and training of pupils in the science and practice of navigation, accommodations for the school on board a proper vessel, shall purchase and provide books, stationery, apparatus and supplies needed in the work of the school, shall appoint and remove instructors and other necessary employees and determine their number and compensation, shall fix the terms and conditions upon which pupils shall be received and instructed in the school, and be dismissed or discharged therefrom, and shall establish all regulations necessary for the proper management and conduct of the school and for carrying out efficiently the purposes of this act.

Use of United States vessels.

§ 4. The nautical school board may receive from the United States government and use for the accommodation of the school, such vessel or vessels as the secretary of the navy may furnish. The governor is hereby authorized and directed to apply in writing

to the secretary of the navy for a suitable vessel of the navy, with all her apparel, charts, books and instruments of navigation for the use of the school hereby established, and to request that the president of the United States detail proper officers of the navy as superintendents or instructors in the said school.

Nautical school fund.

§ 5. There is hereby created the nautical school fund, which shall consist of such money as shall be appropriated from time to time by the legislature, and such sum as may be received from year to year from the government of the United States for the purpose of maintaining the school hereby established in compliance with the provisions of an act of congress entitled "An act for the establishment of marine schools and for other purposes," approved March 4, 1911. There is hereby appropriated out of any money in the state treasury not otherwise appropriated, for the establishment of said school and for its maintenance during the sixty-ninth and seventieth fiscal years, the sum of twenty-five thousand dollars, which shall become available when the nautical school board has received from the secretary of the navy a suitable vessel of the navy for the use of said nautical school.

Vouchers.

§ 6. The moneys hereby appropriated shall be expended in accordance with law upon vouchers certified by the superintendent of the nautical school and approved by the nautical school board.

Report.

§ 7. A report of the conduct of the affairs of said nautical school, including a statement of the moneys expended in its establishment and maintenance, shall be presented to the legislature at its convening for the forty-third session and at each biennial session thereafter.

Later act of May 27, 1919; in effect July 27, 1919; Stats. 1919, p. 1301, made an additional appropriation to carry out the purposes of the act.

CHAPTER 245.

NAVAL BATTALION.

References: See, generally, tit. "National Guard."

CONTENTS OF CHAPTER.

ACT 3173. ESTABLISHMENT.

ACT 3173—An act to establish a naval battalion to be attached to the national guard.
[Stats. 1893, p. 62.]

History: Approved March 1, 1893, Stats. 1893, p. 62. Prior act of March 31, 1891, Stats. 1891, p. 258, repealed by the present act so far as in conflict therewith.

The code commissioners say of this act that it was modified, if not entirely superseded. See Kerr's Cyc. Pol. Code, § 1962, as amended in 1901. See, also, Kerr's Cyc. Pol. Code, § 2111.

NAVIGABLE STREAMS.

See tit. "Waters" and Kerr's Cyc. Political Code, § 2349.

CHAPTER 246.

NAVIGATION.

References: See, generally, tits. "Buoys and Beacons"; "Waters"; Kerr's Cyc. Penal Code, § 609.

Navigable streams, see Kerr's Cyc. Political Code, § 2349.

CONTENTS OF CHAPTER.

ACT 3179. SUBMARINE SITES FOR LIGHTHOUSES.

SUBMARINE SITES FOR LIGHTHOUSES.

ACT 3179—An act concerning submarine sites for lighthouses, and other aids to navigation on the coasts of this state.

History: Approved March 26, 1874, Stats. 1873-74, p. 621.

The act authorized the governor to convey sites to the United States for the indicated purpose.

NEEDLES.

See Act 3094, note.

NEGLIGENCE, DEATH BY.

See Kerr's Cyc. Code Civil Procedure, §§ 376, 377.

CHAPTER 247.

NET CONTAINERS.

References: See, generally, tit. "Fruits."

CONTENTS OF CHAPTER.

ACT 3189. NET CONTAINER ACT.

NET CONTAINER ACT.

ACT 3189—An act to provide for the indicating of the net quantity of foodstuffs and stuffs intended to be used or prepared for use as food for human beings when sold or offered or exposed for sale in containers and providing penalties for the violation thereof.

History: Approved May 24, 1913. In effect April 1, 1914. Stats. 1913, p. 247. Amended (1) June 7, 1915, in effect August 8, 1915, Stats. 1915, p. 1263; (2) April 6, 1917, in effect July 27, 1917, Stats. 1917, p. 87; (3) May 3, 1919, in effect July 22, 1919, Stats. 1919, p. 145.

Title as amended May 3, 1919. In effect July 22, 1919. Stats. 1919, p. 145:

AN ACT to provide for the indicating of the net quantity of foodstuffs and stuffs intended to be used or prepared for use as food for human beings, and medicine, and other commodities when sold or offered or exposed for sale in containers and providing for the indicating of quantity in the sale of commodities in respect to which there exists a definite trade custom, and providing penalties for the violation thereof.

The title was also amended April 6, 1917, Stats. 1917, p. 87.

Net container act.

§ 1. This act shall be known as the net container act.

Design of act.

§ 2. This act is designed to protect purchasers of any commodity within its provisions against deception as to the quantity or amount of the commodity purchased, and as against the seller shall be strictly construed with a view to effect its object.

Application of act.

§ 3. The provisions of this act shall apply to foodstuffs and stuffs intended to be used or prepared for use as food or medicine for human beings and shall apply to any commodity when sold, offered or exposed for sale in containers. [Amendment of May 3, 1919. In effect July 22, 1919, Stats. 1919, p. 145.]

This section was also amended June 7, 1915, Stats. 1915, p. 1263.

Net quantity plainly marked.

§ 4. Whenever any of the commodities within the provisions of this act are sold, or offered or exposed for sale, in containers, the net quantity of the contents of the container shall be plainly and conspicuously marked, branded, or otherwise indicated on the outside or top thereof or on a label or tag attached thereto.

Designation of quantity.

§ 5. The designation of the quantity of the commodity required by section four of this act shall be in terms of weight, measure or numerical count, subject however to the following provisions:

(a) The quantity of the contents so marked shall be the net amount of food or stuff or other commodity in the package or container.

(b) If the designation is by weight it shall be in terms of avoirdupois pounds and ounces; if the designation is in liquid measure it shall be in terms of the United States gallon of two hundred thirty-one cubic inches and its customary subdivisions, i. e., in gallons, quarts, pints, or fluid ounces; provided, that, by like method, such designations may be in terms of the metric system of weight or measure.

(c) The quantity of solids shall be designated in terms of weight, and of fluids in terms of measure, except in case of an article in respect to which there exists a definite trade custom; in such case the designation shall be in terms of weight, or measure, or numerical count, in accordance with such custom.

(d) The quantity of the contents shall be designated in terms of weight or measure, unless the container be marked by numerical count and such numerical count gives accurate information as to the quantity of the food or other commodity in the package. When designation is by numerical count it shall be in English words or Arabic numerals.

(e) The quantity of the contents may be stated in terms of minimum weight, minimum measure or minimum count, but in such cases the designation must approximate the actual quantity and there shall be no tolerance below the stated minimum.

(f) The quantity of viscous or semisolid foods, or of a mixture of solids and liquids, may be stated in terms of weight and measure. When products are packed in brine or other preserving fluids, the weight or measure of such brine or fluids shall not be included in the weight or measure of the edible or commodity indicated on the container. [Amendment of May 3, 1919. In effect July 22, 1919, Stats. 1919, p. 146.]

This section was also amended June 7, 1915, Stats. 1915, p. 1264; and April 6, 1917, Stats. 1917, p. 87.

Wherein not applicable.

§ 6. The provisions of this act shall not apply—

(a) To any sale of a commodity within the provisions of this act when such sale is made from bulk and the quantity is weighed, measured or counted for the immediate purpose of such sale.

(b) To a sale of any container of an ornamental or symbolic character with which a quantity of some commodity is sold as merely incidental.

(c) To a sale of a commodity in any container of a net weight of 2 ounces or less, or of a commodity in any container of a measure of 2 fluid ounces or less, or of a commodity in any container of a numerical count of six or less.

(d) To the sale of medicine, when prescribed by a licensed physician, veterinarian, or dentist; or to medicinal or pharmaceutical preparations or mixtures of two or more medicinal substances. [Amendment of June 7, 1915. In effect August 8, 1915, Stats. 1915, p. 1264.]

Violation defined.

§ 7. It shall not be held to be a violation of the provisions of this act when a commodity in a container is sold, or offered or exposed for sale, and there is a discrepancy between the actual quantity of the commodity in said container and the net quantity of the contents thereof indicated on the container as herein prescribed, provided such discrepancy is due to unavoidable leakage, shrinkage, evaporation, waste, or causes beyond the control of the seller acting in good faith.

No violation.

§ 8. It shall not be held to be a violation of the provisions of this act when a commodity in a container is sold, or offered or exposed for sale, and there is a discrepancy between the actual quantity of the commodity in said container and the net quantity of the contents thereof indicated on the container as herein prescribed; provided, that the seller purchased said commodity in said container, in good faith relying upon the said indication of the net contents thereof, and sold said commodity in said container without altering the contents thereof or the indication of the contents thereof; and provided, further, that the exemption of this section shall not apply to any sale unless the container had the name of a packer, manufacturer, wholesaler, or jobber thereon at the time the seller purchased it.

“Person.”

§ 9. The term “person” used in this act shall include every person, firm, company, copartnership, society, association and corporation.

Container defined.

§ 10. The term container used in this act is hereby defined to be any receptacle or carton into which a commodity is packed, or any wrappings with which any commodity is wrapped or put for sale, or to be offered or exposed for sale. No containers, boxes, or baskets wherein food products or other commodities are packed shall have a false bottom, or be so constructed as to facilitate the perpetration of deception or fraud. [Amendment of May 3, 1919. In effect July 22, 1919, Stats. 1919, p. 146.]

This section was also amended April 6, 1917, Stats. 1917, p. 88.

Penalty.

§ 11. Every person, who by himself or his agent, servant or employee violates or causes or permits to be violated, any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

§ 12. All acts and parts of acts inconsistent with or in conflict with any of the provisions of this act are hereby repealed.

Not violation.

(a) It shall not be held to be a violation of the provisions of this act to sell or offer for sale any commodity contained in a container which complies with the provisions and requirements of any act of congress or the opinions and regulations as issued by the secretary of agriculture and appertaining to net weight or measure.

Enforcement.

(b) The enactment of the provisions of this act shall be under the supervision of the state superintendent of weights and measures. [Amendment of June 7, 1915. In effect August 8, 1915, Stats. 1915, p. 1265.]

NEUCES CREEK.

See tit. "Nueces Creek."

CHAPTER 247a.**NEVADA CITY.****CONTENTS OF CHAPTER.****ACT 3199. INCORPORATION ACT.****INCORPORATION ACT.**

ACT 3199—An act to amend an act to incorporate the city of Nevada, and all acts supplemental thereto, and to repeal all acts in conflict therewith.

History: Approved March 12, 1878, Stats. 1877-78, p. 221. While this act purports to be amendatory, it is in fact a new incorporation act and repeals all prior acts. Originally incorporated in 1851 (Stats. 1851, p. 339). Disincorporated in 1852 (Stats. 1852, p. 188). The city was reincorporated April 19, 1856, Stats. 1856, p. 216. This act was amended (1) February 4, 1857, Stats. 1857, p. 10; (2) April 29, 1857, Stats. 1857, p. 312; (3) April 10, 1858, Stats. 1858, p. 125; (4) April 28, 1860, Stats. 1860, p. 295; (5) April 2, 1870, Stats. 1869-70, p. 652. It was superseded by the present incorporation. Most of the amendatory acts are also supplementary.

CHAPTER 248.**NEVADA COUNTY.**

References: Boundary, see Kerr's Cyc. Political Code, § 3937.

County government, see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 3205. LAWFUL FENCES.

3207. REMEDY DEFECTS IN RECORDS.

3208. INDEXING RECORDS.

3212. REMOVAL OF BODIES OF DECEASED PERSONS.

LAWFUL FENCES.

ACT 3205—An act to extend over the county of Nevada the provisions of the act entitled an act concerning lawful fences, April 27th, 1855, and acts amendatory thereof and supplementary thereto.

History: Approved April 1, 1864, Stats. 1863-64, p. 318.

REMEDY DEFECTS IN RECORDS.

ACT 3207—An act to remedy defects in certain county records.

History: Approved March 16, 1872, Stats. 1871-72, p. 377.

The act validated certain records in Nevada county which the president of the board had omitted to sign.

INDEXING RECORDS.

ACT 3208—An act to provide for the indexing certain records of Nevada county.

History: Approved March 6, 1874, Stats. 1873-74, p. 280.

The act provided for the manner of indexing certain deeds.

REMOVAL OF BODIES OF DECEASED PERSONS.

ACT 3212—An act to authorize the board of supervisors of Nevada county to remove the bodies of certain deceased persons.

History: Approved February 25, 1878, Stats. 1877-78, p. 104.

This act provided for the disinterment and reinterment of remains interred in Moore's Flat cemetery.

NEWMAN.

See Act 3094, note.

CHAPTER 249.

NEWPORT BEACH.

Reference: Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.

ACT 3223. TIDELAND GRANT.

3224. CONSTRUCTION OF CONDUITS.

TIDELAND GRANT.

ACT 3223—An act granting certain tidelands and submerged lands of the state of California to the city of Newport Beach, upon certain trusts and conditions.

History: Approved May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1011.

Tidelands granted to Newport Beach.

§ 1. There is hereby granted to the city of Newport Beach, a municipal corporation of the state of California, and to its successors, all of the right, title and interest of the state of California held by said state by virtue of its sovereignty, in and to all that portion of the tidelands and submerged lands within the present boundaries of said city, and situated below the line of mean high tide of the Pacific ocean which border upon and are in front of the upland now owned by said city and such other upland as it may hereafter acquire, to be forever held by said city, and by its successors in trust for the uses and purposes and upon the express conditions following, to wit:

Use of lands.

(a) Said lands shall be used by said city and by its successors solely for the establishment, improvement and conduct of a harbor and for the establishment and construction of bulkheads or breakwaters for the protection of lands within its boundaries, or for the protection of its harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, ways and streets, and other utilities, structures and appliances necessary or convenient for the promotion or accommodation of commerce and navigation, and the protection of the lands within said city. And said city or its successors shall not at any time grant, convey, give or alien said lands or any part thereof to any individual, firm, or corporation for any purposes whatever; provided, that said city or its successors may grant franchises thereon for a period not exceeding twenty-five years for wharves and other public uses and purposes, and may lease said lands or any part thereof for a period not exceeding twenty-five years for purposes consistent with the trust upon which said lands are held by the state of California and with the requirements of commerce or navigation at said harbor.

Improvement of harbor.

(b) Said harbor shall be improved by said city without expense to the state and shall always remain a public harbor for all purposes of commerce and navigation, and the state of California shall have at all times the right to use, without charge, all

wharves, docks, piers, slips, quays, and other improvements constructed on said lands or any part thereof for any vessel or other water craft or railroad owned or operated by the state of California.

Rates, tolls, etc.

(c) In the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph (a) no discrimination in rates, tolls or charges, or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city, or by its successors. The absolute right to fish in the waters of said harbor with the right of convenient access to said water over said lands for said purpose is hereby reserved to the people of the state of California.

CONSTRUCTION OF CONDUITS.

ACT 3224—An act granting to the city of Newport Beach, a municipal corporation, the right and authority to construct and maintain sewer, water, gas, and other conduits upon public lands.

History: Approved May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1012.

Conduit rights granted to Newport Beach,

§ 1. There is hereby granted to the city of Newport Beach, a municipal corporation of this state, the right, power and authority to construct and maintain over, across, and along the public lands of the state of California under and bordering upon Newport bay sewer, water, gas, and other pipe lines and conduits, and to go upon said public lands to construct and maintain the same.

NORMAL SCHOOLS.

See tit. "Schools."

NORTH BEACH AND MISSION RAILROAD COMPANY.

See tit. "Street Railroads."

CHAPTER 250.

NORTH SAN FRANCISCO HOMESTEAD AND RAILROAD ASSOCIATION.

References: See, generally, tit. "Homesteads."

CONTENTS OF CHAPTER.

ACT 3232. CONVEYANCE OF LANDS.

CONVEYANCE OF LANDS.

ACT 3232—An act authorizing sale and conveyance of lands in San Francisco to.

History: Approved April 4, 1864, Stats. 1863-64, p. 482.

This act authorized the commissioners of swamp and overflowed lands to convey certain overflowed land to this corporation.

1. Construction—Grant of lands owned in sovereignty.—The special act of 1864 (Stats. 1863-64, p. 482) granting certain lands to the North San Francisco Homestead

and Railroad Association, is construed so as to show on its face a grant of lands owned by the state by reason of its sovereignty; that is to say, lands below ordinary high water.—*Rondell v. Fay*, 32 Cal. 354.

NOTARIES.

See Kerr's Cyc. Political Code, § 791.

CHAPTER 251.

NOTICE.

CONTENTS OF CHAPTER.

ACT 3244. PUBLICATION.

PUBLICATION.

ACT 3244—An act relating to the advertising and publication of notices, publications and advertisements by state officers, boards, commissions, bureaus and departments, directing that all notices, advertisements and publications when prepared be delivered to the state board of control and vesting in the state board of control the exclusive charge, control, supervision, direction, designation, management and regulation of the giving, advertising, noticing and publication of all advertisements, publications and notices to be inserted in newspapers or other mediums, revoking all such authority heretofore given to any state officer, board, commission, bureau or department, and repealing all acts and parts of acts in conflict herewith.

History: Approved December 18, 1911, Stats. 1911 (ex. sess.), p. 11.

Advertisements by state officers or departments. State board of control to have supervision and management. Revocation of previous authority.

§ 1. Whenever under the laws of the state of California it is now, or may hereafter be, the duty of any state officer, board, commission, bureau or department to prepare any notice, advertisement or publication, authorized or directed by law to be prepared, advertised, published, noticed or inserted in any newspaper or other medium, the said state officer, board, commission, bureau or department shall as now authorized or directed by law, or as may hereafter be authorized or directed by law, properly prepare, in all respects and in due form and within due time, in order to accomplish the purposes thereby intended, the said notice, advertisement or publication. When said notice, advertisement or publication shall have been so properly prepared it shall thereupon be the duty of said state officer, board, commission, bureau or department to deliver the same to the state board of control of the state of California. Thereupon the said state board of control of the state of California after having approved the said notice, advertisement or publication, shall cause the same to be advertised, published or noticed in such newspaper or newspapers or other medium as may be now or hereafter required by law, and said state board of control shall have the sole and exclusive charge, control, supervision, direction, designation, management and regulation of the giving, advertising, noticing and publication of any and all such advertisements, publications, and notices. Any and all authority heretofore given by law to any state officer, board, commission, bureau or department for the advertising, noticing, or publication, of any and all advertisements, publications or notices in newspapers or other mediums or for the insertion of the same in newspapers or other mediums, is hereby expressly revoked and such authority is hereby vested exclusively in the state board of control and shall be assumed, performed and exercised by said state board of control.

§ 2. All acts and parts of acts in conflict with or inconsistent with this act are hereby repealed.

NOVATO CREEK.

See Kerr's Cyc. Political Code, § 2349.

NUECES CREEK.

See Kerr's Cyc. Political Code, § 2349.

CHAPTER 252.

NUISANCES.

References: See tits. "Intoxicating Liquors"; "Prostitution."

Fences, see tit. "Fences," Act 1497.

Public nuisances, see Kerr's Cyc. Penal Code, §§ 370, et seq.

Suit to abate, duty of district attorney, see Kerr's Cyc. Political Code, § 4156.

CONTENTS OF CHAPTER.

ACT 3259. PROPERTY INFESTED WITH RODENTS.

PROPERTY INFESTED WITH RODENTS.

ACT 3259—An act declaring property infested with certain rodents to be a public nuisance; requiring owners, occupants, and persons having possession of or dominion over such property to endeavor to exterminate and destroy such rodents; providing for the inspection of property by boards of health and health officers, authorizing boards of supervisors and other governing bodies to purchase materials and employ inspectors to prosecute such work of extermination; authorizing state and local health authorities to prosecute such work in certain cases; providing for the payment of the expense thereof; making the amount of such expense a lien on the property; providing for the collection of such amount by foreclosure of such lien; and declaring any violation of the provisions thereof to be a misdemeanor.

History: Approved March 13, 1909, Stats. 1909, p. 311.

Duty of persons to exterminate rodents.

§ 1. It shall be and is hereby declared to be the duty of every person, firm, copartnership, company and corporation, owning, leasing, occupying, possessing or having charge of or dominion over, any land, place, building, structure, wharf, pier, dock, vessel or water craft, which is infested with rats, mice, gophers or ground squirrels, or as soon as the presence of the same shall come to his, their, or its knowledge, at once to proceed and to continue in good faith to endeavor to exterminate and destroy such rodents, by poisoning, trapping, and other appropriate means.

State board of health, authority of.

§ 2. The state board of health and inspectors appointed by such board, and local health officers and inspectors appointed for the purpose, as hereinafter provided, shall have authority and shall be permitted to enter into and upon any and all lands, places, buildings, structures, wharves, piers, docks, vessels and water craft, for the purpose of ascertaining whether the same are infested with such rodents and whether the requirements of this act as to the extermination and destruction thereof are being complied with; provided, however, that no building occupied as a dwelling, hotel or rooming house, shall be entered for such purpose except between the hours of 9 o'clock in the forenoon and 5 o'clock in the afternoon of any day.

Supervisors may appropriate moneys.

§ 3. The board of supervisors of each county and the city council or other governing body of each city and county, city and town, whenever it may by resolution determine that it is necessary for the preservation of the public health or to prevent the spread of contagious or infectious disease, communicable to mankind, or when such board shall so determine that it is necessary to prevent great and irreparable damage to crops or other property, may appropriate money for the purchase of, and may purchase, poison, traps and other materials for the purpose of exterminating and destroying such rodents, in such county, city and county, city or town, and may employ and pay inspectors, who shall have authority to and shall prosecute such work of extermination and destruction, under the direction of such board, or of the local health officer, or board of health, on both private and public property, in such county, city and county, city or town.

Refusal to exterminate. Expense of extermination. Sale of property.

§ 4. Whenever any person, firm, copartnership, company or corporation, owning, leasing, occupying, possessing or having charge of or dominion over, any land, place, building, structure, wharf, pier, dock, vessel or water craft, which is infested with such rodents, shall fail, neglect or refuse to proceed and to continue to endeavor to exterminate and destroy such rodents, as herein required, it shall be the duty of the state board of health, its inspectors and the local board of health and health officer, at once to cause such nuisance to be abated by exterminating and destroying such rodents. The expense thereof shall be a charge against the county, city and county, city or town, wherein the work is done, and the board of supervisors or other governing body shall allow and pay the same. Thereupon, the clerk of such board shall file in the office of the county recorder a notice of such payment, claiming a lien on such property for the amount of such payment. Any and all sums so paid by such county, city and county, city or town, shall be a lien on the property on which said nuisance shall have been abated, and may be recovered in an action against such property, which action to foreclose such lien shall be brought, within ninety days after such payment, and be prosecuted by the district, city or town attorney, in the name of such county, city and county, city or town, and for its benefit. When the property is sold, enough of the proceeds shall be paid into the treasury of such county, city and county, city or town, to satisfy such lien and the costs, and the overplus, if any there be, shall be paid to the owner of the property, if known, and if not known shall be paid into court for the use of such owner when ascertained. When it appears from the complaint in such action that the property on which such lien is to be foreclosed is likely to be removed from the jurisdiction of the court, the court may appoint a receiver to take possession of the property and hold the same while the action may be pending or until the defendant shall execute and file a bond, with sufficient sureties, conditioned for the payment of any judgment that may be recovered against him in the action and all costs.

Penalty.

§ 5. Any violation of the provisions of this act shall be deemed a misdemeanor and shall be punishable as such.

CHAPTER 253.**NURSING.****CONTENTS OF CHAPTER.**

ACT 3267. EDUCATION AND REGISTRATION OF NURSES.

3268. EXAMINATION AND LICENSING OF TRAINED ATTENDANTS ON THE SICK.

EDUCATION AND REGISTRATION OF NURSES.

ACT 3267—An act to promote the better education of nurses and the better care of the sick in the state of California, to provide for and regulate the examination and registration of graduate nurses, and to provide for the issuance of certificates of registration as registered nurses to qualified applicants by the state board of health, and to repeal an act approved March 20, 1905, entitled, "An act to promote the better education of the practice of nursing the sick in the state of California, to provide for the issuance of certificates of registration as a registered nurse, to qualified applicants of the board of regents of the University of California, and to provide penalties for violation thereof."

History: Approved June 12, 1913. In effect August 10, 1913. Stats. 1913, p. 613. Amended (1) April 1, 1915, in effect August 8, 1915, Stats. 1915, p. 21; (2) May 19, 1915, in effect August 8, 1915, Stats. 1915, p. 603; (3) April 5, 1917, in effect July 27, 1917, Stats. 1917, p. 44. Prior act of March 20, 1905, Stats. 1905, p. 533, was repealed by the present act.

Examination and registration of graduate nurses. Director. Accredited training schools.

§ 1. Within thirty days after this act takes effect the state board of health shall establish and maintain a department of examination and registration of graduate nurses, as hereinafter provided. The state board of health shall appoint a director, whose salary shall be fixed by the board, and said director shall have been graduated from an accredited training school for nurses as defined in this act, and shall be duly registered under the provisions of this act. Said director shall visit and inspect all training schools in this state, subject to the provisions of this act, at such times as may be required by the secretary of the board and shall perform all duties required by this act and such other duties as may be required by the state board of health in order to carry out the objects and provisions of this act. Lists of accredited training-schools for nurses and a register of the names of all nurses duly registered under this act shall be prepared and kept by the department. An annual report shall be prepared and filed before January first of each year. [Amendment of May 19, 1915. In effect August 8, 1915, Stats. 1915, p. 603.]

Examinations held every six months. Fee.

§ 2. Examinations as provided for in this act shall be held at least every six months at such times and places as the board shall direct and according to the rules and regulations of said board. Public notice of such examination shall be given by publishing the same at least two weeks prior to the date of each examination in two or more papers of general circulation, and one nursing journal, to be selected by said board; all of said papers and said nursing journal shall be published within the state of California. Upon filing application for examination each applicant shall pay an examination fee of ten dollars, which shall in no case be returned to the applicant. No further fee shall be required for registration. [Amendment of April 1, 1915. In effect August 8, 1915, Stats. 1915, p. 21.]

How examinations shall be held.

§ 3. Examinations may be conducted by the state board of health or by a special committee of three examiners to be appointed by the board at least thirty days prior to each examination, under such rules and regulations as may be prescribed by said board. If such special committee of examiners be appointed, they shall prepare and submit to the board, at least ten days prior to the examination, all questions for such examination, which may be approved, rejected, changed or altered in any manner by and at the discretion of said board. Said examiners shall be paid their necessary traveling expenses and such compensation as shall be fixed by the state board of health. All expenses of conducting said examinations shall be paid from the fund hereinafter mentioned in the manner therein provided. If the examinations be conducted by said examiners, they shall mark all examination papers of applicants and render to the board, within ten days thereafter, a report of the same in such form as may be prescribed by the board, which may change the grading on any paper. The board shall finally pass or reject all applicants, and its actions shall be final and conclusive and not subject to review by any court or other authority. The board shall issue to each successful applicant a certificate provided for in this act. [Amendment of April 1, 1915. In effect August 8, 1915, Stats. 1915, p. 21.]

Registration after July 1, 1914.

§ 4. On and after July 1, 1914, no person shall be eligible for examination or for registration as a registered nurse who shall not furnish satisfactory evidence of having been graduated from an accredited training school for nurses. An accredited training school for nurses within the meaning of this act is hereby defined to be a school for

the training of nurses attached to or operated in connection with a hospital or hospitals giving a general training and a systematic theoretical and practical course of instruction covering a period of at least three years. All applicants for examination must furnish satisfactory evidence of good moral character, and of having complied with the provisions of this act relative to qualifying.

False representation in nurse's examination.

§ 4½. Any person who shall wilfully make any false representation or who shall impersonate any other person or permit or aid in any manner any person to impersonate him in connection with any examination or application for examination or registration or request to be examined or registered, such person shall be guilty of a misdemeanor. [New section added April 5, 1917. In effect July 27, 1917, Stats. 1917, p. 45.]

Registered nurse.

§ 5. A nurse who has received his or her certificate according to the provisions of this act, shall be styled and known as a registered nurse, and shall be entitled to place the initials "R. N." after his or her name.

Nursing by friends not affected.

§ 6. This act shall not be construed to affect or apply to the gratuitous nursing of the sick by friends or members of the family, or to any person nursing the sick for hire who does not in any way assume to be, or practice as a registered nurse.

Unlawful to pretend to be "R. N."

§ 7. It shall be unlawful for any person not holding a certificate of registration issued by the state board of health to use the title "registered nurse" or the letters "R. N.," in connection with, or following his or her name, or to impersonate in any manner, or pretend to be, a "registered nurse."

Registration of nurses from other states.

§ 8. The board, upon written application, and upon the receipt of ten dollars as registration fee, shall issue a certificate of registration without examination to any applicant who has been duly registered as a registered nurse under the laws of another state or foreign country having requirements equivalent to those provided for by this act.

Revocation of certificate.

§ 9. The board shall have the power to revoke any certificate of registration for dishonesty, intemperance, immorality, unprofessional conduct, or any habit rendering a nurse unfit or unsafe to care for the sick, after a full and fair investigation of the charges preferred against the accused.

Penalty.

§ 10. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and shall upon conviction be fined not less than ten dollars nor more than one hundred dollars for the first offense and not less than fifty dollars nor more than five hundred dollars for each subsequent offense.

Monthly report of receipts.

§ 11. Within ten days after the beginning of each month the secretary of the state board of health shall report to the controller the amount and source of all collections made under the provisions of this act, and at the same time all such amounts shall be paid into the state treasury and shall be placed to the credit of the special fund to be known as the fund for examination and registration of nurses; provided, that whenever and as often as there is in the state treasury to the credit of the fund for the examination and registration of nurses, funds in excess of ten thousand dollars the

same may be invested by the state board of control in the same manner that the funds of the state school land fund are invested and the interest upon such investment when collected shall be placed to the credit of the fund for the examination and registration of nurses. All amounts paid into this fund shall be held subject to the order of the state board of health, to be used only for the purpose of meeting necessary expenses in the performance of the purposes of and the duties imposed by this act. Claims against the fund shall be audited by the state board of health and by the board of control and shall be paid by the state treasurer upon warrants drawn by the state controller. [Amendment of April 5, 1917. In effect July 27, 1917, Stats. 1917, p. 45.]

This section was also amended May 19, 1915, Stats. 1915, p. 604.

1. Action for damages by nurse against hospital for fraud.—Verdict held not excessive.—In an action for damages for fraudulent misrepresentations to a nurse, employed at an unaccredited and unregistered hospital, it was held that a verdict for less than the value of the services as shown by the evidence was not excessive.—*Myers v. Lowery*, (Cal. App.) 189 Pac. 793.

2. Same.—Misrepresentations of hospital proprietors.—A misrepresentation made by the proprietors of a hospital, who were themselves accredited and registered nurses, that such hospital was accredited under the act to the state board of health, to induce other nurses to rely on the truth of that fact, was an affirmation of an existing

fact material to the transaction.—*Myers v. Lowery*, (Cal. App.) 189 Pac. 793.

3. Same.—Same.—Statement of opinion.—When the proprietors of a hospital were themselves accredited, registered nurses familiar with the requirements of their profession, and its preliminary training, it will be assumed that they knew that the hospital was not an accredited school, was not on the list of such institutions, as the act requires, and that the course of training which was admittedly insufficient, did not measure up to the legal standard and that representations made by them will be treated as affirmations as to existing facts and not mere expressions of opinion.—*Myers v. Lowery*, (Cal. App.) 189 Pac. 793.

EXAMINATION AND LICENSING OF TRAINED ATTENDANTS ON THE SICK.

ACT 3268—An act to promote the better education of trained attendants and the better care of the sick in the state of California; to provide for and regulate the examination and licensure of trained attendants; to provide for the issuance of licenses as trained attendants to qualified applicants by the state board of health; to provide that the state board of health shall enforce the provisions hereof; to provide penalties for the violation of any of the provisions hereof and to repeal all acts and parts of acts inconsistent with the provisions of this act.

History: Approved May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 242.

Certificates for trained attendants for sick.

§ 1. The state board of health is hereby authorized to issue certificates to applicants to care for the sick as trained attendants and to formulate and issue rules and regulations from time to time as may be necessary for the proper conduct of the care of the sick by a trained attendant; to establish centers of training for trained attendants; to prescribe the course of instruction and length thereof, and to provide for an examination before a license may be issued.

Qualifications.

§ 2. Any person applying for the certificate as trained attendant shall be at least eighteen years of age, of good moral character, and, after one year from the passage of this act, shall have had not less than one year's practical experience in the care of the sick in a reputable hospital or sanatorium, connected with a school for trained attendants, and systematic instruction in the following subjects, namely: anatomy and physiology, hygiene, diet for the sick, nursing care of the sick, including children and the aged, and obstetrics.

Persons now engaged in practice.

§ 3. Provided that any person engaged in the practice of the care of the sick as a business or for hire as an attendant, practical or undergraduate nurse, or in any

capacity other than a registered nurse, may be granted a certificate as a trained attendant without taking an examination, provided such application shall be made within one year of the passage of the act and that such application shall be accompanied by credentials of character and show extent of training and experience, and a license fee of five dollars.

Examination.

§ 4. On or after one year following the passage of the act all applicants for certificate as trained attendants shall be required to pass an examination, the fee for which will be five dollars and will in no case be returned to the applicant. Said examination will be practical in character and designed to ascertain the applicant's fitness to practice her calling, and will be conducted by a committee of three examiners appointed by the board and under such rules and regulations as may be prescribed by said board, and shall be held at least every six months. Due notice of said examination shall be published in not less than three daily papers of the state. The subjects on which applicants will be examined are elementary anatomy and physiology, hygiene, diet for the sick, nursing methods in the care of the sick, including children and aged people, obstetrics. The board shall issue to each applicant successfully passing this examination a certificate as provided for in this act.

Title.

§ 5. All persons who have been duly licensed in accordance with the provisions of this act shall be known and styled as trained attendants and may use the words "trained attendant" after their names.

Penalty for false representation, etc.

§ 6. Any person who shall wilfully make any false representation or who shall impersonate any other person or permit or aid in any manner any person to impersonate her in connection with any examination or application, shall be guilty of a misdemeanor. It shall be unlawful for any person to advertise as, or assume the title of trained attendant, or to use the words "trained attendant" after her name, or any other words, letters or figures to indicate that the person using the same is a trained attendant, or to impersonate in any manner or pretend to be a trained attendant.

Revocation of license.

§ 7. The board shall have the power to revoke a license to any person for gross incompetency, dishonesty, addiction to the use of alcohol or narcotic drugs, or for any habit rendering him or her unsafe or unfit to care for the sick. Before revocation, notice of such charges shall be sent to the defendant with opportunity to appear in his or her own defense.

Penalty for violating act.

§ 8. Any person violating any of the provisions of this act shall be guilty of a misdemeanor and shall upon conviction be liable to a fine of not less than ten dollars or more than one hundred dollars for the first offense, and not less than twenty dollars or more than two hundred dollars for each subsequent offense.

Accounts, collections, etc.

§ 9. All accounts, collections and fines made under the provisions of this act shall be paid into the state treasury and shall be placed to the credit of the traveling and contingent fund of the state board of health.

Repealed.

§ 10. All acts or parts of acts inconsistent with this act are hereby repealed.

CHAPTER 254.

OAKLAND.

CONTENTS OF CHAPTER.

ACT 3272. FREEHOLDERS' CHARTER.

- 3273. SETTLEMENT OF CONTROVERSIES.
- 3274. ALAMEDA, OAKLAND AND PIEDMONT RAILROAD COMPANY.
- 3274a. OAKLAND RAILROAD COMPANY.
- 3279. ISSUE OF BONDS TO CANCEL SCHOOL BONDS.
- 3280. FUNDING OF FLOATING INDEBTEDNESS.
- 3281. ISSUE OF BONDS FOR CERTAIN PURPOSES.
- 3282. BRIDGE ACROSS SAN ANTONIO ESTUARY.
- 3285. CANAL FOR HARBOR.
- 3287. TIDE AND SALT MARSH LAND GRANT OF 1874.
- 3288. TIDE AND SALT MARSH LAND GRANT OF 1909.
- 3297. TIDE AND SALT MARSH LAND GRANT OF 1911.
- 3298. TIDE LAND GRANT OF 1911.

FREEHOLDERS' CHARTER.

ACT 3272—Freeholders' charter of the city of Oakland.

History: Voted for and ratified at a special municipal election held December 8, 1910. Filed with the secretary of state February 15, 1911, Stats. 1911, p. 1551. Amended (1) November 7, 1916, filed with the secretary of state January 24, 1917, Stats. 1917, p. 1699; (2) April 17, 1917, filed with the secretary of state, May 4, 1917, Stats. 1917, p. 1948; (3) August 22, 1916, filed with the secretary of state May 4, 1917, Stats. 1917, p. 1963; (4) August 7, 1918, filed with the secretary of state January 17, 1919, Stats. 1919, p. 1364; (5) April 15, 1919, filed with the secretary of state April 23, 1919, Stats. 1919, p. 1515. Originally incorporated by the act of May 4, 1852, Stats. 1852, p. 180. Repealed and reincorporated March 25, 1854, Stats. 1854, p. 46. Amended (1) March 6, 1860, Stats. 1860, p. 67; (2) May 14, 1861, Stats. 1861, p. 367; (3) May 15, 1861, Stats. 1861, p. 384; repealed and reincorporated April 24, 1862, Stats. 1862, p. 337. This last act recited in its title that it was amendatory, but in section 58, it contained an express repeal of the act of 1854. The latter act was again repealed by the act of April 25, 1863, Stats. 1863, p. 471, and the act of 1862 was supplemented by the act of April 27, 1863, Stats. 1863, p. 773, again supplemented by the act of April 4, 1864, Stats. 1863-64, p. 393, again by the act of March 30, 1874, Stats. 1873-74, and again by the act of March 30, 1876, Stats. 1875-76, p. 567. The charter of 1862 was superseded by the freeholders' charter voted for and ratified at a special election held November 6, 1888, adopted February 14, 1889, Stats. 1889, p. 513. This charter was amended (1) January 26, 1895, adopted January 31, 1895, Stats. 1895, p. 349; (2) March 1, 1907, adopted March 9, 1907, Stats. 1907, p. 1349; (3) March 5, 1909, adopted March 16, 1909, Stats. 1909, p. 1320.

1. Charter powers—Lease of tide lands.

—Under the Oakland charter the board of public works is empowered to execute a lease of tide lands whose title is vested by law in the city.—*Oakland v. Larue, etc., Co.*, 179 Cal. 207, 176 Pac. 361.

2. Same—Tide lands—Disposition of.

Tide lands granted to the town of Oakland by the act of incorporation of 1852 and to which the city succeeded under the act of 1854, could be granted or sold by the city under its charter of 1862 only in the manner therein prescribed, and an attempt to dispose of such land by mere resolution of the city council was wholly ineffectual.—*Cimpher v. Oakland*, 162 Cal. 87, 121 Pac. 374.

3. Same—Same—Same. — The property rights of the city of Oakland and its grant

under the incorporation act of 1852 must be determined by the proper judicial construction of that act, regardless of any subsequent change in the city limits; and the construction which the act of 1854 and the act of 1862 sought to give the act of 1852 so far as the boundaries of the town were therein defined, being erroneous, must be disregarded in determining those property rights.—*Oakland v. Oakland Water Front Co.*, 118 Cal. 160, 50 Pac. 770.

4. Same—Proceeding to make improvements under general law—Previous resolution declaring statute, not required.—Section 51 of the Oakland charter authorized the board to proceed under general law in making improvements, and where the proceedings were in strict accord with the provisions of the act of 1911 (Stats. 1911, p.

730), its proceedings were valid, notwithstanding the fact that no resolution was passed declaring the statute under which it was operating.—*Ransome-Crummy Co. v. Cornelius*, 39 Cal. App. 345, 178 Pac. 731.

5. Same—Jurisdiction of civil service board on appeal.—Sections 81 and 82 of the Oakland charter include the power of the civil service board to determine not only the guilt of the employee, but the punishment which he should receive.—*Hackett v. Moore*, (Cal. App.) 188 Pac. 308.

6. Same—Courts can not review wisdom of policy.—It is not within the power of the courts to weigh the considerations which should have actuated the people of Oakland in placing certain power with the civil service board of that city.—*Hackett v. Morse*, (Cal. App.) 188 Pac. 308.

7. Same—Board of education—Discharge of teacher.—Under section 192 of its charter the power of the Oakland board of education to discharge a school teacher for the next ensuing fiscal year by giving the required notice is absolute and unrestricted.—*Catania v. Board of Education*, 37 Cal. App. 593, 174 Pac. 334.

8. Same—Franchise for electric light plant.—Oakland was authorized in 1913 under its charter and under section 19, article XI, of the constitution, to grant a franchise for the supply of electric light to itself and its inhabitants in the method provided by law.—*Oakland v. Great Western Power Co.*, 33 Cal. App. Dec. 269.

9. Same—Merger of electric franchises.—The franchises granted by Oakland, under section 19, article XI, of the constitution, to the Great Western Power Company, for the distribution of electricity for lighting purposes, and the franchise to the same company to furnish electricity for heat and power granted under the Broughton act were merged in the franchise granted in 1913 to the same company.—*Oakland v. Great Western Power Company*, 33 Cal. App. Dec. 269.

10. Same—Police court—No charter existence.—The police court of the city of Oakland established by the charter of that city, has no legal existence.—*Ex parte Ah You*, 82 Cal. 339, 22 Pac. 929.

11. Same—Same—Freeholders' charter did not abolish previously existing court.—The police court of the city of Oakland, created by the Whitney act, was not abolished by the freeholders' charter of 1911.—*Ex parte Westenberg*, 167 Cal. 309, 139 Pac. 674.

12. Same—No power to abolish office by mere change of name.—The city council of the city of Oakland has no authority under the charter of 1911 to circumvent the object and purpose of the civil service system by enacting an ordinance giving to the positions of deputy plumbing inspector and assistant sanitary inspector the name of deputy sanitary and plumbing inspector without changing the duties of the position and to remove the incumbents under civil service regulations and appoint other persons in their places; and mandamus will lie

to compel the commissioner of public health and safety to reinstate such discharged employees.—*Barry v. Jackson*, 30 Cal. App. 165, 157 Pac. 828.

13. Same—The power to discharge an employee of the board of park directors of the city of Oakland is vested by the charter in the board itself and not in the mayor, notwithstanding the provisions of subdivision 1, section 29, article VII, and section 81 of article XIII of the charter of 1911.—*Gardner v. Board of Park Directors*, 35 Cal. App. 597, 170 Pac. 672.

14. Same—Create and abolish clerkships and offices—Section 31, charter of 1911.—The power given by section 31 of the charter of 1911 of the city of Oakland to create and abolish clerkships and offices, is not abridged as to the persons in the employ of the municipality on September 1, 1910.—*Foley v. City of Oakland*, 33 Cal. App. 128, 164 Pac. 419.

15. Same—Discretion of board as to awarding contract to "lowest responsible bidder."—Under the provisions of sections 126 and 130 of the charter of Oakland the city council is given a discretion in awarding a contract for the construction of a jail in its city hall to the "lowest responsible bidder" to consider the quality of the respective locking devices upon which the various bids were predicated, and it is not required to award the contract to the lowest responsible bidder subject to the sole limitation that the bidder shall not have been delinquent or unfaithful in any former contract with the city.—*West v. Oakland*, 30 Cal. App. 556, 159 Pac. 202.

16. Same—Power of mayor to fill vacancy in office of justice of peace.—The supervisors of the county of Alameda are empowered by section 111 of the Code of Civil Procedure to fill a vacancy in the office of a justice of the peace of that city, and the mayor of that city has no power under section 203 of the charter of Oakland to fill such vacancy.—*People v. Sands*, 102 Cal. 12, 36 Pac. 404 (S. C. 4 Cal. Unrep. 424, 35 Pac. 330).

17. Same—Office of justice of the peace a constitutional office.—The office of justice of the peace was created by the constitution and can not be created by any city charter, and such officer is elected at a general state election and holds his office under the provisions of the general state law.—*People v. Sands*, 102 Cal. 12, 36 Pac. 404 (S. C. 4 Cal. Unrep. 424, 35 Pac. 330).

18. Same—Oakland charter paramount to workmen's compensation act.—The industrial accident commission has no jurisdiction to award an indemnity to a police officer of the city of Oakland for medical expenses incurred by reason of an injury sustained in the course of his employment, it being held that where the city charter provides for disability compensation the workmen's compensation act has no application.—*Gilbert v. Oakland*, 3 I. A. C. Dec. 58.

Following the decision in *Crehan v. Los Angeles*, 1 I. A. C. Dec. 253.

19. Recall—Mandamus to compel clerk to make certificate.—Mandamus will issue to compel a clerk to determine the sufficiency of a recall petition, where he refuses to perform this duty.—*Fraser v. Cummings*, (Cal. App.) 192 Pac. 100.

20. Same—Clerk's certificate conclusive.—It is for the clerk and not the court to determine whether a recall petition complies with the requirements of the charter, and in the absence of an abuse of discretion his conclusion will not be disturbed.—*Fraser v. Cummings*, (Cal. App.) 192 Pac. 100.

21. Recall—Sufficiency of petition.—Where the signatures of signers to a recall petition are sufficient to identify the signer, and were otherwise unobjectionable, they should be counted, although the signers did use their full names.—*Fraser v. Cummings*, (Cal. App.) 192 Pac. 100.

22. Same—Same—Basis of percentage.—The vote at the last preceding primary election cast for mayor must be taken as a basis for the percentage required in a recall of an elective officer of the city of Oakland, where, under the terms of section 5, subdivision 21, of the charter, the mayor was elected at such primary.—*Fraser v. Cummings*, (Cal. App.) 192 Pac. 100.

23. Same—Same—Defective verification of signatures—Clerk's determination conclusive.—In mandamus to compel the certification of a recall petition the burden is on the petitioner to show the sufficiency of the petition, and in the absence of such showing the determination of the clerk that some of the certificates were invalid because of defective verification can not be disturbed.—*Fraser v. Cummings*, (Cal. App.) 192 Pac. 100.

24. Same—Section 1142, Political Code applies.—Under the Oakland charter the provisions of section 1142, Political Code, applies to recall elections.—*Vincent v. Mott*, 163 Cal. 342, 125 Pac. 346.

25. Retirement pension of police officer.—Under the Oakland charter section 91 as amended in 1919, and section 95, a police corporal retired less than one year after the amendment of section 91 is entitled to a pension based on the salary allowed by it.—*Rumetsch v. Davie*, (Cal. App.) 190 Pac. 1075.

26. Same—"Children" not adult children.—The adult children of a police officer of the city of Oakland are not "children" within the meaning of subdivision 2, section 96, of the charter, entitling them to the death benefit in certain cases.—*Mackey v. Mott*, 25 Cal. App. 110, 142 Pac. 1082.

27. Same—"Children" defined.—The term "children" in subdivision 2 of section 96 of the charter of Oakland was not intended to be used in the larger sense of sons and daughters, and it was not contemplated by the framers of the charter that provision should be made for grown sons and daughters, but it was unmistakably the purpose

of the whole act to make provision for the aged and infirm officers and certain necessitous relatives and minor children.—*Mackey v. Mott*, 25 Cal. App. 110, 142 Pac. 1082.

28. "Extra man" held "member" of fire department.—Under the provisions of section 97 of the charter of 1911 an "extra man" employed by the fire department of the city of Oakland at the time said charter went into effect was a "member" of such department, in the meaning of sections 98 et seq., of that charter.—*Parke v. Board of Trustees*, 34 Cal. App. 632, 168 Pac. 582.

29. Contract for jail—Plans and specifications—Unsuccessful bidder can not complain of want of.—An unsuccessful bidder for the furnishing of a jail in the Oakland city hall can not complain of the want of authority in the city council to investigate the merits of the locking devices submitted by the various bidders on the ground that the plans and specifications did not call for or require the submission of models of devices nor provide for comparison of different devices, where such unsuccessful bidder co-operated with the city council in making comparisons and investigations to the extent of exhibiting before the board a working model of its particular device and of suggesting the names of cities where such device was in actual operation.—*West v. Oakland*, 30 Cal. App. 556, 159 Pac. 202.

30. Private patrol service—"Municipal affair"—Municipal ordinance supreme.—The matter of licensing and regulating a private patrol service or system within the city of Oakland is a "municipal affair" within the meaning of section 6, article XII, of the constitution, and such matter is uncontrolled by general laws; and so far as the private detective act of 1915 undertakes to authorize the employees or operatives of such an agency to act as uniform patrolmen or watchmen within the city of Oakland, without complying with the ordinances of that city, it must yield to the supreme control of the city ordinances.—*In re Hitchcock*, 34 Cal. App. 111, 166 Pac. 849.

31. Same—Ordinance not invalid.—An ordinance regulating the granting of permits for a patrol service fixing a license therefor and providing a penalty for its violation, is not invalid on the ground that it requires application to be referred to the chief of police for investigation and report to the council.—*In re Hitchcock*, 34 Cal. App. 111, 166 Pac. 849.

32. Auditor and treasurer—Liability for commissions on taxes collected.—Under the Oakland charter of 1889 the office of "auditor and treasurer" is a single office, and the incumbent is entitled only to the salary fixed for that office and is liable on his official bond for commissions retained on taxes collected and not paid into the treasury.—*Oakland v. Snow*, 145 Cal. 419, 78 Pac. 1060.

SETTLEMENT OF CONTROVERSIES.

ACT 3273—An act to enable the city of Oakland to settle its controversies.

History: Approved March 21, 1868, Stats. 1867-68, p. 222.

1. Effect of compromise under the act.—The city of Oakland, by virtue of the compromise under the authority of this act abandoned its claim to streets previously claimed, and revoked previous dedications.—Oakland v. Oakland, etc., Co., 162 Cal. 675, 124 Pac. 251.

ALAMEDA, OAKLAND AND PIEDMONT RAILROAD COMPANY.

ACT 3274—An act to authorize the city council of the city of Oakland, Alameda county, to grant certain privileges to the Alameda, Oakland and Piedmont Railroad Company.

History: Approved March 27, 1876, Stats. 1875-76, p. 499.

Editor's note: See, also, act of 1865-66, p. 164, granting certain privileges to the Oakland Railroad Company. This act was amended 1867-68, p. 31. It was cited in Oakland Railroad Co. v. Oakland, etc., R. R. Co., 45 Cal. 365, 370, 371, 13 Am. Rep. 181.

OAKLAND RAILROAD COMPANY.

ACT 3274a—An act to grant the Oakland Railroad Company the right of way for a railroad track in the city of Oakland and Alameda county, and to run horse cars thereon.

History: Approved March 3, 1866, Stats. 1865-66, p. 164. Amended February 4, 1868, Stats. 1867-68, p. 31.

ISSUE OF BONDS TO CANCEL SCHOOL BONDS.

ACT 3279—An act authorizing the city of Oakland to issue and sell bonds of the city of Oakland, and with the proceeds thereof to pay and cancel certain other bonds of said city.

History: Approved March 30, 1874, Stats. 1873-74, p. 845.

This act authorized the sale of bonds to redeem bonds issued under the previous act (Act 3278a).

FUNDING OF FLOATING INDEBTEDNESS.

ACT 3280—An act to provide for the liquidation of the floating indebtedness of the city of Oakland and to prevent the incurring of further debts. [Stats. 1873-74, p. 799.]

History: Approved March 30, 1874, Stats. 1873-74, p. 799.

The act authorized the issue of bonds not to exceed \$100,000.

ISSUE OF BONDS FOR CERTAIN PURPOSES.

ACT 3281—An act to provide funds for the city of Oakland.

History: Approved March 27, 1872, Stats. 1871-72, p. 590.

This act authorized the city council to issue bonds.

BRIDGE ACROSS SAN ANTONIO ESTUARY.

ACT 3282—An act authorizing the city of Oakland to construct a bridge across the estuary of San Antonio, between Eighth street and East Ninth street.

History: Approved April 1, 1876, Stats. 1875-76, p. 653.

CANAL FOR HARBOR.

ACT 3285—An act to facilitate the construction of a canal for the improvement of Oakland harbor.

History: Approved April 3, 1876, Stats. 1875-76, p. 862. Amended and supplemented February 28, 1878, Stats. 1877-78, p. 113.

TIDE AND SALT MARSH LAND GRANT OF 1874.

ACT 3287—An act granting certain salt marsh and tide lands to the city of Oakland.

History: Approved February 18, 1874, Stats. 1873-74, p. 132.

See, post, Act 3288.

TIDE AND SALT MARSH LAND GRANT OF 1909.

ACT 3288—An act granting certain lands and salt marsh and tide lands of the state of California, to the city of Oakland.

History: Approved March 22, 1909, Stats. 1909, p. 665.

See preceding act, Act 3287.

1. Constitutionality—Not special legislation.—The act is not special legislation.—*Cimpher v. Oakland*, 162 Cal. 87, 90, 121 Pac. 374.

2. Tide lands—Disposition only in manner prescribed.—Tide lands granted to the town of Oakland at its incorporation (Stats.

1852, p. 181), to which the city of Oakland succeeded (Stats. 1854, p. 187, § 12) could be disposed of only in the manner prescribed by the charter of 1862 (338), and an attempt to make such disposition by a resolution of the city council was wholly ineffectual.—*Cimpher v. Oakland*, 162 Cal. 87, 89, 121 Pac. 374.

TIDE AND SALT MARSH LAND GRANT OF 1911.

ACT 3297—An act granting certain lands and salt marsh and tide lands of the state of California, including the right to wharf out therefrom to the city of Oakland, and regulating the management, use and control thereof.

History: Approved May 1, 1911, Stats. 1911, p. 1254.

Marsh and tide lands granted to Oakland. Purposes for which lands may be used. Belt line railroad. Rights of persons in possession. Discrimination in rates. Right to fish.

§ 1. There is hereby granted to the city of Oakland, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California held by said state by virtue of its sovereignty in and to all the salt marsh and tide lands in the present city of Oakland, lying and being southerly from the southern line of East Fourteenth street in said city of Oakland, and easterly from the eastern limits of the former town of Oakland (as said easterly limits of said town are described in the act of the legislature of the state of California, entitled "An act to incorporate the town of Oakland and to provide for the construction of wharves thereat," approved May 4, 1852, and as said eastern limits of said town are determined and defined by the supreme court of the state of California, in the action entitled "*City of Oakland versus Oakland Water Front Company*," decided by said court September 13, 1897), and the right to wharf out therefrom, to be forever held by said city and by its successors in trust for the uses and purposes and upon the expressed conditions following, to wit:

That said lands shall be used by said city and its successors, only for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any time, grant, convey, give, or alien said lands, or any part thereof, to any individual, firm or corporation for any purposes whatever; provided, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the state of California, and with the requirements of commerce or navigation at said harbor, for a term not exceeding twenty-five years, and on such other terms and conditions as said city may determine, including a right to renew such lease or leases for a further term not exceeding twenty-five years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases, and said lease or leases may be for any and all purposes which shall not interfere with navigation or commerce, with reversion to the said city on the termination of such lease or leases of any and all improvements thereon, and on such other terms and conditions as the said city may determine, but for no purpose which will interfere with navigation or commerce; subject also to a

reservation in all such leases or such wharfing out privileges of a street, or of such other reservation as the said city may determine for a belt line railroad where the same may be deemed necessary by the said city; and such other reservations as the city may require, and for sewer outlets, and for gas and oil mains, and for hydrants, and for electric cables and wires, and for such other conduits for municipal purposes, and for such public and municipal purposes and uses as may be deemed necessary by the said city, provided, however, that each person, firm or corporation or their heirs, successors or assigns now in possession of land or lands abutting on said lands, within the boundaries of the city of Oakland, lying and being southerly from the southern line of East Fourteenth street in said city of Oakland and easterly from the eastern limits of the former town of Oakland as hereinbefore firstly described, and lying and being westerly from the easterly boundary line of the city of Oakland as it existed in A. D. 1908, shall have a right to obtain a lease for a term of twenty-five years from said city of said land and wharfing out privileges therefrom with a right of renewal for a further term of twenty-five years pursuant to the provisions of this act and on such terms and conditions as said city may determine and specify, subject to the right of said city to terminate said lease at the end of the first twenty-five years or refuse to renew the same, or to terminate the lease so renewed during the term of such renewed lease on such just and reasonable terms for compensation for improvements at the then value of said improvements as said city may determine and specify.

Upon obtaining such lease and wharfing out privileges such person, firm or corporation, their heirs or assigns, shall quitclaim to said city any right they or any of them may claim or have to the said lands hereby granted.

This grant shall carry the right to such city of the rents, issues and profits in any manner hereafter arising from the lands or wharfing out privileges hereby granted.

The state of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California.

No discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors in the management, conduct or operation of any of the utilities, structures or appliances mentioned in this section. There is hereby reserved in the people of the state of California the right to fish in the waters on which said lands may front with the right of convenient access to said waters over said lands for said purpose.

§ 2. This act shall take effect immediately.

1. Tide land lease.—A lease of water front privileges by the board of public works of the city of Oakland, conveying for harbor development purposes, tide lands the title to which was vested in the city, drawn in accordance with the terms of the act of 1911, held valid.—*Oakland v. Larue, etc., Co.*, 179 Cal. 207, 176 Pac. 361.

TIDE LAND GRANT OF 1911.

ACT 3298—An act granting certain tide lands and submerged lands of the state of California to the city of Oakland and regulating the management, use and control thereof.

History: Approved May 1, 1911, Stats. 1911, p. 1258. Amended (1) April 5, 1917, in effect July 27, 1917, Stats. 1917, p. 63; (2) May 25, 1919, in effect July 25, 1919, Stats. 1919, p. 1088.

Tidelands granted to Oakland.

§ 1. There is hereby granted to the city of Oakland, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California held by said state by virtue of its sovereignty in and to tidelands and submerged lands, whether filled or unfilled, which are included within that portion of the

city of Oakland that lies westerly of the western line of Pine street, as Pine street exists between Atlantic street and Goss street, and as shown upon that certain map entitled "map of land on Oakland point (railroad ferry landing) city of Oakland, tract 406," filed May 24, 1864 in book of maps 5, page 33, records of Alameda county, and said western line of Pine street produced northerly and southerly, to be forever held by said city and by its successors in trust for the use and purposes and upon the expressed conditions following, to wit:

Use of lands.

(a) That said lands shall be used by said city and its successors, only for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purposes, whatever; provided, that said city, or its successors, may grant franchises thereon for limited periods, but in no event exceeding fifty years for wharves and other public uses and purposes, and may lease said lands or any part thereof for limited periods, but in no event exceeding fifty years, for the purposes consistent with the trusts upon which said lands are held by the state of California, and with the requirements of commerce or navigation at said harbor.

Improvement of harbor.

(b) That said harbor shall be improved by said city without expense to the state, and shall always remain a public harbor for all purposes of commerce and navigation, and the state of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California.

Rates, tolls, etc.

(c) That in the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph (a), no discrimination in rates, tolls, or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors.

Right to fish reserved to people.

(d) There is hereby reserved, however, in the people of the state of California the absolute right to fish in all the waters of said harbor, with the right of convenient access to said waters over said land for said purpose. [Amendment of May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1088.]

This section was also amended April 5, 1917, Stats. 1917, p. 63.

§ 2. This act shall take effect immediately.

Upon the amendment of § 1, § 2 became inoperative, but it was not referred to in the repealing act.

CHAPTER 255.

ODD FELLOWS.

References: Incorporation, see Kerr's Cyc. Civil Code, §§ 593, et seq.

CONTENTS OF CHAPTER.

ACT 3304. AUTHORIZING LEASE OF LOT.

3305. GRANT OF CERTAIN LANDS TO SAN DIEGO LODGE No. 153.

AUTHORIZING LEASE OF LOT.

ACT 3304—An act to authorize the trustees of the Independent Order of Odd Fellows, of the city of San Francisco, to lease the lot of land in the city and county of San Francisco held by said trustees for the Independent Order of Odd Fellows of said city.

History: Became a law by virtue of section 17, article IV of the constitution, March 27, 1878, Stats. 1877-78, p. 561.

GRANT OF CERTAIN LANDS TO SAN DIEGO LODGE NO. 153.

ACT 3305—An act granting certain lands in the city of San Diego to San Diego Lodge No. 153, of the Independent Order of Odd Fellows of California; and ratifying and declaring valid a conveyance of said lands heretofore made by said city to said lodge.

History: Approved May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 932.

Certain lands granted to San Diego Lodge No. 153, I. O. O. F.

§ 1. There is hereby granted to San Diego Lodge No. 153, of the Independent Order of Odd Fellows, of California, and to its successors and assigns, all that certain tract of land situate and being in the city of San Diego, county of San Diego, state of California, and bounded and described as follows, viz.: Beginning at the southeastern corner of the cemetery lot as designated in the map of the city lands as drawn by James Pascoe bearing date May, A. D. 1870; thence westerly along the south boundary of said cemetery lot fifteen chains; thence due north seven and twenty-five hundredths chains; thence easterly, parallel with the south boundary of the tract, twelve and seventy-eight hundredths chains; thence along the eastern boundary of the pueblo of San Diego, as surveyed by J. C. Hayes, seven and fifty-nine hundredths chains to the point of beginning; comprising ten acres of land, together with all and singular the tenements and appurtenances thereunto in any wise appertaining; and being the same tract of land sold and conveyed to said lodge by a deed duly executed and delivered by said city of San Diego by and through its trustees on the twenty-ninth day of September, A. D. one thousand eight hundred seventy, and which deed was duly recorded in the office of the county recorder of said county of San Diego, in book number twelve of deeds, at page four hundred forty-seven, records of said county of San Diego, on the nineteenth day of May, A. D. one thousand eight hundred seventy-one, and which said deed and conveyance by said city of San Diego to said lodge is hereby ratified, confirmed and declared valid and effectual from the date thereof.

Right to sell, etc.

§ 2. Said San Diego lodge shall have the free and exclusive use, control and management of said tract of land forever, and shall have the power to sell and convey lots or plots of land within said tract to purchasers, and all conveyances shall be made in the name of said lodge and shall be executed by the noble grand the secretary of said lodge, with the seal thereof attached thereto; and every conveyance and transfer of lots or plots within said tract heretofore made by or on behalf of said lodge is hereby declared to be valid and effectual to transfer the title to the purchaser.

Repealed.

§ 3. All acts and parts of acts inconsistent with or in conflict with the provisions of this act, so far as they apply or refer to the said tract of land herein granted, are hereby repealed.

CHAPTER 256.

OFFICERS.

References: Offices and officers, in general, see Kerr's Cyc. Political Code, and Kerr's Cyc. Penal Code, appropriate subject.

Particular officers, see particular title.

See, generally, tits. "Aliens"; "Leases."

CONTENTS OF CHAPTER.

ACT 3317. INTOXICATION OF OFFICERS.

3319. STATE OFFICERS NOT TO PROFIT BY LABOR OF INMATES OF STATE INSTITUTIONS.

3320. UNLAWFUL REMOVAL FROM OFFICE.

3321. VACATIONS OF CERTAIN STATE EMPLOYEES.

3322. LIABILITY OF OFFICERS IN DAMAGES.

3323. RECALL OF ELECTIVE OFFICERS.

3324. TRANSFER OF CERTAIN POWERS OF MUNICIPAL TO COUNTY OFFICERS.

INTOXICATION OF OFFICERS.

ACT 3317—An act relating to the intoxication of officers.

History: Approved April 15, 1880, Stats. 1880, p. 77.

Intoxication of officers. Misdemeanor. Penalty.

§ 1. Any officer of a town, village, city, county, or state, who shall be intoxicated while in discharge of the duties of his office, or by reason of intoxication is disqualified for the discharge of, or neglects his duties, shall be guilty of a misdemeanor, and on conviction of such misdemeanor shall forfeit his office; and in such case the vacancy occasioned thereby shall be filled in the same manner as if such officer had filed his resignation in the proper office, and it had been accepted by the proper authority; provided, such acceptance shall have been necessary to make the office vacant.

Act takes effect when

§ 2. This act shall take effect immediately.

STATE OFFICERS NOT TO PROFIT BY LABOR OF INMATES OF STATE INSTITUTIONS.

ACT 3319—An act forbidding the employment of the inmates of state institutions in the manufacture, or production of articles, for the use of state officers, or the officers and employees of state institutions.

History: Approved March 19, 1903, Stats. 1903, p. 210.

State officers not to profit by labor of inmates of state institutions.

§ 1. No inmate of any state institution shall be employed in the manufacture or production, of any article, intended for the private and personal use of any state officer, or officer, or employee, of any state institution; provided, that this act shall not prevent repairing of any kind nor the employment of such inmates in household or domestic work connected with such institution.

Repeal of conflicting acts.

§ 2. All acts or parts of acts in conflict with this act, are hereby repealed.

§ 3. This act shall take effect on and after its passage.

UNLAWFUL REMOVAL FROM OFFICE.

ACT 3320—An act to execute and carry into effect section 3 of article 20 of the constitution of the state of California.

History: Approved March 23, 1901, Stats. 1901, p. 552.

Removal from office, when may be resisted by injunction.

§ 1. Whenever any person within this state shall hold any office or position of public trust and shall have taken the oath of office prescribed by section 3 of article 20 of the

state constitution upon entering upon such office, or shall, after his election or appointment, have offered to take such oath, it shall be unlawful to remove such person from such office or position of public trust because such person has not complied with some or any provision of any law, charter, or regulation prescribing an additional test or qualification for such office or position of public trust, and any person who is removed or threatened with removal from any office or position of public trust under any pretense or device whatever, if the real reason be because of noncompliance with provisions requiring such additional test or qualification, shall be entitled to restrain such unlawful removal or to enforce restoration by process of injunction, both prohibitory and mandatory.

Removal from office, when unlawful.

§ 2. It shall be unlawful for any person having the power of removal from office of any public official, state or local, to remove or threaten to remove such official from his office because such official in the appointment of any person to a position of public trust under such last-named official, refuses to require any test or additional qualification than the oath referred to in section one of this act as a condition of permitting such appointee to enter upon or remain in such position of public trust; and such person making or threatening such unlawful removal from office may be restrained by prohibitory and mandatory injunction from effecting such removal under any pretense or device if the real reason of such removal or threatened removal be or was such as herein declared unlawful.

§ 3. This act shall take effect immediately.

VACATIONS OF CERTAIN STATE EMPLOYEES.

ACT 3321—An act providing for vacations for certain employees of the state.

History: Approved March 15, 1909, Stats. 1909, p. 383. Amended April 10, 1905. In effect August 8, 1915. Stats. 1915, p. 51.

Vacations of state employees.

§ 1. Each employee regularly employed at the state hospitals and each employee regularly employed in the service of any of the state commissions or state boards or in the state printing office who shall have been employed for a period of not less than six months shall be allowed, during each year of his service, a vacation of not less than fifteen working days duration; said vacation to be without loss of pay, and the time allowed for said vacation to be designated by the management of such state hospitals, and by the members of the state commissions and state boards and by the superintendent of state printing. [Amendment of April 10, 1915. In effect August 8, 1915. Stats. 1915, p. 51.]

§ 2. This act shall take effect immediately.

The amending act renders this section inoperative, but it is not mentioned.

LIABILITY OF OFFICERS IN DAMAGES.

ACT 3322—An act relating to the liability in damages of the officers of districts, towns, cities, cities and counties, counties and of the state of California for injuries to person or property resulting from defects and dangers in public streets, highways, bridges, buildings, work or property, prescribing the duties of certain public officers with respect thereto, and repealing an act entitled "An act relating to the liability of public officers for damages resulting from defects and dangers in streets, highways, public buildings, public work or property," approved April 26, 1911.

History: Approved May 18, 1919. In effect July 22, 1919. Stats. 1919, p. 756. Prior act (known as "Fridham Act") of April 26, 1911, Stats. 1911, p. 1115, repealed by the present act.

When officers are not liable for damages.

§ 1. No officer of any district, town, city, city and county, county, or of the state of California, shall be liable for any damage or injury to any person or property hereafter resulting from the defective or dangerous condition of any public street, highway, bridge, building, work or property, unless it shall first appear: (1) that the injury sustained was the direct and proximate result of such defective or dangerous condition, (2) that such officer had notice of such defective or dangerous condition or that such defective and dangerous condition was directly attributable to work done by him, or under his direction, in a negligent, careless or unworkmanlike manner, (3) that he had authority and it was his duty to remedy such condition at the expense of the state or of a political subdivision thereof and that funds for that purpose were immediately available to him, and (4) that, within a reasonable time after receiving such notice and being able to remedy such condition, he failed so to do, or failed to take reasonable steps to give adequate warning of such condition; and then only when it shall further appear that such damage or injury was sustained while such public street, highway, bridge, building, work or property was being carefully used, and that due care was being exercised to avoid the danger due to such condition; provided, however, that this act shall not be construed as enlarging the duty or liability of any public officer.

Counsel in defense of suit brought against officer.

§ 2. If suit is brought against any such officer of any district, town, city, city and county, county, or of the state of California, on account of any action, or work done by him, in his official capacity as such officer, when done under and according to the provisions of the law respecting his said office, it shall be the duty of the attorney for the district, the corporation counsel, city attorney, district attorney, county counsel, or attorney general of the state, as the case may be, to act as counsel in defense of such suit, unless provision has been made by law for the employment of other counsel in connection with the performance of the work out of which such suit arises, and in such event it shall be the duty of such other counsel to defend such suit.

Stats. 1911, p. 1115, repealed.

§ 3. An act entitled "An act relating to the liability of public officers for damages resulting from defects and dangers in streets, highways, public buildings, public work or property," approved April 6, 1911, and all acts and parts of acts in conflict herewith are hereby repealed.

1. Right of action dependent upon statute.—In the absence of a statutory provision permitting it, an action will not lie against a municipal corporation for damages caused by the negligence of its officers, agents, and servants in the performance of the public or governmental duties of such corporations.—*Brunson v. Santa Monica*, 27 Cal. App. 89, 148 Pac. 950. See, also, *Davoust v. Alameda*, 149 Cal. 69, 9 Ann. Cas. 847, 5 L. R. A. (N. S.) 536, 84 Pac. 760.

2. Same.—In the absence of a statutory provision declaring otherwise, a municipal corporation in California is not liable in damages for the neglect of its officers or agents in the maintenance or care of streets or bridges.—*Winbigler v. Los Angeles*, 45 Cal. 36.

3. Same.—In the absence of a statutory provision declaring otherwise, a municipal corporation is not liable for the negligence of its officers or agents committed while

engaged in repairing a sewer.—*Chope v. Eureka*, 78 Cal. 588, 12 Am. St. Rep. 113, 4 L. R. A. 325, 21 Pac. 364.

4. Same.—In the absence of a statutory provision declaring otherwise, a municipal corporation in California is not liable for the neglect of its officers or agents in the maintenance or care of streets or bridges.—*South v. San Benito Co.*, 40 Cal. App. 13, 180 Pac. 354.

5. Same—Repair of sewer.—In the absence of statutory provisions permitting it, a municipal corporation is not liable for the negligent care and maintenance of its streets or bridges by its officers nor for such negligence while engaged in repairing a sewer, nor in the maintenance and operation of a municipal dumping ground on the street which plaintiff was permitted and compelled to use.—*Brunson v. Santa Monica*, 27 Cal. App. 89, 148 Pac. 950.

6. Same—Except when conducting non-governmental functions.—A municipal cor-

poration is liable for damages caused by negligence in its conduct of some kinds of business carried on by it for the public use, such as gas works, electric works and water works.—*Brunson v. City of Santa Monica*, 27 Cal. App. 89, 148 Pac. 950. See, also, *Davoust v. Alameda*, 149 Cal. 69, 9 Ann. Cas. 847, 5 L. R. A. (N. S.) 536, 84 Pac. 760.

7. Same—Same.—As to the liability of municipal corporations for personal injuries resulting from negligence in the maintenance and operation of a structure maintained and operated in its private and proprietary as distinguished from its governmental capacity, see *Chafor v. Long Beach*, 174 Cal. 478, 163 Pac. 670, Ann. Cas. 1918D, 106, L. R. A. 1917E, 685.

8. Same — Same — Operation of electric light plant.—A municipality is liable for the negligent operation of an electric light plant owned by it and used for the purpose of lighting the city and furnishing electric light for domestic use to the inhabitants thereof.—*Davoust v. Alameda*, 149 Cal. 69, 9 Ann. Cas. 847, 5 L. R. A. (N. S.) 536, 84 Pac. 760.

9. Same—Same—Authority to maintain not material.—The fact that authority to maintain an electric lighting plant for public and domestic use was given to the board of trustees and not in terms to the city, is immaterial in an action against the city for the death of a person caused by the negligent operation of such plant.—*Davoust v. Alameda*, 149 Cal. 69, 9 Ann. Cas. 847, 5 L. R. A. (N. S.) 536, 84 Pac. 760.

10. Construction—Officers liable only for neglect of ministerial duty.—Public officers are liable under this act only for negligence in the performance or failure to perform a "ministerial" act as distinguished from one that is "judicial" or "discretionary."—*Ham v. Los Angeles Co.*, (Cal. App.) 189 Pac. 462.

11. Same—Same.—A street superintendent or a road supervisor upon whom is imposed by statute or ordinance or under the express direction of the legislative or administrative authority of a city or county, the duty of keeping in repair or making safe for public use the streets or highways, and to whom the means of carrying out his duty is available, is liable for a negligent performance of his duty, provided that he has had certain notice, under recent legislation ("Pridham act") of the condition of the street or highway demanding attention.—*Ham v. Los Angeles Co.*, (Cal. App.) 189 Pac. 462.

12. Same—Duty must be mandatory.—Before a public official becomes liable for a breach of duty, the duty must be plain and mandatory, the means and ability to perform it must exist, and it must be such as not to involve the exercise of any discretion on his part, either as to its performance or non-performance or as to the manner of its performance.—*South v. San Benito Co.*, 40 Cal. App. 13, 180 Pac. 354.

14. Construction—Officers not responsible as principals.—The city trustees are not

responsible as principals for the faithful performance by the superintendent of streets of the duties of his office, and where they had no actual notice that such superintendent left a dangerous trench in the street unguarded, and without warning signals, they can not be held liable under the act for damages resulting therefrom.—*Dobbins v. Arcadia*, (Cal. App.) 186 Pac. 190.

15. Same—Bridges across county line stream.—No duty is imposed by law upon the board of supervisors of one county to maintain a bridge across a county line creek, and they can not be held liable as for neglect, under this act for the failure to keep such a bridge in repair, or to repair the county road in the adjoining county, or to place warning signals on the road leading to such bridge on the side of the latter county.—*South v. San Benito Co.*, 40 Cal. App. 13, 180 Pac. 354.

16. Construction—"Pridham act"—Necessity of warning signs or barriers on streets or highways out of repair.—The "Pridham act" did not absolve those in charge of the care and maintenance of a highway from liability for negligence in failing to place warning signs or barriers at dangerous breaks in a road until such time as it might be convenient to repair the break.—*Ham v. Los Angeles Co.*, (Cal. App.) 189 Pac. 462.

17. Complaint—Necessary averments.—In order to state a cause of action under the act, the complaint should aver facts exonerating the officer or board charged with the care and repair of the street in question where the action was for damages for injury on a public street and was due to the fact that such street was out of repairs.—*Coffey v. Berkeley*, 170 Cal. 258, 149 Pac. 559.

18. Same—"Pridham act"—Necessary averments.—In an action under the "Pridham act" against county highway officials for damages resulting from their negligent failure to keep a highway in repair, the plaintiff must allege and prove that he was at the time of the injury exercising due care.—*Ham v. Los Angeles Co.*, (Cal. App.) 189 Pac. 462.

19. Constitutionality—Title does not cover liability of city.—The act is unconstitutional in that the title purports to deal with the liability of public officers for damages resulting from certain specified causes, and this can not include the subject of liability of the public corporations in whose services such officers may be, thus creating a new rule of liability against such corporations.—*Brunson v. Santa Monica*, 27 Cal. App. 89, 148 Pac. 950.

20. Same—Same.—The act is void as to a purported legislation therein contained attempting to create a new rule of liability as against the corporations themselves, on the ground that such liability was not within the scope of the act as described in its rule.—*South v. San Benito Co.*, 40 Cal. App. 13, 180 Pac. 354; *Dobbins v. Arcadia* (Cal. App.), 186 Pac. 190.

See, also, *Brunson v. Santa Monica*, 27 Cal. App. 89, 148 Pac. 950.

21. Same—Same.—The act can not by any process of reasoning be made to include the subject of the liability of the public cor-

porations in whose services the officers may be.—*South v. San Benito Co.*, 40 Cal. App. 13, 180 Pac. 354.

RECALL OF ELECTIVE OFFICERS.

ACT 3323—An act to provide for the recall of elective officers of incorporated cities and towns.

History: Approved January 2, 1912, Stats. 1911 (ex. sess.), p. 128.

Recall of officers of municipal corporations. Petition for removal. Examination by clerk. Nominations. Ballots. Succession to removed officer.

§ 1. The holder of any elective office of any incorporated city or town may be removed or recalled at any time by the electors; provided he has held his office at least six months. The provisions of this statute are intended to apply to officials now in office, as well as to those hereafter elected. The procedure to effect such removal or recall shall be as follows: A petition demanding the election of a successor to the person sought to be removed shall be filed with the clerk of the legislative body of such city or town, which petition shall be signed by qualified voters equal in number to at least twenty-five per cent of the entire vote cast within such city or town for all candidates for the office which the incumbent sought to be removed occupies, at the last preceding regular municipal election at which such officer was voted for (or a like percentage of such vote within those precincts of the city or town embraced within the ward or subdivision of the city or town entitled to vote for a successor to the officer named, in case of an official not elected by the city or town at large), and shall contain a statement of the grounds on which the removal or recall is sought, which statement is intended solely for the information of the electors. Any insufficiency of form or substance in such statement shall in nowise affect the validity of the election and proceedings held thereunder. The signatures to the petition need not all be appended to one paper. Each signer shall add to his signature his place of residence and occupation, giving street and number, where such street and number, or either, exist, and if no street or number exist, then such a designation of the place of residence as will enable the location to be readily ascertained. Each such separate paper shall have attached thereto an affidavit made by a qualified elector of the city or town (or particular subdivision thereof as the case may be) and sworn to before an officer competent to administer oaths, stating that the affiant circulated that particular paper and saw written the signatures appended thereto; and that according to the best information and belief of the affiant, each is the genuine signature of the person whose name purports to be thereunto subscribed, and of a qualified elector of the city or town (or particular subdivision thereof). Within ten days from the date of filing such petition, the clerk shall examine and from the records of registration ascertain whether or not said petition is signed by the requisite number of qualified voters, and he shall attach to said petition his certificate showing the result of said examination. If by the clerk's certificate the petition is shown to be insufficient, it may be supplemented within ten days from the date of such certificate, by the filing of additional papers, duplicates of the original petition except as to the names signed. The clerk shall, within ten days after such supplementing papers are filed, make like examination of the supplementing petition, and if his certificate shall show that all the names to such petition, including the supplemental papers, are still insufficient, no action shall be taken thereon; but the petition shall remain on file as a public record; and the failure to secure sufficient names shall be without prejudice to the filing later of an entirely new petition to the same effect. If required by the clerk, the legislative body of said city or town, shall authorize him to employ, and shall provide for the compensation to be paid, persons necessary in the examination of said petition and supplementing petition, all in addition to the persons regularly employed by him in his office. In case the clerk is the officer sought to be

recalled, the duties herein provided to be performed by him shall be performed by some other person designated by said legislative body for that purpose. If the petition shall be found to be sufficient, the clerk shall submit the same to the legislative body of the city or town without delay, whereupon, that body shall forthwith cause a special election to be held within not less than thirty-five nor more than forty days after the date of the order calling such election, to determine whether the voters will recall such officer; provided, that if a regular municipal election is to occur within sixty days from the date of the order calling such election, the legislative body of the city or town may, in its discretion, postpone the holding of such election to such regular municipal election or submit such recall election at any such election occurring not less than thirty-five days after such order. If a vacancy occur in said office after a recall petition is filed, the election shall nevertheless proceed as in this section provided. One petition is sufficient to propose the removal and election of one or more elective officials. One election is competent for the removal and election of one or more elective officials. Nominations for any office under such recall election shall be made by petition in the manner prescribed by section 1188 of the Political Code; except that no party affiliation of candidate, signer or verification deputy shall be given, nor shall the election as a convention delegate or participation in a primary election be any bar to signing such petition. Upon the sample ballot there shall be printed in not more than two hundred words, the reasons set forth in the recall petition for demanding the recall of the officer, and upon the same ballot in not more than two hundred words, the officer may justify his course in office. There shall be printed on the recall ballot, as to every officer whose recall is to be voted on thereat, the following question: "Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of the office)?" following which question shall be the words "Yes" and "No" on separate lines, with a blank space at the right of each, in which the voter shall indicate by stamping a cross (X) his vote for or against such recall. On such ballots, under each such question, there shall also be printed the names of those persons who have been nominated as candidates to succeed the person recalled, in case he shall be removed from office by said recall election; but no vote shall be counted for any candidate for said office unless the voter also voted on said question of the recall of the person sought to be recalled from said office. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. If a majority of those voting on said question of the recall of any incumbent from office shall vote "No," said incumbent shall continue in said office. If a majority shall vote "Yes," said incumbent shall thereupon be deemed removed from such office, upon the qualification of his successor. The canvassers shall canvass all votes for candidates for said office and declare the result in like manner as in a regular election. If the vote at any such recall election shall recall the officer, then the candidate who has received the highest number of votes for the office shall be thereby declared elected for the remainder of the term. In case the person who received the highest number of votes shall fail to qualify within ten days after receiving the certificate of election, the office shall be deemed vacant and shall be filled according to law.

Application of act to chartered cities.

§ 2. This act is not intended to apply to those cities having a freeholders' charter, adopted under the provisions of section 8 of article XI of the constitution, and having in such charter provision for the recall of elective officials by the electors.

Repeal of former law.

§ 3. Section one (1) of an act entitled "An act adding three new sections to an act entitled 'An act to provide for the organization, incorporation and government of municipal corporations,' approved March 13, 1883, to be numbered 10, 11 and 12 and relating

to the government of municipal corporations and providing for the recall, initiative and referendum," and approved March 14th, 1911, is hereby repealed.

1. Petition—Sufficient.—A petition for the recall of a county supervisor in the present case was held to sufficiently comply with the requirements of section 4021a of the Political Code as to the statement of the grounds for recall.—*Laam v. McLaren*, 28 Cal. App. 632, 153 Pac. 985.

2. Same—Separate sections fastened together.—Where a petition for a recall of the trustees of a municipality consisted of five sections, all fastened together, each section consisting of three or more sheets fastened together under a separate cover, and each section consisting of a copy of the petition followed by the signatures and an affidavit of the person who circulated the petition that he saw written the signatures appended thereto and that the same was a genuine signature of the person whose name purported to be subscribed, according to his best information and belief, was a sufficient compliance with the requirement of the act.—*Facundus v. Curtis*, 34 Cal. App. 752, 168 Pac. 1961.

3. Same—Signatures required—Computation of percentage.—The only reasonable rule to apply as to the percentage of signatures required, is to declare that such percentage should be computed by taking the total number of ballots at the election, thereby making the statute operative and accomplishing its purposes.—*Robinson v. Anderson*, 26 Cal. App. 644, 147 Pac. 1182.

4. Same—Same—Same—Regular election.—A statute should be construed as referring to regular election at which the officer sought to be recalled was elected, rather than a subsequent election of other trustee officers, not including that in which the officer in question occupies.—*Robinson v. Anderson*, 26 Cal. App. 644, 147 Pac. 1182.

5. Same—Withdrawal of signatures.—After the filing of a petition for a recall, the names of the signers thereto may not be withdrawn.—*Beecham v. Burns*, 34 Cal. App. 754, 168 Pac. 1058.

6. Same—Same—Jurisdiction of superior court.—The superior court has no jurisdiction to enjoin the board of supervisors from ordering a recall election after the certificate of the county clerk has shown the sufficiency of the petition for recall, on the ground that after such certification and before the calling of the election, certain signers attempted to withdraw their names so as to reduce the number below that required by the statute.—*Laam v. McLaren*, 28 Cal. App. 632, 153 Pac. 985.

7. Election—Ballot—Blank spaces required.—It was the intention of the legislature that the requirement of sections 1196 and 1197 of the Political Code, with respect to blank spaces on the ballots, wherein the voter may write the names of the candidates of his choice, should apply to recall elections held under the recall act of 1912, just as in every other election of public officers.—*Cohn v. Isensee*, (Cal. App.) 188 Pac. 279.

8. Same—Same—Same—Sections 1196 and 1197, Political Code, applicable.—Sections 1196 and 1197 of the Political Code and the recall act of 1912 are in pari materia, and without creating any inconsistency or repugnancy between the two the field covered by the latter may also be covered by the code sections, in so far as the latter provides that at every municipal election the official ballots shall contain "the necessary blank space or spaces to permit an elector to write in the names of persons whose names are not printed on the ballot."—*Cohn v. Isensee*, (Cal. App.) 188 Pac. 279.

9. Evidence—Newspaper clipping.—In an action to compel a city clerk to certify to the sufficiency of a recall petition where the returns which would have shown the number of votes cast at the next preceding city election had been lost, it was proper to permit the city clerk's predecessor to refresh his memory from a newspaper clipping of the results printed from a memorandum which he had made at the time and furnished to the newspaper.—*Beecham v. Burns*, 34 Cal. App. 754, 168 Pac. 1058.

10. Constitutional power should be liberally construed.—The power given by the constitution in the matter of the initiative, referendum and recall and statutes enacted in aid thereof, should be liberally construed but should not be interfered with by the courts except upon a clear showing that the law is being violated.—*Laam v. McLaren*, 28 Cal. App. 632, 153 Pac. 985.

11. Construction—Majority for recall not sufficient—Successor must be elected and qualified.—Though a majority vote for the recall of an officer such officer is not, for that reason alone, deemed to be removed, and he is not deemed to be removed until the qualification of his successor, and where no candidate's name printed on the recall ballot, and no voter can write in the name of any person as his choice for the office, there can be no successor and no successor can qualify.—*Cohn v. Isensee*, (Cal. App.) 188 Pac. 279.

TRANSFER OF CERTAIN POWERS OF MUNICIPAL TO COUNTY OFFICERS.

ACT 3324—An act authorizing the transfer of certain powers, duties and functions of certain cities and officers thereof to the officers of counties in which any such city is located.

History: Approved May 3, 1915. In effect August 8, 1915. Stats. 1915, p. 329.

Functions of cities under freeholders' charter may be transferred to county. Resolution of transfer. Transfer may be rescinded.

§ 1. Any or all of the functions, hereinafter set forth, of any city organized under a freeholders' charter, authorized by the constitution of the state of California, and any or all of the powers, duties or functions of any officer, board or commission thereof, may be transferred to and performed by any officer, board or commission of the county in which such city is situated; provided, however, the transfer of such function is authorized to be made by the charter of such city, and such transfer is made in the manner required by such charter; and provided, further, that such transfer is approved on behalf of such county by resolution adopted by the board of supervisors of such county. Such resolution shall set forth the powers, duties or functions to be transferred to and performed by the specified officers, boards or commissions of such county, and the compensation to be paid by such city to such county for the services to be performed by such officers, boards or commissions. Any such transfer may be rescinded at any time by the joint action of such city taken in the manner provided by its charter, or by resolution of the governing body of such city, in case the manner of rescinding such transfer is not provided in such charter, and by resolution of the board of supervisors of such county. Any such transfer may be rescinded, upon one year's notice, by the separate action of such city or county, taken as aforesaid.

Functions specified.

§ 2. The functions of any city organized under a freeholders' charter, and the powers, duties or functions of the officers thereof, which may be transferred and performed as provided in section one of this act, shall be the powers, duties or functions relating to the assessment of property for taxation, the collection of taxes levied for municipal purposes, the collection of assessments, the sale of property for the nonpayment of taxes or assessments levied thereon, and such other powers, duties or functions as the charter of such city may authorize to be transferred and performed as provided by law.

OIL.

See tits. "Mining Bureau"; "Public Utilities."

OLEOMARGARINE.

See tits. "Adulteration"; "Butter"; "Dairies."

CHAPTER 257.

OLIVE OIL.

References: See, generally, tit. "Adulteration."

CONTENTS OF CHAPTER.

ACT 3344. SALE OF IMITATION OLIVE OIL.

SALE OF IMITATION OLIVE OIL.

ACT 3344—An act to regulate the sale of imitation olive oil, and to repeal an act entitled "An act to regulate the sale of olive oil," approved March 10, 1891.

History: Approved March 23, 1893, Stats. 1893, p. 210. Prior act of March 10, 1891, Stats. 1891, p. 46, repealed by the present act.

Imitation oil. What constitutes.

§ 1. That for the purpose of this act every article, substance, or compound, or oil other than that extracted solely from the fruit of the olive-tree, made in the semblance of olive-oil extracted solely from the fruit of the olive-tree, is hereby declared to be imitation olive-oil.

Imitation oil to be labeled. Letters, kind of type to be used. Names of ingredients to be given.

§ 2. Each person who manufactures imitation olive-oil shall place upon every bottle, can, or other vessel containing such imitation oil, a label, with the words "imitation olive-oil" printed thereon in capital letters, in a clear and durable manner, in the English language, in plain type, designated and known as twenty-four-point letter type [sic] (two-line pica), of a Gothic face; said label shall also state plainly the name and address of the manufacturer or compounder, the name and place where manufactured and put up, and also the names and actual percentages of the different ingredients contained in each bottle, can, or vessel.

Not to be consigned unless marked. Proviso.

§ 3. No person, by himself or another, shall knowingly ship, consign, or forward by any common carrier, whether public or private, any imitation olive-oil, unless the same be marked as provided in section two of this act; and no carrier shall knowingly receive, for the purpose of forwarding or transporting, any imitation olive-oil, unless it shall be marked as hereinbefore provided, consigned, and by the carrier receipted for, as imitation olive-oil; provided, that this act shall not apply to any goods in transit between foreign countries and across the state of California.

Not to be in possession.

§ 4. No person shall knowingly have in his possession or under his control, any imitation olive-oil, unless the bottle, can, or vessel, or other package containing the same, be clearly marked, as provided in section two of this act.

Not to be sold as pure olive-oil. Purchaser to be informed of imitation oil. Statement, what to contain.

§ 5. No person, by himself or another, shall knowingly sell or offer for sale imitation olive-oil under the name of or under the pretense that the same is pure olive-oil; and no person, by himself or another, shall knowingly sell any imitation olive-oil unless he shall inform the purchaser at the time of sale that the same is imitation olive-oil, and shall deliver to the purchaser at the time of sale a statement, clearly printed in the English language, which shall refer to the article sold, and which shall contain, in plain type, designated and known as twenty-four-point letter type [sic] (two-line pica), of a Gothic face, in capital letters, the words "imitation olive-oil," and shall give the name and place of business of the manufacturer or compounder.

Presumption as to persons having imitation oil.

§ 6. Every person having possession or control of any imitation olive-oil, which is not marked as required by the provisions of this act, shall be presumed to have known, during the time of such possession or control, that the same was imitation olive-oil.

False representation as to imitation oil.

§ 7. No person shall expose for sale any oil bearing the semblance of olive-oil, manufactured out of the state, and represent that it is manufactured in this state, nor shall offer for sale any such oil upon the receptacle of which is any cut, design, or mark intended to convey the belief that such is manufactured in this state.

Penalty for violation of provisions of this act.

§ 8. Whoever shall violate any of the provisions or sections of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both fine and imprisonment, as the court may direct.

Who to enforce.

§ 9. It shall be the duty of the state board of horticulture and the state analyst to enforce the provisions of this act.

Certain act repealed.

§ 10. An act entitled "An Act to regulate the sale of olive-oil," approved March tenth, eighteen hundred and ninety-one, is hereby repealed.

ONTARIO.

See Act 3094, note.

CHAPTER 258.

OPTOMETRY.

CONTENTS OF CHAPTER.

ACT 3349. PRACTICE OF OPTOMETRY ACT.

PRACTICE OF OPTOMETRY ACT.

ACT 3349—An act to regulate the practice of optometry; to provide for the appointment of a board of optometry, define its duties and powers and prescribing a penalty for the violation of this act.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1097. Prior act of March 20, 1903, Stats. 1903, p. 285; amended (1) February 28, 1907, Stats. 1907, p. 63; (2) March 25, 1909, Stats. 1909, p. 775, repealed by the present act.

Optometrists must register.

§ 1. It shall be unlawful for any person to engage in the practice of optometry or to display a sign or in any other way advertise or hold himself out as an optician or optometrist without having first obtained a certificate of registration from the state board of optometry as provided for in this act or under the provisions of a certain act entitled "An act to regulate the practice of optometry and for the appointment of a board of examiners in the matter of said regulation," approved March 20, 1903, and acts amendatory thereof.

Optometry defined.

§ 2. The practice of optometry is hereby defined to be the employment of any means other than the use of drugs for the measurement of the powers or range of human vision or the determination of the accommodative and refractive states of the human eye or the scope of its functions in general or the adaptation of lenses or frames for the aid thereof.

Board of optometry created. Term. Persons not eligible.

§ 3. A board is hereby created to be known as the state board of optometry which shall consist of three members appointed by the governor. No person shall be eligible to appointment who is not a registered optometrist of the state of California and actually engaged in the practice of optometry at the time of such appointment. Each of the members shall hold office for a term of six years or until his successor is appointed and qualified and shall be so classified that one member of said board shall retire every two years. The present members of the California state board of examiners in optometry appointed under the provisions of the act in section number one hereof referred to, shall continue to serve and act as members of the state board of optometry, but under the provisions of this act during their respective terms or until their successors are appointed and qualified. No person shall be eligible to membership

in the said state board of optometry who shall be a stockholder in, or owner of, or a member of the faculty of or of the board of trustees of any school of optometry or who shall be financially interested directly or indirectly in any concern manufacturing or dealing optical supplies at wholesale. No member of the board shall be financially interested in any purchase or contract in which the board is interested. No member of the board shall be financially interested in the sale of any property or optical supplies to any prospective candidate for examination before the board.

Powers and duties.

§ 4. The powers and duties of the said state board of examiners in optometry shall be as follows:

Organize board.

1. To organize and elect from their members a president and secretary of said board who shall hold office for one year or until the election and qualification of a successor; to adopt and use a common seal, and establish a permanent office. The secretary of the said board before entering into the discharge of his duties shall execute a good and sufficient bond to the state of California in the sum of one thousand dollars conditioned for the faithful performance of his duties as such secretary. He shall receive all fees and moneys paid to the board; keep all the records of the board and discharge such other duties as the board shall from time to time prescribe.

Make disbursements. Year book. Compensation.

2. To make all necessary disbursements to carry out the provisions of this act, but only upon the signature of the president and secretary of the said board and only from the state optometry fund, including payment for the bond of the secretary of said board; payment for stationery supplies; necessary optical instruments to be used in the conduct of examinations which shall be the property of the state; the printing and circulating to all optometrists in the state, once a year, a year book containing the names and addresses of all optometrists in this state; a per diem of ten dollars for each member of the said board for each day actually spent in the performance of his duties as such, and mileage of five cents per mile for all distances necessarily traveled in going to and coming from the meetings of said board, in full compensation for all services; per diems shall not exceed one for any calendar day and shall not exceed two in any one calendar month, except that in months when examinations are being held per diems may be allowed for not to exceed six days in any such month. Additional compensation may be allowed the secretary not to exceed fifty dollars per month.

Prosecute violators.

3. To employ agents, attorneys and inspectors to secure evidence of, report on, and prosecute to conviction all violations of this act and to employ other necessary assistants in the carrying out of the provisions of this act. No state officer shall be eligible to employment by the board.

Meetings.

4. To hold regular meetings at least twice a year at which an examination of applicants for certificates of registration shall be held at such places as the board shall from time to time designate and special meetings upon request of a majority of the members of said board or upon the call of the president.

Record of proceedings.

5. To keep an accurate record of all the proceedings of the board and of all its meetings, of all receipts and disbursements with vouchers for all disbursements, and of all prosecutions for violations of this act, and of all examinations held for applicants

for certificates of registration with the names and addresses of all persons taking examinations and their success or failure to pass such examinations. To keep an accurate inventory of all property of the board and of the state in the possession of the board and to obtain a receipt therefor from its successor. All the records of the board shall be public and shall be kept in the office of the board.

Visit schools.

6. To visit and examine public schools wherein the science of optometry is taught in this state and accredit such public schools as shall have been found by such board to give a sufficient course of study for the preparation of optometrists.

Keep register.

7. To keep a register of optometrists which shall contain the names and addresses of all persons to whom certificates of registration have been issued in the state of California, together with the date of the issuance of such certificates and the place or places of business in which each optometrist is engaged, and all renewals, revocations and suspensions thereof.

Grant, etc., certificates.

8. To grant or refuse to grant certificates of registration as herein provided and to revoke the certificate of registration of any optometrist for any of the causes specified in section eleven hereof.

Administer oaths.

9. To administer oaths and take testimony upon granting and revoking or suspending any certificate of registration.

Make rules.

10. To make rules for the procedure of the board and for the conduct and government of applicants for certificates of registration as optometrists not inconsistent with the provisions of this act.

Reports.

11. To report to the governor annually on the first Monday in January in each year giving an accurate account of the work of the board during the preceding year with a statement of all moneys received and paid out pursuant to this act.

Application for registration. Fee. Public schools defined.

§ 5. Any person over the age of legal majority desiring to engage in the practice of optometry in this state may file an application duly verified by his oath for an examination before said board or for a certificate of registration without examination as hereinafter provided, such application to be filed with the secretary of said board at least two weeks prior to the date of any meeting at which an examination is to be held and shall set forth the following:

- (a) The name, age, and address of the applicant.
- (b) The name of the optometry school attended, if any, and for what period of time such school was attended by the applicant.
- (c) The previous experience, if any, of the applicant in the practice or in assisting in the practice of optometry.
- (d) A statement of the previous examinations, if any, taken before the board and the dates of such examinations.

Such application shall be accompanied by a fee of \$20.00. In case an applicant for a certificate of registration has attended a public school of optometry, accredited as provided in section 4, subdivision 6 of this act, and shall accompany his application with a

certificate from such accredited school acknowledged before an officer authorized to take acknowledgments, showing the applicant to have successfully completed one year's work in such school, the board shall issue to him a certificate entitling him to practice optometry in the state of California without examination.

Public schools within the meaning of this act are schools maintained as part of the public school system of the state by public funds, and furnishing free instruction, and none other.

Examinations twice a year. Successful applicants registered.

§ 6. Examinations shall be held and given by the board at least twice a year at such time and place as the board may from time to time fix and designate at least one month prior to the date of such examination; provided, however, that one of such examinations shall be held in the city and county of San Francisco commencing with the third Monday in March of each year, and the other in the city of Los Angeles commencing with the third Monday in September of each year. At such examinations the board shall examine applicants in the anatomy of the eye, in normal and abnormal refractive and accommodative and muscular conditions and co-ordination of the eye, in subjective and objective optometry, including the fitting of glasses, the principles of lens grinding and frame adjusting, and in such other subjects as pertain to the science and practice of optometry, such subjects to be enumerated in publication by the board. In case of failure, the applicant shall be examined at the next examination only in the subjects in which he failed. All such applicants without discrimination, who shall satisfactorily pass such examination shall thereupon be registered in the board's register of optometrists and a certificate of registration shall be issued to them, under the seal and signature of the members of said board upon payment of a fee of five dollars. Such certificate shall continue in force until the first day of August in the year next succeeding.

Notice to board of place where practicing. Annual fee. Receipt to customer.

§ 7. Before engaging in the practice of optometry it shall be the duty of each registered optometrist to notify the board in writing of the place or places where he is to engage or intends to engage in the practice of optometry and of any changes in his place of business, and any notice required to be given by the board to any registered optometrist may be given by mailing to such address through the United States mail, post paid. Each registered optometrist shall annually on or before the first day of August of each year pay to the secretary of said board a fee of two dollars for a renewal of his registration certificate and shall keep such certificate conspicuously posted in his office or place of business at all times; a period of thirty days' grace shall be allowed after the first of August, during which registration certificates may be renewed on payment of the fee of five dollars. Any registered optometrist who shall temporarily practice optometry outside or away from his regular registered place of business shall deliver to each customer or person there fitted or supplied with glasses a receipt which shall contain his signature and show his permanent registered place of business and the number of his certificate, together with a specification of the lenses furnished and the amount charged therefor.

Certificates filed with county clerk. Failure forfeits certificate.

§ 8. All recipients of said certificate of registration shall present the same for filing to the clerk of the county in which they reside, and shall pay a fee of fifty cents to the clerk for recording the same. Said clerk shall record said certificate in a book to be provided by him for that purpose. Any person so licensed removing his residence from one county to another in this state, shall, before engaging in the practice of optometry in such other county, obtain from the clerk of the county in which said certificate of registration is recorded a certified copy of such certificate of registration, and shall

before commencing practice in such county, file the same for record with the clerk of the county to which he removes and pay the clerk of said county for recording the same a fee of fifty cents. Any failure, neglect or refusal on the part of any person holding such certificate of registration, or certified copy of such certificate of registration, to record the same as hereinabove provided, for six months after the issuance of said certificate of registration, or from the date of removal of residence shall ipso facto work the forfeiture of his certificate of registration, and it shall not be restored except upon the payment of twenty-five dollars to the California state board of examiners in optometry.

Penalty. Disposition of fines.

§ 9. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty dollars nor more than two hundred and fifty dollars or by imprisonment for not less than one month or more than three months for the first offense and for the second offense by a fine of not less than two hundred and fifty dollars nor more than one thousand dollars or by imprisonment in the county jail not less than six months nor more than one year. All fines and forfeitures collected or received for violations of or in prosecutions under this act shall be paid one-half to the state treasurer for the benefit of the state optometry fund without demand and one-half to the school fund of the city or county where the prosecution is had. In any prosecution for a violation of section one, hereof the use of test cards, test lenses, or of trial frames shall be prima facie evidence of the practice of optometry. Trial frames and test lenses within the meaning of this act shall be any frame or lens used in testing the eye which is not sold and not for sale to customers.

Persons not affected by act.

§ 10. The provision of this act shall not be construed to prevent duly licensed physicians and surgeons from treating or fitting glasses to the human eye; nor to prohibit the sale of complete ready-to-wear eye glasses as merchandise from a permanent place of business in good faith and not in evasion of this act by any person not holding himself out as competent to examine and prescribe for the human eye.

Unlawful to sell, etc., certificates of registration.

§ 10½. It shall be unlawful for any person:

1. To sell or barter, or offer to sell or barter any certificate of registration issued by the state board of optometry; or
2. To purchase or procure by barter any such certificate of registration with intent to use the same as evidence of the holder's qualification to practice optometry; or
3. To alter with fraudulent intent in any material regard such certificate of registration; or
4. To use or attempt to use any such certificate of registration which has been purchased, fraudulently issued, counterfeited or materially altered as a valid certificate of registration; or
5. To practice optometry under a false or assumed name; or
6. To wilfully make any false statement in a material regard in an application for an examination before the state board of optometry or for a certificate of registration; or
7. To practice optometry in the state of California without having at the time of so doing a valid unrevoked certificate of registration as an optometrist; or
8. To advertise by displaying a sign or otherwise or hold himself out to be an optometrist or optician without having at the time of so doing a valid unrevoked certificate of registration from the said state board of optometry.

Grounds for revoking certificates. Unprofessional conduct.

§ 11. Any person registered as provided for in this act may have his certificate of registration revoked or suspended for a fixed period by the state board of optometry for any of the following causes:

1. His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction, or a certified copy thereof certified by the clerk of the court, or by the judge in whose court the conviction is had, shall be conclusive evidence of such conviction.

2. When his certificate of registration has been secured by fraud or deceit practiced upon the board.

3. For unprofessional conduct, or for gross ignorance or inefficiency in his profession. Unprofessional conduct shall mean employing what are known as "cappers" or "steerers" to obtain business; the obtaining of any fee by fraud or misrepresentation; employing, directly or indirectly any suspended or unlicensed optician or optometrist to perform any work covered by this act; the advertising of optical business or treatment or advice in which untruthful, improbable, or impossible statements are made; the use in advertising of the expression "eye specialist" in connection with the name of such optometrist, unless the person using the same is a regularly licensed physician and surgeon under the laws of this state; or habitual intemperance, or gross immorality, or shall permit another to use his certificate.

4. Who shall send a solicitor from house to house or who shall solicit from house to house.

5. When the holder is suffering from a contagious or infectious disease.

6. For any violation of the provisions of this act.

Notice before revoking. Setting aside revocation.

§ 12. Before any certificate shall be so revoked or suspended the holder thereof shall have notice in writing of the charge or charges against him and at a date specified in said notice at least five days after the service thereof, be given a public hearing and have an opportunity to produce testimony in his favor, and to confront the witness against him.

The revocation or suspension of any license revoked or suspended for any of the above causes except those specified in one and two of section eleven may be set aside upon application of the person whose license has been revoked at any time within six months from the date of such revocation upon proof being made to the satisfaction of said board that the cause of said revocation no longer exists and that the applicant has been sufficiently punished. Before setting aside the revocation of any certificate the board may in its discretion require the applicant to pass the regular examination given for applicants for certificates of registration.

Payment of money into state treasury. Optometry fund.

§ 13. It shall be the duty of the secretary as soon as this act takes effect, to pay into the state treasury all moneys then in his possession or standing to the credit of the state board of optometry, and thereafter he shall, within ten days after the beginning of each month, report to the state controller all collections of fees and all other receipts for the preceding month, and at the same time he shall pay all such amounts into the state treasury. All such moneys shall be placed in a fund to be known as the state optometry fund, which fund is hereby created, and which shall be for the uses of the state board of optometry, claims thereon to be audited and paid in the usual manner. (An amount not to exceed three hundred dollars may be drawn from the fund herein created to be used as a revolving fund where cash advances are necessary; but expenditures from such revolving fund must be substantiated by vouchers and itemized statements at the end of each fiscal year, or at any other time when demand therefor is made by the board of control or by the controller.)

Appropriation by member of board a felony.

§ 14. Any member of the board who shall appropriate, retain or use for his own private use any of the funds of the board shall be guilty of a felony.

Title of act.

§ 15. This act shall be known and may be cited as the optometry law.

Repealed.

§ 16. An act entitled "An act to regulate the practice of optometry and for the appointment of a board of examiners in the matter of said regulation," approved March 20, 1903, is hereby repealed.

1. Constitutionality—Not unreasonably discriminatory.—The provisions of section 10 are not unconstitutional as an unreasonable discrimination against osteopaths.—Ex parte Rust, 181 Cal. 73, 183 Pac. 548.

2. Same—Not interference with personal liberty.—The optometry act is not unconstitutional as an unlawful and unreasonable interference with the personal liberty of a citizen to perform the "merely mechanical act of fitting glasses."—Ex parte Rust, 181 Cal. 73, 183 Pac. 548.

3. Construction—"Osteopathy" does not include "optometry."—A license to practice

"osteopathy" under the practice of osteopathy act, construed in force by the medical practice act, does not permit the practice of "optometry."—Ex parte Rust, 181 Cal. 73, 183 Pac. 543.

4. Same—Same.—The practice of medicine act recognizes a distinction between the practice of medicine and the practice of osteopathy and a person licensed to practice osteopathy is not a duly licensed physician and surgeon within the meaning of section 10 of the practice of optometry act.—In re Rust, 35 Cal. App. 422, 169 Pac. 1050.

ORANGE CITY.

See Act 3094, note.

CHAPTER 259.

ORANGE COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3938.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

- ACT 3354. ORGANIZATION ACT.
- 3355. INCREASE OF SUPERIOR JUDGES.
- 3356. TIDELAND GRANT.

ORGANIZATION ACT.

ACT 3354—An act to create the county of Orange, to define the boundaries thereof, to determine the county seat by an election, and to provide for its organization and election of officers, and to classify said county.

History: Approved March 11, 1889, Stats. 1889, p. 123.

1. Constitutionality—Special legislation—Question of fact not for judicial determination.—Whether a general law may be made applicable within the meaning of the constitution prohibiting special legislation, depends upon questions of fact which the court has no means of investigating and upon the solution of such a question, it would not attempt to substitute its judgment in place of that of the legislature.—People ex rel. Graves v. McFadden, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66; People ex rel. Graves v. Orange County, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66.

2. Same—Not delegation of legislative power—Not special legislation.—The act for 11 Gen. Laws—34

the creation of Orange county is constitutional, is not a delegation of legislative power, and is not special legislation in any matter affecting its general scope and purpose.—People ex rel. Graves v. McFadden, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66; People ex rel. Graves v. Orange County, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66.

3. Same—Policy of creating new county is legislative—Determination of boundaries.—The policy of adding to the number of the "political subdivisions of the state," is one to be determined by the legislative department of the government in each instance when the proposition to do so is made; and if the determination be favorable, then the

legislative department alone must fix and determine the boundaries of such subdivision.—*Ex rel. Graves v. McFadden*, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66; *People ex rel. Graves v. Orange County*, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66.

4. Same.—Counties not “municipal corporations.”—Counties are not municipal corporations within the meaning of section 6 of article XI of the constitution, prohibiting the formation of municipal corporations otherwise than by general law.—*People ex rel. Graves v. McFadden*, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66; *People ex rel. Graves v. Orange County*, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66.

See, also, *People v. Sacramento County*, 45 Cal. 695.

5. Same.—Legislative power to classify.—The legislature was authorized to classify the new county, the classification to remain in force until, and only until, a readjustment of the classification of all the counties will take place under the provisions of the general law on that subject.—*People ex rel. Graves v. McFadden*, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66.

6. Same.—Same.—Limitation.—The legislature having the power to create and organize a new county had power and authority to adopt the measures necessary to its complete organization, so far as they do not extend in their operation beyond the time when the organization shall have become complete and subject to general laws, and all incidents of that character may be done by the act of creation and are germane to the main object of the act.—*People ex rel. Graves v. McFadden*, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66; *People ex rel. Graves v. Orange County*, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66.

7. Division of assets.—Mistake legislative not judicial.—Where the commissioners appointed to make a division of the assets between the new county and the old make a mistake in dividing a claim in favor of the old county against the state, and of which they then had no knowledge, the only remedy for such mistake is legislative and not judicial, and the courts are without jurisdiction in an action by the new county against the old to recover its proportion of such claim.—*Orange County v. Los Angeles County*, 114 Cal. 390, 46 Pac. 173.

8. Same.—Liability of new county for debts of old county.—Under the provisions

of section 7 of the act creating the county of Orange, the latter is liable to the county of Los Angeles only for the indebtedness found to be existing on March 11, 1889, the date when the act creating the county of Orange took effect, and is not liable for moneys expended by the county of Los Angeles after that date and prior to the organization of a new county, although expended within the territory of the new county.—*Los Angeles County v. Orange County*, 97 Cal. 329, 32 Pac. 316.

9. Same.—Matter of legislative determination.—Section 3 of article XI of the constitution provides only for payment by the new county of a just proportion of the debts and liabilities existing at the time the act creating the new account goes into effect and does not require any division of assets or property of the old county, but the disposition of that matter is laid to the determination of the legislature in each particular case.—*Los Angeles County v. Orange County*, 97 Cal. 329, 32 Pac. 316.

10. Same.—Date for ascertainment of “just proportion,” legislative.—The legislature is empowered to fix any date it chooses as the time for ascertaining the amount and value of the assets and property to be divided of the creation of a new account as well as for determining the “just proportion” of the debts and liabilities to be assumed by the new account.—*Los Angeles County v. Orange County*, 97 Cal. 329, 32 Pac. 316.

11. Same — Legislative power — Rule in the absence of restrictions.—Upon the creation of a new account out of the territory of another the legislature in the absence of constitutional restrictions may make such provision with reference to the public property and debts or their division as to it may seem just; and in the absence of any provision in reference thereto the old account will be entitled to retain all public property to assets except such public buildings and structures as lie within the territory of the new, and will also be liable for all its prior obligations.—*Los Angeles County v. Orange County*, 97 Cal. 329, 32 Pac. 316; *Orange County v. Los Angeles County*, 114 Cal. 390, 46 Pac. 173.

12. Other decisions.—See, also on the subject of the organization of new counties the following cases: *People ex rel. Hargrave v. Markham*, 104 Cal. 232, 37 Pac. 918; *Wheeler v. Herbert*, 152 Cal. 224, 92 Pac. 353; *San Diego County v. Riverside County*, 6 Cal. Unrep. 170, 55 Pac. 7.

INCREASE OF SUPERIOR JUDGES.

ACT 3355—An act to increase the number of judges of the superior court of the state of California, in and for the county of Orange, to provide for the appointment of an additional judge and for his compensation. [Approved June 3, 1913, Stats. 1913, p. 375. In effect August 10, 1913.]

History: Approved June 3, 1913. In effect August 10, 1913. Stats. 1913, p. 375.

The act increased the number of superior judges from one to two.

TIDELAND GRANT.

ACT 3356—An act granting certain tidelands and submerged lands of the state of California to the county of Orange in said state upon certain trusts and conditions.

History: Approved May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 1138.

Tidelands granted to Orange county.

§ 1. There is hereby granted to the county of Orange and to its successors all of the right, title and interest of the state of California held by said state by virtue of its sovereignty in and to all that portion of the tidelands and submerged lands bordering upon and under Newport bay in the said county of Orange, which are outside of the corporate limits of the city of Newport Beach, a municipal corporation, the same to be forever held by said county and by its successors in trust for the uses and purposes and upon the express conditions following, to wit:

Use of lands.

(a) Said lands shall be used by said county and by its successors solely for the establishment, improvement and conduct of a harbor and for the establishment and construction of bulkheads or breakwaters for the protection of lands within its boundaries, or for the protection of its harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, ways and streets, and other utilities, structures and appliances necessary or convenient for the promotion or accommodation of commerce and navigation, and the protection of the lands within said county. And said county or its successors shall not at any time grant, convey, give or alien said lands or any part thereof to any individual, firm, or corporation for any purposes whatever; provided, that said county or its successors may grant franchises thereon for a period not exceeding twenty-five years for wharves and other public uses and purposes, and may lease said lands or any part thereof for a period not exceeding twenty-five years for purposes consistent with the trust upon which said lands are held by the state of California, and with the requirements of commerce or navigation at said harbor.

Improvement of harbor.

(b) Said harbor shall be improved by said county without expense to the state and shall always remain a public harbor for all purposes of commerce and navigation, and the state of California shall have at all times the right to use, without charge, all wharves, docks, piers, slips, quays, and other improvements constructed on said lands or any part thereof for any vessel or other water craft or railroad owned or operated by the state of California.

Rates, tolls, etc. Right to fish reserved to people.

(c) In the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph (a) no discrimination in rates, tolls or charges, or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said county, or by its successors. The absolute right to fish in the waters of said harbor with the right of convenient access to said water over said lands for said purpose is hereby reserved to the people of the state of California.

ORDINANCES.

See tit. "Municipal Corporations," Act 3093p.

ORLAND.

See Act 3094, note.

OROVILLE, CITY OF.

See Act 3094, note.

CHAPTER 260.

ORPHAN ASYLUMS.

References: Adoption of abandoned children, see Kerr's Cyc. Civil Code, § 224.

Orphan asylums, corporations, see Kerr's Cyc. Civil Code, §§ 593, et seq.; Kerr's Cyc. Political Code, §§ 2283, et seq.

See, generally, tit. "Infants"; "Schools."

CONTENTS OF CHAPTER.

ACT 3374. BINDING OF APPRENTICES FROM ORPHAN ASYLUMS.

3375. GUARDIANS FOR ORPHAN CHILDREN.

BINDING OF APPRENTICES FROM ORPHAN ASYLUMS.

ACT 3374—An act to authorize the managers of the San Francisco Orphan Asylum or any other orphan asylum to bind as apprentices, clerks, and servants, orphan or half-orphan children under their care and tuition.

History: Approved February 22, 1860, Stats. 1860, p. 37. Supplemented March 18, 1870, Stats. 1869-70, p. 334.

GUARDIANS FOR ORPHAN CHILDREN.

ACT 3375—An act to provide for the appointment of guardians of children in orphan asylums maintained in any orphans' home or orphan asylum in this state.

History: Approved March 23, 1893, Stats. 1893, p. 203.

Preferences. Consent. Duty of court.

§ 1. When any orphan or half-orphan has been maintained in any orphans' asylum or orphans' home in the state of California for more than one year, the managers of said home or asylum shall be entitled to the guardianship of such child in preference to any other person, provided, however, that such managers shall not be appointed guardian of a minor child over fourteen years of age without its consent, nor shall this act preclude the court of competent jurisdiction from inquiring into the fitness of such managers for the guardianship of such children; but in exercising the power of the court to appoint guardians for minors, the managers of the home having the care of such child for more than one year shall, if there be no special reasons to the contrary in any particular case, be preferred in the guardianship of the person of the child to the parent so leaving the child, without good cause therefor being shown, under the care of said home for the said time.

§ 2. This act shall take effect immediately.

Editor's note: It is not clear that this statute has been entirely superseded by the new legislation.

See Kerr's Cyc. Civ. Code, § 224, as amended in 1903, and § 246 Ib., as amended by Stats. 1905, p. 728, ch. DLXII.

OSTEOPATHY.

See tit. "Medicine."

CHAPTER 261.

OVERFLOW DISTRICTS.

CONTENTS OF CHAPTER.

ACT 3385. OVERFLOW DISTRICT ACT.

OVERFLOW DISTRICT ACT.

ACT 3385—An act to provide for the formation, government and control of overflow districts.

History: Approved May 1, 1911, Stats. 1911, p. 1397.

Petition to form overflow district.

§ 1. Whenever one-half or more of the voters residing within a proposed district of swamp, overflow, or other lands lying within this state, one-third or more of which lands are liable to be flooded by the waters of any stream or lake, and more than half of said lands requiring irrigation during a portion of the year, susceptible of one mode of irrigation and reclamation, desire to reclaim and irrigate the same, they may present to the board of supervisors of the county in which the lands or the greater part thereof are situated, at a regular meeting of the board, a petition setting forth that they propose to form an overflow district of the same.

Description of land.

§ 2. Such petition must contain a description of the lands by legal subdivisions, or by other boundaries, or by subdivisions shown upon a map recorded in the counties in which such lands are situated; the approximate number of acres in the proposed district, and each tract, with the names (if known) of the owners thereof, and designate as unsold any lands not reduced to private ownership.

Affidavit of three signers.

§ 3. Said petition must be accompanied by the affidavit of at least three signers thereto, showing that not less than one-third of the land is subject to overflow, and that all of the land described in the petition can either be irrigated or reclaimed, or irrigated and reclaimed by one mode of irrigation and reclamation.

Certificate of county clerk.

§ 4. Said petition must also be accompanied by a certificate of the county clerk of the proper county, showing that the names of the signers of said petition are on the last great register of the precinct or precincts in which the proposed district is situated.

Petition published two weeks before hearing.

§ 5. Such petition must be published for two weeks next preceding the hearing thereof in some newspaper published in the proposed district, or if no newspaper is published therein, then in some newspaper having a general circulation in said district, and an affidavit of such publication must be filed with said board of supervisors at or before the hearing of said petition.

Order of approval.

§ 6. If such board of supervisors find, on hearing the petition, that its statements are correct, they must make an order approving the same and establishing the district. If it be shown that any land has been improperly included in the proposed district, they must reform the boundaries of such district accordingly in their order. The order of approval must be signed by the chairman, and attested by the clerk of said board; and a copy thereof attached to the petition.

Order to be recorded.

§ 7. After the approval of the petition by the board of supervisors of the county in which the greater part of the district is situated, the order establishing the district, or a certified copy thereof, must be recorded in the office of the county recorder of each county, in which any portion of the lands embraced in the district are situated, in a book kept for the purpose of recording papers relative to overflow districts, and a certified copy thereof forwarded to the register of the state land office by the recorder of the county in which the district was formed.

Freeholders appointed trustees.

§ 8. Said board of supervisors of said county must thereafter, upon the application of ten or more qualified voters of the district, appoint three eligible freeholders to act as trustees until their successors are elected and qualified.

All counties forming part of district to be notified.

§ 9. When a district is situated in more than one county, the trustees must forward a certified copy of the order of the board of supervisors establishing the district, to the clerk of the board of supervisors of the counties in which any portion of the district may lie, and the board to which the same is forwarded must not allow another district to be formed within such district, or including any part thereof.

Districts numbered.

§ 10. All districts organized under this act must have a state number, and the register upon receipt of a certified copy of the order of the board of supervisors establishing the district must number the same, and send the number to the county recorder of any county in which the district or a portion thereof is situated, and such recorder must number the records of said district in like manner, and the district must thereafter be known and designated thereby.

Elections.

§ 11. The board of supervisors of the county in which the district was formed must call an election to be held in the district, on the second Tuesday after the first Monday in November of the even-numbered years, at which election must be elected three freeholders who are resident voters in said district, and who shall constitute, when elected and qualified, the board of trustees of the district.

Notice of election published.

§ 12. Notice of such election must be published, for at least thirty days prior thereto, in a newspaper published in the district, if any newspaper is published therein, and if not, then in some newspaper having a general circulation in the district.

Voting precincts.

§ 13. The supervisors of each county, in which said district is wholly or partially situated, shall form at least one voting precinct in such district, and appoint an election board, and otherwise provide for such election in the precinct or precincts so formed.

Failure of persons appointed on election board to appear.

§ 14. If the persons appointed on such election board, or any of them, fail to attend at the time and place for election, the voters present at the time and place of opening the polls, may appoint the board, or supply the place of any absent member thereof.

Members of board sworn.

§ 15. Each member of the board must, before entering upon his duties, be sworn to a faithful performance thereof by some officer authorized to administer oaths, or by any qualified elector.

Canvass of votes.

§ 16. The board of trustees must canvass the votes and issue certificates of election to the person elected, and must place the ballots when canvassed in an envelope, and forward the same to the clerk of the board of supervisors of the county in which the district is formed.

Challenge of votes.

§ 17. Any legally qualified voter may challenge any vote, and the board of election may determine, by oath of the parties, or otherwise, as they may think proper, whether or not the person challenged is entitled to vote, and in case of challenge, either one of the board of election is hereby authorized to administer the oath.

Polls open.

§ 18. The polls shall be opened and closed as provided by law for general elections; and the provisions of the general election laws of this state are applicable to elections provided for in this act, when no different provision is contained herein.

Term of trustees.

§ 19. The trustees shall hold office for four years succeeding their election, except the first board elected under the provisions of this act, shall, after election, choose by lot, two of their number to hold office for a term of two years, and one for a term of four years, or until their successors are elected and qualified.

Vacancy.

§ 20. In case of a vacancy in the board of trustees, the supervisors of the county in which the district was formed, shall, by appointment, fill any vacancy until the next regular election.

Trustees' oath.

§ 21. Before entering upon their duties, the trustees must take and subscribe to an oath, that they will obey the constitution of the United States, of the state of California, and the laws and statutes thereof, and will faithfully and diligently discharge the duties of their office according to law.

Bond.

§ 22. The trustees of any district organized under this act shall give a bond of two thousand five hundred dollars each, for the faithful performance of their duties, which bond must be approved by a judge of the superior court of the county in which the district was formed.

Office of trustees.

§ 23. The board of trustees must keep an office, at some convenient place in the district, for the transaction of the business of the district, in which must be kept the books, maps, papers, records, contracts, and all other documents pertaining to the affairs of the district; they shall also keep a record and books of account of all expenditures and disbursements, and minutes of the meetings of the board, and such books, records and maps shall be open for inspection by all persons interested, at all reasonable times.

Copies of papers to supervisors.

§ 24. The trustees must, upon the request of the board of supervisors of any county in which the district or any part thereof is situated, forward to said board copies of any papers in their possession belonging to said district, and any other information they may require pertaining to the business and affairs of the district.

By-laws.

§ 25. The trustees must adopt by-laws for the government and control of the affairs of the district, not otherwise provided by law. The by-laws thus adopted must be approved by the supervisors of the county or counties in which the district is situated, and thereafter filed for record with the county recorder of said county or counties in the book kept by him for the purpose of recording instruments and writings relative to overflow districts.

Amendments.

§ 26. The by-laws may be amended from time to time in the same manner as the original by-laws were adopted.

District deemed organized.

§ 27. After the by-laws are recorded, the district shall be deemed organized for all purposes, and may then sue and be sued in the courts of competent jurisdiction.

Officers of board.

§ 28. The board of trustees shall elect one of their number president thereof; they shall have power to employ an attorney, engineer, clerk, and such other employees as may be necessary for the transaction of business and the reclamation and irrigation of the lands of the district; to modify or change such original plan or plans, adopt new and supplemental, or additional, plans.

Powers.

§ 29. Said board shall have power to acquire by purchase, or otherwise, necessary lands, right of way, and the right to take material for the construction of all works necessary to reclaim and irrigate the lands of the district, including drains, canals, sluices, bulkheads, water gates, levees, pipe lines, pumping plants, culverts, embankments and all other things necessary to construct, maintain, and keep in repair all works requisite and necessary to that end; and do all other acts and things necessary and required to properly reclaim and irrigate the lands embraced in the district.

May condemn lands, etc.

§ 30. Whenever in their judgment it becomes necessary, the trustees may in the name of the district, or the president thereof acting in their behalf, may proceed under the provisions of title VII, part III, of the Code of Civil Procedure, for the condemnation of any lands, or material needed by the district for right of way or for other purposes pertaining to the construction, maintenance, or repair of the works of the district, whether said land or material is outside of, or within, the limits of the district, and the title of said lands and material, whether acquired by condemnation or otherwise, shall become vested in the district.

Work done under direction of board.

§ 31. All work necessary for the irrigation and reclamation of the lands of the district, must be executed under the direction of, and in the manner prescribed by, the board of trustees.

Surveys.

§ 32. Whenever the trustees find that the surveys of the lands within the district, made by the authority of the United States land office, are incomplete, or inaccurate, they shall cause their engineer to survey, and map the boundaries of the district, and all property lines embraced therein; and after said map has been approved by the supervisors, and the county surveyor of the county or counties in which said district is situated, it shall be recorded in the office of the county recorder, in the map book of said county or counties, and shall thereafter for all purposes provided by law, become the official map of said district, and the lands embraced therein, subject to amendment or change, in the same manner as the original map was prepared and adopted.

Use of water.

§ 33. The trustees may by provision of the by-laws allow the water supplied by the district to be used for domestic, power, irrigation, and other purposes; and they shall adopt rules and charges for the use and distribution of the same, which shall become effective when approved by the board of supervisors of the county or counties in which the district is situated.

Warrants drawn on funds.

§ 34. The trustees shall draw all warrants upon the funds of the district, either in money or bonds; after the warrants are approved by the supervisors of the county in which the district was formed, they are to be presented to the treasurer of said county and, if not paid upon presentation, such indorsement must be made thereon and they must be registered and bear interest from the date of presentation; but no warrant shall be an indebtedness against the district until it has been approved by the board of supervisors of said county.

Monthly payments into county treasury.

§ 35. The trustees must at the end of each month pay all money received by them for the district, from the sale of water, material, or from other sources, into the treasury of the county in which the district was formed, and the treasurer must receipt for the same and place such money to the credit of the district.

Compensation of board.

§ 36. The several members of the board of trustees of overflowed districts shall each be entitled to receive, for actual and necessary services performed, and for expenses incurred by them respectively for and in the interest of the district, such compensation as the board shall determine to be just and reasonable for which warrants of the district may be drawn and paid in the same manner, and out of the same funds, as other warrants of the district; after they have been approved by the board of supervisors of the county in which the district was formed.

Plans of work.

§ 37. The board of trustees must report to the board of supervisors of the county or counties in which the district is situated, such original plan or plans of the work; and every new, supplemental, or additional plan, if any, together with the estimates of the cost of the work necessary, for the reclamation and irrigation of the lands in the district, in pursuance of such plan or plans, together with the estimates of the incidental expenses, supervision, repairs, and costs of collections, and such other expenses necessary to the construction and maintenance of said work.

Lands sold subject to by-laws.

§ 38. The purchaser of any tract of land which may be unsold in any overflow district at the time said district was formed, takes the same subject to all the provisions of such by-laws and charges assessed in pursuance thereof.

Rights of purchaser.

§ 39. Such purchaser has all the rights and privileges enjoyed by original petitioners, if he pays into the county treasury of the county in which the district was formed, to the credit of said district, not less than twenty per cent of the principal, one year's interest at the rate of seven per cent on the remainder, and any charges assessed against the lands so purchased and remaining unpaid; and each year thereafter shall continue to pay twenty per cent of the principal and interest on the remainder until the whole of said assessment or charges have been paid.

Lien on land for unpaid assessments.

§ 40. From the time the purchaser has acquired said land designated upon the petition as unsold, the district shall have a lien upon said land for the amount of the unpaid assessments, which lien, together with the costs, may be collected by the trustees of the district in a suit to be brought in the name of the district by said trustees at any time after said purchaser has defaulted in any of the payments provided for in section 39 of this act.

Payment of interest due state suspended.

§ 41. Whenever the supervisors of any county, in which any overflow district has been formed under the provisions of this act, certify to the register of the state land office that the works of irrigation and reclamation are in progress, in conformity with the requirements and plans hereinbefore provided, the payment of interest due the state of California by purchasers in such district is hereby suspended; but if the works are not completed and accepted, or that not less than two dollars in money per acre has been expended on said work within five years of the date of filing the petition, the interest for the whole time must be charged and collected by the register.

Works completed.

§ 42. Whenever the trustees certify under oath to the board of supervisors of the county in which the district was formed, and show to their satisfaction that the works of reclamation and irrigation are completed or that two dollars in money per acre has been expended on said works of reclamation and irrigation, the board of supervisors must certify such fact to the register.

Deed issued.

§ 43. The register must thereupon forward to the county clerk and county treasurer of the county in which the district or any part thereof is situated, a statement showing the names of purchasers of lands in the district and the amount paid by each purchaser of swamp and overflowed land; and thereafter upon the order of the trustees of the district approved by the supervisors of the county in which the district was formed, the county treasurer or such other person having custody of the purchase money of the swamp and overflowed lands lying within said district, shall pay such money to the county treasurer of the county in which the district was formed, and said money shall by him be placed to the credit of the district, and fifty cents per acre or such part thereof as has been paid in shall by him be placed to the credit of the district, to be used in paying the necessary expenses incurred in forming and organizing such district, and for such other expenses of the district as the trustees of the district and the board of supervisors of the county in which the district was formed may order. The remainder of the purchase price in excess of fifty cents per acre shall then be refunded to the purchaser and all further payments in excess of the fifty cents per acre before mentioned and interest due from the purchaser as a part of the purchase price shall then be canceled and deed issued to said purchaser as though the full purchase price had been paid.

Tax levy.

§ 44. The revenue of overflow districts formed under this act, other than that received from the sale of water, franchises, power, and from other sources by the trustees of the district, and approved by the board of supervisors of the county in which the district was formed, must be derived from a tax levied upon the taxable property of the district, as shown by the last assessment roll of the county or counties in which the district or a part thereof is situated.

Estimate of expenditures.

§ 45. The board of trustees of overflowed districts formed under this act, must on the first Monday of June of each year certify to the clerk of the board of supervisors of the county or counties in which the district or any part thereof is situated, an estimate of the expenditures necessary to conduct the business, and execute the work of the district, also the amount of interest and principal of any bonded or other indebtedness, that will become due during the ensuing year.

Statement of equalized value of taxable property.

§ 46. The assessor of each county in which the district is wholly or partially situated, shall each year, after the county assessments have been equalized by the state board of equalization, and prior to the time when the board of supervisors of the counties meet to levy the taxes for county purposes, certify to the board of supervisors of said county or counties, a statement of the equalized value of all taxable property within the district and situated in the county in which he is the assessor; thereupon the board of supervisors of the county or counties in which any portion of said district is situated, shall, at the time of levying taxes for county purposes, levy a tax upon the property of such district situated in said county or counties sufficient to meet the requirements of said district, and to pay the interest which may become due on any bonds, or other indebtedness of such district during such year, and if any portion of the principal of said bonds, or other indebtedness, shall become due during the year, an amount sufficient to pay such portion of such principal, and such other charges against such district necessary to maintain and construct the works and conduct its business, less the amount estimated by the trustees to be derived from the sale of water, or other sources under their control during said year; the tax must be levied upon the property of the district situated in such County or counties by the board of supervisors of each county according to the ratio which the assessed valuation of the property of said district situated in such county, bears to the total valuation of the property of the district.

Taxes entered on assessment roll.

§ 47. All taxes so levied must be computed and entered upon the assessment roll of the county where such property may be situated, by the county auditor, and collected by the tax collector, at the same time and in the same manner as state and county taxes, and when collected shall be paid into the county treasury for the use of such district.

Money to be forwarded to treasurer of county in which district was formed.

§ 48. When any tax has been collected under the provisions of this act, and placed in the treasury of any county other than the one in which the district was formed, the treasurer of said county must, within thirty days after receipt of the same, forward all money in such treasury belonging to the district, to the county treasurer of the county in which the district was formed, who shall receive and receipt for the same, and place such money in the treasury of such county to the credit of said district.

No fees to officers.

§ 49. No assessor, tax collector, treasurer, or clerk shall receive any fee for any services required to be performed by them under the provisions of this act. All expenses necessarily incurred in carrying out the provisions of this act, shall be paid to the board of supervisors of the county incurring the expense, for the benefit of said county, by warrants of the district, in the same manner as other expenses of said district.

Lands capable of independent mode of reclamation may be set aside.

§ 50. If the owners of lands representing more than two-thirds of any body of lands within any overflowed district formed under this act, in which such lands have not been reclaimed or irrigated, and for which the trustees have made no provision for such reclamation and irrigation, desire to have such body of lands set over from said district, they must, in addition to the petition required for that purpose, show to the board of supervisors in which the district is formed, that said body of lands is capable of an independent mode of reclamation and irrigation, and that said body of lands could not be reclaimed and irrigated according to the plans and specifications adopted by the board of trustees of the district and that such segregation would not endanger or delay,

or otherwise interfere with the work of irrigating and reclaiming the remainder of the district.

Special election to vote bonds.

§ 51. Whenever in the opinion of the board of trustees of any overflowed district, formed under this act, the cost of reclamation and irrigation according to the plans thereof will be too great to be raised by taxes as provided in this act, to be paid within one year; the board of trustees of such district shall, for the purpose of voting the necessary bonded indebtedness therefor, order a special election to be held in said district at some time and some place or places designated by them.

Question submitted.

§ 52. At such special election there shall be submitted to the voters of said district, the question of whether or not the bonds of said district shall be issued in an amount necessary to construct said works of reclamation and irrigation, and which amount shall be estimated by said board of trustees and stated in the order for such election.

Election called by supervisors.

§ 53. Said election shall be called by the supervisors of the county in which the district was formed, upon petition signed by at least two members of the board of trustees, and said election shall conform to the provisions of this act, relative to election, and to the election laws of the state of California, and the question whether or not bonds of said district shall be issued in the amount named in the estimate and order of the board of trustees, for reclaiming and irrigating the lands of said district, shall be submitted to the voters thereof.

Notice of election to specify time and place.

§ 54. The notice of such special election shall specify the time and place or places of holding such election, the amount of bonds proposed to be issued, the names of the persons to act as the board or boards of election, and the ballot shall contain the words, "Bonds—Yes" and "Bonds—No."

Majority in favor.

§ 55. If a majority of the votes cast at such election are in favor of the bonds, the board of trustees of the district shall cause bonds, in the amount stated in the order for election, to be issued and placed in the custody of the treasurer of the county in which the district was formed.

Sale of bonds.

§ 56. The treasurer of said county shall place the bonds issued pursuant to this act, to the credit of said district and may at any time upon the order of the board of supervisors of said county, sell any of said bonds for the best price obtainable therefor, but in no event for less than the face value of said bonds, and the accrued interest thereon. Any money derived from the sale of such bonds by such county treasurer, shall be placed in the treasury to the credit of said district, and a proper record of such transaction be placed upon the books of such treasurer.

Denomination and form.

§ 57. Said bonds shall be of a denomination of not less than one hundred dollars, and not more than one thousand dollars each, shall be negotiable in form, signed by the board of trustees, and the chairman of the board of supervisors of the county in which the district was formed, and attested by the clerk of said board of supervisors, and the seal of such board of supervisors, and shall be numbered consecutively as issued, and bear date at the time of their issue, and shall express on their face that they were issued by authority of this act, stating its title and date of approval, and the date of election at which such issuance was authorized.

Interest.

§ 58. The bonds shall bear interest at a rate not to exceed six per cent per annum, payable semi-annually on the first day of January and the first day of July in each year, at the office of the county treasurer of the county in which the district was formed, or some other place allowed by law, and approved by the supervisors of said county and the judge or judges of the superior court thereof, upon presentation of the proper coupons therefor.

Coupons.

§ 59. Coupons for such installment and interest shall be attached to said bonds, and shall be numbered, signed, and attested in the same manner as the bonds.

Payment.

§ 60. The principal of said bonds shall be paid as follows, to wit: Five per cent of the whole amount of the bonds issued, according to their consecutive numbers, shall be paid ten years from the date of their issue, at the place provided for their payment, and five per cent thereof each succeeding year thereafter, until all are paid.

Deemed municipal bonds.

§ 61. When said bonds are issued in accordance with the provisions of this act, they shall be deemed municipal bonds for all purposes mentioned in the codes and statutes of this state. The principal and interest of said bonds shall be paid by revenue derived from a tax levied upon the assessable property of the district in accordance with the provisions of this act.

Bonds not presented when due.

§ 62. If any bond shall not be presented for payment when it becomes due, it shall cease to draw interest; but if presented at such time and not paid for the want of funds, the county treasurer shall so indorse it, and thereafter such bond shall draw interest until paid at the rate specified therein.

Orders on treasurer to pay for labor, etc.

§ 63. The board of trustees of said district may draw orders upon the county treasurer of the county in which the district was formed, payable in bonds or money in proportion to the amount thereof, to pay for labor or services performed, for materials or property furnished to said district, for the purpose of constructing, repairing and maintaining, the reclamation and irrigation works thereof, and the contingent expense of said district, which order shall be approved by the board of supervisors of said county, and thereafter paid by said treasurer, in the manner therein provided for, if such bonds then remaining in the treasury to the credit of the district be sufficient to pay the same.

Does not affect reclamation districts.

§ 64. Nothing in this act shall be construed as in any manner affecting or modifying the provision of the Political Code of the state of California concerning reclamation districts formed under the provisions of said code.

OXNARD.

See Act 3094, note.

CHAPTER 262.

OYSTERS.

Reference: See, generally, tit. "Fish and Game."

CONTENTS OF CHAPTER.

ACT 3392. PLANTING AND CULTIVATION OF OYSTERS.

PLANTING AND CULTIVATION OF OYSTERS.

ACT 3392—An act to encourage the planting and cultivation of oysters.

History: Approved March 30, 1874, Stats. 1873-74, p. 940. Prior acts of 1851 (Stats. 1851, p. 432), and 1866 (Stats. 1865-66, p. 848), continued in force by the codes (Kerr's Cyc. Penal Code, § 23 and Kerr's Cyc. Political Code, § 19), were repealed by the present act.

Right to plant oysters.

§ 1. Any citizen of the United States may lay down and plant oysters in any of the bays, rivers, or public waters of this state; and the ownership of and the exclusive right to take up and carry off the same shall be continued and remain in such person or persons who shall have laid down and planted the same.

Beds to be staked off.

§ 2. Any person or persons who now have or who may hereafter lay down and plant oysters, as hereinbefore provided, shall stake or fence off the land on which the same is or hereafter may be laid down or planted, and such stakes or fences shall be sufficient marks of the boundaries and limits, and entitle such person or persons to the exclusive use and occupation thereof for the purposes prescribed in this act; provided, that nothing herein contained shall be deemed to authorize any impediments or obstructions to the navigation of any channels.

Record of beds.

§ 3. Parties planting or laying down such oyster beds, shall record a full description of said bed or beds, in the county recorder's office in the county where the same is situated. The recorder shall record the description so furnished, in a book to be kept by him for that purpose, to be entitled a "Record of Oyster Beds."

Trespass upon beds a misdemeanor.

§ 4. Any person or persons who shall enter upon any lot of land, in which there shall be oysters laid down and planted, and which at the time of such entry shall be fenced or staked off pursuant to the provisions of this act, and who shall take up and carry off therefrom such oysters, without the consent or permission of the occupants and owners thereof, and shall wilfully destroy or remove, or cause to be removed or destroyed, any stakes, marks, or fences intended to designate the boundaries and limits of any land claimed and staked or fenced off pursuant to the provisions of this act, shall be guilty of a misdemeanor.

Penalties.

§ 5. The penalties of the Penal Code relative to misdemeanors are hereby made applicable to any violation of the provisions of this act.

Fines and penalties paid to common school fund.

§ 6. All fines and penalties collected for a violation of any of the provisions of this act, over and above the costs of suit, shall be paid into the common school fund of the county where the offense was committed.

Erection of signs.

§ 7. All parties availing themselves of the provisions of this act, shall erect or cause to be erected, on some conspicuous part of the grounds devoted to the planting of oysters a sign, not less than six feet in length and one foot in width, on which shall be painted in black letters upon a white ground the words: "Oyster Beds."

Repeal of conflicting acts.

§ 8. All acts and parts of acts in conflict with the provisions of this act, and especially an act entitled "An act concerning oysters," passed April twenty-eighth, one thousand eight hundred and fifty-one, as also the act entitled "An act concerning oyster beds," approved April second, one thousand eight hundred and sixty-six, are hereby repealed.

Act does not apply to what lands.

§ 9. This act shall not apply to any tide-lands which the state may have sold to private parties; provided, further, that nothing herein shall be so construed as to interfere with the right of the state to sell and dispose of any of the tide-lands, nor to affect in any manner the rights of purchasers at any sale of tide-lands by the state.

§ 10. This act shall take effect and be in force from and after its passage.

Editor's note: As to what statutes, concerning oysters, and oyster beds, were preserved by the codes, see Kerr's Cyc. Pol. Code, § 19, subds. 18, 19.

1. An oyster bed not real estate, but mere personal license.—An oyster bed planted under the provisions of March 20,

1874, is not real estate or any estate of inheritance whatever, but that act grants a mere personal license not inheritable or transferable, which may be revoked by the state.—Darbee, etc., Co. v. Pacific, etc., Co., 150 Cal. 392, 88 Pac. 1090, 119 Am. St. Rep. 227.

PACIFIC COLONY.

See tit. "Insane Asylums."

PACIFIC GROVE.

See Act 3094, note.

CHAPTER 263.**PALO ALTO.**

Reference: Original Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.

ACT 3397. FREEHOLDERS' CHARTER.

FREEHOLDERS' CHARTER.

ACT 3397—Freeholders' charter of Palo Alto.

History: Voted for and ratified at a special election held January 21, 1909. Adopted February 20, 1909, Stats. 1909, p. 1175. Amended February 1, 1911. Filed with the secretary of state March 24, 1911, Stats. 1911, p. 2040; November 27, 1916. Filed with the secretary of state January 27, 1917, Stats. 1917, p. 1859.

CHAPTER 264.**PANDERING.**

References: See, generally, tits. "Pimping"; "Prostitution."

CONTENTS OF CHAPTER.

ACT 3398. PANDERING PROHIBITED.

PANDERING PROHIBITED.

ACT 3398—An act in relation to pandering; to define and prohibit the same, to provide for punishment thereof; for the competency of certain evidence at the trial therefor.

History: Approved February 8, 1911, Stats. 1911, p. 9.

Pandering. Penalty.

§ 1. Any person who shall procure a female inmate for a house of prostitution, or who, by promises, threats, violence, or by any device or scheme, shall cause, induce, persuade or encourage a female person to become an inmate of a house of prostitution, or shall procure for a female person a place as inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state, or any person who shall, by promises, threats, violence or by any device or scheme, cause, induce, persuade or encourage an inmate of a house of prostitution or any other place in which prostitution is encouraged or allowed to remain therein as such inmate, or any person who shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any female person to become an inmate of a house of ill-fame, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution, or who shall receive or give, or agree to receive or give, any money or thing of value for procuring, or attempting to procure, any female person to become an inmate of a house of ill-fame within this state, or to come into this state or leave this state for the purpose of prostitution, shall be guilty of a felony, to wit: pandering, and upon conviction for an offense under this act shall be punished by imprisonment in the state prison for a period of not less than one year nor more than ten years.

Competent witness.

§ 2. Any such female person referred to in the foregoing section shall be a competent witness in any prosecution under this act to testify for or against the accused as to any transaction or as to any conversation with the accused or by him with another person or persons in her presence, notwithstanding her having married the accused before or after the violation of any of the provisions of this act, whether called as a witness during the existence of the marriage or after its dissolution.

1. No connection with crime of abduction.—The crime of pandering under this act has no connection with the crime of abduction defined in section 267, Penal Code.—*People v. Matsicura*, 19 Cal. App. 75, 124 Pac. 882.

2. Pandering defined.—One who procures for a female a place in a house of prostitution for the purpose of plying the vocation of a prostitute, is guilty of pandering under the act, although she was accepted as an inmate upon condition subsequent that she would register with the police department and pass the clinic.—*People v. Hirsch*, 21 Cal. App. 737, 132 Pac. 1062.

3. An information charging the commission of the crime of pandering in procuring a place in a house of prostitution as an inmate for a female person is sufficient to charge the crime without denouncing the other acts and conduct enumerated by the statute.—*People v. Lawlor*, 21 Cal. App. 63, 131 Pac. 63.

4. Attempt to commit the crime of pandering.—Where a man induces a woman to accompany him to a certain city, and occupies a room in a hotel as husband and

wife and thereafter procures a prostitute to take her to a house of prostitution for the purpose of "working" as a prostitute, he is guilty of an attempt to commit the crime of pandering under the act, although he does not personally procure her a room in such house and the prostitute to whom he delivers her did not intend to and did not carry out his purpose.—*People v. Petros*, 25 Cal. App. 236, 143 Pac. 246.

5. Same.—The act recognizes and denounces the crime of pandering, and a conviction for an attempt to commit that crime is not open to an objection that the offense for which the conviction was had involved acts which would constitute another substantive crime.—*People v. Marks*, 24 Cal. App. 610, 142 Pac. 98.

6. Same.—Under the statute where it appears that the defendant had the intention to place a female in a house of prostitution for the purpose of prostitution, and had used toward her such inducement, persuasion or encouragement that she would have been caused to become an inmate of such a house, but for the intervention of circumstances apart from and independent

of the will of the defendant, the crime of an attempt to commit the crime denounced by the statute is fully accomplished.—*People v. Petros*, 25 Cal. App. 236, 143 Pac. 246.

7. Same—Conflict of evidence.—Where there is a conflict of evidence upon the question, the order granting a new trial will be affirmed.—*People v. Petros*, 25 Cal. App. 236, 143 Pac. 246.

8. The crime of pandering under the act is complete where one procures a female person "to enter any place in which prostitution is encouraged or allowed," and it is immaterial whether or not such female person became an inmate of such house.—*People v. Jan You*, 26 Cal. App. 148, 146 Pac. 63.

9. Actual occupancy of room in a house of prostitution by a female inmate is essential to the completion of the crime of pandering, and it is not sufficient that there was an intention or a mere unconsummated agreement, or that a room in the house is promised.—*People v. Matsicura*, 19 Cal. App. 75, 124 Pac. 882.

10. Inmate of house of prostitution.—A female who enters a house of prostitution with intent to remain and ply her vocation

as a prostitute, is an inmate of such house, even though she does not remain twenty-four hours, and does not ply her vocation.—*People v. Hirsch*, 21 Cal. App. 737, 132 Pac. 1062.

11. Evidence.—Where the evidence was ample as tending to prove that defendant conducted a rooming house, and under the pretense of showing the prosecuting witness, and her two female companions, some curios, as well as by other means, encouraged and induced them to go to this rooming house, which they visited at night on two or three occasions, and while there, at defendant's suggestion, occupied rooms, and had sexual intercourse with Chinese habitues of the place, from whom they received money, which the defendant required them to divide with him, the crime of pandering is clearly proved.—*People v. Jan You*, 26 Cal. App. 148, 146 Pac. 63.

12. Evidence held to be sufficient to sustain a verdict of conviction of the crime of attempt to commit the crime of pandering under the act.—*People v. Marks*, 24 Cal. App. 610, 142 Pac. 98.

CHAPTER 265.

PARDON BOARD.

CONTENTS OF CHAPTER.

ACT 3400. ADVISORY PARDON BOARD.

ADVISORY PARDON BOARD.

ACT 3400—An act creating an advisory pardon board; defining and prescribing the powers and duties thereof; and making an appropriation therefor.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 465. Amended May 8, 1917. In effect July 27, 1917. Stats. 1917, p. 291.

Advisory pardon board created. President pro tempore of senate serves when.

§ 1. An advisory pardon board of and for the state of California is hereby created, which shall consist of the lieutenant governor, who shall be chairman of said board, the attorney general, and the wardens of the two state prisons. Should the lieutenant governor be absent or unable to perform the duties herein prescribed, the president pro tempore of the senate shall act in his place. The board shall have and exercise the powers and duties hereinafter set forth and specified.

Board shall appoint secretary. Duties. No compensation for board.

§ 2. The board shall have power to appoint a secretary, who shall hold office during its pleasure and who shall receive a salary of one hundred fifty dollars per month. The secretary shall keep a record, in which shall be entered all applications referred to the board, the name of each applicant, the date and place of his conviction, his sentence, his offense, and such other data as the board may direct, and a memorandum of the action taken by the board on each application. The secretary shall perform also such other duties as the board may require of him. The members of said board shall not receive any salary or compensation, but they and the secretary shall each be allowed all actual and necessary expenses incurred while traveling on the business of the board.

Meetings. Duties.

§ 3. The board shall meet at the state capitol at least once in every two months and at such other times as proper exercise of its functions may require. Upon request of the governor the board shall investigate and report on all applications for reprieves, pardons and commutations of sentence and shall make such recommendations to the governor with reference thereto as to it may seem advisable. To that end the said board shall examine and consider all applications so referred and all transcripts of judicial proceedings and all affidavits or other documents submitted in connection therewith, and shall have power to take testimony and to examine witnesses under oath and to do any and all things necessary to make a full and complete investigation of and concerning all applications referred to it. Members of said board and its secretary are, and each of them is, hereby authorized to administer oaths.

Appropriation.

§ 4. Out of any money in the state treasury not otherwise appropriated, there is hereby appropriated, for the sixty-seventh and sixty-eighth fiscal years, the sum of five thousand dollars for carrying into effect the provisions of this act.

PARIS GREEN.

See tit. "Adulteration."

CHAPTER 266.**PAROLE OF PRISONERS.**

Reference: Employment of paroled prisoners, see tit. "Prisons," Act 3609.

CONTENTS OF CHAPTER.

- ACT 3408. BOARD OF PAROLE COMMISSIONERS.
- 3409. COUNTY PAROLE COMMISSIONERS.
- 3410. PAROLE HEADQUARTERS FOR STATE SCHOOLS.

BOARD OF PAROLE COMMISSIONERS.

ACT 3408—An act to establish a board of parole commissioners for the parole of, and government of paroled prisoners, and repealing an act to amend an act entitled, "An act to establish a board of parole commissioners for the parole of, and government of paroled prisoners," approved March 23, 1893.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1048. Amended May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 981. Prior act of March 23, 1893, Stats. 1893, p. 183. Amended February 28, 1901, Stats. 1901, p. 82. Repealed by the present act.

Rules governing parole.

§ 1. The state board of prison directors of this state shall have power to establish rules and regulations under which any prisoner who is now or hereafter may be imprisoned in any state prison, and who may have served one calendar year of the term for which he was convicted may be allowed to go upon parole outside of the buildings and inclosures, but to remain while on parole in the legal custody and under the control of the state board of prison directors, and subject at any time to be taken back within the inclosure of said prison; and full power to make and enforce such rules and regulations, to grant paroles thereunder, and to retake and imprison any convict so upon parole is hereby conferred upon said board of directors, whose written order certified by the president of said board shall be a sufficient warrant for all officers named therein to authorize such officer to return to actual custody any conditionally released or paroled prisoner, and it is hereby made the duty of all chiefs of police, marshals of cities and

villages, and sheriffs of counties, and all police, prison and peace officers and constables to execute any such order in like manner as ordinary criminal process; provided, however, that no prisoner imprisoned under a life sentence shall be paroled until he shall have served at least seven calendar years; provided further, that no prisoner who has served a previous term in any state prison in this or any other state shall be paroled until he has served at least two calendar years, and no prisoner who has had imposed upon him two or more cumulative or consecutive sentences shall be paroled until he has served at least two years of the aggregate time of such cumulative or consecutive sentences. The governor of the state shall have like power to cancel and revoke the parole of any prisoner, and his written authority shall likewise be sufficient to authorize any of the officers named therein to retake and return said prisoner to the state prison, and his written order canceling or revoking the parole shall have the same force and effect and be executed in like manner as the order of the state board of prison directors. If any prisoner so paroled shall leave the state without permission from said board he shall be held as an escaped prisoner and arrested as such.

Conditions of parole. Hearing upon forfeiture. Parole not to be revoked without cause.

§ 1½. The board of parole commissioners may upon granting any parole to any prisoner impose as a condition thereof any term or terms they may deem proper relating to the term of imprisonment or credits of such prisoner, and may impose as a condition thereof that all or a portion of his credits, earned or to be earned, may be forfeited by order of the board in the event that such prisoner shall break his parole or violate any law of the state, or rule or regulation of the prison, of the board of prison directors or of the board of parole commissioners, or any of the terms or conditions of his parole; provided, however, that such forfeiture shall not be had except upon a hearing upon the question of such violation and adjudication by the board that such prisoner was guilty thereof, which adjudication shall be final. At such hearing such prisoner shall be present and entitled to be heard and may present evidence and witnesses in his behalf.

No parole shall be revoked and no credits forfeited without cause, which cause must be stated in the order revoking the parole or forfeiting the credits. [New section added May 29, 1915. In effect August 8, 1915, Stats. 1915, p. 981.]

§ 2. "An act to establish a board of parole commissioners for the parole of, and government of parole prisoners," approved March 23, 1893, is hereby repealed.

1. Right to parole—Legislative intent.—It was the intention of the legislature in the present act to give to a prisoner the right to apply for a parole at the end of the fixed period specified and to confer entire discretion upon the board as to giving a parole to such prisoner.—*Roberts v. Duffy*, 167 Cal. 629, 140 Pac. 260.

2. Same—"May" not construed as "must" or "shall."—A prisoner is not entitled as a matter of right to a parole even though his conduct during the year has been good, but the word "may" in the provision "may be allowed to go on parole outside the buildings and enclosures," is not to be construed as "must" or "shall" so as to impose upon the board an amendatory duty to parole him.—*Roberts v. Duffy*, 167 Cal. 629, 140 Pac. 260.

3. Terms of parole—Legislative intent.—It was the legislative intention that the board should examine not only the daily prison life and conduct of the prisoner but

to consider also the nature of the offense for which he was sentenced, the term for which he was sentenced, the portion thereof which he had served, his age, life history, habits, inclinations, disposition, traits of character and the probabilities for and against his reformation.—*Roberts v. Duffy*, 167 Cal. 629, 140 Pac. 260.

4. Prisoners, not for life, entitled to benefit of act.—A prisoner sentenced for a term of imprisonment and not for life, is entitled under the parole law, as a matter of right at the expiration of one calendar year of his sentence, to apply for a parole and to be accorded a hearing thereon within a reasonable time thereafter; and the board of prison directors have no authority to adopt a rule postponing the enjoyment of this right for a longer period.—*Roberts v. Duffy*, 167 Cal. 629, 140 Pac. 260.

5. Determination of board conclusive.—The determination of the board of prison directors, on any application for parole, is

conclusive on the courts, regardless of the reasons or facts upon which it is based.—*Roberts v. Duffy*, 167 Cal. 629, 641, 140 Pac. 260.

6. **Prisoner on parole, status of—Rules governing, are "prison rules."**—Under the act of 1893 a prisoner on parole is "in the legal custody and under the control of

the state board of prison directors," and the rules which such board may make for the government of such prisoner's conduct outside the parole, are "the rules and regulations of the prison" within the meaning of that phrase, as used in section 1588 of the Penal Code.—*In re Stanton*, 169 Cal. 607, 147 Pac. 264.

COUNTY PAROLE COMMISSIONERS.

ACT 3409—An act to provide for the creation of a board of parole commissioners for each county in this state, for the paroling of prisoners confined in county jails, and authorizing and empowering such boards to make rules and regulations in relation thereto.

History: Approved March 25, 1909, Stats. 1909, p. 783. Amended June 4, 1913. In effect August 10, 1913. Stats. 1913, p. 385.

County parole commissioners. Power to enforce rules. Prisoner who leaves county.

§ 1. A board of three parole commissioners for each county in this state, consisting of the sheriff and the district attorney of each said county and the chief of police (or other chief or sole peace officer) of every city which now is or hereafter may be the county seat of any such county, is hereby created for each such county, which board shall and must as a board of parole commissioners for and in each county, make and establish rules and regulations under which any prisoner who is now or hereafter may be imprisoned in the county jail of said county, or in the city jail of any city in any county, or in any jail as the prisoner of any city, or in any other jail in any such county, after judgment of conviction for the commission of a misdemeanor, may be allowed to go upon parole outside of any jail in which he is or may be hereafter imprisoned, but to remain, while on parole, in the legal custody and under the control of the board of parole commissioners establishing the rule and regulations for his parole, and subject, at any time, to be taken back within the enclosure of any such jail. Full power to make, establish and enforce such rules and regulations, and to retake and imprison any prisoner so upon parole, is hereby conferred upon each such board of parole commissioners; and its written order shall be a sufficient warrant for all officers named in such order to authorize them, or any of them, to return to actual custody any conditionally released or paroled prisoner. It shall be and is hereby made the duty of all chiefs of police, marshals of cities and villages, sheriffs of counties, constables, and all other police and peace officers of this state to execute any such order in like manner as ordinary criminal process. If any prisoner so paroled shall leave the county in which he was or is hereafter may be so imprisoned without permission from the board of parole commissioners granting his parole, he shall be arrested as an escaped prisoner and held as such. [Amendment approved June 14, 1913, Stats. 1913, p. 385.]

To succeed former board.

§ 2. The board of parole commissioners created by this amendment of said act shall be the successor to and the substitute for the board of parole commissioners specified in section 1 of said act prior to this amendment thereof, and shall have, possess and enforce the powers, rights and duties as to prisoners paroled by such former board, as such former board had, possessed and could enforce. Upon the taking effect of this act, such former board of parole commissioners shall cease to exist. [Amendment approved June 14, 1913, Stats. 1913, p. 385.]

This section was amended by the act of 1913, though no mention was made of it in the title of the act.

PAROLE HEADQUARTERS FOR STATE SCHOOLS.

ACT 3410—An act to provide for the establishing and maintaining of parole headquarters in connection with state schools and reformatories.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1034.

Parole headquarters for state schools.

§ 1. The board of trustees or other administrative body of any state reformatory or state school is hereby empowered and authorized to establish and maintain parole headquarters out of funds made available for their use and to pay rental and such incidental expenses as may be incurred in maintaining such headquarters and to advance money to any boy or girl who may now or hereafter be on furlough, parole or discharge from any such reformatory or state school, and to assist them in obtaining employment and in becoming established as useful and law-abiding members of society.

PARTNERSHIP.

See tit. "Mines and Mining"; and Kerr's Cyc. Civil Code, §§ 2477-2485, 2511, et seq.

CHAPTER 267.

PASADENA.

Reference: Incorporation under general law, see Act 3094, note.

CONTENTS OF CHAPTER.

ACT 3421. FREEHOLDERS' CHARTER.

FREEHOLDERS' CHARTER.

ACT 3421—Freeholders' charter of the city of Pasadena.

History: Voted for and ratified at a special election held November 20, 1900. Adopted January 29, 1901, Stats. 1901, p. 884. Amended (1) February 4, 1905, adopted February 20, 1905, Stats. 1905, p. 1011; (2) February 26, 1909, adopted March 3, 1909, Stats. 1909, p. 1198; (3) May 24, 1912, filed with the secretary of state January 27, 1913, Stats. 1913, p. 1457; (4) April 3, 1919, filed with the secretary of state April 22, 1919, Stats. 1919, p. 1502.

1. Office of superintendent of schools.—Intention as to control of.—The electors in adopting the charter and the legislature in ratifying it, intended that the term of office of the superintendent of schools should be controlled by the general statute (§ 1793, Pol. Code).—*West v. Board of Education*, (Cal. App.) 184 Pac. 877.

2. Same—Same—Appointment and salary.—The board of education of Pasadena was authorized under section 6, 7 of article 16 to appoint a superintendent of schools, fix his salary, and term of office in accordance with the authority of section 1793, Political Code.—*West v. Board of Education*, (Cal. App.) 184 Cal. 877.

3. Streets—Change of grade—Waiver of constitutional guaranty.—The charter of Pasadena contains no provision making the owner's failure to present a claim for damages on account of change of grade of streets a waiver of his right to be compensated; and such failure to remonstrate and claim damages prior to the commencement of the work can not be construed as such a waiver or to bar his right of action for damages for the completion of the right,

notwithstanding the provisions of sections 2 and 3 of article IX of said charter.—*Sala v. Pasadena*, 162 Cal. 714, 124 Pac. 539.

4. Power to control streets—Use by public service corporations.—The charter of Pasadena confers upon the city full control of its streets without power to determine what portions thereof, and upon what terms, may be used by public service corporations.—*Sunset, etc., Co. v. Pasadena*, 161 Cal. 285, 280, 118 Pac. 796.

5. Same—Same.—The reasonableness of the charge imposed by the city of Pasadena upon a telephone and telegraph company for the use of certain portions of its streets for lines and polls, is purely a matter for the determination of the city authorities, and the courts will not interfere.—*Sunset, etc., Co. v. Pasadena*, 161 Cal. 265, 118 Pac. 796.

6. Same—Same—Section 536, Civil Code, does not affect.—The charter of Pasadena gives to the city a full control of its streets with the power to determine upon what terms portions thereof may be used by telegraph and telephone companies; and this being a municipal affair, the re-enactment of

section 536 of the Civil Code conferred no right upon a telegraph and telephone company so far as the streets of that city are concerned.—*Sunset, etc., Co. v. Pasadena*, 161 Cal. 265, 118 Pac. 796.

7. Street traffic—Power to regulate subordinate to that of legislature.—The regulation of street traffic is not one of those municipal affairs in which chartered cities are given a power superior to that of the legislature, but such power (as in the case of that given in the Pasadena charter) is subject to the general law, and if inconsistent therewith, is invalid.—*Ex parte Daniels*, (Cal.) 192 Pac. 442.

8. Same—Same—Speed of motor vehicles.—The Pasadena charter, in so far as it confers the power upon the city to regulate motor vehicle traffic in the matter of lawful speed, is subordinate to the motor vehicle act, and an ordinance under the charter is invalid so far as inconsistent with the general law.—*Ex parte Daniels*, (Cal.) 192 Pac. 442.

9. Purchase of private water plant—Duty as trustee to continue to supply company's contract customers.—Upon its purchase of the plant of a water company by the city of Pasadena the duty devolves upon it as a trustee to continue to supply the city of South Pasadena and its inhabitants with the water of said company appropriate to the use of said last-named city.—*South Pasadena v. Pasadena, etc., Co.*, 152 Cal. 579, 93 Pac. 490.

10. Same—Same—Charter power.—Under

the provisions of its charter and under the act of 1891, the city of Pasadena is empowered to accept the property, business and franchises of a water company engaged in supplying water to the cities of Pasadena and South Pasadena for the use of the inhabitants of those cities, and for the sprinkling of the streets of said city and to undertake and perform the public service imposed on such property in the hands of the said water company.—*South Pasadena v. Pasadena, etc., Co.*, 152 Cal. 579, 93 Pac. 490.

11. Same—Same—Acts in proprietary not governmental capacity.—The city of Pasadena does not act in its political, public or governmental capacity in supplying water to the people of South Pasadena, but it acts in a proprietary and only quasi-public capacity.—*South Pasadena v. Pasadena, etc., Co.*, 152 Cal. 579, 93 Pac. 490.

12. Same—Same—"Municipal affair"—Charter paramount.—The supplying of water by the city of Pasadena to the people of South Pasadena is a municipal affair of the former, and its charter provisions relating thereto are paramount to general laws of any consistent therewith.—*South Pasadena v. Pasadena, etc., Co.*, 152 Cal. 579, 93 Pac. 490.

13. Ordinances—"Finally adopted" and "final passage" synonymous.—The expression "finally adopted," as used in section 39, and the expression "final passage" as used in section 198b of the Pasadena charter, are synonymous.—*Solomon v. Alexander*, 161 Cal. 23, 26, 118 Pac. 217.

PASO DE ROBLES.

See Act 3094, note.

CHAPTER 268.

PAUPERS.

CONTENTS OF CHAPTER.

ACT 3428. SUPPORT OF INDIGENT, INCOMPETENT, AND INCAPACITATED PERSONS.

SUPPORT OF INDIGENT, INCOMPETENT, AND INCAPACITATED PERSONS.

ACT 3428—An act to provide for the maintenance and support, in certain cases, of indigent, incompetent, and incapacitated persons (other than persons adjudged insane and confined within state hospitals), becoming a public charge upon the counties or cities and counties within the state of California, and for the payment thereof into a fund for the maintenance and support of such persons.

History: Approved March 23, 1901, Stats. 1901, p. 636. Amended May 14, 1917. In effect July 27, 1917. Stats. 1917, p. 444. Prior acts of 1855 (Stats. 1855, p. 67), superseded by the county government act of 1883, and the act of 1883 (Stats. 1883, p. 380), repealed by the act of 1895 (Stats. 1895, p. 23), were of a similar character.

Indigent, poor and incompetents to be relieved.

§ 1. Every county and every city and county shall relieve and support all pauper, incompetent, poor, indigent persons and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, or by their own means, or by state hospitals or other state or private institutions.

Residence defined.

§ 2. The term "residence" as used in this act shall be taken to mean and shall be considered to mean the actual residence of each of such persons, or the place where such person was employed, or in case such person was in no employment, then it shall be considered and held to be the place where such person made his or her home, or his or her headquarters.

Bringing indigents into state a misdemeanor.

§ 3. Every person, firm or corporation, or the officers, agents, servants, or employees of any person, firm or corporation, bringing into or leaving within, or procuring the bringing into or the leaving within, or aiding in the bringing into or the leaving within, of any pauper or poor or indigent or incapacitated or incompetent person as hereinbefore mentioned, in any county or city and county in the state of California, wherein such person is not lawfully settled or not lawfully residing as herein defined, knowing him to be such pauper, poor, indigent, or incapacitated or incompetent person, shall be guilty of a misdemeanor.

Residents of other counties. Duty of county clerk.

§ 4. If any person shall become chargeable as a pauper, or poor, or indigent, or incapacitated, or incompetent person as herein designated, in any county, or city and county, who did not reside therein (as herein specified) at the commencement of three months immediately preceding his becoming so chargeable, but did at that time reside (as herein specified) in some other county, or city and county in this state, it shall be the duty of the county clerk of said first-mentioned county or city and county to send written notice by mail or otherwise to the county clerk of the county or city and county in which such person so resided, requesting the proper authorities of such county or city and county to remove such person forthwith, and to pay the expenses accruing on to accrue, in taking care of such person; and such county or city and county, wherein such person resided at the commencement of the three months immediately preceding such person's becoming chargeable as a poor, indigent, or incapacitated, or incompetent person as herein designated, shall pay to the county or city and county so taking care of such person all reasonable charges for the same, and such amount may be recovered by suit in any court of competent jurisdiction by such county or city and county.

Duty of board of supervisors.

§ 5. It shall be the duty of the board of supervisors of every county and every city and county as a whole, or by committee or by such person or society as it may authorize, to investigate every application for relief from the funds of such county or city and county, to supervise by periodic visitation every person receiving such relief, to devise ways and means for bringing persons unable to maintain themselves to self support and to keep full and complete records of such investigation, supervision, relief and rehabilitation as shall be prescribed by the state board of charities and corrections. [Amendment of May 14, 1917. In effect July 27, 1917, Stats. 1917, p. 445.]

Property subsequently acquired chargeable with support. Duty of district attorney. Procedure. Kindred must aid.

§ 6. In case such person shall be or shall thereafter become the owner of property, real, personal, or mixed, it shall be the duty of the district attorney of the county, or city and county, or the city and county attorney thereof, in which such person shall become a public charge, in whole or in part, to cause the entire or partial support as hereinafter provided to be fixed, of such person to be made out of such property, and to that end shall procure by suit or otherwise the assignment and payment for such purpose of all annuities and pensions; and in case such person shall be incompetent or a minor, within the provisions of the codes relating to the guardianship of the persons and estates of incompetent persons and minors, it shall be the duty of the district

attorney of such county, or city and county, or the city and county attorney thereof, to apply to the proper court for the appointment of a general guardian of the person and estate, or either, of such person or minor. Such application and appointment shall be made in the manner as provided by the codes of this state for the application for the appointment of guardians of infants and incompetent persons, and all proceedings thereunder, except as herein expressly declared otherwise, shall be in accordance with such provisions of said codes, and the public support of such minor or such incompetent shall be deemed one of the grounds for which an application may be made on behalf of such person for the sale of his property, as in the Code of Civil Procedure provided. From the proceeds of the property of said person or from such other funds as such guardian may obtain, or from such funds as the district attorney of the county, or the city and county, or the city and county attorney thereof, may be able to collect, there shall be paid into the county treasury of the county, the sum per month fixed by the board of supervisors of such county or city and county, quarterly in advance, for the maintenance and support of any such person or pauper; and there shall also be paid out of the proceeds of such sale or such other funds, such clothing and other supplies as may have been furnished to such person or pauper.

If any pauper, indigent, poor, incompetent, or incapacitated person has kindred of the degree of husband, wife, children (other than minors), father or mother, brother or sister, grandchildren, or grandparents living within this state, of sufficient pecuniary ability, such kindred in the order above named shall support such person by paying into the county treasury of such county, the sum per month fixed on by the board of supervisors, quarterly in advance, for the maintenance and support of such pauper, indigent, poor, incompetent or incapacitated person, and shall in the order above named, also pay for the clothing and other supplies, if any, furnished to such person. And if it shall be that the relatives liable as aforesaid are not of sufficient ability wholly to maintain such poor person or pauper, but are able to contribute something, they shall be required to pay a sum in proportion to their ability.

Failure of kindred to act. Proceedings.

§ 7. Upon the failure on the part of said kindred to perform such duty, an action shall be brought by the district attorney of the county or the city and county, or the city and county attorney thereof, in the name of the county or city and county, against said kindred in the order above named. And such action shall be prosecuted as are all other actions for the recovery of money in this state.

Funds refunded.

§ 8. If there be in the hands of any guardian of any such person or in the hands of any officer of said county upon the discharge or death of said person, any funds, the same shall be refunded after the payment of all the claims of the said county or city and county thereon and of the funeral expenses, in case of death of such person.

Moneys to be paid into what fund.

§ 9. All moneys derived in accordance with the provisions of this act shall be paid into such fund of the county or city and county as is used for the support and furtherance of the care of the persons herein referred to.

§ 10. This act shall take effect immediately.

New section added:

Duty of state board of charities and corrections.

§ 10. It shall be the duty of the state board of charities and corrections to prescribe forms of records for the use of board of supervisors and their agents in keeping records heretofore mentioned. [New section added May 14, 1917. In effect July 27, 1917, Stats. 1917, p. 445.]

CHAPTER 269.

PAWNBROKERS.

References: License of, see Kerr's Cyc. Political Code, § 3380.

Pawnbrokers, see Kerr's Cyc. Penal Code, §§ 338, et seq.

Pledge, see Kerr's Cyc. Civil Code, §§ 2986, et seq.

See, generally, tits. "Interest"; "Usury."

CONTENTS OF CHAPTER.

ACT 3434. PERSONAL PROPERTY BROKERS ACT.

PERSONAL PROPERTY BROKERS ACT.

ACT 3434—An act to define personal property brokers and regulate their charge and business.

History: Approved April 16, 1909, Stats. 1909, p. 969. Amended April 21, 1911, Stats. 1911, p. 978.

Personal property broker defined.

§ 1. That every person or corporation engaged in the business of loaning or advancing money or other thing and taking in whole or in part as security for such loan or advance any chattel mortgage, bill of sale or other obligation or contract involving the forfeiture of rights in or to personal property, the use or possession of which is retained by other than the mortgagee or lender, or engaged in the business of loaning or advancing money or other thing, and taking either in whole or in part as security therefor any lien on, assignment of or power of attorney relative to wages, salary, earnings, income or commissions, shall be held, and, for the uses and purposes of this act, is hereby declared and defined to be a personal property broker.

Broker may charge two per cent per month.

§ 2. Such personal property broker may charge, receive and collect a benefit or percentage upon money or other thing advanced, or for the use and forbearance thereof, of two per centum per month where such loan or advance is made upon security properly falling within the scope of business as set forth in section 1 hereof. [Amendment approved April 21, 1911, Stats. 1911, p. 978.]

No further charges may be made.

§ 3. No further or other charges either for recording, insuring or examining the security or property, or for the drawing, executing or filing of papers, or for any services or upon any pretext whatever beyond the aforesaid charge for interest or discount shall be asked, charged, or in any way received, where the same would thereby make a greater charge for the money or thing advanced than the aforesaid rate of two per centum per month, and where made, all such charges shall be considered and be of the same effect as so much added interest; provided, however, that with the consent of the borrower he may be required to pay the fees or charges actually expended where the same are made necessary by law to give full legal effect to any instrument given hereunder. [Amendment approved April 21, 1911, Stats. 1911, p. 978.]

Contract bearing greater rate not valid.

§ 4. No contract of any kind or nature made by any personal property broker which comes within the scope of business as set forth in section 1 hereof, or which in any way involves any security given to secure the performance of such contract, shall be valid or of any force, virtue or effect, either at law or in equity, if there is therein or thereon directly or indirectly charged, accepted or contracted to be received or paid, either in money, goods, discount, or thing in action, or in any other way, a greater benefit, rate of discount, or interest than the rate of two per centum per month; and if a

greater benefit, rate of discount or interest than two per centum per month is directly or indirectly advanced or paid upon any such contract as in this section designated, the excess above the said rate of two per centum per month so advanced or paid may be demanded and recovered by the person or his legal representative or assigns who advanced or paid the same from the person or corporation either to whom or for whose use or benefit such payment or advance or any part thereof was made. [Amendment approved April 21, 1911, Stats. 1911, p. 978.]

Loan tickets.

§ 5. Whenever a loan or advance shall be made, renewed or extended, hereunder there shall be given to the borrower a ticket or memorandum plainly inscribed with the name of the person or corporation making the loan, and members or general partners of the same if it be a firm, partnership or association, and further designating the number and nature of the instruments taken as security, the number of notes and amount of each, and the name of the party or parties in whose favor each of the aforesaid papers are executed, when the same are payable, the amount actually advanced thereon, the amount including all interest and expenses charged or to be paid for such loan or advance, and copies of sections 2, 3 and 4 of this act.

Failure to comply with act a misdemeanor. Penalty.

§ 6. The failure of any person or corporation, or any employee, employees, agent, agents, representative or representatives making, renewing or extending a loan or advance properly falling within the scope of business as set forth in section 1 of this act to comply with any or any part of the provisions of section 5 hereof, shall be guilty of a misdemeanor and for the first offense punished in the manner now provided by law and for each subsequent offense by a fine of not less than \$50 or more than \$500 or by imprisonment in the county jail of not less than ten days and not to exceed six months or by both such fine and imprisonment. [Amendment approved April 21, 1911, Stats. 1911, p. 979.]

1. **Constitutionality—Not special law and does not grant special privileges.**—The personal property brokers act of 1909 is not in conflict with the requirement that all laws of a general nature should have a uniform operation, nor is it unconstitutional on the ground that it grants special privileges to municipalities, nor that it is a denial of due process of law.—*Eaker v. Bryant*, 24 Cal. App. 87, 140 Pac. 310.

2. **Same—Same.**—The personal property brokers act of 1909 is not in violation of either section 11, or section 21, of article I of the constitution nor is it a special law within the meaning of subdivision 23, section 25 of article IV of the constitution.—*In re Stephan*, 170 Cal. 48, 148 Pac. 196, Ann. Cas. 1916E, 617.

3. **Same—Classification reasonable and appropriate.**—The business of loaning money on chattel mortgages or assignments or transfers of wages, etc., is an appropriate subject of recognition and classification by the legislative, and justifies the enactment of a law relating to that particular class of business.—*In re Stephan*, 170 Cal. 48, 148 Pac. 196, Ann. Cas. 1916E, 617.

4. **"Pawnbroker" defined.**—A pawnbroker is one who receives goods in pledge for loans of money and interest, and this must be his business or a well defined part thereof as distinguished from a single transac-

tion or occasional loans upon pledge.—*Levinson v. Boas*, 150 Cal. 185, 11 Ann. Cas. 661, 12 L. R. A. (N. S.) 575, 88 Pac. 825; *Innes v. Goldwater*, 30 Cal. App. 101, 157 Pac. 18.

5. **Violation of statute—When contract void.**—Wherever a statute is made for the protection of the public, a contract in violation of its provisions is void.—*Levinson v. Boas*, 150 Cal. 185, 11 Ann. Cas. 661, 12 L. R. A. (N. S.) 575, 88 Pac. 825; *Wood v. Krepps*, 168 Cal. 382, L. R. A. 1915B, 851, 143 Pac. 691.

6. **Same—Same.**—A statute or ordinance in imposing a license to conduct a harmless and legitimate business is solely for the purpose of yielding revenue not for the purpose of public protection; and the contracts made in the course of such business are valid, notwithstanding a penalty is imposed for a failure to obtain the license to conduct it.—*Wood v. Krepps*, 168 Cal. 382, L. R. A. 1915B, 851, 143 Pac. 691.

7. **Same—Same—Engaging in business without license.**—A chattel mortgage executed to a personal property broker is not invalidated by the violation on the part of such broker of an ordinance prohibiting him from engaging in the business without a license.—*Wood v. Krepps*, 168 Cal. 382, L. R. A. 1915B, 851, 143 Pac. 691. See, also, *Levinson v. Boas*, 150 Cal. 185, 11 Ann.

Cas. 661, 12 L. R. A. (N. S.) 575, 88 Pac. 825; Innes v. Goldwater, 30 Cal. App. 101, 157 Pac. 18.

8. Same—Same—Failure to comply with section 5.—The only penalty imposed by the personal property brokers act for a failure on the part of the broker to give the memorandum required by section 5 thereof, is a fine; and a loan made upon a chattel mortgage is not invalidated or the right to foreclose precluded by the failure to give such

notice. — Wood v. Krepps, 168 Cal. 382, L. R. A. 1915B, 851, 143 Pac. 691.

9. Loan not invalidated by inclusion of broker's commission.—The inclusion of a broker's commission in the amount of a loan does not invalidate the same, where it does not appear that the lender had been served by such broker, or that he had been benefited by the service which was rendered under contract with the borrower.—Herzer v. Lee, (Cal. App.) 189 Pac. 493.

CHAPTER 270.

PENSIONS.

References: Certification of pension vouchers, see Kerr's Cyc. Political Code, § 4295.

Firemen's pensions, see tit. "Fire Department."

Police pensions, see tit. "Police."

Teachers' pensions, see tit. "Schools."

CONTENTS OF CHAPTER.

ACT 3439. OLD AGE AND MOTHERS' PENSIONS.

3440. RETIREMENT SYSTEMS FOR COUNTY EMPLOYEES.

OLD AGE AND MOTHERS' PENSIONS.

ACT 3439—An act authorizing the governor to appoint a commission to investigate and report at the forty-first session of the legislature concerning the adoption of a system of old age insurance and pensions, and mothers' pensions, and making an appropriation therefor.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1353.

Commission to investigate old age insurance and pensions, and mothers' pensions.

§ 1. The governor of California is hereby authorized and requested to appoint a commission consisting of five persons, citizens of this state, one of whom shall be a member of the state board of control, to investigate and consider the various systems of old age insurance, old age pensions or annuities, also mothers' pensions or mothers' compensations now in use in different counties of this or other states, and as may be proposed or as are now in operation in other states of this country or elsewhere abroad, and to make a full and complete report of its findings with all data so obtained, properly tabulated, to the legislature at its next regular session. Said commission shall report also statistics showing the probable expense to the state of various systems, or of any system that it may recommend for adoption together with any bills of its own relating to this subject that may be deemed expedient.

Appropriation.

§ 2. There is hereby appropriated out of the general fund not otherwise appropriated, and the controller is herewith authorized and directed to issue his warrants for same from time to time, and the treasurer is likewise authorized and directed to pay the same on presentation of said warrants, the sum of three thousand dollars or any portion thereof as may in the judgment of the commission be required to complete its work under the provisions of this act.

RETIREMENT SYSTEM FOR COUNTY EMPLOYEES.

ACT 3440—An act to authorize the counties of the state of California to establish retirement systems for their employees.

History: Approved May 20, 1919. In effect July 22, 1919. Stats. 1919, p. 782.

Definitions.

§ 1. In this act, unless the context otherwise requires:

(a) The words "retirement system" mean the arrangements provided in this act for the payment of annuities, or the payment of total sums in lieu of annuities.

(b) The word "annuity" means the payments for life derived from money deposited by the employees and contributed by the county.

(c) The words "regular interest" mean interest calculated on March thirty-first, June thirtieth, September thirtieth and December thirty-first on payments received during the preceding quarter from the last of that quarter at four per cent per annum compounded annually on the last day of December.

(d) The word "employees" includes both appointive officers and employees of the county.

(e) The words "in continuous service" mean uninterrupted employment, except that a temporary lay-off on account of illness or for purposes of economy, a leave of absence, suspension or dismissal followed by reinstatement within one year shall not be considered as breaking the continuity of service; provided, further, that in case of reinstatement of any member who at the time of his separation from the service receives a refund under section six of this act, he shall be deemed to be a new entrant to the service and the monthly deductions from his salary shall be computed from the date of such reinstatement unless he shall, within ninety days from such reinstatement, return to the members' deposit reserve the amount refunded to him.

(f) The word "county" shall mean "county" or "city and county."

(g) The term "salary fund" shall mean in any city and county the fund from which salaries are ordinarily paid.

Retirement system for county employees established.

§ 2. There is established in each of the several counties of the state, a retirement system for its employees, as defined in section three; provided, however, that the provisions of this act shall become effective in any particular county only upon condition that the provisions of this act are accepted by ordinance passed by a four-fifths vote of its board of supervisors, in which event the provisions of this act shall become operative in such county on the first day of January, or on the first day of July next following the expiration of three months after the passage of said ordinance. Within thirty days after the passage of such ordinance, the clerk of the board of supervisors shall mail a certified copy of such ordinance to the insurance commissioner of this state, who shall forthwith issue a certificate that the retirement system, provided for in this act, is declared established in such county to become operative therein, as above set forth.

Organization of retirement association.

§ 3. Whenever the provisions of this act shall become operative in any particular county a retirement association shall be organized as follows:

(1) Except as otherwise herein provided, all employees of the county shall become members of the association thirty days after the retirement system becomes operative, or thirty days after their entrance into the service; provided, however, that employees entitled to become beneficiaries under a retirement or pension system already provided by law or freeholders' charter, are exempt from the provisions of this act.

(2) No officer holding an elective office or elected by popular vote may become a member of the association.

(3) After one year subsequent to the formation of a retirement system any member who reaches or has reached the age of sixty years and who has been in the continuous service of the county for a period of ten years immediately preceding may retire, and

any member who reaches the age of seventy must retire; provided, however, that within thirty days before reaching the age of compulsory retirement a member may be retained for a period not to exceed one year and similarly thereafter from year to year, if the head of the department or office in which he is employed, or the board or commission having power of appointment, certifies to the board of retirement that, by reason of his efficiency and willingness to remain, his further continuance would be advantageous to the public service and if such recommendation is approved by the board of retirement and the board of supervisors.

(4) After the said first year has elapsed any member who has completed a period of thirty-five years of continuous service may retire or may be retired at any age by the officer, board or commission having power to dismiss such member if such action be deemed advisable for the good of the service.

(5) After the said first year has elapsed any member who becomes permanently disabled for any cause whether incurred in the performance of duty or otherwise shall be retired in the same manner as prescribed in subdivision (4) of this section.

(6) Membership in the association shall be evidenced by membership certificate and the right to an annuity shall be evidenced by an annuity certificate to be issued by the board of retirement.

(7) Nothing contained in this act shall be construed as in any way affecting the power of removal vested in officers, boards or commissions.

Board of retirement.

§ 4. (1) The management of the retirement system is hereby vested in the board of retirement, consisting of three members, one of whom shall be the county treasurer. The second member shall be a member of the association elected by the latter within thirty days after the date when the retirement system becomes operative as provided under section two, in a manner to be determined by the county board of supervisors. The third member shall be an officer or employee of the county chosen by the board of supervisors. The first person so chosen or appointed as third member shall serve for two years; otherwise and thereafter the term of office of the two elected members shall be three years. On a vacancy occurring in the board for any cause or on the expiration of the term of office of any member, a successor of the person whose place has become vacant or whose term has expired shall be chosen in the same manner as was his predecessor. Separation from the service of the county of a member of the board of retirement shall automatically vacate his office.

Compensation.

(2) The members of the board of retirement shall serve without compensation, but they shall be reimbursed out of the funds of the county, appropriated in section five (1) to defray the cost of operating the retirement system, for any expense or loss of salary or wages which they may have incurred through service on the board.

County treasurer shall have control of funds.

(3) Subject to the approval of the board of retirement, the county treasurer shall have charge and control of and shall safely keep the funds of the system, and shall invest and reinvest the same, and may from time to time sell any securities held by him and invest and reinvest the proceeds therefrom, and any and all unappropriated income of said funds; provided, however, that all funds received by him not required for current disbursements shall be invested in first mortgages on improved real estate situated within the county not exceeding sixty per cent of the value thereof; or in bonds of the United States or of the state of California, or of any county, city and county, or municipal corporation, or other subdivision thereof; or deposited at interest

in any state or national bank doing business within the county; provided, that the credit of the county shall not be given or lent in aid of, or to, any person, association, or corporation, whether municipal or otherwise, nor shall it be pledged in any manner whatever for the payment of the liabilities of any individual, association, municipal or other corporation whatever. He may, whenever he sells such securities, deliver the securities so sold upon receiving the proceeds thereof, and may execute any and all documents necessary to transfer the title thereto. The duties herein imposed upon the county treasurer shall be deemed a part of his official duties and for the faithful performance of which he shall be liable on his official bond.

Employees retirement fund.

(4) A trust fund account to be known as employees retirement fund is hereby created to be opened upon the books of the auditor and treasurer of the counties adopting a retirement system under the provisions of this act.

All transfers or payments to the retirement system, and all withdrawals and other cash transactions, shall be accounted upon the books of the auditor and treasurer in and out of this fund account, in the manner they would be accounted if they were county transactions.

All warrants drawn on the employees retirement fund shall be signed by the treasurer and at least one other member of the board of retirement, who shall be designated by such board, but no warrant so drawn shall be valid until it has been countersigned and numbered by the county auditor and a record made of it by him.

By-laws and regulations.

(5) The board of retirement shall have power to make by-laws and regulations not inconsistent with the provisions of this act and such by-laws and regulations shall become effective when approved by the board of supervisors. The by-laws shall provide among other things:

Election of officers.

(a) For the election of officers, terms for which elected, times of meeting and all other matters relating to the administrative procedure of the board.

Exemption from membership.

(b) In the discretion of the board, for exemption from membership of persons whose tenure is temporary, or intermittent, or part time; and for exemption from membership, or for reduced rate of deposit (which in no case shall be less than two dollars per month) of, or by persons whose rate of compensation is less than eighty dollars per month, or by persons whose compensation is measured by a per diem wage.

Employee's statement.

(c) For the filing of a sworn statement by every person who is or who shall have become an employee of the county, showing date of birth, nature and duration of employment with the county, compensation received, and giving any other information that may be required by the board that will enable it to determine eligibility for membership and retirement.

Forms.

(d) For forms of membership and annuity certificates and for such other forms as may be required.

Statement of county treasurer to insurance commissioner.

(6) The county treasurer in January of each year shall, unless for cause the insurance commissioner shall have granted an extension of time, file in the office of the

insurance commissioner a sworn statement which shall exhibit the financial condition of the retirement system at the close of the thirty-first day of the preceding December and its financial transactions for the year ending with such day. Such statement shall be in a form approved by the insurance commissioner and shall show the following assets and liabilities:

Assets.

A. Assets.

- (1) Cash on hand.
- (2) Cash on deposit.
- (3) Securities owned.
- (4) All other assets, showing each kind separately.

Liabilities.

B. Liabilities.

(1) Members' deposit reserve—Less than ten years—The total of the deposits of members actually received by the treasurer or due from the county under section five, (2), (a), for the first nine and a fraction years, and held subject to withdrawal by such members, together with regular interest thereon separately reported.

(2) Members' deposit reserve—Ten years and over—The total of the deposits of members who have made deposits for ten or more years actually received by the treasurer or due from the county under section five, (2), (a), and held subject to withdrawal by such members, together with regular interest thereon separately reported.

(3) County advance reserve—The unused amount advanced by the county during the first ten years under section five, (2), (d).

(4) County contribution reserve—An amount equal to the net amount of the deposits by members that have made deposits for ten or more years plus regular interest, as reported under the provisions of subdivision (6), B, (2) of this section.

(5) Annuity reserve—The present worth of the combined annuities as a group entered upon under section six, on the basis of the mortality and annuity tables and regular interest rates provided for in this act. The unpaid annuities, resulting from the death of members before the full amount reserved for such annuities has been paid, shall not be deducted from this reserve but such amounts shall be used for the payment of annuities of persons exceeding their life expectancy.

(6) Prior service annuity reserve—The unexpended amount contributed by the county for the payment of annuities for prior service as provided by section six 2, B (4), and section five, (4), which must not be less than the amount of the annuities due and unpaid.

(7) Gifts and bequests—The amount received as gifts or bequests and held under the terms of such gifts or bequests.

- (8) All other liabilities.

Resulting surplus or deficit.

C. Resulting Surplus or Deficit.

- (1) Surplus if assets exceed liabilities.
- (2) Deficit if liabilities exceed assets.

Creation of funds.

Creation of Funds.

§ 5. The funds of the retirement system shall be raised as follows:

Expense.

(1) Expense—The county shall appropriate annually such an amount as may be necessary to defray the entire expense of administration according to estimates pre-

pared by the treasurer. All payments for this purpose except salaries shall be from the general fund of the county and all liabilities created hereunder shall be deemed liabilities created by law.

Deposit and contribution funds.

(2) Deposit and contribution funds—(a) Deposits by members. From the first salary or wage warrant drawn in each month in favor of each member of the association for an amount not less than four dollars, there shall be deducted, by the county auditor or other officer charged with the duty of drawing salary or wage warrants, the sum of four dollars which shall be paid by such officer to the county treasurer and placed to the credit of the member's account in the members' deposit reserve; provided, that where the board of retirement has, in accordance with the by-laws, permitted the exemption of certain members or the deduction of smaller amounts from their salaries or wages, the action of the board in such cases shall govern. Deductions shall not be made for any member for a period longer than twenty-five years.

(b) Contributions by the county. Whenever any member has made his or her deposits for ten years during a period of not less than ten years, or whenever a member becomes permanently disabled during the first ten years of his or her membership and is entitled to an annuity or to a lump sum payment from the county under the provisions of this act, the county shall transfer to the county contribution reserve, from the county advance reserve or from the salary fund if the former is not large enough a sum equal to that contributed by such member with regular interest added thereto. Thereafter for a period not exceeding fifteen years, the county shall at the end of each month contribute a sum equal to the sum deposited by such member during that month.

(c) Whenever any member entitled to an annuity retires or is retired under the provisions of this act, during the first ten years of its operation, an amount equal to the amount deposited by such member with regular interest shall be transferred from the county advance reserve, or from the salary fund if the former is not large enough, to the county contribution reserve.

(d) For the first ten years after the adoption of this act by any county in this state the board of supervisors thereof shall pay or transfer to the retirement system an amount not less than one per cent of the pay roll for the preceding year, which amount shall be paid from the salary fund, and be used only for the purpose of making contributions under the provisions of section five, (2), (b), and (c).

(e) If the amount so reserved shall at the end of ten years be in excess of the amount required to be contributed under provision of this act the balance shall be used in making contributions in the following year or years.

If the amount to be contributed by the county during the tenth year after the establishment of the retirement system is greater than the amount reserved under the provisions of this subdivision, the difference shall be contributed from the salary fund.

Annuity fund.

(3) Annuity fund—The annuity fund shall be created by transfers from the deposit and contribution funds as follows:

(a) When a member has been retired upon an annuity, the amount of his deposits plus regular interest shall be deemed transferred from the deposit fund to the annuity fund.

(b) A similar amount shall be deemed transferred from the contribution fund.

(c) The actual funds, i. e., the cash and other assets of the retirement system, shall be treated as a whole and no attempt made to keep and invest separately the amounts coming in from the several sources of income, but separate reserve or other accounts shall be kept to show from what sources the income is derived and for what purpose and to show the several liabilities of the system to be paid from the funds.

Prior service annuity fund.

(4) Prior service annuity fund—Upon the establishment of the retirement system and upon the first of the first month of each succeeding quarter, there shall be contributed by the county from the salary fund a sum as determined by the board of retirement equal to the total amount of prior service annuities as defined in section six 2, B, (4), that will be payable during the time that will intervene before the beginning of the next quarter.

Nothing herein contained however shall prevent a county from creating a fund for the payment of prior service annuities by dividing the total amount to be raised for this purpose as determined by the board of retirement into monthly, quarterly or annual contributions of equal amount; provided, that there shall always be in this fund a balance not less than the current demands against it.

Distribution of funds.**Distribution of Funds.**

§ 6. The county treasurer shall administer the funds of the retirement system in accordance with the following plan:

1. The cost of operation of the retirement system shall be borne by the county from funds provided under section five, (1), and the liabilities incurred in connection therewith paid as other county charges are paid. These expenses are hereby made county charges.

2. Deposit, contribution, and annuity funds—

Refunds.**A. Refunds.**

(1) Should a member separate from the service of the county for any cause except permanent disability before retirement, there shall be paid to him or, in case of death to his legal representatives, all the money that shall have been paid in by him under section five, (2), (a), with regular interest on such deposits.

(2) The amount contributed by the county for such member with regular interest shall be transferred from the county contribution reserve to the surplus and deficit account.

Annuities.**B. Annuities From Employees' Deposits and Contributions by the County.**

(1) Any member who reaches the age of sixty years and has been in the continuous service of the county for ten years immediately preceding and then or thereafter retires or is retired, any member who retires or is retired at the age of seventy years, or thereafter, and any member who retires or is retired for the good of the service or for permanent disability under the provisions of section three, (4) and (5), shall receive a life annuity to which the sum of his deposits under section five, (2), (a), with regular interest and contributions by the county with regular interest under section five, (2), (b), and (c), shall entitle him according to the annuity tables adopted by the board of retirement in one of the following forms at his option:

(a) A life annuity, payable quarterly.

(b) A life annuity payable quarterly with the provision that in the event of the death of the annuitant before receiving payments equal to the sum at the date of his retirement of his deposits under section five, (2), (a), with regular interest, the difference shall be paid to his legal representatives.

(2) Annuities for permanent disability—Any member who has been retired for permanent disability as provided under section three, (5) shall receive an annuity based upon the sum of his deposits and of the county's contributions with regular interest.

Except that any member who receives compensation from the county under any workmen's compensation act or by virtue of any judgment obtained against the county for permanent disability, shall in lieu of such annuity receive a refund of all the money that has been paid in by him under section five, (2), (a), with regular interest on such deposits. The annuities paid hereunder shall cease whenever, upon investigation, the board of retirement shall find that such disability has been removed, but if the member has not received a sum equal to the amount he deposited with regular interest the difference shall be refunded to him.

(3) If the sum of the deposits made by an employee entitled to an annuity and the contributions by the county with regular interest do not amount to more than five hundred dollars, such amount shall be paid to the retiring employee in one lump sum in lieu of an annuity.

(4) Annuities based on prior service—Any member in the service of the county at the time this law becomes operative shall, upon being retired receive an annuity based upon an annuity reserve of such sum as the county's contributions at regular interest would have produced for the period of years, not exceeding twenty-five, that he shall have been in the actual service of the county at the date of retirement, plus the amount of the reserve created by his own deposits with regular interest. In all such cases that portion of the annuity not produced by the member's deposits and similar contributions by the county shall be paid from the prior service annuity reserve. Nothing herein contained shall prohibit any employee from paying into the retirement system any sums in excess of the regular monthly contributions. Any payment so made shall be made in accordance with rules adopted by the board of retirement, be credited to a separate and special account of the employee so making the payment, held for his sole use and benefit, and increased with regular interest as provided by this act. When a member who has made an extra deposit retires or separates from the service of the county, the amount of such extra deposit with regular interest shall be returned to him in a lump sum, or used to increase his annuity reserve and annuity, as the circumstances of each particular case may require.

(5) The amount of the surplus as of December thirty-first of each year, if there be a surplus, shall be paid into the salary fund of the county. The deficit, if there be a deficit, shall be made good by a transfer from the salary fund of the county, on order of the board of supervisors, to the fund of the retirement system.

(6) Refunds to the county shall go to the fund from which disbursements were originally made.

Taxation, attachments and assignments.

Taxation, Attachments and Assignments.

§ 7. The title to all property acquired under the provisions of this act shall be taken in the name of the county. The title to any moneys which may become due to any member shall not pass from the county to such member until such member is entitled thereto under the provisions of this act.

That portion of the wage of a member deducted or to be deducted under this act, the right of a member to an annuity, and all his rights in the fund of the retirement system shall be exempt from taxation, and from the operation of any law relating to bankruptcy or insolvency, and shall not be attached or taken upon execution or other process of any court. No assignment of any right in or to said funds shall be valid.

Supervision by insurance commissioner.

Supervision by Insurance Commissioner.

§ 8. The insurance commissioner shall prescribe for each county that adopts a retirement system under the provisions of this act mortality and annuity tables based upon the rate of interest herein named and may later modify such tables or prescribe

other tables to represent more accurately the cost of the annuity system, and may determine the application of the change so made. He shall also prescribe and supervise methods of bookkeeping of each retirement association formed under the provisions of this act.

The insurance commissioner shall at least once in each year, either personally or by deputy or assistant, thoroughly inspect and examine the affairs of the retirement association to ascertain its financial condition, its ability to fulfill its obligations, whether all parties in interest have complied with the provisions of law applicable to the association, and whether the transactions of the board of retirement have been in accordance with the rights and equities of those in interest. The retirement system shall be credited, in the account of its financial condition, with the amounts due from the county, under the provisions of section five, its investments with fixed maturities at amortized values, and its other investments at a reasonable valuation.

For the purposes aforesaid the insurance commissioner or other persons making examination shall have access to all the securities, books and papers of the retirement system, and may summon and administer oaths and examine as witnesses the members of the board of retirement or any other person, relative to the financial affairs, transactions and conditions of the retirement system. The insurance commissioner shall preserve in a permanent form a full record of the proceedings at such examination and the results thereof. Upon the completion of such examination, verification and valuation, the insurance commissioner shall make a report in writing of his findings to the board of retirement and shall send a copy thereof to the county board of supervisors.

Violation of act.

§ 9. If, in the judgment of the insurance commissioner, the county or the board of retirement have violated or neglected to comply with any of the provisions of this act, or of the rules and regulations established by the board of retirement hereunder, he shall give notice thereof to the county and to the board of retirement, and thereafter if such violation or neglect continues shall forthwith present the facts to the attorney general for his action. It shall be the duty of the attorney general by mandamus or other proper proceedings in his own name to compel compliance with this act.

Purpose of act.

§ 10. The purpose of this act is to recognize a public obligation to such of its employees as may become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for a retirement annuity as an additional element of compensation for future services, and at the same time to provide a means whereby public employees who may become incapacitated may be replaced by more capable employees to the betterment of the public service without prejudice and without inflicting a hardship upon the employees removed.

This act, therefore, shall be given a liberal interpretation with a view of carrying out such purpose, and it shall not be construed as a local measure or one intended as a benefit to particular persons or places.

Constitutionality.

In case any section, or sections, or part of any section, of this act, shall be found to be unconstitutional or invalid, for any reason, the remainder of the act shall not thereby be invalidated, but shall remain in full force and effect.

PERRIS.

See Act 3094, note.

PESTHOUSES.

See Kerr's Cyc. Penal Code, § 373.

CHAPTER 271.

PETALUMA.

Reference: Original Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.

ACT 3450. FREEHOLDERS' CHARTER.

3453. WIDENING ENGLISH STREET.

FREEHOLDERS' CHARTER.

ACT 3450—Freeholders' charter of Petaluma.

History: Voted for and ratified at a special municipal election held February 14, 1911. Filed with the secretary of state March 8, 1911, Stats. 1911, p. 1799. Amended (1) June 10, 1913, filed with secretary of state April 3, 1915, Stats. 1915, p. 1803; (2) November 5, 1918, filed with secretary of state January 25, 1919, Stats. 1919, p. 1434.

1. Street opening—Charter authorized adoption of method provided by street opening act of 1889.—Although there was no provision in the charter for opening streets, it authorized the city to adopt a system, and therefore the city was authorized to adopt

the method prescribed by the act of 1889 (Stats. 1889, p. 70), and no previous adoption of that method by separate ordinance was necessary.—Petaluma v. Hughes, 37 Cal. App. 473, 174 Pac. 336.

WIDENING ENGLISH STREET.

ACT 3453—An act to widen English Street, and to take private lands therefor.

History: Approved March 25, 1876, Stats. 1875-76, p. 473. Amended March 9, 1878, Stats. 1877-78, p. 203.

CHAPTER 272.

PETALUMA CREEK.

CONTENTS OF CHAPTER.

ACT 3458. DRAWBRIDGE.

3459. IMPROVEMENT OF NAVIGATION.

DRAWBRIDGE.

ACT 3458—An act authorizing erection and maintenance of a drawbridge across, by the trustees of Petaluma.

History: Approved April 1, 1876, Stats. 1875-76, p. 726.

IMPROVEMENT OF NAVIGATION.

ACT 3459—An act to grant the right to improve the navigation of.

History: Approved April 11, 1859, Stats. 1859, p. 214. Amended March 31, 1866, Stats. 1865-66, p. 525.

CHAPTER 273.

PHARMACY.

References: See tits. "Medicine"; "Poisons."

CONTENTS OF CHAPTER.

ACT 3464. PRACTICE OF PHARMACY ACT.

3465. HOURS OF LABOR.

PRACTICE OF PHARMACY ACT.

ACT 3464—An act to regulate the practice of pharmacy in the state of California.

History: Approved March 20, 1905, Stats. 1905, p. 535. Amended (1) March 21, 1907, Stats. 1907, p. 766; (2) April 21, 1909, Stats. 1909, p. 1013; (3) May 27, 1915, in effect August 8, 1915, Stats. 1915, p. 865. Prior act of March 11, 1891, Stats. 1891, p. 86. Amended March 3, 1893, Stats. 1893, p. 68. Repealed by the act of March 15, 1901, Stats. 1901, p. 299, which was superseded, as to the practice of pharmacy, by the present act.

The title was amended by the act of 1907, so as to read as follows:

“An act to regulate the practice of pharmacy in the state of California, and to provide a penalty for the violation thereof; and for the appointment of a board to be known as the California state board of pharmacy.”

Pharmacists to be registered. Assistant pharmacists not to conduct pharmacy. Pharmacy defined.

§ 1. From and after the passage of this act it shall be unlawful for any person to manufacture, compound, sell, or dispense any drug, poison, medicine or chemical, or to dispense or compound any prescription of a medical practitioner, unless such person be a registered pharmacist or a registered assistant pharmacist within the meaning of this act, except as hereinafter provided. Every store, dispensary, pharmacy, laboratory or office for the sale, dispensing or compounding of drugs, medicines or chemicals, or for the dispensing of prescriptions of medical practitioners, shall be in charge of a registered pharmacist. A registered assistant pharmacist may be left in charge of a store, dispensary, pharmacy, laboratory or office for the sale, dispensing, or compounding of drugs, medicines or chemicals or for the dispensing of prescriptions of medical practitioners only during the temporary absence of the registered pharmacist. Temporary absence within the meaning of this act shall be held to be only those unavoidable absences which may occur during a day's work, and when the registered pharmacist in charge shall be within immediate call, ready and able to assume the direct supervision of said pharmacy. No registered assistants shall conduct a pharmacy. Every store or shop where drugs, medicines or chemicals are dispensed or sold at retail, or displayed for sale at retail, or where prescriptions are compounded, which has upon it or in it as a sign, the words “pharmacist,” “pharmaceutical chemist,” “apothecary,” “drug-gist,” “pharmacy,” “drugstore,” “drugs,” or any of these words, or the characteristic show-bottles or globes, either colored or filled with colored liquids, shall be deemed a “pharmacy” within the meaning of this act.

Qualifications of pharmacists.

§ 2. Any person in order to be a registered pharmacist must be a licentiate in pharmacy, or a practicing pharmacist.

Licentiates in pharmacy, who are. Practicing pharmacists, who are.

§ 3. Licentiates in pharmacy are persons who have had five years' experience in stores where the prescriptions of medical practitioners are compounded, and shall have passed an examination before the state board of pharmacy, or who shall present satisfactory evidence to the said board that they have had twenty years' actual experience in the practice of pharmacy, and have also been registered as a licentiate, or assistant pharmacist in good standing in any state or territory for a period of at least ten years prior to the date of their application; provided, that graduates from a reputable college of pharmacy may be registered after eighteen years of like experience. Practicing pharmacists are persons who, at the passage of this act, are registered as such, and who shall have on or before the first day of January next succeeding the passage of this act, paid to the board of pharmacy of this state all moneys due for renewal of

registration as required by the acts of the legislature regulating the practice of pharmacy in the state of California, approved March 11, 1891, and March 15, 1901. [Amendment approved April 21, 1909, Stats. 1909, p. 1013.]

Registered assistant pharmacists, who are. Who may be registered as a licentiate. Who may be registered as assistant pharmacist.

§ 4. Registered assistant pharmacists are persons who at the time of the passage of this act are already registered as such, and who shall have on or before the first day of January next succeeding the passage of this act paid to the board of pharmacy of this state all moneys due for renewal of registration as required by the acts of the legislature regulating the practice of pharmacy in the state of California, approved March 11, 1891, and March 15, 1901; provided, that no person shall be examined or registered as a licentiate, unless such person has had five years' pharmaceutical experience in a pharmacy under the supervision of a registered pharmacist; and provided further, that no person shall be examined or registered as an assistant pharmacist from and after the passage of this act; unless such person shall be not less than eighteen years of age and has had not less than three years' instruction and experience in a pharmacy, under a registered pharmacist; or has been registered as an apprentice as provided in section 15 of this act for not less than three years; and, provided further, that an applicant for registration as an assistant pharmacist must first pass a satisfactory examination before the board of pharmacy.

The title of the amendatory act of 1909 recited that it also amended this section, but the body of the act contained no such amendment.

Board of pharmacy, appointment. Oath. Term of office. Vacancies, filling. Location of office. Secretary and treasurer. Bonds of.

§ 5. The governor shall appoint seven competent registered pharmacists, residing in different parts of the state, to serve as a board of pharmacy. The members of the board shall, within thirty (30) days after their appointment, individually take and subscribe before the county clerk, in the county in which they individually reside, an oath faithfully and impartially to discharge the duties prescribed by this act. They shall hold office for the term of four (4) years, and until their successors are appointed and have qualified. In case of vacancy in the board of pharmacy, the governor shall fill the same by appointing a member to serve for the remainder of the term only. The office of the board shall be located in San Francisco. The board shall organize by electing a president, a secretary, and a treasurer. The secretary may or may not be a member of the board as the board in its sound discretion shall determine. The secretary and treasurer shall each give a satisfactory bond running to the board of pharmacy in a sum of not less than two thousand dollars, and such greater sum as the board may from time to time, require for the faithful discharge of their respective duties.

The title of the amendatory act of 1909 recited that it also amended this section, but the body of the act contained no such amendment.

Duty of secretary and treasurer. Compensation of secretary.

§ 6. It shall be the duty of the secretary to keep a book of registration open at the city of San Francisco, in which shall be entered under the supervision of the board, the names, titles, qualifications, and places of business of all persons coming under the provisions of this act. The secretary shall give receipts for all moneys received by him and pay the same to the treasurer of the board, taking his receipt for the same. The treasurer shall disburse the same by order of the board for necessary expenses, taking proper vouchers therefor. The balance of said money, after paying the expenses of the board, he shall pay to the state treasurer, who shall keep it in a special fund to be used in carrying out the provisions of this act. It shall be the duty of the secretary of the board to erase from the register the name of any registered pharmacist or assist-

ant pharmacist who has died, or who in the opinion of the board has forfeited his right under the law to do business in this state. Beside the duties required by this act, it shall be the duty of the secretary to perform such other reasonable duties appertaining to his office, as may be required of him by the board of pharmacy. The secretary shall receive such compensation as may be fixed by the board of pharmacy, if he be a member of the board, then such compensation shall be in addition to his per diem as a member of said board.

The title of the amendatory act of 1909 recited that it also amended this section, but the body of the act contained no such amendment.

Powers and duties of board. Registration fees. Lost certificates, fees for renewal. Revocation of licenses.

§ 7. Four members of the board shall constitute a quorum. They shall hold a meeting at least once in every four months.

Powers and duties of the board.

Subdivision 1. The state board of pharmacy shall have power:

(a) To make such by-laws and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public, appertaining to the practice of pharmacy and the lawful performance of its duties.

(b) To regulate the practice of pharmacy.

(c) To regulate the sale of poisons.

(d) To regulate the quality of all pharmaceutical preparations and medicines dispensed or sold in this state, using the United States Pharmacopoeia or National Formulary, as the standard.

(e) To investigate all complaints as to the quality and strength of all pharmaceutical preparations and medicines, and to take such action as may be necessary to prevent the sale of such as do not conform to the standard and tests prescribed in the latest edition of the United States Pharmacopoeia or National Formulary.

(f) To employ inspectors of pharmacy and to inspect during business hours all pharmacies, dispensaries, stores, or places in which drugs, medicines and poisons are compounded, dispensed or retailed, and to cause the prosecution of all persons whenever there appears to the board to be reasonable ground for such action.

(g) To examine and register as pharmacists and assistant pharmacists all applicants whom it shall deem qualified to be such. All persons applying for registration, under this act, shall pay the following fees therefor to the secretary of the board of pharmacy: Every applicant for registration, other than that of an apprentice, shall pay a fee of ten dollars on filing his or her application, which shall be compensation to the board of pharmacy for investigation or examination of the applicant; and if the board finds that any applicant for registration on experience and credentials is entitled to be registered, then he or she shall pay an additional fee of fifteen dollars upon the issuance of certificate of such registration; and any licentiate found by the board on examination to be entitled to a certificate shall pay the additional sum of five dollars upon the issuance of certificate; all applicants for examination as assistant, if found satisfactory by the board, shall be entitled to their certificate without further fee; and provided further, that an applicant for registration on experience and credentials may at his or her option be examined as a licentiate without further fee for application.

(h) In the event any person having registered shall have lost his or her certificate, or the same has been destroyed, or if he or she desires the renewal of the same, a new certificate may be issued by said board upon the applicant paying therefor the sum of three dollars; provided further, that where the original certificate is not lost or destroyed, then the certificate shall be surrendered before a renewal of same shall be

issued; and provided further, that the board shall have power to require satisfactory evidence from the applicant of the loss or destruction of the certificate; and provided further, that where the applicant is delinquent for the annual dues required by this act then he or she shall be required to pay to said board sufficient fees to cover his delinquency in that behalf before he or she shall be entitled to a reissue of the certificate in this subdivision provided for.

(i) To provide by proper rules and regulations for the revocation by said board of licenses issued under the provisions of this act, whenever the holder of such license shall be guilty of habitual intemperance or addicted to the use of narcotic drugs, or shall have been convicted of a felony. [Amendment approved April 21, 1909, Stats. 1909, p. 1013.]

This section was also amended March 21, 1907, Stats. 1907, p. 766.

Members of board not to teach pharmacy except in certain capacities. Compensation of members.

§ 8. No member of the board shall teach pharmacy in any of its branches, unless it be as a teacher in a public capacity and in a college of pharmacy. The members of the board of pharmacy shall each be paid the sum of eight dollars per diem for every meeting of the board which they attend, together with their necessary expenses, and mileage at the rate of five cents per mile for each mile necessarily traveled. All compensation of members and all other expenses of the board, shall be paid out of the examination and registration fees and fines.

Annual renewal fee. Recording certificate. Penalty for violation of statute. Duty of county clerk.

§ 9. Every person holding a certificate from said board shall renew annually their registration with said board; and every registered pharmacist, and every assistant registered pharmacist who desires to retain his registration on the books of the board of pharmacy in this state shall annually, after the expiration of the first year's registration and on or before the first day of July of each succeeding year, pay to the secretary of the board of pharmacy a renewal fee, to be fixed by the board, which shall not exceed two dollars for registered pharmacist and one dollar for assistant registered pharmacist, in return for which fee a renewal certificate of registration shall be issued. In case any person defaults in payment of said fee his or her registration may be revoked by the board of pharmacy on sixty days' notice, in writing from the secretary, unless within said time the fee is paid, together with such penalty not exceeding ten dollars, as the board may impose. Upon payment of said fee and penalty the board must reinstate the delinquent's registration. No person having received, or who may hereafter receive a certificate of registration as a pharmacist or assistant pharmacist, shall engage in business as pharmacist or assistant pharmacist, in any county of this state in which he or she shall locate, or into which he or she shall afterwards remove, until he or she shall have had such certificate recorded in the office of the county clerk of such county, and it is hereby made the duty of the county clerk to record such certificate in a book to be provided and kept for that purpose, and the county clerk is authorized to charge a fee of fifty cents for the recording of such certificate—to be paid by the person offering such certificate for record. Each pharmacist or assistant pharmacist holding a certificate of registration as a pharmacist, or assistant pharmacist, and being engaged in business as a pharmacist or assistant pharmacist, shall have such certificate recorded, as is in this section provided, within thirty days after the taking effect of this act. The record of the certificate required by this section, or a certified copy thereof, shall be evidence in all courts that the person holding it was registered as evidenced by said certificate on the date of the same. Any registered pharmacist or

assistant registered pharmacist failing to comply with any of the foregoing provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars. Upon the certificate being recorded as herein provided, it shall be the duty of the county clerk to notify the secretary of the board of pharmacy of the name of the party and the date of such record. [Amendment approved March 21, 1907, Stats. 1907, p. 767. In effect in sixty days.]

Posting of certificate. Removal of place of business.

§ 10. Every person upon receiving a certificate of registration under this act, or who has heretofore received a certificate of registration in this state, shall keep his last receipt for re-registration, conspicuously exposed in his place of business. Every registered pharmacist, and assistant pharmacist, shall within thirty days after the changing of his place of business as designated on the books of the board of pharmacy, notify the secretary of the board of his new place of business, and upon receipt of said notification, the secretary shall make necessary change in his register.

Responsibility for quality of drugs, etc. Adulteration, penalty. Filing prescriptions. Investigating violations of act.

§ 11. Every proprietor or manager of a pharmacy or drugstore shall be held responsible for the quality of all drugs, chemicals and medicines sold or dispensed by him, except those sold in the original packages of the manufacturer and except those articles or preparations known as patent or proprietary medicines. Any persons who shall knowingly, willfully, or fraudulently falsify or adulterate, or cause to be falsified or adulterated, any drug or medicinal substance, or any preparation authorized or recognized by the pharmacopoeia of the United States or used, or intended to be used, in medical practice, or shall mix, or cause to be mixed, with any such drug or medicinal substance any foreign or inert substance whatever, for the purpose of destroying or weakening its medicinal power or effect, or of lessening its cost, and shall willfully, knowingly, or fraudulently sell the same, or cause it to be sold, for medicinal purposes, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars and not more than two hundred dollars, or by imprisonment for not less than fifty days and not more than two hundred days, or by both such fine and imprisonment.

Every registered pharmacist shall file or cause to be filed, all physician's prescriptions, or a copy thereof, compounded or dispensed in his pharmacy or store, and any person who shall willfully fail so to do shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine not exceeding fifty dollars; and for such subsequent offense shall be liable to a fine of not less than fifty dollars, and not more than one hundred dollars. The state board of pharmacy may at any time, when in their judgment it appears advisable, deputize one of their members, or any other competent person, to investigate any suspected violation of any of the provisions of this act, and if the result of such investigation seems to the board to justify such action the board shall cause the prosecution of any person violating any of the provisions of this act. [Amendment approved April 21, 1909, Stats. 1909, p. 1015.]

Registration by false representations, penalty. Sales or compounding to be directed by registered pharmacist. Fines, disposition of. Not to apply to physicians. Proprietary medicines.

§ 12. Any person who shall attempt to secure, or secures registration for himself or any other person under this act by making or causing to be made any false representations, or who shall fraudulently represent himself to be registered, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be liable to punishment by a fine not exceeding one hundred dollars, or by imprisonment for a term not exceeding

fifty days, or by both such fine and imprisonment. Any person who shall permit the compounding of prescriptions of medical practitioners, or the selling of drugs and medicines, in his or her store or pharmacy, except under the direct, immediate and personal supervision of a registered pharmacist, or any person not registered who shall retail medicine, poisons or chemicals, except in a pharmacy under the direct, immediate and personal supervision of a registered pharmacist, or any person violating any of the provisions of this act, when no other penalty is provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be liable to punishment by a fine of not less than twenty dollars, and not more than one hundred dollars, or by imprisonment of not exceeding fifty days, or by both such fine and imprisonment. All fines recoverable under this act shall be paid by the magistrate receiving the same to the state board of pharmacy. Any person convicted of violating the provisions of this act the third time shall in addition to the penalties hereinbefore mentioned have his or her registration as a pharmacist canceled. Nothing in this act shall apply to or interfere with any practitioner of medicine who is duly registered as such by the state board of medical examiners of this state with supplying his own patients, as their physician, and by them employed as such, with such remedies as he may desire and who does not keep a pharmacy, open shop, or drugstore, advertised or otherwise for the retailing of medicines or poisons, nor does this act apply to the exclusively wholesale business of any dealer. Nor does this apply to registered, trademarked or copyrighted proprietary medicines, registered in the United States patent office nor to the sale of proprietary medicines, when manufactured under the supervision of a registered pharmacist in the state of California for which trademarks may have been filed with the secretary of state of California, by merchants possessing a license issued by the board of pharmacy as described in section 16 of this act. [Amendment approved March 21, 1907, Stats. 1907, p. 768. In effect in sixty days.]

Registered pharmacist must be in charge.

§ 13. Any proprietor of a pharmacy, who shall fail, or neglect to place in charge of such pharmacy a registered pharmacist, or any proprietor, who shall by himself, or any other person, permit the compounding of prescriptions, or the vending of drugs, medicines, or poisons, in his or her store, or place of business, except by or in the presence and under the direct, immediate and personal supervision of a registered pharmacist, or any person, not being a registered pharmacist, who shall take charge of, or act as manager of any pharmacy, or store, or who, not being a registered pharmacist, retails, compounds, or dispenses drugs, medicines, or poisons, shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not less than twenty (\$20) dollars and not more than one hundred dollars, or by imprisonment for a term of not exceeding fifty days, or by both such fine and imprisonment. [Amendment approved April 21, 1909, Stats. 1909, p. 1015.]

This section was also amended March 21, 1907, Stats. 1907, p. 769.

Examination of applicants for temporary certificates.

§ 14. Any member of the board of pharmacy, or inspector duly authorized by said board may examine applicants orally, or in writing, and issue a temporary certificate to practice pharmacy, which shall authorize such practice for a period not to exceed four months from its date. The issuance of such temporary certificate shall not entitle the holder thereof to a permanent certificate, and no permanent certificate shall be issued to such holder until he passes a satisfactory examination by the board. Only one temporary certificate shall ever be issued to the same applicant, and no temporary certificate shall be granted to any person whose application has been denied by the board. The member or authorized inspector conducting the examination as herein set forth shall be entitled to charge and receive the sum of three dollars for such certifi-

cate, said moneys to be paid to the board of pharmacy. [Amendment approved April 21, 1909, Stats. 1909, p. 1016.]

This section was also amended March 21, 1907, Stats. 1907, p. 769.

Apprentices. Standard of qualifications.

§ 15. It shall be the duty of all registered pharmacists who take into their employ an apprentice, whose purpose it is to become a pharmacist, to report to the board of pharmacy such facts regarding his schooling and preliminary qualifications as the board of pharmacy may require for the purpose of registration as an apprentice. The board of pharmacy shall adopt a standard of qualifications regarding schooling and preliminary qualifications for all persons desiring to be registered as apprentices, as provided for in this section. The pharmaceutical experience of every apprentice shall, after the passage of this act, be deemed to begin on the date on which he began the study of pharmacy, and such date shall be inserted in the certificate of registration of said apprentice, provided the preliminary qualifications have been found satisfactory by the board. Sworn testimony shall be furnished the board upon which they shall determine the date as aforesaid. The date so determined and entered as aforesaid shall be deemed to be the beginning of the applicant's pharmaceutical experience for the purpose of this act; provided, that the students matriculating and attending any reputable college of pharmacy shall be registered as apprentices upon such fact being shown. The board shall keep a register for the registration of apprentices and furnish upon application proper blanks for this purpose. No apprentice shall be permitted to sell drugs, medicines, or poisons, or compound prescriptions except under the direct, immediate and personal supervision of a registered pharmacist. No registered apprentice shall ever be left in charge of a pharmacy. No applicant for registration as an apprentice shall be registered as such if such applicant has had more than three years' experience in a pharmacy, but must apply for registration as assistant pharmacist. [Amendment approved March 21, 1907, Stats. 1907, p. 770. In effect in sixty days.]

Permits to general dealers to sell certain drugs.

§ 16. The board of pharmacy shall issue a permit to general dealers in rural districts in which the conditions, in their judgment, do not justify the employment of a registered pharmacist, and where the store of such general dealer is not less than three miles distant from the store of a registered pharmacist; which said permit shall authorize the persons or firm named therein to sell in such locality, but not elsewhere, and under such restrictions and regulations as said board may from time to time adopt, the following simple household remedies and drugs, and no other, in such manner and form as may be hereafter authorized by said board, as follows, to wit:

Remedies specified.

Tincture of arnica, spirits of camphor, almond oil, distilled extract witch-hazel, paregoric, syrup of ipecac, syrup of rhubarb, hive syrup, sweet spirits of nitre, tincture of iron, epsom salts, Rochelle salts, senna leaves, carbonate of magnesia, seidlitz powders, quinine, cathartic pills, chamomile flowers, caraway seed, chlorate of potash, moth balls, plasters, salves, ointments, peroxide of hydrogen, copperas, gum camphor, blue ointment, asafoetida, saffron, anise seed, saltpetre.

Fee.

The board shall charge an annual fee of five dollars in advance for such permit, and it shall be unlawful for any dealer to sell any drugs or ordinary household remedies without complying with the requirements of this section. Whenever a registered pharmacist shall establish a pharmacy within three miles by the shortest road from the place of business of such dealer, no further license shall be granted, and the license

already issued shall be void; provided, that the following drugs, medicines and chemicals may be sold by grocers and dealers generally without restriction, viz:

Drugs which may be sold without permit.

Glauber salts, vaseline, turpentine, condition powders, cream of tartar, carbonate of soda, bay rum, essence of Jamaica ginger, essence of peppermint, ammonia, alum, castor oil, bicarbonate of soda, chloride of lime, glycerine, witch-hazel, sheep dip, borax, sulphur, bluestone, flaxseed, insect powder, fly paper, ant poison, squirrel poison, and gopher poison, and arsenical poisons used for orchard spraying, when prepared and sold only in original and unbroken packages and labeled with the official poison labels. [Amendment of May 27, 1915. In effect August 8, 1915, Stats. 1915, p. 865.]

This section was also amended March 21, 1907, Stats. 1907, p. 770; April 21, 1909, Stats. 1909, p. 1016.

Marshals and police to furnish list of drugstores to state board. Duty of owners of stores.

§ 17. It shall be the duty of the board of pharmacy, by resolution, at least annually to request of the chief of police, marshal or constable of every city, town or township in this state, to furnish a list of all drugstores, together with the names of the owners, managers, and all employees in said stores, and a brief statement of the capacity in which said persons are employed in said stores, and also the firm name of all stores retailing drugs, medicines or poisons. Upon such request in writing, it shall be the duty of the chief of police, marshal, or constable of said city, town or township to require the patrolmen or deputies under their command, upon their respective beats, to obtain such lists as are in this section specified, and deliver the same to the board of pharmacy. It shall be the duty of the owner or manager of any drugstore or other store retailing drugs, medicines or poisons when called upon by an officer as above set forth, or by a member of the board of pharmacy, or a duly authorized inspector, to furnish said officer, member of the board of pharmacy or duly authorized inspector with the information required. Any person refusing to furnish the information, or willfully furnishing information that is false or untrue shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars nor more than fifty dollars, or by imprisonment for not less than ten days and not more than thirty-five days, or by both such fine and imprisonment. [Amendment approved March 21, 1907, Stats. 1907, p. 770. In effect in sixty days.]

Penalties, how recovered.

§ 18. The several penalties prescribed in this act may be recovered in any court having jurisdiction, by a civil action instituted by the board of pharmacy, in the name of the state of California, or by criminal prosecution upon complaint being made; and it shall be the duty of the district attorney of the county wherein violations of the provisions of this act occur, to conduct all such actions and prosecutions at the request of the board.

Exemption from jury duty.

§ 19. All persons registered under this act shall be exempt and free from jury duty.

Time of taking effect. Repeal of conflicting laws.

§ 20. This act shall take effect July 1, 1905, and all laws in conflict with this act, in and so far as they conflict are hereby repealed.

1. Constitutionality — Delegation of power to regulate.—The legislature may delegate the power to make rules and regulations for the conduct and transaction of any branch of the business of the state, as to the board of pharmacy to carry out the

purposes of the pharmacy act, and to declare a violation of such regulations a penal offense.—In re Potter, 164 Cal. 735, 740, 130 Pac. 721.

2. Same—Power of pharmacy board under act to regulate.—The power of the

pharmacy board to regulate the sale of poisons extends no further than the adoption of regulations not inconsistent with the laws of the state.—In re Potter, 164 Cal. 735, 739, 130 Pac. 721.

3. Same—Title broad enough to cover subject of act.—The poison act of 1891, as amended in 1909, is not unconstitutional on the ground that the subject of the act is not embraced in the title.—In re Yun Quong, 159 Cal. 508, 114 Pac. 835, Ann. Cas. 1912C, 969.

4. Construction—"Pharmacy act" and "poison act" in pari materia.—The "pharmacy act" and the "poison act" are in pari materia, and are to be so construed, and so construed, the pharmacy board is given power to promulgate regulations, not inconsistent with the laws of the state for the protection of the public, in the sale of poisons.—In re Potter, 164 Cal. 735, 739, 130 Pac. 721.

5. Same—Sale of Kellogg's ant paste—Provisions of act inconsistent with poison act.—A regulation of the board of pharmacy requiring grocers and dealers generally to sell Kellogg's ant paste only in strict compliance with sections 1, 2 and 3 of the poison

act, which requires all poisons to be sold only by registered pharmacists, is inconsistent with the provisions of the pharmacy act which authorizes the sale of such paste in unbroken packages by grocers and dealers generally.—In re Potter, 164 Cal. 735, 739, 130 Pac. 721.

6. Kellogg's ant paste—Effect of section 7 of "poison act."—Under the 1913 amendment to section 7 of the poison act, insecticides such as Kellogg's ant paste and ant poison containing arsenic, are excluded from the ant poisons which may be sold by grocers and dealers generally under the poison act, notwithstanding the provisions of the insecticide act of 1911, as amended in 1913, and the decision of the supreme court in re Potter, 164 Cal. 735, 130 Pac. 721.—In re Potter, 26 Cal. App. 45, 146 Pac. 62.

7. San Francisco ordinance—No conflict.—A San Francisco ordinance regulating the sale of opium is warranted by section 11, article XI, of the constitution and is valid, although differing from the pharmacy act and poison act, where there is no conflict with the provisions of such acts.—Ex parte Hong Shen, 98 Cal. 681, 33 Pac. 799.

HOURS OF LABOR.

ACT 3465—An act to regulate the work and hours of employees engaged in selling, at retail, drugs and medicines, and compounding physicians' prescriptions, and providing a penalty for the violation thereof.

History: Approved February 28, 1905, Stats. 1905, p. 28. Amended March 15, 1907, Stats. 1907, p. 273.

Limit of hours of labor.

§ 1. As a measure for the protection of public health, no person employed by any person, firm or corporation, shall for more than an average of ten hours a day or sixty hours a week of six consecutive calendar days, perform the work of selling drugs or other medicines, or compounding physicians' prescriptions, in any store, establishment or place of business, where and in which drugs or medicines are sold, at retail, and where and in which physicians' prescriptions are compounded; provided, that the answering of and attending to emergency calls shall not be construed as a violation of this act.

Employer not to permit longer hours.

§ 2. No person, firm or corporation employing another person to do work which consists wholly or in part of selling, at retail, drugs or medicines, or of compounding physicians' prescriptions, in any store, or establishment or place of business where or in which medicines are sold and where and in which physicians' prescriptions are compounded shall require or permit said employed person to perform such work for more than an average of ten hours a day, or sixty hours a week of six consecutive calendar days.

Penalty for violation of act.

§ 3. Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of misdemeanor and shall be punished therefor by a fine not less than twenty dollars nor more than fifty dollars, or by imprisonment for not exceeding sixty days, or by both such fine and imprisonment, at the discretion of the court.

Repeal of conflicting acts.

§ 4. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Duty of state bureau of labor.

§ 5. The commissioners of the state bureau of labor statistics are hereby authorized, directed and empowered to enforce the provisions of this act. [Amendment approved March 15, 1907, Stats. 1907, p. 273.]

Editor's note: Labor laws—Fixing hours of labor.—The state of New York passed a statute essentially the same as the above in its name and purpose, but relating to employees in bakeries. This statute is as follows:

"No employee shall be required or permitted to work in a biscuit, bread, or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter workday on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work," and has a penalty attached for a violation thereof.

Joseph Lochner was indicted for a violation of the above law and convicted in the trial court. The conviction was affirmed by the appellate division and also by the court of appeals, and thereupon taken to the supreme court of the United States (*Lochner v. State*, May 15, 1905, vol. 198 U. S. 45, 49 L. ed. 539, 25 Sup. Ct. Rep. 539), wherein by a bare majority the law was held unconstitutional and the judgment of conviction reversed. Mr. Justice Peckham, writing the majority opinion, says:

"There is nothing in any of the opinions delivered in this case, either in the supreme court or the court of appeals of the state, which construes the section, in using the word 'required,' as referring to any physical force being used to obtain the labor of an employee. It is assumed that the word means nothing more than the requirement arising from voluntary contract for such labor in excess of the number of hours specified in the statute. There is no pretense in any of the opinions that the statute was intended to meet a case of involuntary labor in any form. All the opinions assume that there is no real distinction, so far as this question is concerned, between the words 'required' and 'permitted.' The mandate of the statute, that 'no employee shall be required or permitted to work,' is the substantial equivalent of an enactment that 'no employee shall contract or agree to work,' more than ten hours per day; and, as there is no provision for special emergencies, the statute is mandatory in all cases. It is not an act merely fixing the number of hours which shall constitute a legal day's work, but an absolute prohibition upon the employer permitting, under any circumstances, more than ten hours' work to be done in his establishment. The em-

ployee may desire to earn the extra money which would arise from his working more than the prescribed time, but this statute forbids the employer from permitting the employee to earn it."

Limit to valid exercise of police power.—The court say: "It must, of course, be conceded that there is a limit to the valid exercise of the police power by the state. There is no dispute concerning this general proposition. Otherwise the XIV amendment would have no efficacy and the legislatures of the states would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health, or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext,—become another and delusive name for the supreme sovereignty of the state to be exercised free from constitutional restraint. This is not contended for. In every case that comes before this court, therefore, where legislation of this character is concerned, and where the protection of the federal constitution is sought, the question necessarily arises: Is this a fair, reasonable, and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty, or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor.

"This is not a question of substituting the judgment of the court for that of the legislature. If the act be within the power of the state, it is valid, although the judgment of the court might be totally opposed to the enactment of such a law. But the question would still remain, Is it within the police power of the state? and that question must be answered by the court."

Interference with contract—Fourteenth amendment.—The court say: "The statute necessarily interferes with the right of contract between the employer and employees, concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is part of the liberty of the individual protected by the XIV amendment of the federal constitution. (*Allgeyer v. Louisiana*, 165 U. S.

578, 41 L. ed. 832, 17 Sup. Ct. Rep. 427.) Under that provision no state can deprive any person of life, liberty, or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right. There are, however, certain powers, existing in the sovereignty of each state in the Union, somewhat vaguely termed police powers, the exact description and limitation of which have not been attempted by the courts. Those powers, broadly stated, and without, at present, any attempt at a more specific limitation, relate to the safety, health, morals, and general welfare of the public. Both property and liberty are held on such reasonable conditions as may be imposed by the governing power of the state in the exercise of those powers, and with such conditions the XIV amendment was not designed to interfere. (*Mugler v. Kansas*, 123 U. S. 623, 31 L. ed. 205, 8 Sup. Ct. Rep. 273; *In re Kemmler*, 136 U. S. 436, 34 L. ed. 519, 10 Sup. Ct. Rep. 930; *Crowley v. Christensen*, 137 U. S. 86, 34 L. ed. 620, 11 Sup. Ct. Rep. 13; *In re Converse*, 137 U. S. 624, 34 L. ed. 796, 11 Sup. Ct. Rep. 191.)

"The state, therefore, has power to prevent the individual from making certain kinds of contracts, and in regard to them the federal constitution offers no protection. If the contract be one which the state, in the legitimate exercise of its police power, has the right to prohibit, it is not prevented from prohibiting it by the XIV amendment. Contracts in violation of a statute, either of the federal or state government, or a contract to let one's property for immoral purposes, or to do any other unlawful act, could obtain no protection from the federal constitution, as coming under the liberty of person or of free contract. Therefore, when the state, by its legislature, in the assumed exercise of its police powers, has passed an act which seriously limits the right to labor or the right of contract in regard to their means of livelihood between persons who are *sui juris* (both employer and employee), it becomes of great importance to determine which shall prevail,—the right of the individual to labor for such time as he may choose, or the right of the state to prevent the individual from laboring, or from entering into any contract to labor, beyond a certain time prescribed by the state."

Validity of labor law—Laborers not wards of state.—Mr. Justice Peckham further says: "The question whether this act is valid as a labor law, pure and simple, may be dismissed in a few words. There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor, in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights

and care for themselves without the protecting arm of the state interfering with their independence of judgment and of action. They are in no sense wards of the state. Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals, nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. The limitation of the hours of labor does not come within the police power on that ground.

"It is a question of which of two powers or rights shall prevail,—the power of the state to legislate or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates, though but in a remote degree, to the public health, does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor.

"We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health, or the health of the individuals who are following the trade of a baker. If this statute be valid, and if, therefore, a proper case is made out in which to deny the right of an individual, *sui juris*, as employer or employee, to make contracts for the labor of the latter under the protection of the provisions of the federal constitution, there would seem to be no length to which legislation of this nature might not go. The case differs widely, as we have already stated, from the expressions of this court in regard to laws of this nature, as stated in *Holden v. Hardy*, 169 U. S. 366, 42 L. ed. 780, 18 Sup. Ct. Rep. 383, and *Jacobson v. Massachusetts*, 197 U. S. 11, 49 L. ed. 358, 25 Sup. Ct. Rep. 358."

Emergency clause.—It will be observed that our statute has no emergency clause. Neither has the New York law. On this subject the court, calling attention to the fact that the Utah law (regulating the hours in underground mines and smelters. —See *Holden v. Hardy*, 169 U. S. 366, 42 L. ed. 780, 18 Sup. Ct. Rep. 383) had an emergency clause, remarks: "The statute now before this court has no emergency clause in it, and, if the statute is valid, there are no circumstances and no emer-

gencies under which the slightest violation of the provisions of the act would be innocent. There is nothing in *Holden v. Hardy* which covers the case now before us. Nor does *Atkin v. Kansas*, 191 U. S. 207, 43 L. ed. 148, 24 Sup. Ct. Rep. 124, touch the case at bar. The *Atkin* case was decided upon the right of the state to control its municipal corporations and to prescribe the conditions upon which it will permit work of a public character to be done for a municipality. *Knoxville Iron*

Co. v. Harbison, 183 U. S. 13, 46 L. ed. 55, 22 Sup. Ct. Rep. 1, is equally far from an authority for this legislation. The employees in that case were held to be at a disadvantage with the employer in matters of wages, they being miners and coal workers, and the act simply provided for the cashing of coal orders when presented by the miner to the employer."

See tits. "Hours of Labor"; and "Municipal Corporations," Act 3093c.

PHYSICIANS.

See tit. "Medicine."

PIEDMONT.

See Act 3094, note.

CHAPTER 274.

PILOTS.

References: Pilots at *Humboldt Bay*, see *Kerr's Cyc. Political Code*, §§ 2476, et seq.

Pilots at *San Francisco Bay*, *Mare Island*, and *Benicia*, see *Kerr's Cyc. Political Code*, §§ 2457, et seq.

Pilots for other ports, see *Kerr's Cyc. Political Code*, § 2436.

Pilots and pilot commissioners, see *Kerr's Cyc. Political Code*, §§ 2429, et seq.

CONTENTS OF CHAPTER.

ACT 3474. BOARD OF PILOT COMMISSIONERS FOR SAN DIEGO.

BOARD OF PILOT COMMISSIONERS FOR SAN DIEGO.

ACT 3474—An act creating a board of pilot commissioners for the harbor of San Diego, defining their duties, and fixing their compensation.

History: Approved March 2, 1911, Stats. 1911, p. 267. Amended May 4, 1915. In effect August 8, 1915. Stats. 1915, p. 338. Prior act of March 26, 1872, Stats. 1871-72, p. 650, superseded by the present act.

Pilot commissioners of San Diego.

§ 1. It shall be the duty of the governor to appoint one citizen and one nautical man, residents of San Diego, as pilot commissioners. The mayor of said city shall be ex-officio pilot commissioner. The three persons named shall constitute a board of pilot commissioners, with the powers and duties as hereinafter provided.

Oath of office.

§ 2. Each commissioner shall, before entering upon his official duties, take the following oath or affirmation, which shall be indorsed on his commission, and shall be signed by him and certified by the county judge of the county of San Diego: "I do solemnly swear (or affirm, as the case may be), that I will support the constitution of the United States and the constitution of the state of California, and that I will faithfully discharge the duties of the office of pilot commissioner, without fear, favor or affection, according to the best of my ability."

Term.

§ 3. The board of pilot commissioners shall hold their offices during the pleasure of the power appointing them, not exceeding four years.

Organization of board.

§ 4. The board of pilot commissioners shall meet at least once in each month. They shall elect one of their number president, who shall be authorized to administer oaths, and under his hand and private seal to issue subpoenas for the attendance of witnesses in all cases arising before the board under this act. A witness disobeying such subpoena shall forfeit and pay a sum not exceeding one hundred dollars, which may be sued for and recovered in a civil action, in the name of the president of the board. It shall make by-laws and rules for its own government of the pilots not inconsistent with the laws of the state or of the United States. A majority of such board shall constitute a quorum for the transaction of business, and may meet and adjourn from time to time, according to adjournment or appointment.

Qualifications of pilots.

§ 5. Pilots appointed by commissioners must be carefully examined as to their qualifications, and, if found to be qualified and worthy, must receive license as pilots for the term of twelve months; which license shall be thereafter annually renewed until the commissioners have good cause to withhold such renewal, and whenever the commissioners deem they have such cause, or intend for any reason to withhold such renewal, the secretary of the board of commissioners shall serve notice in writing on such pilot, specifying the causes, at least ten days before the expiration of his license; and such pilot shall thereupon be entitled to a full hearing before said board.

Qualifications of pilots.

§ 6. No person shall be appointed a pilot unless he is an American citizen, over the age of twenty-one years, with a practical knowledge of the management of sailing vessels and steamboats, and of the tides, soundings, bearings, and distances of the several shoals, bars, rocks, points of land, lighthouse, and fog signals of the port and harbor of San Diego.

Oath and bond of pilots. Number.

§ 7. Every pilot receiving a license shall, before entering on the discharge of his duties, take the oath prescribed by the constitution of this state, which shall be indorsed upon his license, signed by him, and certified by the president of the board; and shall give a bond in the sum of twenty-five hundred dollars, with two sureties to be approved by the board and recorded in the county recorder's office of San Diego county, made payable to the state of California, and conditioned that he will faithfully perform all the duties required of him as a pilot under this act, and will observe the rules and regulations and decisions of the board. The pilots shall renew their bonds whenever the board may deem it necessary and shall so order. In all cases where a pilot shall have been deprived of his license before the expiration thereof for any of the causes hereinafter specified, it shall be the duty of the president of the board, provided a majority of the board shall instruct, to place the bond of such pilot in the hands of the attorney general of the state of California for collection. If any amount be collected thereon in such suit, it shall be paid to the board and shall constitute a fund out of which it shall be the duty of the board to provide rewards to encourage the relief of vessels and passengers in distress, and generally to encourage the pilots in the energetic performance of their duties.

The board of commissioners must examine and license in the manner prescribed, not less than two nor more than four pilots for the port of San Diego.

Duty.

§ 8. It shall be the duty of every pilot in charge of a vessel arriving in the harbor of San Diego to have the vessel safely moored in such a position as the master may direct.

If carried to sea against his will.

§ 9. Every pilot carried to sea against his will, when a pilot boat is in attendance to receive him, shall be entitled to receive the sum of eight dollars per day while absent, which sum may be recovered from the master or owner of the vessel so taking him away; provided, the amount herein allowed to be recovered shall in no case exceed one thousand dollars.

Causes for taking away license.

§ 10. Any pilot may be deprived of his license before the expiration thereof, for the following causes:

First—For refusing to exhibit his license when requested to do so by the master of any vessel he may have boarded.

Second—For habitual or occasional intoxication, whether the same shall occur while in charge of a pilot boat, or at any other time.

Third—For negligently, ignorantly, or willfully running any vessel on shore, or otherwise rendering her liable to injury; provided, that any pilot deprived of his license under this subdivision shall thereafter be ineligible to a license as pilot under this act.

Piloting vessel without license.

§ 11. Any person not holding a license as pilot, who shall pilot any vessel into or out of the harbor of San Diego, shall be deemed guilty of a misdemeanor, and on conviction in any court of competent jurisdiction shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding ninety days.

Liability for fees.

§ 12. All vessels, their tackle, apparel and furniture, and the masters and owners thereof, shall be jointly and severally liable for pilotage fees, to be recovered in any court of competent jurisdiction.

When two pilots offer services.

§ 13. When two or more pilots shall offer their services to a vessel outside of a line from Punta Lomas and the southeast end of Zuinga shoal, the first pilot offering his services shall have the preference; and if the master of any vessel shall refuse to observe such rule of preference, and take the pilot entitled to be preferred on board, the vessel, her appurtenances, the master and owner thereof, shall be jointly and severally liable to the pilot entitled to such preference for one-half of the amount of pilotage he would have been entitled to claim had his services been accepted.

Rates of pilotage, San Diego.

§ 14. The rates of pilotage for all vessels into or out of the harbor of San Diego shall be such reasonable rates as the board of pilot commissioners of San Diego harbor shall, from time to time, fix and establish and not in any case to exceed two dollars per foot draft and two cents per ton for each and every net ton of registered measurement for vessels having cargoes to be laden or unladen solely at the port of San Diego, and one dollar per foot registered measurement for vessels having cargoes to be laden or unladen partly at the port of San Diego and partly elsewhere, and every vessel spoken inward or outward bound, except as hereinafter provided, shall pay said rates. A vessel spoken by day by a pilot boat displaying a union jack, or by night displaying a torch or flare-up within a distance of one mile of the vessel, in all cases where inward bound vessels are not spoken until inside the bar, the rates of pilotage herein provided shall be reduced fifty per cent.

Vessels engaged in coasting trade.

All vessels sailing under enrollment and licensed and engaged in the coasting trade, between the port of San Diego and any other port of the United States, shall be exempt from all pilotage, unless a pilot is actually employed.

Foreign vessels.

All foreign vessels and vessels from a foreign port or bound thereto, and all vessels sailing under a register between the port of San Diego and any other port of the United States, shall be liable for pilotage as provided in section fourteen. [Amendment of May 4, 1915. In effect August 8, 1915, Stats. 1915, p. 338.]

Reports of pilots.

§ 15. Every pilot of the harbor of San Diego must once in each month, upon blanks to be furnished to them by the board of pilot commissioners, render a verified account to the board of all moneys received by him, or by any other person for him, or on his account, and pay five per cent thereof to the board, in full compensation for its official services, for the services of its secretary and treasurer. Such account shall give the name of each vessel piloted, and of each vessel for which pilotage has been charged or collected, and the amount charged to, or collected from each, where the same is registered, the depth of its draught, its tonnage, whether inward or outward bound, and whether the amount so received, collected, or charged is for full pilotage or half pilotage, and the secretary shall record such account in a book prepared for that purpose, which book shall at all times be open to public inspection.

Absence from San Diego.

§ 16. All pilots absenting themselves from San Diego for more than thirty days shall forfeit their commission, except in case of sickness, or consent of the commissioners.

§ 17. This act shall take effect and be in force from and after its passage.

CHAPTER 275.**PIMPING.**

References: See tits. "Pandering"; "Prostitution."

CONTENTS OF CHAPTER.**ACT 3476. PIMPING PROHIBITED.****PIMPING PROHIBITED.**

ACT 3476—An act in relation to pimping; to define and prohibit the same, and providing for punishment thereof; and for the competency of certain evidence at the trial therefor.

History: Approved February 8, 1911, Stats. 1911, p. 10.

Pimping. Penalty.

§ 1. Any male person who, knowing a female person to be a prostitute, shall live or derive support or maintenance in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from moneys loaned or advanced to or charged against such prostitute by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who shall solicit or receive compensation for soliciting for such prostitute, shall be guilty of a felony, to wit: pimping, and upon conviction for an offense under this act shall be punished by imprisonment in the state prison for a period of not less than one year nor more than three years.

Competent witness.

§ 2. Any such female person referred to in the foregoing section shall be a competent witness in any prosecution under this act to testify for or against the accused

as to any transaction or as to any conversation with the accused or by him with another person or persons in her presence, notwithstanding her having married the accused before or after the violation of any of the provisions of this act, whether called as a witness during the existence of the marriage or after its dissolution.

1. Act was not repealed by implication by section 1322, Penal Code, as amended March 2, 1911, by the failure of that section to refer to the special provision of the act as the wife's competency as a witness against her husband charged with pimping.—*People v. Edwards*, 28 Cal. App. 716, 153 Pac. 975.

2. Essentials of offense under act.—To constitute the offense of "pimping" within the meaning of this act the defendant must be a male person and have knowledge that a certain female person is a prostitute; that there are earnings from her prostitution, and that the defendant must derive his support or maintenance from such earnings, in whole or in part, knowing them to be the proceeds from her prostitution, and these essentials must appear by suitable averment in the indictment or information.—*People v. Fuski*, (Cal. App.) 192 Pac. 552.

3. Gist of offenses.—Support from earnings of prostitute.—The gist of the offense of pimping is in receiving the earnings of a prostitute for his support by the defendant, knowing the source from which it came, and if the fact existed that he was the keeper or manager of a house of prostitution, it was a mere additional incident not necessary to be alleged.—*People v. Fuski*, (Cal. App.) 192 Pac. 552.

4. Indictment or information.—In a prosecution for a violation of the pimping act an allegation in the indictment or in-

formation that the defendant is a male person would be of no aid to him since that is a matter peculiarly within his own knowledge, and whether guilty or innocent he is equally apprised of his sex.—*People v. Fuski*, (Cal. App.) 192 Pac. 552.

5. Same.—Support "wholly" or "in part" not necessary to be alleged.—It is not necessary that an indictment for pimping should show whether defendant derived support and maintenance "wholly" or "in part," from the earnings of a prostitute, that fact being immaterial, it being sufficient if he derived any support whatever from that source.—*People v. Fuski*, (Cal. App.) 192 Pac. 552.

6. Evidence.—Of sex.—In a prosecution for pimping it can not be that there is no evidence that defendant was a male person or that the prosecuting witness was a female person, where both were before the jury in person.—*People v. Fuski*, (Cal. App.) 192 Pac. 552.

7. Evidence sufficient to sustain a conviction of the crime of pimping defined in the act.—*People v. Reitzke*, 21 Cal. App. 740, 132 Pac. 1063.

8. Instruction that if the jury find that the prosecuting witness lent defendant money to go into the saloon or other business they should acquit him of the crime of pimping under the act, is a proper instruction.—*People v. Reitzke*, 21 Cal. App. 740, 132 Pac. 1063.

PINOLE.

See Act 3094, note.

PITT RIVER.

See tit. "Game Laws," Act 1702.

PITTSBURG.

See Act 3094, note.

CHAPTER 276.

PLACER COUNTY.

References: Boundary, see *Kerr's Cyc. Political Code*, § 3939.

County government, etc., see *Kerr's Cyc. Political Code*, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 3484. TRESPASSING ANIMALS.
3491. LEGALIZING RECORDS.

TRESPASSING ANIMALS.

ACT 3484—An act to prevent the trespassing of animals in judicial townships numbers one and ten of Placer county.

History: Approved March 29, 1876, Stats. 1875-76, p. 542.

LEGALIZING RECORDS.

ACT 3491—An act to legalize certain records in the office of the recorder of Placer county.

History: Approved February 15, 1864, Stats. 1863-64, p. 84.

This legalized certain records filed in 1861 and 1862 which were defective because not signed by the recorder or his deputy.

PLACERVILLE.

See Act 3094, note.

PLUMAS COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3940.

County government, etc., see Kerr's Cyc. Political Code, § 4000.

CHAPTER 278.

PLUMBERS.

CONTENTS OF CHAPTER.

ACT 3520. PLUMBERS' ACT.

PLUMBERS' ACT.

ACT 3520—An act providing for the examination, certification and registration of plumbers, prescribing powers and duties of the state board of health in reference thereto, and penalties for a violation of the provisions hereof.

History: Approved April 6, 1917. In effect July 27, 1917. Stats. 1917, p. 73. Prior act of March 15, 1883, Stats. 1883, p. 366, superseded, if not repealed by the present act. The same may also be said of the act of March 3, 1885, Stats. 1885, p. 12, amended March 9, 1887, Stats. 1887, p. 58.

Definitions.

§ 1. Certain terms as used in this act shall be construed as follows:

“Master plumber” defined.

(a) The term “master plumber” means one who has an established place of business and works by contract.

“Journeyman plumber” defined.

(b) The term “journeyman plumber” means one who, as an employee, personally installs plumbing work, but does not mean a helper or an apprentice working under the direct personal supervision of a plumber who holds a temporary permit or a certificate of competency issued pursuant to the provisions of this act.

Certificate of competency.

§ 2. It shall be unlawful for any journeyman plumber or master plumber in any city or town maintaining a public sewer system to personally install any plumbing or drainage system or portion thereof unless he shall first obtain a temporary permit or a certificate of competency issued pursuant to and as provided for in this act.

Examining board.

§ 3. In each county in which there is a city or town having a sewer system, the state board of health shall appoint an examining board of three members, one of whom must be a journeyman plumber who has had at least five years' practical experience as a plumber in this state, one a master plumber who has engaged in the plumbing business as a master plumber for at least five years in this state, and one a regularly licensed and practicing physician of this state. They shall serve for twelve, eighteen and twenty-four months respectively, or until their successors are duly appointed and

qualified, and each member shall receive as compensation fifty cents for each applicant examined, such compensation to be paid out of the funds of the state board of health semiannually. Within ten days after their appointment the board shall meet and choose one of its members to act as secretary of the board. The state board of health shall provide each examining board with the necessary application forms, registration books, temporary permits, certification blanks, and all tools, materials and office or shop room in which to properly conduct the examinations. Applications for examination may be made in writing. The state board of health shall adopt such rules and regulations as may be necessary and advisable to carry out the purposes of this act.

Application for certification. Examination.

§ 4. Application for certification shall be made to the secretary of the examining board. The fee for filing the application shall be two and one-half dollars and shall be paid to the secretary of the examining board and by him to the state board of health to the credit of the contingent fund thereof. In no case shall the filing fee be returned to the applicant. The examining board shall issue to the applicant a temporary permit which shall be valid only until the examination is held and the certificate granted or denied. The examination shall consist of an oral or written examination and practical test and shall be of sufficient strictness to properly test the qualifications of the applicant as to his knowledge of plumbing, house draining and ventilation. If the applicant shows by a proper examination that he is qualified the board shall issue to him a certificate of competency which shall thereafter be renewed every twelve months without the necessity of an examination, upon the payment of an annual fee of two dollars. Any person possessing such a certificate of competency to work in a particular county shall be entitled to work at the plumbing business in any other county in this state upon registering with the examining board thereof. Such registration shall be without cost and without examination.

Revocation of certificate.

§ 5. Said board may make such rules and regulations as may be necessary to effectively carry out the provisions of this act and may at any time revoke a certificate granted by it for the violation of any such rules or regulations or of a municipal building, plumbing or sanitary ordinance.

Provisions of city charters.

§ 6. Nothing in this act contained shall be deemed to repeal or in any manner supersede the authority conferred upon the board of health, department of public health, or health officer, by the charter of any incorporated city or city and county, or the power, under such charter, to enact ordinances providing for the conduct of any of the matters and things embraced within the terms of this act.

Penalty.

§ 7. Any person violating any provisions of this act shall be guilty of a misdemeanor as defined in section nineteen of the Penal Code.

1. Constitutionality — Licensing under police power.—Generally speaking, plumbing work is so related to the public health that the legislature may, under its police power, make reasonable regulations governing it, and for that purpose may require the examination and licensing of those engaged in such work.—*Aaroe v. Crosby*, (Cal. App.) 192 Pac. 97.

2. Same—Act not a health measure.—The act is not a health measure, and could not be sustained on that ground.—*Aaroe v. Crosby*, (Cal. App.) 192 Pac. 97.

3. Same—Same—Not necessary to validity.—It is not necessary to its validity that act should be a health measure, and it is a proper exercise of the police power if its purpose and effect is imposed by way of regulating reasonable safeguards in the public interest around the exercise of the plumbing occupation.—*Aaroe v. Crosby*, (Cal. App.) 192 Pac. 97.

4. Same—Invalid as discriminatory.—The act is invalid because it discriminates in favor of an employing master plumber against one who has an established place

of business and performs plumbing work himself, since the former may operate without a license, and the latter can not, and moreover is liable to be deprived of his means of livelihood at the caprice of an examining.—*Aaroe v. Crosby*, (Cal. App.) 192 Pac. 97.

5. Same—Act is special legislation.—The act is special legislation as discriminating in its application between persons engaged in the same trade, without any reasonable basis for a classification.—*Aaroe v. Crosby*, (Cal. App.) 192 Pac. 97.

6. Same—Invalidity not removed by provisions of act of 1885.—The act of 1885, lacking the discriminatory features of the present act, if it was not intended to be repealed by it, merely emphasizes those objectionable features, and can not be said to remove them.—*Aaroe v. Crosby*, (Cal. App.) 192 Pac. 97.

7. Implied power to appoint plumbing examiners can not be delegated.—Where the charter of a municipality contains no express power to appoint plumbing examiners, such examiners can only be appointed under its general implied powers, and such powers can not be delegated to

a subordinate municipal body or persons and is moreover subject to general laws inconsistent with its exercise.—*Ex parte Grey*, 11 Cal. App. 125, 104 Pac. 476.

8. Same.—The city of San Jose has no express power under its charter to delegate to the board of police commissioners and fire commissioners of the city the power to appoint a board of plumbing examiners; and an ordinance attempting to do this, is void as being in conflict with the general law.—*Ex parte Grey*, 11 Cal. App. 125, 104 Pac. 476.

9. Plumbers' license tax imposed under freeholders' charter is a "municipal affair." The imposition of a plumber's license tax in the city of Stockton, operating under a freeholders' charter, is a "municipal affair."—*In re Prentice*, 24 Cal. App. 345, 141 Pac. 220.

10. Ordinance of Stockton not in conflict with act.—An ordinance of the city of Stockton requiring a license of master-plumbers as a condition of their right to engage in the business of plumbing, is not in conflict with the act of 1885.—*In re Prentice*, 24 Cal. App. 345, 141 Pac. 220.

PLYMOUTH.

See Act 3094, note.

POINT ARENA.

See Act 3094, note.

CHAPTER 279.

POISONS.

References: See, generally, tits. "Medicine"; "Pharmacy."
Poisons, sale of, see *Kerr's Cyc. Penal Code*, § 347a.

CONTENTS OF CHAPTER.

ACT 3528. POISON ACT.

POISON ACT.

ACT 3528—An act to regulate the sale of poisons in the state of California and providing a penalty for the violation thereof.

Amendment of title of act. The original title of this act was amended by the amending act of 1909, by adding the words "and use" after "to regulate the sale."

History: Approved March 6, 1917, Stats. 1907, p. 124. Amended (1) March 19, 1909, Stats. 1909, p. 422; (2) April 25, 1911, Stats. 1911, p. 1106; (3) June 11, 1913, in effect August 10, 1913, Stats. 1913, p. 692; (4) May 27, 1915, in effect August 8, 1915, Stats. 1915, p. 863; (5) June 1, 1915, in effect August 8, 1915, Stats. 1915, p. 1066; (6) May 27, 1919, Stats. 1919, p. 1275, which last amendment was suspended by referendum and submitted to the people at the general election of November 2, 1920, and adopted. The title of the amending act of 1919 recites that a new section is added, number 8g, but no such section appears in the body of the act. Prior acts of April 16, 1880, Stats. 1880, p. 102, codified by § 347a of the Penal Code (see *Kerr's Cyc. Penal Code*, § 347a); March 11, 1891; amended March 3, 1893, Stats. 1893, p. 68; repealed by the act of March 15, 1901, Stats. 1901, p. 299, which was no doubt superseded, as to the sale of poisons, by the present act.

Labeling packages of poisons. Poisons sold only for legitimate purposes. Giving fictitious name unlawful. Schedule and antidote given to pharmacists. Entries of sales in poison register. Form of book.

§ 1. It shall be unlawful for any person to vend, sell, give away or furnish, either directly or indirectly any poisons enumerated in schedules "A" and "B" in section seven of this act as hereinafter set forth, without labeling the package, box, bottle or paper in which said poison is contained, with the name of the article, the word "poison," and the name and place of business of the person furnishing the same. Said label shall be substantially in the form hereinafter provided. It shall be unlawful to sell or deliver any of the poisons named in schedule "A" or any other dangerously poisonous drug, chemical, or medicinal substance, which may from time to time be designated by the state board of pharmacy of California, unless on inquiry it is found that the person desiring the same is aware of its poisonous character, and it satisfactorily appears that it is to be used for a legitimate purpose. It shall be unlawful for any person to give a fictitious name or make any false representations to the seller or dealer when buying any of the poisons thus enumerated; provided, that this prohibition shall not apply to an officer or inspector of the state board of pharmacy in the performance of the duties enjoined by law upon said board, or to any person acting under authority of said board in the performance of said duties. Printed notice of all such additions to the schedule of poisons named and provided for in this section, and the antidote adopted by the board of pharmacy for such poisons shall be given to all registered pharmacists with the next following renewal of their certificates. It shall be unlawful to sell or deliver any poison included in schedule "A" or the additions thereto, without making or causing to be made, at the time of said sale, an entry in a book kept solely for that purpose, stating the date and hour of sale, and the name, address and signature of the purchaser, the name and quantity of the poison sold, the statement by the purchaser of the purpose for which it is required, and the name of the dispenser, who must be a duly registered pharmacist; provided, however, that said entry shall be made out in full, in ink before said signature of the purchaser is made thereto, and that said entry shall be made by said dispenser himself, and not by any person who is not a duly registered pharmacist or duly registered assistant pharmacist.

Said book shall be in form substantially as follows:

Date and hour	Name of purchaser	Residence	Kind and quantity	Purpose of use	Signature of druggist	Signature of purchaser
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This book shall always be open for inspection by the proper authorities, and shall be preserved for at least five years after the date of the last entry therein. [Amendment approved June 11, 1913, Stats. 1913, p. 692.]

This section was also amended March 19, 1909, Stats. 1909, p. 423.

Form of label.

§ 2. The label required by this act, to be placed on all packages of poison, shall be printed upon red paper in distinct white letters, or in distinct red letters upon white paper, and shall contain the word "poison," the "vignette" representing the skull and crossbones, and the name and address of the person or firm selling the same. The name of an antidote if any there be for the poison sold, shall also be upon the package. No poison shall be sold or delivered to any person who is less than eighteen years of age.

State board of pharmacy to adopt schedule of antidotes. Entries to be in English.

§ 3. It shall be the duty of the state board of pharmacy to adopt a schedule of what in their judgment are the most suitable common antidotes for the various poisons usually sold. After the board has adopted the schedule of antidotes as herein provided

for, they shall have the same printed and shall forward by mail one copy to each person registered upon their books, and to any other person applying for the same. The particular antidote adopted (and no other) shall appear on the poison label, provided for in section 2 of this act, or be attached to the package containing said poison. The board shall have power to revise and amend the list of antidotes from time to time, as to them may seem advisable. The entries in the poison-book and the printed or written matter provided for in sections 2 and 3 of this act, shall be in the English language, provided that the vendor of said poison may enter the same in any foreign language he may desire, in addition to said entry and label in English.

Board may further restrict sales.

§ 4. When in the opinion of the state board of pharmacy it is in the interest of the public health, they are hereby empowered to further restrict, or prohibit, the retail sale of any poison by rules, not inconsistent with the provisions of this act, by them to be adopted, and which rules must be applicable to all persons alike. It shall be the duty of the board, upon request, to furnish any dealer with a copy of the laws relating to articles, preparations and compounds, the sale of which is prohibited or regulated by this act. [Amendment approved June 11, 1913, Stats. 1913, p. 693. In effect August 10, 1913.]

Duty of wholesale dealers.

§ 5. Wholesale dealers and pharmacists shall affix or cause to be affixed to every bottle, box, parcel or other inclosure of an original package containing any of the articles named in schedule "A" the additions thereto, or in sections 8 and 9 of this act, a suitable label, or brand with the word "poison" but they are hereby exempted from the registration of the sale of such articles when sold at wholesale to a registered pharmacist, physician, dentist or veterinary surgeon duly licensed to practice in the state; provided, that the provisions of this act shall not apply to the sale of such upon the prescriptions of practicing physicians, dentists or veterinary surgeons who are duly licensed to practice in this state.

District attorney to prosecute.

§ 6. It is hereby made the duty of the district attorney of the county wherein any violation of this act is committed, to conduct all actions and prosecutions for the same, at the request of the board of pharmacy; provided, however, that the board may employ special counsel to assist the district attorney in such actions and prosecutions. [Amendment approved June 11, 1913, Stats. 1913, p. 694. In effect August 10, 1913.]

§ 7. Any person violating any of the provisions of sections eight or eight a of this act shall upon conviction be guilty of and shall be punished as follows, viz.: for the first offense said person so convicted shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars, and not to exceed four hundred dollars, or by imprisonment for not less than fifty days and not exceeding one hundred eighty days, or by both such fine and imprisonment; for the second offense said person so convicted shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars, and not to exceed five hundred dollars, or by imprisonment for not less than ninety days and not exceeding six months, or by both such fine and imprisonment; and for the third offense said person so convicted shall be deemed guilty of a felony and shall be punished by imprisonment in the state prison for not less than one year and not more than five years. Any person violating any of the provisions of this act, except those contained in sections eight or eight a, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than thirty dollars, nor more than two hundred dollars, or by imprisonment for not less than thirty days and not more than fifty days, or by both such fine and imprisonment. All moneys, forfeited bail or fines, received under the operation of

this act shall be paid by the magistrate receiving same, seventy-five per cent to the state board of pharmacy, and twenty-five per cent to the city treasurer of the city, if incorporated, or to the county treasurer of the county in which the prosecution is conducted. The following is schedule "A" referred to in section one, viz.: Schedule "A," arsenic, its compounds and preparations, corrosive sublimate, and other poisonous derivatives of mercury, cyanide of potassium, strychnine, hydrocyanic acid, oils of croton, rue, savin, and tansy, phosphorus and its poisonous derivatives and compounds, strophanthus or its preparations, aconite, belladonna, nux vomica, veratrum viride, their preparations, alkaloids or derivatives, ant poison containing any of the poisons enumerated in this schedule.

The following is schedule "B": Hydrochloric or muriatic acid, nitric acid, oxalic acid, sulphuric acid, bromide, chloroform, cowhage, creosote, ether, solution of formaldehyde or formaline; cantharides, cocculus indicus, all their preparations; iodine, or its tinctures, oil of pennyroyal, tartar emetic, and other poisonous derivatives of antimony, sugar of lead, sulphate of zinc, wood alcohol, lysol and compound solution of cresol. [Amended by referendum November 2, 1920.]

This section was also amended March 19, 1909, Stats. 1909, p. 422; June 11, 1913, Stats. 1913, p. 692; June 1, 1915, Stats. 1915, p. 1066; and was amended as above May 27, 1919, Stats. 1919, p. 1275.

§ 8. It shall be unlawful for any person, firm or corporation to sell, furnish or give away or offer to sell, furnish or give away or to have in their or his possession any cocaine, opium, morphine, codeine, heroin, alpha eucaine, beta eucaine, nova eaine, flowering tops and leaves, extracts, tinctures and other narcotic preparations or hemp or loco weed (*cannabis sativa*), Indian hemp, peyote (*anhalonium*), or chloral hydrate or any of the salts, derivatives or compounds of the foregoing substances or any preparation or compound containing any of the foregoing substances or their salts, derivatives or compounds excepting upon the written order or prescription of a physician, dentist or veterinary surgeon, licensed to practice in this state, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, written in by the person writing said prescription, or if ordered by a veterinary surgeon it shall state the kind of animal for which ordered and shall be signed by the person giving the prescription or order. Such order or prescription shall be permanently retained on file by the person, firm or corporation who shall compound or dispense the articles ordered or prescribed, and it shall not be again compounded or dispensed if each fluid or avoirdupois ounce contains more than ten grains of chloral hydrate, or four grains of Indian hemp or loco weed excepting upon the written order of the prescriber for each and every subsequent compounding and dispensing. No copy or duplicate of such written order or prescription shall be made or delivered to any person but the original shall be at all times open to inspection by the prescriber and properly authorized officers of the law and shall be preserved for at least three years from the date of the filing thereof; provided, that the above provisions shall not apply to sales at wholesale by jobbers, wholesalers and manufacturers to pharmacies, as defined in section one of an act entitled "An act to regulate the practice of pharmacy in the state of California and to provide a penalty for the violation thereof; and for the appointment of a board to be known as the California state board of pharmacy," approved March 20, 1905, and acts amendatory thereof; or physicians, nor to each other, nor to the sale at retail in pharmacies by pharmacists to physicians, dentists or veterinary surgeons duly licensed to practice in this state; provided, further, that all such wholesale jobbers, wholesalers and manufacturers, in this section mentioned shall keep in a manner readily accessible, the written orders or blank forms required to be preserved under the provisions of section two of the act of congress, approved December 17, 1914, relating to the production, importation, manufacture, compounding, sale, dispensing or giving away of opium

or coca leaves and salts, derivatives or preparations. And said records shall always be open for inspection by any peace officer or any member of the board of pharmacy or any inspector authorized by said board and such records shall be preserved for at least two years after the date of the last entry therein. The taking of any order, or making of any contract or agreement, by any traveling representative, or any employee, of any person, firm or corporation, for future delivery in this state, of any of the articles or drugs mentioned in this section shall be deemed a sale of said articles or drugs by said traveling representative, or employee, within the meaning of the provision of this act; provided, further, that a true and correct copy of all orders, contracts or agreements, taken for narcotic drugs specified in this section shall be forwarded by registered mail to the secretary of the California state board of pharmacy within twenty-four hours after the taking of such order, contract or agreement, unless such order, contract or agreement is recorded as required under the provisions of section two of an act of congress, approved December 17, 1914, relating to the production, importation, manufacture, compounding, sale, dispensing or giving away of opium or coca leaves, their salts, derivatives or preparations of some wholesale jobber, wholesaler, or manufacturer permanently located in this state, as provided for in this section. It shall be unlawful for any practitioner of medicine, dentistry or veterinary medicine to administer to himself as a habitual user or furnish to or prescribe for the use of any other habitual user of the same, or of anyone representing himself as such, any cocaine, opium, morphine, codeine, heroin, or chloral hydrate, or any salt, derivative or compound of the foregoing substances or their salts, derivatives or compounds; and it shall also be unlawful for any practitioner of medicine or dentistry to prescribe or give any of the foregoing substances for himself or any person not under his treatment in the regular practice of his profession, or for any veterinary surgeon to prescribe or furnish any of the foregoing substances for the use of himself or any other human being; provided, however, that the provisions of this section shall not be construed to prevent any duly licensed physician from furnishing or prescribing in good faith as their physician by them employed as such, for any habitual user of any narcotic drugs who is under his professional care, such substances as he may deem necessary for their treatment, when such prescriptions are not given or substances furnished for the purpose of evading the purposes of this act; provided, that such licensed physician shall report in writing, over his signature, by registered mail, to the office of the California state board of pharmacy, within twenty-four hours after the first treatment, each and every habitual user of such narcotic drugs as are enumerated in this section whom he or she has taken, in good faith, under his or her professional care, for the cure of such habit, such report to contain the date, name and address of such patient, and the name and quantity of the narcotic or narcotics prescribed in such treatment; and provided, further, that the above provisions shall not apply to preparations of the United States pharmacopoeia and national formulary or other recognized or established formula or remedies sold or dispensed without a physician's prescription containing not more than two grains of opium, or one-fourth grain of morphine, or one grain of codeine, or one-eighth grain of heroin, or ten grains of chloral hydrate or four grains of Indian hemp or loco weed in one fluid ounce, or, if a solid preparation, in one ounce, avoirdupois, except tincture opii camphorata (commonly known as paregoric) which may be sold only upon the prescription of a physician licensed to practice in this state and said prescription shall not be again refilled or dispensed. [Amended by referendum November 2, 1920.]

This section was also amended March 19, 1909, Stats. 1909, p. 422; April 25, 1911, Stats. 1911, p. 1106; June 11, 1913, Stats. 1913, p. 692; June 1, 1915, Stats. 1915, p. 1066; and was amended as above May 27, 1919, Stats. 1919, p. 1275.

Possession of opium pipes, misdemeanor.

§ 8a. The possession of a pipe or pipes used for smoking opium (commonly known as opium pipes) or the usual attachment or attachments thereto, or other contrivances used

for smoking opium, or extracts, tinctures or other narcotic preparations of hemp, or loco weed, their preparations or compounds containing more than four grains to each fluid or avoirdupois ounce (except corn remedies containing not more than fifteen grains of the extract or fluid extract of hemp to the ounce, mixed with not less than five times its weight of salicylic acid combined with collodion), is hereby made a misdemeanor, and upon conviction thereof shall be punishable by the penalties prescribed in section seven of this act. [Amendment of June 1, 1915. In effect August 8, 1915, Stats. 1915, p. 1070.]

This section was added April 25, 1911, Stats. 1911, p. 1108. It was also amended June 11, 1913, Stats. 1913, p. 697.

Narcotics and opium pipes may be seized by peace officer. Order of destruction. Alternative disposition.

§ 8b. All narcotic drugs specified in section eight and also all pipes used for smoking opium (commonly known as opium pipes) or the usual attachments thereto, flowering tops and leaves, or extracts, tinctures, or other narcotic preparations of hemp, or loco weed, their preparations or compounds containing more than four grains of Indian hemp or loco weed to each fluid or avoirdupois ounce (except corn remedies containing not more than fifteen grains of the extract or fluid extract of hemp to the ounce, mixed with not less than five times its weight of salicylic acid combined with collodion), may be seized by any peace officer, and in aid of such seizure a search warrant or search warrants may be issued in the manner and form prescribed in chapter III of title XII of part II of the Penal Code. All such narcotic drugs, pipes used for smoking opium (commonly known as opium pipes) or the usual attachments thereto, and all such hemp or preparation of hemp or loco weed seized under the provisions of this act shall be ordered destroyed by the judge of the court in which final conviction was had; said order of destruction shall contain the name of the party charged with the duty of destruction as herein required; provided, however, that the judge shall turn all such evidence over to the California state board of pharmacy for such destruction; and provided, further, that any narcotic drug specified in section eight, opium pipes and the usual attachments thereto, or smoking opium, seized under the provisions of this act, now in the possession of any city or county official or officials, or the California state board of pharmacy, or which may hereafter come into their or its possession, in which no trial was had, shall be delivered to the California state board of pharmacy for destruction by said board; provided, however, that none of the narcotic drugs specified in section eight, opium pipes and the usual attachments thereto, or smoking opium coming into the possession of said board, as above described, shall not be destroyed within a period of six months from the date of such seizure; and provided, further, that the board of pharmacy may dispose of all narcotics now on hand or hereafter coming into their possession (other than smoking opium), either by gift to the medical director of California state prisons or state hospitals or by sale to wholesale druggists, the funds received from such sales to be applied by the board of pharmacy to the carrying out the provisions of this act or of the act creating such California state board of pharmacy. [Amendment of June 1, 1915. In effect August 8, 1915, Stats. 1915, p. 1070.]

This section was added April 28, 1911, Stats. 1911, p. 1108. It was also amended June 11, 1913, Stats. 1913, p. 697.

Revocation of registration of pharmacist for violation.

§ 8c. The board may revoke the registration of any registered pharmacist or assistant pharmacist upon conviction of the second offense for violating any of the provisions of section eight or eight a of this act, and in such case said registration shall not be restored before the period of one year from the date of said revocation. [Amendment of June 1, 1915. In effect August 8, 1915, Stats. 1915, p. 1071.]

This section was added June 11, 1913, Stats. 1913, p. 698.

Enforcement of act.

§ 8d. The state board of pharmacy is hereby charged with the enforcement of the provisions of section 307 of the Penal Code and all fines, moneys or forfeited bail imposed for violation of said section upon collection shall be disposed of as is provided for the disposition of fines, moneys or forfeited bail, in section seven of this act. [Amendment of June 1, 1915. In effect August 8, 1915, Stats. 1915, p. 1071.]

This section was added June 11, 1913, Stats. 1913, p. 698.

§ 8e. It is hereby made unlawful for any person to sell, vend, give away, or furnish, either directly or indirectly, to any person other than a duly licensed physician, licensed to practice and prescribe medicines in this state, or to a dentist or a veterinarian, or a pharmacist licensed to practice in this state, or person holding an unrevoked license to practice osteopathy, an instrument commonly known as a hypodermic syringe, or an instrument commonly known as a hypodermic needle, without a written, signed order from a duly licensed physician, dentist or veterinarian licensed to practice and prescribe medicine in this state, said order to contain the name and address of the party for whom ordered; or for any person other than a physician, dentist, veterinarian or pharmacist licensed to practice in this state, to have in his possession such an instrument commonly known as a hypodermic syringe or an instrument commonly known as a hypodermic needle, or any instrument or contrivance used for the same purpose as a hypodermic syringe or hypodermic needle, unless said instrument or contrivance was purchased by said person through and with a written order signed by a duly licensed physician, dentist or veterinarian licensed to practice and prescribe medicine in this state or person holding an unrevoked license to practice osteopathy, as above provided. No order, certificate or prescription shall be for more than one hypodermic syringe or for more than three hypodermic needles and no copy or duplicate of such order shall be made for or delivered to any person and said order or prescription shall be accepted and filled only once; provided, however, that the above restrictions shall not prevent any duly registered nurse of this state or student nurse in any hospital or training school for nurses from obtaining or possessing any hypodermic syringe and hypodermic needles when working under the immediate direction and supervision of a licensed physician or licensed dentist; provided, further, that the board of pharmacy may upon application and at its discretion issue a permit, revocable at the discretion of the said board, to any duly registered pharmacist, for a limited period, permitting and authorizing such pharmacist to sell and dispense hypodermic syringes and needles for specified purposes, to persons not addicted to the use of the narcotic drugs enumerated in this act, and sales made under the authority of and in conformity with the terms of such permit shall not be construed to be in violation of the provisions of this section.

Any person violating any of the provisions of this section shall, upon conviction, be guilty of a misdemeanor and shall be punished as follows: for the first offense by a fine of not less than twenty-five dollars and not more than fifty dollars or by imprisonment for not less than twenty-five days and not more than fifty days or by both such fine and imprisonment; and for each subsequent offense by a fine of not less than fifty dollars and not more than one hundred dollars or by imprisonment for not less than fifty days and not more than one hundred days or by both such fine and imprisonment. All fines, moneys, or forfeited bail imposed for violation of this section, upon collection thereof, shall be disposed of as is provided for in the disposition of fines, moneys or forfeited bail under section seven of this act. [Added by referendum November 2, 1920.]

This section was added May 27, 1919, Stats. 1919, p. 1275.

§ 8f. For the purpose of this act the terms veterinarian, dentist, pharmacist shall be deemed to mean and shall refer only to persons who hold valid, unrevoked certificates to practice their respective professions in this state, issued by their respective examining boards in California. The term "physician," or "duly licensed physician," or "physi-

cian duly licensed to practice in this state," or "duly licensed physician licensed to practice and prescribe medicine in this state," or "practitioner of medicine," or "licensed physician," shall be deemed to mean and refer only to persons holding a valid and unrevoked physician's and surgeon's certificate, or certificate to practice medicine and surgery, issued by the board of medical examiners of the state of California or under the terms or provisions of any preceding medical practice act of the state of California. [Added by referendum November 2, 1920.]

This section was added May 27, 1919, Stats. 1919, p. 1275.

§ 8½. Any licensed physician treating any habitue under section eight of this act shall not prescribe for or furnish such habitue more than eight grains of opium, or four grains of morphine, or two grains of cocaine, or two grains of heroin for each daily treatment and at the end of fifteen days of such treatment the said physician shall not prescribe for or furnish to such habitue, for each daily treatment, more than four grains of opium, or two grains of morphine, or one grain of cocaine, or one grain of heroin, and at the end of thirty days from the first treatment, the prescribing or furnishing of any of the narcotic drugs above enumerated shall be entirely discontinued; and the physician shall report by registered mail as required in section eight of this act, and shall in the same manner further report in fifteen days, and in thirty days, the progress of the patient under the treatment so administered by him; otherwise, said treatment shall not be considered in good faith as provided in section eight of this act; provided, however, that any licensed physician may prescribe for or furnish his patient as their physician employed by them as such, and who is suffering with some incurable disease, ailment, or injury, any of the narcotic drugs mentioned in section eight, in such quantity as may be necessary for a reasonable length of time and the physician prescribing or furnishing any of the narcotic drugs must personally furnish a signed, detailed report in writing, to the office of the California state board of pharmacy, by registered mail, within twenty-four hours after writing the first prescription or furnishing the narcotic drug to such patient; and provided, further, that the California state board of pharmacy may employ a licensed physician to interview, examine and report the result of such interview or examination of any patient coming under the provisions of this section; provided, further, that the California state board of health shall furnish, upon request in writing from the California state board of pharmacy, a list of incurable diseases or ailments which, in its judgment, might require excessive amounts of narcotic drugs to be prescribed for or furnished by a physician for relief or benefit. [Added by referendum November 2, 1920.]

This section was added May 27, 1919, Stats. 1919, p. 1275.

§ 9. The sale or furnishing of carbolic acid (phenol) in quantities of less than one pound, is prohibited unless upon the prescription of a physician, dentist or veterinary surgeon duly licensed to practice in this state, but this prohibition shall not apply to solution of carbolic acid (phenol) containing not over ten per cent of the carbolic acid (phenol) and not less than ten per cent of ethyl alcoholic. All sales of carbolic acid (phenol) thus diluted so as to contain no more than ten per cent of carbolic acid (phenol) may be made under the same conditions as the drugs enumerated in schedule "B" as found in section seven, but sales of carbolic acid (phenol) containing more than ten per cent of said acid shall be registered subject to the same regulation as the poisons enumerated in schedule "A" as found in section seven. [Amended by referendum November 2, 1920.]

This section was also amended March 19, 1909, Stats. 1909, p. 422; April 25, 1911, Stats. 1911, p. 1106; June 1, 1915, Stats. 1915, p. 1066; and was amended as above May 27, 1919, Stats. 1919, p. 1275.

Conflicting acts repealed.

§ 10. All acts and parts of acts in conflict with this act are hereby repealed.

1. Constitutionality—Poison act constitutional.—The poison act of 1907 is held to be constitutional.—In re Potter, 164 Cal. 735, 740, 130 Pac. 721.

2. Same—Not unreasonable exercise of police power.—The act is not unreasonable for the protection of the public from the evils resulting from the use of opium.—Ex parte Yun Quong, 159 Cal. 508, 114 Pac. 835, Ann. Cas. 1912C, 969.

3. Same—Not unreasonable — Innocent possession of opium.—The statute is not unreasonable and void because it is possible for one to have the possession of opium innocently and without knowledge inasmuch as the act clearly means a conscious and voluntary possession.—Ex parte Yun Quong, 159 Cal. 508, 114 Pac. 835, Ann. Cas. 1912C, 969.

4. Same—Not invalid for failure to prohibit giving away of poisons.—The act is not invalid because of its failure to prohibit the giving away of the poisons specified.—Ex parte Hallawell, 8 Cal. App. 563, 97 Pac. 320, 155 Cal. 112, 99 Pac. 490.

5. Same—Title sufficient to cover subject of section 8.—Section 8 of the act is not invalid on the ground that its subject matter is not embraced in the title.—Ex parte Hallawell, 8 Cal. App. 563, 97 Pac. 320, 155 Cal. 112, 99 Pac. 490.

6. Same—Title broad enough to cover provisions as to possession of opium.—The title is broad enough to embrace the provision making it unlawful for any person to have opium in his possession except on the written prescription of a physician.—Ex parte Yun Quong, 159 Cal. 508, 114 Pac. 835, Ann. Cas. 1912C, 969.

7. Same—Title sufficiently expresses contents of act.—The title sufficiently expresses the contents of the act to satisfy the constitutional requirements.—People v. San Bernardino, (Cal. App.) 190 Pac. 482.

8. Same—Not an invasion of the right to enjoy property.—The act is not violative of the fourteenth amendment to the federal constitution protecting the right to the enjoyment of property.—Ex parte Yun Quong,

159 Cal. 508, 114 Pac. 835, Ann. Cas. 1912C, 969.

9. Same—Not an invasion of the right to possess property.—The act is not an invasion of the right to acquire, possess and enjoy property, declared inalienable by section 1, article I of the constitution.—Ex parte Yun Quong, 159 Cal. 508, 114 Pac. 835, Ann. Cas. 1912C, 969.

10. Construction — Pharmacy act and poison act in pari materia.—The "pharmacy act" and the "poison act" are in pari materia, and are to be so construed, and so construed, the pharmacy board is given power to promulgate regulations, not inconsistent with the laws of the state for the protection of the public in the sale of poisons.—In re Potter, 164 Cal. 735, 739, 130 Pac. 731.

11. Same—"Pharmacy act" and poison act" inconsistent—Sale of Kellogg's ant paste.—A regulation of the board of pharmacy requiring grocers and dealers generally to sell Kellogg's ant paste only in strict compliance with sections 1, 2 and 3 of the "poison act," which requires all poisons to be sold only by registered pharmacists, is inconsistent with the provisions of the "pharmacy act" which authorizes the sale of such paste in unbroken packages by grocers and dealers generally.—In re Potter, 164 Cal. 735, 739, 130 Pac. 721.

12. Same—Same—Same—"Pharmacy act" not repealed by 1911 amendment to "poison act."—The 1911 amendment did not have the effect to re-enact the poison act as of the date of the amendment, and thus to repeal by implication the pharmacy act allowing certain sales of poisons to be made by grocers and other dealers.—In re Potter, 164 Cal. 735, 740, 130 Pac. 721.

13. Same—Same—Same—Effect of 1913 amendment.—The effect of the 1913 amendment of section 7 was to prohibit the sale of ant poisons containing arsenic by grocers and dealers generally, notwithstanding section 14a of the insecticide act, and notwithstanding the decision of the court in In re Potter, 164 Cal. 735, 130 Pac. 721.—Ex parte Potter, 26 Cal. App. 45, 146 Pac. 62.

CHAPTER 280.

POLICE.

Reference: See, generally, tits. "Municipal Corporations"; "Pensions."

CONTENTS OF CHAPTER.

- ACT 3536. RELIEF AND PENSION FUND.
- 3537. INCREASE OF POLICE FORCES.
- 3538. ANNUAL VACATIONS.
- 3539. HOURS OF SERVICE.
- 3540. RIGHTS OF SENIORITY ACT.
- 3541. SPECIAL POLICE.
- 3542. BOARDS OF POLICE COMMISSIONERS.

RELIEF AND PENSION FUND.

ACT 3536—An act to create a police relief, health, and life insurance and pension fund in the several counties, cities and counties, cities and towns of the state.

History: Approved March 4, 1889, Stats. 1889, p. 56. Amended (1) March 31, 1891, Stats. 1891, p. 287; (2) March 31, 1891, Stats. 1891, p. 469; (3) March 2, 1897, Stats. 1897, p. 52; (4) April 14, 1917, in effect July 27, 1917, Stats. 1917, pp. 119, 120; (5) April 15, 1919, in effect July 22, 1919, Stats. 1919, p. 101.

Who to constitute board of trustees of police relief or pension fund.

§ 1. The chairman of the board of supervisors of the county, city and county, city, or incorporated town in which there is no board of police commissioners, the treasurer of the county, city and county, or incorporated town, and the chief of police, and their successors in office, are hereby constituted a board of trustees of the police relief or pension fund of the police department, to provide for the disbursement of the same and to designate the beneficiaries thereof, as hereinafter directed, which board shall be known as the "Board of Police Pension Fund Commissioners;" provided, however, that where there is in any county, city and county, city, or town, a board of police commissioners, then such body shall constitute said board of trustees of the police relief and pension fund of the police department. [Amendment approved March 31, 1891, Stats. 1891, p. 469.]

Organization and officers.

§ 2. They shall organize as such board by choosing one of their number as chairman, and by appointing a secretary. The treasurer of the county, city and county, city, or town shall be ex officio treasurer of said fund. Such board of trustees shall have charge of and administer said fund, and to order payments therefrom in pursuance of the provisions of this act. They shall report annually, in the month of June, to the board of supervisors, or other governing authority of the county, city and county, city, or incorporated town, the condition of the police relief and pension fund, and the receipts and disbursements on account of the same, with a full and complete list of the beneficiaries of said fund and the amounts paid them. [Amendment approved March 31, 1891, Stats. 1891, p. 469.]

Who entitled to receive police pensions.

§ 3. Whenever any person at the taking effect of this act or thereafter, shall have been duly appointed or selected, and sworn, and have served for twenty years, or more, in the aggregate, as a member, in any capacity or any rank whatever, of the regularly constituted police department of any such county, city and county, city, or town which may hereafter be subject to the provisions of this act, said board shall upon the application of such person, order and direct that such person, after becoming sixty years of age, be retired from further service in such police department, and from the date of

the making of such order the service of such person in such police department shall cease, and such person so retired shall thereafter, during his lifetime, be paid from such fund a yearly pension equal to one-half of the amount of salary attached to the rank which he may have held in said police department for the period of one year next preceding the date of such retirement; provided, that any person who comes within the purview of this section, who has otherwise complied with its provisions and who has served for thirty years or more as herein provided shall upon his application, be retired from further service upon a yearly pension equal to two-thirds of the amount of such yearly salary. [Amendment of April 15, 1919. In effect July 22, 1919. Stats. 1919, p. 101.]

This section was also amended March 2, 1897, Stats. 1897, p. 52; April 14, 1917, Stats. 1917, p. 119.

Physical disability. Restoration.

§ 4. Whenever any person, while serving as a policeman in any such county, city and county, city or town, shall become physically disabled by reason of any bodily injury received in the immediate or direct performance or discharge of his duty as such policeman, said board may, upon his written request, or without such request, if it deem it to be for the good of said police force, retire such person from said department, and order and direct that he shall be paid from said fund, during his lifetime, a yearly pension equal to one-half of the amount of salary attached to the rank which he may have held on such police force at the date of such retirement, but on the death of such pensioner his heirs or assigns shall have no claim against or upon such police relief or pension fund; provided, that whenever such disability shall cease such pension shall cease, and such person shall be restored to active service at the same salary he received at the time of his retirement. [Amendment approved March 2, 1897, Stats. 1897, p. 52.]

Evidence of disability to be filed.

§ 5. No person shall be retired, as provided in the next preceding section, or receive any benefit from said fund, unless there shall be filed with said board certificates of his disability, which certificates shall be subscribed and sworn to by said person, and by the county, city and county, city, or town physician (if there be one), and two regularly licensed practicing physicians of such county, city and county, city, or town, and such board may require other evidence of disability before ordering such retirement and payment as aforesaid.

Pension to family.

§ 6. Whenever any member of the police department of such county, city and county, city, or town shall lose his life while in the performance of his duty, leaving a widow, or child or children under the age of sixteen years, then upon satisfactory proof of such facts made to it, such board shall order and direct that a yearly pension, equal to one third the amount of the salary attached to the rank which such member held in said police department at the time of his death, shall be paid to such widow during her life, or if no widow, then to the child or children, until they shall be sixteen years of age; provided, if such widow, or child or children, shall marry, then such person so marrying shall thereafter receive no further pension from such fund.

Stipulated sum to family.

§ 7. Whenever any member of the police department of such county, city and county, city, or town, shall, after ten years of service, die from natural causes, then his widow or children, or if there be no widow or children, then his mother or unmarried sisters, shall be entitled to the sum of one thousand dollars from such fund. [Amendment approved March 31, 1891, Stats. 1891, p. 287.]

Re-examination.

§ 8. Any person retired for disability under this act may be summoned before the board herein provided for at any time thereafter, and shall submit himself thereto for examination as to his fitness for duty, and shall abide the decision and order of such board with reference thereto; and all members of the police force who may be retired under the provisions of this act shall report to the chief of police of the county, city and county, city, or town where so retired, on the first Mondays of April, July, October, and January of each year; and in cases of great public emergency may be assigned to and shall perform such duty as said chief of police may direct; and such persons shall have no claim against the county, city and county, city, or town for payment for such duty so performed.

Forfeiture of pension.

§ 9. When any person who shall have received any benefits from said fund shall be convicted of any felony, or shall become an habitual drunkard, or shall become a non-resident of this state, or shall fail to report himself for examination for duty as required herein, unless excused by the board, or shall disobey the requirements of said board under this act, in respect to said examination or duty, then such board shall order that such pension allowance as may have been granted to such person shall immediately cease, and such person shall receive no further pension, allowance, or benefit under this act.

Meetings, and duties of board.

§ 10. The board herein provided for shall hold quarterly meetings on the first Mondays of April, July, October, and January of each year, and upon the call of its president; it shall biennially select from its members a president and secretary; it shall issue warrants, signed by its president and secretary, to the persons entitled thereto of the amount of money ordered paid to such persons from such fund by said board, which warrant shall state for what purpose such payment is to be made; it shall keep a record of all its proceedings, which record shall be a public record; it shall at each quarterly meeting send to the treasurer of the county, city and county, city or town, and to the auditor of such county, city and county, city, or town, a written or printed list of all persons entitled to payment from the fund herein provided for, stating the amount of such payments and for what granted, which list shall be certified to and signed by the president and secretary of such board, attested under oath. The auditor shall thereupon enter a copy of said list upon a book to be kept for that purpose, and which shall be known as "the police relief and pension fund" book. When such list has been entered by the auditor he shall transmit the same to the board of supervisors, or other governing authority of such county, city and county, city, or town, which board or authority shall order the payment of the amounts named therein out of "the police relief and pension fund." A majority of all the members of said board herein provided for shall constitute a quorum and have power to transact business.

Other powers of board.

§ 11. The board herein provided for shall, in addition to other powers herein granted, have power:

First—To compel witnesses to attend and testify before it, upon all matters connected with the operation of this act, in the same manner as is or may be provided by law for the taking of testimony before notaries public; and its president, or any member of said board, may administer oaths to such witnesses.

Second—To appoint a secretary, and to provide for the payment from said fund of all its necessary expenses, including secretary hire and printing; provided, that no

compensation or emolument shall be paid to any member of said board for any duty required or performed under this act.

Third—To make all needful rules and regulations for its guidance, in conformity with the provisions of this act.

Moneys to be paid into police pension fund.

§ 12. The board of supervisors, or other governing authority, of any county, city and county, city, or town shall, for the purposes of said "police relief and pension fund" hereinbefore mentioned, direct the payment annually, and when the tax levy is made, into said fund, of the following moneys:

First—Not less than five nor more than ten per centum of all moneys collected and received from licenses for the keeping of places wherein spirituous, malt, or other intoxicating liquors are sold.

Second—One-half of all moneys received from taxes or from licenses upon dogs.

Third—All moneys received from fines imposed upon the members of the police force of said county, city and county, city, or town, for violation of the rules and regulations of the police department.

Fourth—All proceeds of sales of unclaimed property.

Fifth—Not less than one-fourth nor more than one-half of all moneys received from licenses from pawnbrokers, billiard-hall keepers, second-hand dealers, and junk-stores.

Sixth—All moneys received from fines for carrying concealed weapons.

Seventh—Twenty-five per centum of all fines collected in money for violation of county, city and county, city, or town ordinances.

Eighth—All rewards given or paid to members of such police force, except such as shall be excepted by the chief of police.

Ninth—The board of supervisors, or other governing authority, of any county, city or county, city or town shall for the purposes of said "police relief and pension fund" provide in addition to the salary now paid or which may be hereafter paid to each member of the police department an amount equal to two per cent of the salaries paid to the policemen of such county, city and county, city or town during the preceding year, payable from the funds of such municipal corporation. [Amendment of April 14, 1917. In effect July 27, 1917. Stats. 1917, p. 120.]

Mergement of other insurance funds.

§ 13. Any police, life, and health insurance fund, or any fund provided by law, heretofore existing in any county, city and county, city, or town, for the relief or pensioning of police-officers, or their life or health insurance, or for the payment of a sum of money on their death, shall be merged with, paid into, and constitute a part of the fund created under the provisions of this act; and no person who has resigned or been dismissed from said police department shall be entitled to any relief from such fund; provided, that any person who, within one year prior to the passage of this act, has been dismissed from the police department for incompetency or inefficiency, and which incompetency or inefficiency was caused solely by sickness or disability contracted or suffered while in service as a member thereof, and who has, prior to said dismissal, served for twelve or more years as such member, shall be entitled to all the benefits of this act.

Reports.

§ 14. On the last day of June of each year, or as soon thereafter as practicable, the auditor of each county, city and county, city, or town shall make a report to the board of supervisors, or other governing authority of such county, city and county, city, or town, of all moneys paid out on account of said fund during the previous year, and of

the amount then to the credit of the "police relief and pension fund," and all surplus of said fund then remaining in said fund exceeding the average amount per year paid out on account of said fund during the three years next preceding, shall be transferred to and become a part of the general fund of each such county, city and county, city, or town, and no longer under the control of said board, or subject to its order. Payments provided for in this act shall be made quarterly, upon proper vouchers.

Conflicting acts repealed.

§ 15. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Act takes effect when.

§ 16. This act shall take effect from and after its passage.

1. Constitutionality — Title sufficiently broad.—The title of the act is broad enough to cover the subject.—*Pennie v. Reis*, 80 Cal. 269, 22 Pac. 176.

2. Same—Title sufficiently broad to cover provisions of section 13.—The title of the act is sufficiently comprehensive to include section 13, providing for the merging of the fund of the act of 1878 with that of the present act.—*Clarke v. Police, etc., Board*, 123 Cal. 24, 55 Pac. 576.

4. Same—Not special legislation.—The act is not local or special legislation.—*Clarke v. Police, etc., Board*, 123 Cal. 24, 55 Pac. 576.

5. Same—Not provision for payment of extra compensation.—The act does not violate section 32, article IV, of the constitution, in the matter of authorizing the payment of extra compensation to public officers.—*Pennie v. Reis*, 80 Cal. 269, 22 Pac. 176.

6. Same—Section 13 not violative of section 24, article IV, of the constitution.—Section 13 of the act providing for the merger of the two police funds is not violative of section 24, article IV, requiring amendatory statutes to set out the statute as amended in full.—*Clarke v. Police, etc., Board*, 123 Cal. 24, 55 Pac. 576.

7. Same—Does not create special commission.—The act does not create a special commission within the meaning of section 13, article XI, of the constitution.—*Pennie v. Reis*, 80 Cal. 269, 22 Pac. 176.

8. Construction — "Unmarried sisters."—The words "unmarried sisters" in the amendment of 1891, do not refer alone to sisters who were never married, but to sisters also who were widowed at the time of the death of the police officer.—*Mott v. Scanlan*, 19 Cal. App. 250, 125 Pac. 762.

9. Same—Provisions of act of 1878 repealed.—This act impliedly repealed the provisions of the act of 1878 for the payment of a sum of money, upon the death of a police officer, to his personal representatives.—*Pennie v. Reis*, 80 Cal. 269, 22 Pac. 176.

10. Same—Superseded by San Francisco charter.—This act was superseded, so far as San Francisco was concerned by the adoption of the charter in 1900.—*Burke v. Board, etc.*, 4 Cal. App. 235, 87 Pac. 421;

Cohrn v. Henderson, 19 Cal. App. 89, 124 Pac. 1037.

11. Same—Payments not voluntary.—Under the method of creating the fund provided by the act, the monthly sums retained from each police officer do not constitute voluntary payments, but was money of the state retained in its possession for the creation of the sum.—*Burke v. Board, etc.*, 4 Cal. App. 235, 87 Pac. 421.

12. Same—Not applicable to death in railroad accident.—The act does not apply to a death caused by a railroad accident.—*Slevin v. Board, etc.*, 123 Cal. 130, 55 Pac. 785, 44 L. R. A. 114.

13. Same—Suicide—Section 7 not intended as provision against.—Suicide is no more unnatural than any other death from external violence, and section 7 was not intended as a provision against suicide only.—*Slevin v. Board, etc.*, 123 Cal. 130, 55 Pac. 785, 44 L. R. A. 114.

14. Same—Sections 7 and 6 not complements.—Section 7 is not the complement of section 6 for the former superadds the requirement of ten years' service to the condition as to the manner of the death.—*Slevin v. Board, etc.*, 123 Cal. 130, 55 Pac. 785, 44 L. R. A. 114.

15. Same—Act does not create vested right.—The act does not create a vested right to the amount fixed during the life of an officer and the repeal of the act during his life does not violate the due process clause of the constitution.—*Pennie v. Reis*, 80 Cal. 269, 22 Pac. 176.

16. Same—Same—Fund may be applied to different purpose.—The fund created under the provisions of this act can be applied to a different purpose by the legislature, in which case no absolute right of property in the police officer was impaired.—*Pennie v. Reis*, 132 U. S. 464, 33 L. ed. 426, 10 Sup. Ct. Rep. 149.

17. Same—Repeal of act of 1878—Revoked expectancy of police officer.—On the repeal of the statute of 1878 (Stats. 1877-78, p. 879), a police officer's expectancy in the provision therein made for his benefit was revoked, and the sum claimed by his representatives was no longer subject to the provisions of the act.—*Pennie v. Reis*, 132 U. S. 464, 33 L. ed. 426, 10 Sup. Ct. Rep. 149.

18. **Same—Same—Act of 1878 did not constitute a contract.**—The act of 1878 did not constitute a life insurance contract with the officers for whose benefit the fund therein provided for was created.—Clarke v. Police, etc., Board, 123 Cal. 24, 55 Pac. 576.

19. **Same—Police officer has no contractual right under act of 1878.**—A police officer has no contractual right in the fund created by the act of 1878.—Clarke v. Police, etc., Board, 123 Cal. 24, 55 Pac. 576.

20. **Pension law may be amended or repealed.**—A law providing for pensions may be repealed or amended at any time before the happening of the event which operates to vest the right to such pension.—Cohn v. Henderson, 19 Cal. App. 89, 124 Pac. 1037.

21. **Same—Change of law can not affect a vested right.**—Where the right of the widow of a police officer of San Francisco to the death benefit provided by this act was vested before the adoption of the new charter, her right could not be divested by the change in the law wrought by such charter.—Kavanagh v. Board, etc., Comrs., 134 Cal. 50, 66 Pac. 36.

22. **Officer on retired list continues a member of force.**—A police officer placed

on the retired list after twenty years service under the act of 1889, who never resigned and was never dismissed continues to be a member of the force, and his widow, upon his death, is entitled to one thousand dollars as provided by the amendment of 1891.—Kavanagh v. Board, etc., Comrs., 134 Cal. 50, 66 Pac. 36.

23. **Officer resigned not entitled to benefit of act.**—A police officer who resigned from the force in 1887 after twenty years' service, and who was not subject, to the control of the board at the time the act of 1889 went into effect, was not entitled to a pension under the provisions of that act as amended in 1897.—Clarke v. Police, etc., Board, 127 Cal. 550, 59 Pac. 994.

24. **Statute of limitations—Time runs from accrual, not from repudiation, of claim.**—The board charged under the act with the management of the fund are not trustees of an express trust and the statute begins to run against a claim on its accrual and not on repudiation by the board, and the widow of a deceased police officer who waits five years before making her claim is barred from recovering.—Nicols v. Board, etc., Comrs., 1 Cal. App. 494, 82 Pac. 557.

INCREASE OF POLICE FORCES.

ACT 3537—An act to increase the police force of the various cities, and cities and counties, and towns, of the state, and to provide for the appointment of such extra police-officers, and for the payment of their salaries.

History: Approved February 24, 1891, Stats. 1891, p. 10.

Police forces. How appointed.

§ 1. The board of supervisors, board of trustees, or common council of a city, or city and county, or town, of this state, of the first, second, or fourth classes, are hereby authorized and empowered to increase the police force of their respective cities, and cities and counties, or towns, from time to time, as may be deemed necessary by said common council, board of trustees, or board of supervisors; provided, that the police force in any city, or city and county, shall not exceed in the aggregate, at any time, one member for every five hundred inhabitants of such city, or city and county; provided further, that in cities of the third class the police force shall not exceed in the aggregate, at any time, one member for every one thousand inhabitants of said cities, according to the latest census of the United States; said additional police force to be appointed by the board of police commissioners or other board of authority now by law empowered to appoint police-officers in their respective cities, or cities and counties, or towns.

Salaries.

§ 2. The salary of additional police-officers hereby authorized shall be of the same amounts for each officer as is now paid by law to the other members of such police force in their respective cities, or cities and counties, or towns; and said additional police-officers shall be paid at the same time and in the same manner and out of the same fund as the other members of their respective police forces are now or shall hereafter be paid.

Who included in terms "common council," "board of trustees," and "board of supervisors."

§ 3. The terms common council, board of trustees, and board of supervisors are hereby declared to include any body, or board which, under the law is the legislative department of the government of any city, or city and county, or towns.

Act takes effect when.

§ 4. This act shall be in force and effect from and after its passage.

ANNUAL VACATIONS.

ACT 3538—An act authorizing and requiring boards or commissions having the management and control of paid police force to grant the members thereof yearly vacations.

History: Approved March 10, 1891, Stats. 1891, p. 47. Amended February 28, 1907, Stats. 1907, p. 62.

Leaves of absence of police-officers, with pay.

§ 1. In every city or city and county of this state where there is a regular organized paid police force, the board of supervisors, common council, commissions or other body having the management and control of the same must once in every year provide for granting every member thereof a leave of absence from active duty for a period of fifteen days. Leaves of absence so granted must be arranged by said board or commission so as not to interfere with the police protection of any such city, or city and county; and leaves of absence granted in case of sickness or in consideration of wounds or injuries received while in the discharge of duty shall not be construed to be or become a part of the leave of absence provided for by this act. No deduction must be made from the pay of any police-officer granted leave of absence under the provisions of this act. [Amendment approved February 28, 1907, Stats. 1907, p. 62.]

Act takes effect when.

§ 2. This act shall take effect immediately.

HOURS OF SERVICE.

ACT 3539—An act regulating the hours of service on regular duty by members of the police department of cities of the first class, cities and counties, cities of the first and one-half class, and cities of the second class.

History: Approved February 27, 1903, Stats. 1903, p. 51. Prior act of March 8, 1901, Stats. 1901, p. 107, probably superseded by the present act, which extended the law to cover cities of the first and a half class, but is otherwise identical in terms with the former act.

Hours of duty of police officers.

§ 1. In all cities of the first class, cities and counties, cities of the first and one-half class, and cities of the second class of this state where a regular police department is maintained, patrol captains, lieutenants, sergeants, and regular officers shall be required to serve on duty not longer than eight hours in every twenty-four hours; provided, that in case of riot or other emergency, every attache of the police department shall perform such duty and for such time as the directing authority of the department shall require.

Act takes effect when.

§ 2. This act shall take effect immediately.

RIGHTS OF SENIORITY ACT.

ACT 3540—An act relating to senior rights of members of paid police departments of counties, cities and counties, cities or towns.

History: Approved February 23, 1907, Stats. 1907, p. 46. Amended June 1, 1917, in effect July 31, 1917, Stats. 1917, p. 1610.

Senior rights in police department.

§ 1. Whenever a member of a paid police department of any county, city and county, city or town shall have served ten years as a member of such police department, he shall be entitled to senior rights in the assignment of duties in the order of their seniority and shall be entitled to day work or to any position held by a member of the same rank not ten years in the service. [Amendment of June 1, 1917. In effect July 31, 1917, Stats. 1917, p. 1610.]

Penalty for failure to make assignments.

§ 2. Any police official whose duty it is to assign the members of the police department to their duties and who fails to make assignments in accordance with the provisions hereof shall forfeit one month's salary. All money forfeited under this act shall be paid into the treasury of the county, city and county, city or town in which the forfeiture occurs. It shall be the duty of the district attorney to enforce the provisions hereof. [Amendment of June 1, 1917. In effect July 31, 1917, Stats. 1917, p. 1611.]

SPECIAL POLICE.

ACT 3541—An act to provide for the appointment of policemen, with the powers of peace-officers, to serve upon the premises, cars or boats of railroad and steamship companies.

History: Approved March 23, 1901, Stats. 1901, p. 666.

Governor to appoint policemen for railroad and steamboat corporations.

§ 1. The governor of the state of California is hereby authorized and empowered, upon the application of any railroad or steamboat company, to appoint and commission during his pleasure one or more persons designated by such company and to serve at the expense of such company, as policeman or policemen, with the powers of peace-officers, and who, after being duly sworn, may act as such policeman or policemen upon the premises, cars or boats of such company. The company designating such person or persons shall be responsible civilly for any abuse of his or their authority.

Officers to wear visible shield.

§ 2. Every such policeman shall, when on duty, wear in plain view a shield bearing the words "railroad police," or "steamboat police," as the case may be, and the name of the company for which he is commissioned.

Act takes effect when.

§ 3. This act shall take effect immediately.

1. Liability of railroad company—Abuse of authority.—A railroad company on whose application a special policeman was appointed under this act is liable only for an abuse of authority by such officer.—*Redgate v. Southern Pacific Co.*, 24 Cal. App. 573, 141 Pac. 1191.

2. Same—Unauthorized arrest.—A railroad company on whose application a special policeman was appointed under this act is not responsible for the act of such officer in arresting an employee on his own initiative.—*Redgate v. Southern Pacific Co.*, 24 Cal. App. 573, 141 Pac. 1191.

BOARDS OF POLICE COMMISSIONERS.

ACT 3542—An act providing that, in any city of the first class or city and county in this state, where by general law or by charter the board of police commissioners of such city, or city and county are authorized and empowered to appoint, promote, suspend, disrate or dismiss any police officer or member of the police department, and to prescribe rules and regulations for the government, discipline, equipment and uniform of such police department, and from time to time to alter or repeal the same, and to prescribe penalties for the violation of any such rules and regulations, all such rules and regulations must be reasonable and couched in plain and concise language, and providing that such board of police commissioners shall prescribe a separate and distinct penalty for the violation of each of such rules and regulations which shall be graded according to the importance and nature of the rule or regulation violated, and providing that such penalty shall in all cases be reasonable, and that the same shall be couched in plain and concise language, and printed or published, as the case may be, in the manual or guide published for the guidance and information of the police officers or members of such police department and in connection with the rule or regulation to which the same is intended to apply, and providing further that such board of police commissioners shall not have power to inflict unreasonable penalties for the violation of such rules and regulations; nor to inflict penalties for the violation of such rules and regulations arbitrarily, nor unless justified by proper and competent evidence, also providing certain procedure in hearings for the violation of such rules and regulations, and that courts of competent jurisdiction may review the proceedings had upon such hearings for certain purposes, and that all acts and parts of acts in conflict herewith are hereby repealed.

History: Approved March 23, 1907, Stats. 1907, p. 993. Entire act amended April 27, 1911, Stats. 1911, p. 1158.

Act giving police commissioners power to make regulations, etc., amended. New title.

The title of an act entitled "An act providing that, in any city of the first class or city and county in this state, where by general law or by charter the board of police commissioners of such city, or city and county are authorized and empowered to appoint, promote, suspend, disrate or dismiss any police officer or member of the police department, and to prescribe rules and regulations for the government, discipline, equipment and uniform of such police department, and from time to time to alter or repeal the same, and to prescribe penalties for the violation of any such rules and regulations, all such rules and regulations must be reasonable and couched in plain and concise language, and providing that such board of police commissioners or board of trustees shall prescribe a separate and distinct penalty for the violation of each of such rules and regulations which shall be graded according to the importance and nature of the rule or regulation violated, and providing that such penalty shall in all cases be reasonable, and that the same shall be couched in plain and concise language, and printed or published, as the case may be, in the manual or guide published for the guidance and information of the police officers or members of such police department and in connection with the rule or regulation to which the same is intended to apply, and providing further that such board of police commissioners shall not have power to inflict unreasonable penalties for the violation of such rules and regulations; nor to inflict penalties for the violation of such rules and regulations arbitrarily, nor unless justified by proper and competent evidence, also providing certain procedure in hearings for the violation of such rules and regulations, and that courts of competent jurisdiction may review the proceedings had upon such hearings for certain purposes, and that all acts and parts of acts in conflict herewith are hereby repealed," approved March 23, 1907, is hereby amended to read as follows: "An act providing that, in any city of the first or second and one-half class or city and county in this state, where by general law or

by charter the board of police commissioners of such city, or city and county, are authorized and empowered to appoint, promote, suspend, disrate or dismiss any police officer or member of the police department, and to prescribe rules and regulations for the government, discipline, equipment and uniform of such police department, and from time to time to alter or repeal the same, and to prescribe penalties for the violation of any such rules and regulations, all such rules and regulations must be reasonable and couched in plain and concise language, and providing that such board of police commissioners shall prescribe a separate and distinct penalty for the violation of each of such rules and regulations which shall be graded according to the importance and nature of the rule or regulation violated, and providing that such penalty shall in all cases be reasonable, and that the same shall be couched in plain and concise language, and printed or published, as the case may be, in the manual or guide published for the guidance and information of the police officers or members of such police department and in connection with the rule or regulation to which the same is intended to apply, and providing further that such board of police commissioners shall not have power to inflict unreasonable penalties for the violation of such rules and regulations; nor to inflict penalties for the violation of such rules and regulations arbitrarily, nor unless justified by proper and competent evidence, also providing certain procedure in hearings for the violation of such rules and regulations, and that courts of competent jurisdiction may review the proceedings had upon such hearings for certain purposes, and that all acts and parts of acts in conflict herewith are hereby repealed." [Amendment approved April 27, 1911, Stats. 1911, p. 1158.]

Rules for police department must be reasonable, etc. Severe penalties may be made for second violation of rules.

§ 1. In any city of the first class, or in any city of the second and one-half class containing a population of over forty-two thousand by the federal census of 1910, or in any city and county in this state, where by general law, or by charter the board of police commissioners or board of trustees of such city or city and county are authorized and empowered to appoint, promote, suspend, disrate or dismiss any police officer or member of the police department, and to provide rules and regulations for the government, discipline, equipment and uniform of such police department, and from time to time to alter or repeal the same, and to prescribe penalties for the violation of any such rules and regulations, all such rules and regulations must be reasonable and couched in plain and concise language, so that the same may be easily understood by persons of ordinary education and understanding, and such board of police commissioners or board of trustees shall prescribe a separate and distinct penalty for the violation of each of such rules and regulations, which said penalties shall be graded according to the importance and nature of the rule or regulation violated, and the consequent gravity of its violation, and in all cases such penalties shall be reasonable, and shall be couched in plain and concise language, so that the same may be easily understood by persons of ordinary education and understanding; and such penalties, together with the several rules and regulations to which they are intended to apply, shall be printed or published, as the case may be, in the manual or other guide published for the guidance or information of the police officers or members of such police department, and each of such penalties shall be so printed or published in direct connection with the particular rule or regulation to which the same is intended to apply, so that the rule or regulation and the penalty for its violation may be easily and readily understood. Nothing in this section contained shall be construed to prevent or prohibit any such board of police commissioners or board of trustees from prescribing other and more severe penalties for a second or repeated violation of any such rule or regulation, or a subsequent violation of any such rule or regulation thus prescribed; provided, that such penalties shall be reasonable, and shall be printed or published as hereinbefore

provided for, nor shall anything in this section contained be construed to prevent or prohibit such board of police commissioners or board of trustees from prescribing like or similar penalties for the violation of more than one of such rules and regulations; provided, that the same shall be printed or published in connection with the rule or regulation to which the same is intended to apply as hereinbefore provided. [Amendment approved April 27, 1911, Stats. 1911, p. 1160.]

Penalty may be inflicted only after full hearing. Written charge. Right to appear in own defense.

§ 2. No penalty for the violation of any rule or regulation of the board of police commissioners or board of trustees of any such city or city and county, as is mentioned in section 2 of this act, shall be inflicted upon any police officer or member of the police department thereof, except that a full, fair and impartial hearing before such board of police commissioners or board of trustees shall first have been had upon the charge or complaint preferred against such officer or member as hereinafter provided. Such hearing can be had only upon a written charge or complaint filed with the secretary or clerk of such board, which must be verified by the oath of the person making the same, and must contain a statement in ordinary and concise language of all the facts constituting the charge made. A copy of such charge or complaint shall be served upon the person charged at least five days prior to the time set for the hearing thereof. At such hearing the person charged shall have the right to appear in person and by counsel and make defense to such charge; he may produce witnesses to testify in his behalf upon such hearing; he shall also have the right, if he shall so request, to have all of the testimony given upon such hearing, both against him and in his behalf, reduced to writing by questions and answers, or reported by a stenographer and transcribed; which said written or transcribed testimony shall be filed and remain of record in the office of the secretary or clerk of the said board of police commissioners or board of trustees, and such board must render its decision upon the evidence adduced upon such hearing and not otherwise. No such board of police commissioners or board of trustees shall have power or authority to inflict any penalty for the violation of any such rule or regulation, arbitrarily, nor unless such evidence shall justify such action. [Amendment approved April 27, 1911, Stats. 1911, p. 1161.]

Right to hold office during "good behavior" a substantial right. Superior court may inquire into proceedings.

§ 3. In any such city, or city and county, as is mentioned in section 2 of this act, where the right to hold the office of police officer, or member of the police department is dependent upon the "good behavior" of such officer or member subject to reasonable rules and regulations of the board of police commissioners or board of trustees thereof, such right to hold such office is hereby declared to be a substantial right of which he shall not be deprived arbitrarily, nor summarily, nor otherwise than upon a hearing as hereinbefore in this act provided. Superior courts, and all courts of competent jurisdiction, shall have the power, by proper proceedings instituted for that purpose, to inquire as to the regularity of proceedings of boards of police commissioners or boards of trustees upon hearings herein provided for, and to review the evidence adduced upon such hearings, and to make such orders and render such judgments as the circumstances and the law shall warrant; provided, however, that the courts shall not interfere with the proper exercise of discretion by such boards. [Amendment approved April 27, 1911, Stats. 1911, p. 1162.]

§ 4. All acts and parts of acts in conflict herewith are hereby repealed.

§ 5. This act shall take effect and be in force from and after its passage.

CHAPTER 281.

POLICE COURTS.

Reference: See, generally, tit. "Courts."

CONTENTS OF CHAPTER.

ACT 3547. "WHITNEY ACT."

3550. POLICE COURTS IN CITIES OF THE FIRST AND A HALF CLASS.

3551. POLICE COURTS IN CITIES OF THE SECOND CLASS.

3552. PROSECUTING ATTORNEYS IN POLICE COURTS IN CITIES OF THE SECOND CLASS.

3553. POLICE JUDGES IN FREEHOLDER CHARTER CITIES.

3554. MAYOR AS EX-OFFICIO POLICE JUDGE IN CERTAIN CITIES.

"WHITNEY ACT."

ACT 3547—An act to provide for police courts in cities having more than thirty thousand and less than one hundred thousand inhabitants.

History: Approved March 18, 1885, Stats. 1885, p. 213. Entire act except title amended (1) March 31, 1891, Stats. 1891, p. 292; (2) February 27, 1893, Stats. 1893, p. 41; (3) March 26, 1895, Stats. 1895, p. 113.

Judicial power.

§ 1. The judicial power of every city having thirty thousand and under one hundred thousand inhabitants, shall be vested in a police court, to be held therein by the city justices, or one of them, to be designated by the mayor, but either of said city justices may hold such court without such designation, and it is hereby made the duty of said city justices, in addition to the duties now required of them by law, to hold said police court. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

Jurisdiction.

§ 2. The police court shall have exclusive jurisdiction of the following public offenses committed in the city:

First—Petit larceny.

Second—Assault or battery not charged to have been committed upon a public officer in the discharge of official duty, or with intent to kill.

Third—Breaches of the peace, riots, affrays, committing wilful injury to property, and all misdemeanors punishable by fine or by imprisonment, or by both such fine and imprisonment.

Fourth—Of proceedings respecting vagrants, lewd, or disorderly persons. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

Exclusive jurisdiction.

§ 3. Said court shall also have exclusive jurisdiction of all proceedings for violation of any ordinance of said city, both civil and criminal, and of an action for the collection of any license required by any ordinance of said city. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

Proceedings when justices are disqualified from acting.

§ 4. Neither of said justices shall sit in cases in which he is a party, or in which he is interested, or where he is related to either party by consanguinity or affinity within the third degree; and in case of the sickness or inability of the city justices, either of them may call in a justice of the peace residing in the county to act in his place and stead. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

§ 5. Each of the city justices, while acting as judge of said court, shall also have power to hear cases for examination, and may commit and hold the offender to bail for trial in the proper court, and may try, condemn, or acquit, and carry his judgment into execution, as the case may require, according to law, and punish persons guilty

of contempt of court, and shall have power to issue warrants of arrest in case of a criminal prosecution for a violation of a city ordinance, as well as in case of a violation of the criminal law of the state; also, all subpoenas, and all other processes necessary to the full and proper exercise of his powers and jurisdiction, and in such of the cases enumerated in this section in which trial by jury is not secured by the constitution of the state, he may proceed to judgment in the first instance without a jury; but on appeal, the defendant shall be entitled to trial by jury in the superior court. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

Clerks, salary, duties, office hours. Bond.

§ 6. The police courts in all cities having more than thirty thousand and not exceeding one hundred thousand inhabitants, shall have a clerk for each of the judges of said courts, who shall be appointed by the judge of the said court presiding in the department thereof in which the said clerk is to act, who shall hold office for the period of two years from the date of his appointment. Each of the said clerks shall receive an annual salary of one thousand five hundred dollars a year, payable monthly out of the treasury of said city, which salary shall be the full compensation for all services rendered by him. Each of the said clerks shall keep a record of the proceedings of, and issue all processes ordered by, the city justices, or either of them, or by said police court, and receive and pay into the city treasury all fines imposed by said court. They shall also each month render to the city council an exact and detailed account, upon oath, of all fines imposed and collected, and of all fines imposed and uncollected, since their last reports. They shall prepare bonds, justify bail when the amount has been fixed by either of the said justices or said court, in cases not exceeding one hundred dollars, and may administer and certify oaths. The clerks shall remain at the court-rooms of the said court during the business hours, and during such reasonable time thereafter as may be necessary for discharging their duties. Before receiving their salaries each or any month, each of them shall make and file with the city auditor an affidavit that he has deposited with the city treasury all moneys that have come into his hands belonging to the city. Any violation of this provision shall be a misdemeanor. Each of said clerks shall give a bond in the sum of five thousand dollars, with at least two sureties, to be approved by the mayor, conditioned for the faithful discharge of the duties of his office. [Amendment of March 26, 1895, Stats. 1895, p. 113.]

This section was also amended March 31, 1891, Stats. 1891, p. 293.

Provision for prosecuting attorney. Salary. Duties. Bond.

§ 6½. The police court in all cities having more than thirty thousand and less than fifty thousand inhabitants shall have a prosecuting attorney, to be appointed by the district attorney of the county in which said city is situated, who shall hold office for the period of two years from the date of his appointment. He shall receive an annual salary of two thousand (2,000) dollars, payable in equal monthly instalments, out of the treasury of said city, which salary shall be in full compensation for all services rendered by him. It shall be the duty of said prosecuting attorney to attend the sessions of said court, and conduct on behalf of the people all prosecutions for public offenses of which said court has jurisdiction. He shall give a bond in the sum of three thousand dollars, with at least two sureties, to be approved by the mayor, conditioned for the faithful discharge of the duties of his office. [New section added February 27, 1893, Stats. 1893, p. 41.]

Fines. Fees. Costs.

§ 7. All fines and other moneys collected on behalf of the city in the police court shall be paid into the city treasury on the first Tuesday of each month, and all bills for fees and costs due the officers of said court shall be reported to the city council each month. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

Rooms and dockets.

§ 8. Rooms and dockets—The city council shall furnish a suitable room for the holding of said court, and shall also furnish the necessary dockets and blanks. One docket shall be styled "The City Criminal Docket," in which all the criminal business shall be recorded, and each case shall be alphabetically indexed. Another docket shall be styled, "The City Civil Docket," and it shall contain each and every civil case in which the city is a party, or which is prosecuted or defended for her interest, and each case shall be properly indexed. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

When courts must be open.

§ 9. The police court shall be always open, except upon non-judicial days, and then for such purposes only as by law permitted or required of other courts of this state. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

Appeals.

§ 10. Appeals may be taken from any judgment of said police court to the superior court of the county in which said city may be located, in the same manner in which appeals are taken from justices' courts in like cases. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

Where persons convicted to be imprisoned.

§ 11. In all cases of imprisonment of persons convicted in said police court of any offense committed in the city, the persons so to be imprisoned, or by ordinance required to labor, shall be imprisoned in the city jail; or, if required to labor, shall labor in the city. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

Seal.

§ 12. Said courts shall have a seal, to be furnished by the city. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

Report of city cases.

§ 13. City cases—The city justices shall, on the first Tuesday of each month, make to the city council a full and complete report of all the cases, civil and criminal, in which the city has an interest, or which are required to be entered in the city civil docket or the city criminal docket; such report to be made upon blanks furnished by the city council, and in such form as they may require. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

Transcripts as evidence. Warrants and process, effect of.

§ 14. Certified transcripts of the docket made by the clerk of the said court, under the seal of said court, shall be evidence in any court of this state of the contents of said docket; and all warrants and other process issued out of said court, and all acts done by said court, and certified under its seal, shall have the same force and validity in any part of this state as though issued or done by any court of record of this state. [Amendment of March 31, 1891, Stats. 1891, p. 292.]

§ 15. This act shall be in force and effect from and after its passage.

1. Constitutionality—Acts creating police courts upheld.—The validity of acts of the legislature creating police courts has long been upheld.—*Rowe v. Rose*, 26 Cal. App. 744, 148 Pac. 535.

2. Same—Same—"Whitney act."—Under the constitutional authority conferred upon the legislature it was vested with power to provide for police courts in cities having thirty thousand and under one hundred

thousand inhabitants, as by the Whitney act, and to provide for the establishment of police courts in certain classes of cities as by the act of 1901 (Stats. 1901, p. 576) and to confer upon such police courts jurisdiction over all misdemeanors including the offense of criminal libel.—*In re Westenberg*, 167 Cal. 309, 139 Pac. 674.

3. Same—Same—Same.—The legislature, under sections 1 and 13, article VI, of the

constitution, was empowered to enact the Whitney act (1885-213), providing for police courts in cities of thirty and under one hundred thousand inhabitants, and the act of 1901 (576) providing for the establishment of police courts in certain classes of cities, and fixing their jurisdiction.—Ex parte Westenberg, 167 Cal. 309, 312, 139 Pac. 674.

4. Same—Imprisonment.—The act is not unconstitutional on the ground that it provides for imprisonment in the county jail for offenses committed within the county but outside the corporate limits.—In re Ambrosewif, 109 Cal. 264, 41 Pac. 1101.

5. Same—Title sufficiently broad to cover subject of act.—The title of the act is sufficiently comprehensive to cover the subject.—People ex rel. Daniels v. Henshaw, 76 Cal. 436, 18 Pac. 413.

6. Same—Not a special act.—The Whitney act and the act of 1901 vesting jurisdiction in police courts of cities of the second class, are not special acts but are general laws.—Application of Westenberg, 167 Cal. 309, 320, 139 Pac. 674.

7. Same—Same.—The act is not a local or special statute within the inhibition of section 25, article IV, of the constitution.—People ex rel. Daniels v. Henshaw, 76 Cal. 436, 18 Pac. 413.

8. Same—Not violative of section 11, article I, of the constitution.—The act is not in conflict with section 11, article I, of the constitution, requiring statutes of a general nature to have a uniform operation.—People ex rel. Daniels v. Henshaw, 76 Cal. 436, 18 Pac. 413.

9. Police court of Oakland not abolished by the charter.—The police court of the city of Oakland, originally created under the Whitney act, was not abolished by the adoption of the charter of 1911.—Application of Westenberg, 167 Cal. 309, 320, 139 Pac. 674.

9a. Applied to Oakland.—The "Whitney act" applied to the city of Oakland, and was an implied repeal of the act of March 10, 1866 (Stats. 1865-66, p. 193).—People ex rel. Daniels v. Henshaw, 76 Cal. 436, 18 Pac. 413; In re Ah Yon, 82 Cal. 339, 22 Pac. 929.

This question was mooted in Ex parte Henshaw, 73 Cal. 486, 15 Pac. 110, but not decided.

See, also, Reed Orchard Co. v. Superior Court, 19 Cal. App. 648, 128 Pac. 9.

9b. Act gave Oakland police court jurisdiction over all misdemeanors, including criminal libel.—The Whitney act (1885-213) and the act of 1901 (576) conferred upon the police court of Oakland jurisdiction over all misdemeanors, including criminal libel. Application of Westenberg, 167 Cal. 309, 312, 139 Pac. 674.

10. Los Angeles charter did not supersede general law.—The adoption of the Los Angeles charter did not supersede general laws relating to the establishment and jurisdiction of inferior courts.—People v. Toal, 85 Cal. 333, 24 Pac. 603.

10a. Act applies to Los Angeles.—The act applies to the city of Los Angeles.—Ex parte Halstead, 89 Cal. 471, 26 Pac. 961; People v. Wong Wang, 92 Cal. 277, 28 Pac. 270.

10b. Census of 1897 did not abolish existing police court.—The census taken under the act of 1897, made no reference to the Whitney act, failed to designate the purpose of such census, or show its significance, and, therefore, did not abolish the police court of Los Angeles created under the last-named act, although it showed a population in excess of 100,000.—In re Mitchell, 120 Cal. 384, 52 Pac. 799; People v. Burns, 121 Cal. 529, 53 Pac. 1096.

11. Act repealed by section 1425, Penal Code, as to enactments of the latter.—The effect of the enactment of section 1425, Penal Code, and the repeal of section 115, Code Civil Procedure, was to repeal the Whitney act so far as it related to the enactments referred to.—Ex parte Yee Kim Mah, 31 Cal. App. 196, 159 Pac. 1060.

12. San Francisco police courts given jurisdiction of justice of peace.—The act gives to police courts in San Francisco certain jurisdiction elsewhere exercised by justices' courts.—Kahn v. Sutro, 114 Cal. 316, 46 Pac. 87, 33 L. R. A. 620.

13. Whitney act police court given power to impose jail sentence for violation of medical practice act.—A police court created under the Whitney act was empowered to impose a jail sentence in the city jail on conviction of a violation of the practice of medicine act of 1878.—In re Ambrosewif, 109 Cal. 264, 41 Pac. 1101.

14. Jurisdiction included both high and low misdemeanors.—The jurisdiction vested by the act includes both high and low misdemeanors.—Green v. Superior Court, 78 Cal. 556, 21 Pac. 307.

POLICE COURTS IN CITIES OF FIRST AND A HALF CLASS.

ACT 3550—An act to establish police courts in cities of the first and one-half class, to fix the jurisdiction of said courts and to provide for the officers thereof, to prescribe the powers and duties of the officers of said courts, and to fix the compensation of certain officers thereof, and to repeal an act entitled "An act to establish police courts in cities of the first and one-half class, to fix their jurisdiction and provide for officers of said courts and fix the compensation of certain officers thereof," which became a law under the provisions of the constitution of the state of California without the governor's approval, on the 5th day of March, 1901, and all acts amendatory of said act or supplementary thereto.

History: Approved June 6, 1913, in effect August 10, 1913, Stats. 1913, p. 469. Amended May 10, 1917, in effect July 27, 1917, Stats. 1917, p. 417. Prior act of March 5, 1901, Stats. 1901, p. 95, amended (1) March 20, 1903, Stats. 1903, pp. 320, 335; (2) March 3, 1905, Stats. 1905, p. 41; (3) March 8, 1907, Stats. 1907, p. 136; (4) March 22, 1907, Stats. 1907, p. 850; (5) March 19, 1909, Stats. 1909, p. 435; (6) March 31, 1909, Stats. 1909, p. 797; (7) April 5, 1911, Stats. 1911, p. 623; and repealed by the present act.

Judicial power of cities of first and one-half class.

§ 1. The judicial power of every city of the first and one-half class shall be vested in a police court to be held therein by the city justices of such city, or one or more of them. Either of said justices may hold such court, and there may be as many sessions of said court at the same time as there are city justices in said city, and it is hereby made the duty of said city justices, in addition to the duties now required of them by law, to hold said police court, as judges thereof.

Jurisdiction.

§ 2. Said police court shall have exclusive jurisdiction of all misdemeanors punishable by fine or by imprisonment, or by both such fine and imprisonment, committed in the city where such police court is held; and of all such proceedings for violation of any ordinance of said city, both civil and criminal; and of all actions for the collection of any license required by the ordinances of said city. In all cases of which said police court has jurisdiction it shall have power to try and determine the same, convict or acquit; pass and enter judgment and carry such judgment into execution as the case may require, according to law.

Powers of justices.

§ 3. Each of the city justices while acting as judge of said police court shall be and have the powers of a police magistrate and shall have power and jurisdiction to issue warrants of arrest, search warrants, subpoenas, summons, writs of execution and all other writs, orders or processes necessary to the full and proper exercise of the powers and jurisdiction of said court; to punish persons guilty of contempt of said court, in like cases and by the same penalties as justices of the peace; to try all charges of misdemeanor offenses committed within its jurisdiction, as well as all charges for violation of city ordinances, and render judgment therein with full power to carry such judgment into execution; to make disposition of property taken under search warrant, in like cases and like manner as justices of the peace; to act as a committing magistrate, examine and hold to answer or discharge persons charged with the commission of felonies and make all necessary rulings, orders and commitments in that behalf; in all proper cases, to stay the execution of any judgment rendered by him in either civil or criminal cases.

Justices not to be interested.

§ 4. Neither of said justices shall sit in any case in which he is a party, or in which he is interested, or where he is related to either party by consanguinity or affinity within

the third degree; and in case of the absence, sickness or inability of the said justices, or either of them, either of said justices may call in any justice of the peace of the county to act in his place and stead.

Departments. Apportionment of business. Rules. Government of proceedings.

§ 5. The said police court shall be divided into as many departments as there are judges of said court. The judges of said court shall choose from their number a presiding judge, who shall serve for one year; provided, however, that the presiding judge first chosen hereunder shall serve until the first Monday in January, 1914; and provided, further, that the presiding judge may be removed at any time and another appointed in his place by a vote of the majority of said judges. The presiding judge shall assign the judges to their respective departments; but any judge may preside in any department in case of the absence or inability to act of the judge of such department. And in the absence or inability to act of the presiding judge, the remaining judges may select one of their number to act as presiding judge during such absence or inability; and whose official acts during such time shall have the same force and effect as though made or done by the presiding judge. The presiding judge shall have power to apportion the business of said court among the several departments and to transfer cases from one department to another, if necessary or convenient to facilitate the dispatch of business of said court. The judgments, orders and proceedings of any session of the court held by any one or more of the judges of said court shall be equally effectual as though all of the judges had presided at such session. The judges of said court shall have power, by a majority of all the judges of said court, to make rules not inconsistent with the constitution or laws of this state, for the government of said court and the officers thereof, and for conducting the business of said court. Such rules may be published by posting a copy of the same in each of the court rooms of said court and shall be in effect after having been so posted for a period of thirty days. Said court shall be governed in its proceedings by the provisions of law regulating proceedings in justices' courts and police courts so far as such provisions are not altered or modified by this act, and the same are applicable in the several cases arising therein, and no rules shall be made imposing any tax or charge on any legal proceeding or giving any allowance to any officer for services.

**Clerks. Bond. Salary. Duties. Monthly account. Business hours. Violation.
Dockets.**

§ 6. Said police court shall have a clerk for each of the judges of said court, who shall be appointed by the judge of said court presiding in the department thereof in which the said clerk is to act, and one additional clerk who shall be appointed by the presiding judge of said court. Each of said clerks shall hold office for the term of four years from the date of his appointment. Each such clerk shall be ex officio a clerk of the city justices of the peace. Each of said clerks shall give a bond in the sum of five thousand dollars, with at least two sureties, to be approved by the mayor, conditioned for the faithful discharge of the duties of his office. Each of said clerks shall receive an annual salary of two thousand one hundred dollars, payable in equal monthly installments out of the treasury of said city, which salary shall be full compensation for all services rendered by him. Each of said clerks shall keep a record of the proceedings of said court and issue all processes ordered by the city justices or either of them, or by said police court or a judge thereof, and receive and pay into the city treasury all fines imposed and collected by said court, and all forfeitures of cash deposited in lieu of bail in said court, and all other moneys which may come into his hands belonging to or payable to said city. They shall also render each month to the city council an exact and detailed account under oath of all fines imposed and collected and of all fines imposed and uncollected since their last reports. They shall prepare and approve bonds and

may, in the absence of a judge of said court, fix the amount of bail to be required of any defendant charged in such court with any offense of which such court has jurisdiction. Such clerk may also justify bail, and may administer and certify oaths. Said clerks shall remain at the court rooms of said court during business hours and during such reasonable times thereafter as may be necessary for a proper performance of their duties. Before receiving any monthly payment of salary, each of said clerks shall make and file with the city auditor an affidavit that he has deposited with the city treasurer all moneys that have come into his hands belonging to the city. Any violation of this provision shall be a misdemeanor. Said clerks shall keep, compile and be the custodians of the dockets, files and records of said court. Said dockets shall, in civil cases, be kept in conformity to the provisions of sections nine hundred eleven, nine hundred twelve, nine hundred thirteen and nine hundred fourteen of the Code of Civil Procedure of the state of California. In criminal cases the docket shall contain in each case:

Docket in criminal cases.

1. The title of the case;
2. The demurrer, if any;
3. The motion to dismiss, if any, based upon any defect of the complaint in substance or form;
4. The ruling of the court upon any demurrer or motion to dismiss;
5. The defendant's plea;
6. Any order of the court setting the time for hearing of any demurrer or motion, or setting case for trial;
7. The names of the witnesses sworn and examined at the trial;
8. The verdict;
9. The time set for rendering judgment, if judgment is not passed immediately after verdict or plea of guilty; and the waiver of time for sentence, if there be such waiver;
10. The judgment;
11. A minute of all motions, rulings and orders made after verdict of judgment;
12. The dates of the various actions or things required to be recorded.

Other duties.

Each of said clerks shall perform such other duties as the court by a majority vote of the judges thereof may determine in regulating and conducting the business of said court, and said judges may select one of the said clerks to supervise and audit the books, records and accounts of the several departments of said court in co-operation with the city auditor of said city, and to perform such other duties as said judges may require. [Amendment of May 10, 1917. In effect July 27, 1917, Stats. 1917, p. 417.]

Prosecuting attorney. Duties. Application for writ of habeas corpus served on attorney. Enforcing attendance of witness outside of county.

§ 7. Said police court shall have a prosecuting attorney who shall be elected or appointed in such manner as the charter of said city shall provide. Said prosecuting attorney shall have as many assistants, deputies, clerks and stenographers as the legislative body of said city shall provide, all of whom shall be appointed by said prosecuting attorney, unless otherwise provided by the charter of said city. In case the charter of said city shall provide for the election or appointment of a city prosecutor, such city prosecutor shall have and exercise all the powers and duties of said prosecuting attorney. It shall be the duty of such prosecuting attorney, either in person or by his assistants or deputies, to draw complaints to be filed in said police court for misdemeanor offenses in which said court has jurisdiction, arising either from violations of

the charter or ordinances of said city or from violations of the laws of the state of California. Such prosecuting attorney must attend the said police court, and conduct, either in person, or by his assistants or deputies, in behalf of the people, all prosecutions for public offenses of which such court has trial jurisdiction. Said prosecuting attorney shall attend to all appeals and proceedings on application for writs of habeas corpus, in connection with such prosecutions, and shall prosecute all recognizances and bail bonds forfeited in said court, and all actions for the recovery of fines, penalties and forfeitures accruing in said court; and the district attorney of the county in which said city is located shall have no power or authority in or over any of said prosecutions, actions or proceedings. Whenever any person, held in custody or restraint by any peace officer of said city, and charged with having committed any criminal offense against the provisions of the charter or ordinances of said city, or with having committed any offense in said city which is a misdemeanor under the laws of this state, shall apply for a writ of habeas corpus, a copy of the application for such writ shall be served forthwith upon the prosecuting attorney or upon one of his assistants or deputies. In any case where an offense has been committed in the said city that is triable in said court, and any person, whose attendance as a witness at the trial is necessary in the judgment of said prosecuting attorney, resides out of the county in which said court is located, or can only be served with a subpoena outside of said county, the said prosecuting attorney shall have the power to make and present to the said police court, an affidavit stating that he believes the evidence of such witness is material and that the attendance of such witness at the trial is necessary. And if a judge of the said police court shall, upon the presentation to him of such affidavit of said prosecuting attorney, endorse on the subpoena an order for the attendance of the witness named in such affidavit, the attendance of such witness may be enforced in the manner provided by sections 1330, 1331, and 1332 of the Penal Code.

Bailiff. Duties. Salary.

§ 8. There shall be a bailiff in each department of said court, who shall be selected from the regular police force of said city and shall be appointed by the judge presiding in such department, and who by virtue of such selection and appointment shall rank as sergeant. It shall be the duty of the bailiff to attend all sessions of the department of such court for which he is appointed or assigned, and to preserve order therein; to serve or cause to be served and properly returned to said court, all warrants, subpoenas, writs, processes and orders, civil or criminal, issued by or out of or returnable to said court; to have charge of prisoners while in said court, and if committed to deliver them or cause them to be delivered to the proper officer; to perform such other duties in the conducting or facilitating the business of said court as a judge of said court may require; or as may be required by a rule of said court. Each of said bailiffs shall be a civil executive officer and in the performance of his duties as an officer of said court, within the city in which said court is situated, shall have all the powers and authority of a sheriff or other peace officer. He shall be subject to the orders of said court or a judge thereof and may be punished by said court or a judge thereof for contempt, or for the disobedience of any order of said court, or a judge thereof, or for neglect of duty. Any bailiff of said court, or person acting as or performing the duties of bailiff of said court shall not while such bailiff, or while so acting or performing such duties, be assigned to or required to perform any other duties without the consent of the judge presiding in the department in which such bailiff or officer is so acting or performing such duties. Each of said bailiffs shall receive a salary of eighteen hundred dollars per annum, payable in equal monthly installments out of the treasury of said city. Any police officer of said city may perform any of the duties of a bailiff of said court, and while in the performance of any such duties, is subject to the orders and discipline of said court as a bailiff.

Additional bailiff.

§ 9. If at any time, in the opinion of the judges of said court, or a majority of them, the services of more than five men are required to perform the duties devolving upon the bailiffs of said court, or to facilitate the work of said court, the presiding judge may select and appoint one additional man from the police force of said city, who shall thereby become a bailiff of said court, or of any department thereof to which he may be assigned by the presiding judge, and who shall thereby be invested with all the powers and authority of a bailiff of said court, and who shall perform any of the duties of a bailiff of said court, required of him by the presiding judge; or a judge of said court; and such bailiff, while so acting, shall have the rank and receive the compensation of a bailiff of said court. He shall serve as such bailiff during the pleasure of the judges of said court or a majority of them.

Fines paid into treasury.

§ 10. All fines and other moneys collected on behalf of the city in the police court shall be paid into the city treasury on the first Tuesday of each month.

Court rooms.

§ 11. The city council shall furnish suitable rooms for the holding of said police court, including jury rooms and offices for the judges, clerks and bailiffs, and shall also furnish the necessary dockets, blanks, stationery and supplies for the carrying on of the business of said court, requisition for such supplies to be issued by any judge for his department.

Quarterly selection of jurors. Procedure.

§ 12. In the months of January, April, July and October of each year there shall be selected by the judges of said police court a list of jurors to serve as a term trial jury in said police court for the ensuing three months, and until a new term trial jury is selected. Said jurors shall be selected from the persons resident in the city in which said police court is held, and who are legally competent and suitable to serve as jurors therein, as follows: The judges of said court shall meet for the purpose of selecting a jury. The presiding judge shall preside at such meeting, and a majority of the judges of said court shall constitute a quorum. The judges shall estimate and designate the number of jurors required for the trial of cases in said court for the ensuing three months. From the names appearing on the last preceding completed assessment-roll of the county in which said city is located, of persons assessed on property belonging to themselves and apparently competent and suitable to serve as jurors in such court, the judges shall select names which shall not be less than two, nor more than four, times the number designated as the number of jurors required as hereinbefore provided, which names shall be written on separate slips of paper, and said slips shall be folded so as to conceal the names thereon, and said slips shall be placed in a proper receptacle and thoroughly mixed. The presiding judge shall then draw from said receptacle, one at a time, as many slips as the number designated by said judges as the number of jurors required; and there shall be made two lists of said names so drawn and one of said lists shall be delivered to the presiding judge. The other list shall then be filed in the office of the presiding judge. The presiding judge shall thereupon make an order requiring the persons whose names have been so drawn to attend in said court at a suitable time and place in said order designated; and said order shall be signed by the presiding judge and the seal of the court attached. The clerk of the department of the presiding judge shall attach to said order a copy of the list of the names drawn as above set forth, and deliver said order with said list attached to one of the bailiffs of the said court or to any police officer of said city. The said bailiff or police officer shall without delay, and without further pay, serve and return said order to said court, in the manner provided in section 225 of the Code of Civil Procedure.

At the time and place fixed in said order for the appearance of the persons so summoned, the presiding judge shall attend and shall call the names on said list and shall make a record of those present and those absent, and shall excuse such as shall appear to him to be not competent or eligible to serve as jurors, and such as appear to be exempt from jury duty in such cases as the exemption is pressed by the prospective juror as an excuse from duty, and such as appear to him to be entitled to be excused under the provisions of section 201 of the Code of Civil Procedure. The question of the competency or incompetency, or exemption from jury service, shall be determined according to the provisions of sections 198, 199 and 200 of the Code of Civil Procedure.

Any juror summoned as above provided, who fails to appear, may be attached by an order issued by said presiding judge, and served by one of the bailiffs of said court or any police officer of said city, and punished as provided in section 238 of the Code of Civil Procedure.

The names of the persons attending, whether by original service or attachment, and not excused, shall be written on separate slips of paper, which slips shall be folded so as to conceal the names, and shall be placed in a box. If in the opinion of the presiding judge there is not in attendance a sufficient number of jurors for the trial of cases in said court for the ensuing three months, he may cause additional names to be drawn and the persons whose names are so drawn to be summoned in the manner hereinbefore provided, until the number of persons designated in the original order are in attendance and are qualified, and their names placed in a box; provided, however, that the drawing, or the attendance, or the qualifying of a greater or less number of jurors than that designated by the judges as hereinbefore provided shall not be a ground of challenge to the panel or to a juror, nor shall it affect the validity of any act as a juror of any persons so drawn and qualified.

When a jury is required in any department of said court, the judge presiding in that department or any judge of said court, shall cause to be drawn from the box containing the names of the jurors attending, and not excused, a number of names estimated to be sufficient from which to select said jury. If the persons whose names are so drawn are not present in said court, they may by order of a judge of said court, be summoned by the bailiff of said court of a police officer in the manner hereinbefore provided. If said names so drawn are exhausted before the jury is completed, additional names shall be drawn in the same manner until the jury is completed or the slips in the box are exhausted. The slips containing the names so drawn shall be delivered to the clerk of the department in which the jury is to be selected, who shall without unfolding them, place them in a box and cause them to be thoroughly mixed; and shall then draw from said box, one at a time, said slips and call the name from each of said slips as it is drawn, until the jury box is filled. Thereupon the parties to the cause shall proceed to select a jury in the manner and under the rules laid down in sections 1055 to 1088, inclusive, of the Penal Code.

The clerk of the court shall preserve the slips drawn as above required and shall retain in his possession all slips containing the names of jurors sworn to try the cause, until such trial is finished, when he shall return them to the presiding judge; and shall also return to the presiding judge the slips containing the names of those drawn and rejected. The slips so returned to the presiding judge shall not be replaced in the general panel box until the jury in the cause for which they were drawn has been completed, but may be placed in and drawn from, a separate box for use and service in another trial in any other department of said court. If for any reason the entire term trial panel of jurors is exhausted without completing a jury, the judge of the department in which the cause is being tried may issue an order or writ of venire and cause to be summoned additional talesmen, as provided in sections 230, 231 and 232 of the Code of Civil Procedure. From such of these additional talesmen as are qualified and eligible for jury duty, the jury may be completed as provided by law.

Jurors shall be paid two dollars (\$2.00) per diem for each day actually served in the trial of causes in said court, which compensation shall be payable from the treasury of the city. Each juror shall also be entitled to compensation for mileage actually traveled from his place of residence to said court where the distance between such place of residence and court is more than ten miles, the sum of five cents per mile one way and such compensation shall be payable from the treasury of the city. The clerk of each department of said court shall keep an account of the time served by each juror and the distance traveled in attending said court by each juror, and shall, at the end of each month, certify to the presiding judge the number of days served by each juror and the amount of mileage fees due each juror, and the presiding judge shall thereupon deliver to each juror on the last day of each month a certificate over his signature and the seal of said court, showing the number of days served by each juror, the mileage fees due each juror, and the total amount due each juror, which certificate shall be a sufficient demand on the treasurer of such city.

Court open.

§ 13. The police court shall be always open during business hours, except upon non-judicial days, and then for such purposes only as by law permitted or required of other courts of this state.

Appeals.

§ 14. Appeals may be taken from any judgment of said police court to the superior court of the county in which such city may be located, on the same grounds and in the same manner in which appeals are taken from justices' courts in like cases.

Imprisonment of persons convicted.

§ 15. In all cases of the conviction in said police court of any person charged with any offense committed in the city in which such police court is held, and the imprisonment of any person so convicted, the person so to be imprisoned, or by ordinance required to labor, shall upon the order of the judge before whom such conviction is had, be imprisoned in the city jail, or a branch thereof, or in such other penal or reformatory institution as may be provided by the city for such purpose; or if required to labor, shall labor in the city or in such penal or reformatory institution, and the imprisonment in any branch city jail or in any such penal or reformatory institution shall be deemed an imprisonment in the city jail; provided, that if any person who is imprisoned in any branch city jail or any such penal or reformatory institution by judgment of said police court, shall escape therefrom, or shall fail or refuse to submit or conform to the rules of such penal or reformatory institution, such person may by order of the court or any judge thereof, be required to serve the unexpired portion of his term in the city jail. In such case only so much of the prisoner's term shall be deemed to have expired as has been actually served in the city, or a branch city jail, or in such penal or reformatory institution.

Seal.

§ 16. Said court shall have a seal, to be furnished by the city.

Monthly report of justices.

§ 17. The city justices shall, on the first Tuesday of each month, make to the city council a full and complete report of all cases, civil and criminal, filed or acted upon since their last report, in which the city has an interest, or which are required to be entered in the city civil docket or the city criminal docket, such report to be made upon blanks furnished by the city council and in such form as they may require.

Certified transcripts as evidence.

§ 18. Certified transcripts of the dockets or files of said court, certified by the clerk of said court under the seal of said court, shall be evidence in any court of this state

of the contents of said docket or of said files, as the case may be; and all warrants and other process issued out of said court, and all acts done by said court and certified under its seal, shall have the same force and validity in any part of this state as though issued or done by any court of record of this state.

Oath and bond of clerks.

§ 19. Each clerk of said court shall, before entering upon the duties of his office, take and subscribe an oath in the form prescribed in section 904 of the Political Code, before the city clerk of said city, and shall file his official bond with said city clerk.

Repealed. Actions not affected.

§ 20. An act entitled "An act to establish police courts in cities of the first and one half class, to fix their jurisdiction and provide for officers of said courts and fix the compensation of certain officers thereof," which became a law under the provisions of the constitution of this state, without the governor's approval, March 5th, 1901, and all acts amendatory thereof or supplementary thereto are hereby repealed; provided, however, that such repeal shall not affect any actions or proceedings pending in the police court established by said act at the time of the taking effect of this act, nor shall such repeal affect the powers or duties of the said prosecuting attorney relative thereto. All such actions and proceedings shall thereupon be deemed to be and shall be ipso facto transferred to the police court established by this act, and upon the taking effect of this act and by reason thereof, all such actions and proceedings shall ipso facto be and become such actions and proceedings so pending in the police court established by this act, which last named court shall thereby have jurisdiction, power and authority to proceed with them to final judgment or other disposition, and to make and enforce judgment therein as fully, and with the same force and effect, as though said actions or proceedings had been originally instituted in said last named court.

Tenure of office not affected.

§ 21. Nothing in this act contained shall be construed to interfere with, terminate or in any wise affect the tenure of office of any person now holding office under and by authority of the terms of an act entitled "An act to establish police courts in cities of the first and one-half class, to fix their jurisdiction and provide for officers of said court and fix the compensation of certain officers thereof," which became a law under the provisions of the constitution of this state without the governor's approval, March 5th, 1901, and all acts amendatory thereof or supplementary thereto; and the police court established in any city of the first and one-half class by this act, shall, to all intents and purposes, and for every, any and all purposes, be deemed to be and shall be the successor of the police court existing in any such city, at the time of the taking effect of this act, and established therein by the aforesaid act, and all acts amendatory thereof or supplemental thereto, repealed by this act; and the judges and all other officers of any such existing police court shall severally be and act as the judges and other officers respectively of the police court hereby established in any such city, until their successors are elected or appointed, and qualify, as provided by law.

1. Constitutionality.—Validity of police court acts upheld.—The validity of acts of the legislature creating police courts and classifying cities has long been upheld.—*Rowe v. Rose*, 26 Cal. App. 744, 148 Pac. 535.

2. Same—Act valid except as to cities having police courts under section 8½, article XI, of the constitution.—The act is valid except as to municipalities that have exercised the right under section 8½, article XI, of the constitution to provide for such courts by their charters.—*People v. Cory*, 26 Cal. App. 735, 148 Pac. 532.

3. Same—Same—Constitutional provision permissive only.—Section 8½, article XI, of the constitution, is permissive merely, and until a municipality exercised the privilege of establishing its own police courts under the provisions of that section, the general law remains in force.—*Fleming v. Hance*, 153 Cal. 162, 94 Pac. 620.

4. Same—Not special legislation.—The act of 1901 was held not to be special legislation, and to be constitutional in *Union Ice Co. v. Rose*, 11 Cal. App. 357, 104 Pac. 1006.

5. **Jurisdiction—Superseded by “juvenile court law.”**—The juvenile court law divests Los Angeles police courts, established under the act of 1901, of jurisdiction of misdemeanors arising under that act.—*In re Mills Sing*, 13 Cal. App. 736, 110 Pac. 693.

6. **Same—Legislative power to authorize imprisonment.**—The legislature has the right and the power to confer upon police courts jurisdiction of all misdemeanors, whatever may be the extent of the punishment authorized to be inflicted, such courts being limited, of course, in the execution of their judgments of imprisonment, to imprisonment in a local or county jail.—*People v. Sacramento, etc., Association*, 12 Cal. App. 471, 107 Pac. 712.

7. **Same—Misdemeanors under “Cartwright act.”**—The police court of Los Angeles, established under the act of 1901, had jurisdiction of a misdemeanor committed under the Cartwright law.—*Union Ice Co. v. Rose*, 11 Cal. App. 357, 104 Pac. 1006.

8. **Same—Exclusive—Commitment of justice of the peace void.**—The act gives to the police courts exclusive jurisdiction of misdemeanors and a commitment for such an offense by a justice of the peace of a town-

ship is void.—*Ex parte Dowell*, 36 Cal. App. 587, 172 Pac. 1121.

9. **Same—Same—Limited by section 2.**—The act does not confer exclusive jurisdiction of misdemeanors of every nature, and the jurisdiction is limited by section 2.—*Betskouski v. Superior Court*, 34 Cal. App. 177, 166 Pac. 1027.

10. **Same—Conspiracy to defraud—Place of origin and of overt acts.**—In a prosecution for conspiracy to defraud where the conspiracy charged originated in Los Angeles, but the overt acts were committed in Pasadena, the superior court had jurisdiction, in view of the fact that the jurisdiction of the justice court in Pasadena did not include “high-grade misdemeanors.”—*People v. Cory*, 26 Cal. App. 735, 148 Pac. 532.

11. **Police court clerk—Filing bond.**—A police court clerk appointed under this act should file his bond in the office of the city clerk, after its approval by the mayor, not in the county clerk's office, and his failure to file such bond in the latter office does not result in a vacancy under section 996 of the Political Code.—*Rowe v. Rose*, 26 Cal. App. 744, 148 Pac. 535.

POLICE COURTS IN CITIES OF THE SECOND CLASS.

ACT 3551—An act to establish police courts in cities of the second class, to fix their jurisdiction, and provide for officers of said courts, and fix the compensation of certain officers thereof.

History: Approved March 23, 1901, Stats. 1901, p. 576. Amended (1) March 21, 1905, Stats. 1905, p. 634; (2) March 20, 1907, Stats. 1907, p. 748; (3) April 16, 1909, Stats. 1909, p. 975.

Judicial power, in whom vested. Sessions of court. Duty of justices.

§ 1. The judicial power of every city of the second class shall be vested in a police court to be held therein by the city justices of such city, or one of them. Either one of said justices may hold such court, and there may be as many sessions of said court at the same time as there are city justices in such city, and it is hereby made the duty of said city justices, in addition to the duties now required of them by law, to hold said police court, as judges thereof.

Exclusive jurisdiction.

§ 2. Said police court shall have exclusive jurisdiction of all misdemeanors punishable by fine or by imprisonment, or by both such fine and imprisonment, committed in the city where such police court is held; and in all such cases, to try and determine the same, convict or acquit, pass and enter judgment and carry such judgment into execution as the case may require, according to law.

Same.

§ 3. The said court shall also have exclusive jurisdiction of all proceedings for violation of any ordinance of said city, both civil and criminal, and of all actions for the collection of any licenses required by the ordinances of said city.

Disqualification of justices.

§ 4. Neither of said justices shall sit in cases in which he is a party, or in which he is interested, or where he is related to either party by consanguinity or affinity within the third degree; and in case of the sickness or inability of said justices, or either of them, either of said justices may call in any justice of the peace of the county to act in his place or stead.

Powers of justices.

§ 5. Each of the city justices, while acting as judge of said police court, shall have jurisdiction to issue warrants of arrest, search-warrants, subpoenas, and all other processes necessary for the full and proper exercise of the powers and jurisdiction of said court; to punish persons guilty of contempt of said court; to try all charges of misdemeanor offenses committed within its jurisdiction, as well as all charges for violation of city ordinances, and render judgment therein, with full power to carry such judgment into execution.

Clerk, appointment, salary. Duties.

§ 6. Said police court shall have a clerk for each of the judges of said court, who shall be appointed by the judge of said court presiding in the department thereof in which the said clerk is to act, which said clerks shall hold office for the term of two years from the date of appointment. Each of said clerks shall give a bond in the sum of five thousand dollars, with at least two sureties, to be approved by the mayor of said city, conditioned for the faithful discharge of the duties of his office. Each of said clerks shall receive an annual salary of one thousand eight hundred dollars a year, payable in equal monthly installments out of the treasury of said city, which salary shall be the full compensation for all services rendered by him. Each of the said clerks shall keep a record of the proceedings of, and issue all processes ordered by, the city justices, or either of them, or by said police court, and receive and pay into the city treasury all fines imposed by said court. They shall also render each month to the city council an exact and detailed account under oath of all fines imposed and collected, and of all fines imposed and uncollected since their last reports. They shall prepare bonds, justify bail when the amount has been fixed by either of said justices or by said police court, in cases not exceeding one hundred dollars, and may administer and certify oaths. Said clerks shall remain at the courtrooms of said court during the business hours and during such reasonable times thereafter as may be necessary for a proper performance of their duties. Before receiving any monthly payment of salary each of said clerks shall make and file with the city auditor an affidavit that he has deposited with the city treasurer all moneys that have come into his hands, belonging to the city. Any violation of this provision shall be a misdemeanor.

Prosecuting attorney. Salary. Duties.

§ 7. [Amended March 21, 1905, Stats. 1905, p. 634; March 20, 1907, Stats. 1907, p. 748. Repealed April 16, 1909, Stats. 1909, p. 975.]

Fines, disposition of.

§ 8. All fines and other moneys collected on behalf of the city in the police court shall be paid into the city treasury on the first Tuesday of each month.

Court rooms. Dockets.

§ 9. The city council shall furnish suitable rooms for the holding of said police court and shall also furnish the necessary dockets, blanks, stationery, and supplies for the carrying on of the business of said courts. One docket shall be styled "The City Criminal Docket," in which all the criminal business of said court shall be recorded, and each case shall be alphabetically indexed. Another docket shall be styled "The City Civil Docket," and it shall contain each and every civil case in which the city is a party, or which is prosecuted or defended for her interest; and each case shall be properly indexed.

Courts always open.

§ 10. The police court shall be always open, except upon nonjudicial days, and then for such purposes only as by law permitted or required of other courts of this state.

Appeals.

§ 11. Appeals may be taken from any judgment of said police court to the superior court of the county in which such city may be located, in the same manner in which appeals are taken from the justices' courts in like cases.

Place of imprisonment.

§ 12. In all cases of imprisonment of persons convicted in said police court of any offense committed in the city, the person so to be imprisoned, or by ordinance required to labor, shall be imprisoned in the city jail, or, if required to labor, shall labor in the city.

Seal.

§ 13. Said courts shall have a seal, to be furnished by the city.

Report of city cases.

§ 14. The city justices shall, on the first Tuesday of each month, make to the city council a full and complete report of all the cases, civil and criminal, in which the city has an interest, or which are required to be entered in the city civil docket or the city criminal docket, such report to be made upon blanks furnished by the city council and in such form as they may require.

Transcripts as evidence. Warrants and process, effect of.

§ 15. Certified transcripts of the dockets or files of said court, certified by the clerk of said court under the seal of said court, shall be evidence in any court of this state of the contents of said docket or of said files, as the case may be; and all warrants and other process issued out of said court and all acts done by said court and certified under its seal, shall have the same force and validity in any part of this state as though issued or done by any court of record of this state.

§ 16. This act shall take effect and be in force from and after the thirtieth day of March, A. D. nineteen hundred and one.

1. Constitutionality—Held valid.—Under sections 1 and 13 of article VI of the constitution, the legislature was empowered to enact this act.—*In re Westenberg*, 167 Cal. 309, 312, 139 Pac. 674.

2. Same—Not special law.—The act is not a special but a general law.—*In re Westenberg*, 167 Cal. 309, 320, 139 Pac. 674.

3. Jurisdiction over all misdemeanors conferred.—This act and the Whitney act conferred upon the police court of Oakland jurisdiction over all misdemeanors, including criminal libel.—*In re Westenberg*, 167 Cal. 309, 312, 139 Pac. 674.

PROSECUTING ATTORNEYS IN POLICE COURTS IN CITIES OF THE SECOND CLASS.

ACT 3552—An act to provide for prosecuting attorneys of police courts in cities of the second class, and regulating the compensation of such officers.

History: Approved March 23, 1901, Stats. 1901, p. 664. The previous act (Act 3551) contained the same legislation (see § 7). This section was amended in 1905 and 1907, and repealed in 1909.

Appointment. Salary. Duties.

§ 1. The police court in all cities of the second class shall have a prosecuting attorney, to be appointed by the district attorney of the county in which said city is situated, who shall hold office for the period of four years from the date of his appointment. He shall receive an annual salary of two thousand (2,000) dollars, payable in equal monthly installments, out of the treasury of said city, which salary shall be in full compensation for all services rendered by him. It shall be the duty of said prosecuting attorney to attend the sessions of said court, and conduct on behalf of the people all prosecutions for public offenses of which said court has jurisdiction.

Repeal of conflicting acts.

- § 2. All other acts or parts of acts in conflict herewith are hereby repealed.
- § 3. This act shall be in full force and effect from and after its passage.

POLICE JUDGES IN FREEHOLDER CHARTER CITIES.

ACT 3553—An act providing for the appointment of police judges in municipalities having a freeholders' charter, wherein provision is made for a police court judge, but no provision is made for the appointment or election of such police judge.

History: Approved February 23, 1907, Stats. 1907, p. 54.

Who may appoint.

§ 1. That in all municipalities having a freeholders' charter, which provides for a police court to be presided over by a police judge but makes no provision for the election or appointment of a police judge, the board of trustees or council of such municipalities shall have authority to make an appointment to fill such office.

Qualifications. Term of office.

§ 2. The person so appointed must be an elector of the municipality and shall hold office during the existence of the board of trustees or council appointing him and until his successor in office shall have been appointed and qualified.

Repeal of conflicting acts.

- § 3. All acts or portions of acts in conflict with this act are hereby repealed.
- § 4. This act shall take effect immediately.

MAYOR AS EX-OFFICIO POLICE JUDGE IN CERTAIN CITIES.

ACT 3554—An act providing that in cities of over ten thousand inhabitants, the mayor or other chief executive shall not be required to act as city judge or ex-officio judge of the city court or as justice of the peace; to provide for the abolishment of such city court and the transfer of the business and properties of such city court to the justice of the peace of such city, and to require such justice to finish such business.

History: Approved March 8, 1887, Stats. 1887, p. 51.

Duties of mayor.

§ 1. In cities of over ten thousand inhabitants, the mayor, or other chief executive thereof, shall not be required to act as justice of the peace, or to hold a city court, or to act as ex-officio city judge, or to perform any of the duties of judge of the city court; and all city courts created by law to be held by such mayor, or other chief executive of such cities, are hereby abolished.

Transfer of books, etc., to justice of the peace.

§ 2. All books, dockets, files, documents, papers, and properties of every kind whatsoever belonging to such city court, shall be transferred to the justice of the peace of said city, provided for by law, to hold the police court of such city, or if there be no such police court therein, then to such justice of the peace therein as may be designated for such purpose by the mayor thereof; and such justice of the peace shall have jurisdiction of all matters heretofore brought in such city court, or of which said city court had jurisdiction; and it shall be his duty to collect all fines and charges required by law to be collected by such city court, and to account for and pay the same over to the treasurer of said city in the same manner and at the same times and under such terms and conditions as heretofore required of and by said city court. Said justice of the peace shall complete all such unfinished business as may be transferred to him from said city court under the provisions hereof, in the same manner as heretofore required of said city court.

Conflicting acts repealed.

§ 3. The provisions of all acts and every special act of the legislature which conflict in any wise with this act are each and every one hereby repealed.

§ 4. This act shall take effect and be in force at once after its passage.

CHAPTER 282.**POMONA.**

Reference: Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.

ACT 3558. FREEHOLDERS' CHARTER.

FREEHOLDERS' CHARTER.**ACT 3558—Freeholders' charter.**

History: Voted for and ratified at a special municipal election held February 16, 1911; filed with the secretary of state March 10, 1911; Stats. 1911, p. 1913.

CHAPTER 283.**POTATOES.****CONTENTS OF CHAPTER.**

ACT 3560. INSPECTION AND CERTIFICATION ACT.

3561. STANDARD SEED POTATO ACT OF 1915.

INSPECTION AND CERTIFICATION ACT.

ACT 3560—An act to provide for the certification of potato seed, authorizing the state commissioner of horticulture to employ a potato inspector and to fix his salary, declaring the violation of the provisions hereof to be a misdemeanor and making an appropriation to carry out the purposes hereof.

History: Approved May 27, 1919. In effect July 27, 1919, Stats. 1919, p. 1229.

Certification of potato seed.

§ 1. The state commissioner of horticulture is hereby empowered to promote and protect the potato industry of California, and to establish and enforce such rules and regulations as may be deemed necessary for the examination and certification of potatoes grown within the state of California, for the purpose of producing improved varieties or a higher quality of seed. He shall issue to each grower a certificate showing the variety, quality and freedom from insect pests and diseases of the seed crop examined, and each certificate shall show the amount of seed which can be sold thereunder. All such certified potato seed shall be labeled with copies of the certificate, such additional copies to be furnished by the state commissioner of horticulture. The state commissioner of horticulture shall fix a reasonable charge to cover the cost of such inspection and certification, and shall publish a list of the growers of all such seeds. All money collected under this section shall be paid into the state treasury for use in the enforcement of this act.

Potato inspector.

§ 2. Upon the passage of this act the state commissioner of horticulture shall employ a "potato inspector," who shall have an intimate knowledge of the potato industry, who shall be an expert on varieties, and who shall be qualified to carry on

potato investigations and inspections for the purpose of certification of seed. The salary of the "potato inspector" shall be fixed by the state commissioner of horticulture, and he shall be paid the expenses incurred by him while traveling in the performance of his duties.

Penalty.

§ 3. Any person, company, firm, or corporation, who wilfully misbrands, adulterates, or otherwise misrepresents or interferes with the grade or quality of certified seed, or who in any way changes the certificates issued by the state commissioner of horticulture, shall be guilty of a misdemeanor.

Appropriation.

§ 4. Out of any money in the state treasury not otherwise appropriated there is hereby appropriated the sum of ten thousand dollars to be used during the seventy-first and seventy-second fiscal years in carrying out the purposes of this act.

Repealed.

§ 5. All acts, or parts of acts in conflict herewith are hereby repealed.

STANDARD SEED POTATO ACT OF 1915.

ACT 3561—An act to establish a standard for California certified seed potatoes and to prevent the sale of other potatoes as California certified seed potatoes, making the violation of this act a misdemeanor and fixing a penalty therefor.

History: Approved May 24, 1915. In effect August 8, 1915, Stats. 1915, p. 823.

§ 1. No potatoes shall be sold in the state of California as California certified seed potatoes except those which have been inspected and certified to in accordance with the following requirements:

Inspection of potato crops.

(a) The growing potato crop shall be inspected by an inspector who shall be appointed in accordance with the provisions of section three once during the blooming period of the plants and again as the plants begin to mature, but before forty per cent of the plants are dead. A third inspection shall be made after the crop has been harvested and graded.

Certain fields disqualified.

(b) Potato fields showing a mixture of more than two hundred and fifty hills per acre with any other variety or varieties, or showing more than five hundred weak hills, or more than fifty hills affected with blackleg (*Bacillus phytophthorus* Appel) shall be disqualified for certification, unless such mixed and weak or diseased hills shall be removed from the fields at this time under the supervision of the inspector.

Certain crops, on second inspection, disqualified.

(c) At the time of the second inspection the inspector shall dig, or cause to be dug under his supervision, and weigh at least one hundred hills per acre, and if five per cent of the hills so dug shall each weigh less than thirty per cent of the weight of an average hill, the crop shall be disqualified for certification.

Requirements after crop is graded.

(d) After the crop has been graded it shall be inspected and shall meet the following requirements:

The selected potatoes after being graded shall be free from any infestation of eelworms (*Heterodera radicola*), larva of tuber moth (*Phthorimæa operculella* Zeller),

or infection of wart disease (*Synchytrium endobioticum* Perc.) or powdery scab (*Spongospora solani* Brunch.), and shall be practically free from net necrosis or infection of late blight (*Phytophthora infestans* De By.). They shall be in the judgment of the inspector free from serious infection of scab (*Oospora scabies* Thax.) or Rhizoetonia, with not over five per cent light infection of scab (*Oospora scabies* Thax.) or ten per cent light infection of Rhizoetonia. They shall not contain more than eight per cent light infection of wilt diseases (*Fusarium oxysporum* or *Verticillium alboatrum* Reink. and Berth.), and not over two per cent of deep infection of wilt (*Fusarium oxysporum* or *Verticillium alboatrum* Reink. and Berth.). They shall also be free from any mixture of colors or distinct types, and shall be reasonably sound and free from cuts or bruises or second growth, and shall conform in shape to the varietal type. Not over five per cent of the tubers shall weigh less than one and three-fourths ounces and not over five per cent shall weigh more than twelve ounces.

Certificate for seed potatoes meeting requirements.

§ 2. The owner of potatoes which meet the requirements as stated in section one of this act shall be given by the inspector at the time of making the last inspection a certificate stating that such potatoes have been inspected by him in accordance with the provisions of this act and that they meet all the requirements as California certified seed potatoes. All potatoes sold as California certified seed potatoes shall bear on the package or container the certificate of inspection, which shall state the net weight of contents at time of packing, the date of inspection, and the date of packing. The inspector shall determine the weight of the potatoes which have passed inspection and are eligible for certification and shall only issue to the grower, sufficient certificates to label this amount of seed.

Inspection in charge of commissioner of horticulture.

§ 3. The matter of inspection shall be in charge of the state commissioner of horticulture, and the cost of inspection shall be borne by the grower of the potatoes inspected.

§ 4. Any one who shall violate any of the provisions of this act shall upon conviction be deemed guilty of a misdemeanor, and shall be punished as provided in section nineteen of the Penal Code.

PORTERVILLE.

See Act 3094, note.

PORTER VALLEY.

See Act 3094, note.

CHAPTER 284.

POULTRY.

CONTENTS OF CHAPTER.

ACT 3563. POULTRY EXPERIMENT STATION.

POULTRY EXPERIMENT STATION.

ACT 3563—An act to establish a poultry experiment station in the county of Sonoma, and making an appropriation therefor.

History: Approved March 13, 1903, Stats. 1903, p. 143.

Establishment of near Petaluma.

§ 1. There is hereby established in the county of Sonoma, at or near the city of Petaluma, a poultry experiment station, to be known as the "California Poultry Experiment Station."

Purpose of. Act to be liberally construed.

§ 2. The purposes of said station shall be the study of the diseases of poultry to ascertain the causes of such diseases, and to recommend treatment for the prevention and cure of the same; to ascertain the relative value of poultry foods for the production of flesh, fat, eggs, and feathers; to recommend methods of sanitation, and to conduct investigations for the purpose of securing results conducive to the promotion of the poultry interests of the state. This act shall be liberally construed to the end that the station hereby established may at all times contribute to the technical and general knowledge of the public upon the subject of poultry husbandry.

Supervision. Bulletins.

§ 3. The said station shall be under the supervision of the director of the agricultural experiment stations of the state of California, who shall, from time to time, cause to be issued bulletins of information regarding the care of poultry.

Commission to select site. Appointment and power.

§ 4. Within thirty days after the passage of this act the governor shall appoint three persons, two of whom shall be from the staff or professors in the agricultural department of the University of California, and one a practical poultry-raiser, which said persons shall constitute a board or commission to select and secure a site of not less than five acres for such poultry experiment station. Such board shall have full power to secure such site, by lease, purchase, or donation thereof, and shall proceed to the performance of the duties herein imposed within thirty days after receiving notice of their appointment.

Appropriations under control of university regents.

§ 5. All moneys appropriated for the use of the station hereby established shall be under the control of the regents of the University of California.

Appropriation.

§ 6. The sum of five thousand dollars is hereby appropriated out of any money in the state treasury, not otherwise appropriated, for securing the necessary site, and for equipping and maintaining said California poultry experiment station as provided by this act. Of the amount herein appropriated, the sum of two thousand five hundred dollars shall be available during the fiscal year nineteen hundred three and nineteen hundred four, and two thousand five hundred dollars shall be available during the fiscal year nineteen hundred four and nineteen hundred five.

Controller to draw warrant.

§ 7. The state controller is hereby authorized to draw his warrants for the sum herein appropriated in favor of the treasurer of the regents of the University of California, and the state treasurer is hereby directed to pay the same.

§ 8. This act shall take effect immediately.

PRESIDENT.

See tit. "Elections."

CHAPTER 285.

PRESTON SCHOOL OF INDUSTRY.

References: See, generally, tit. "Juvenile Court"; "Whittier State School."

Acquisition of property by gift, etc., see tit. "Whittier State School."

Commitments, see tit. "Whittier State School."

Unauthorized communication with inmates, etc., see Kerr's Cyc. Penal Code, §§ 171-171c.

CONTENTS OF CHAPTER.

ACT 3568. PRESTON SCHOOL OF INDUSTRY ESTABLISHED.

3572. TRANSFER OF INMATES.

PRESTON SCHOOL OF INDUSTRY ESTABLISHED.

ACT 3568—An act to establish a school of industry, to provide for the maintenance and management of the same, and to make an appropriation therefor.

History: Approved March 11, 1889, Stats. 1889, p. 100. Amended (1) February 27, 1893, Stats. 1893, p. 39; (2) April 16, 1909, Stats. 1909, p. 964; (3) May 26, 1915, in effect August 8, 1915, Stats. 1915, p. 849; and (4) by the "Juvenile Court Law" (see Act 2341).

Preston School of Industry.

§ 1. There shall be established at or within a convenient distance from Ione City, in the county of Amador, in said state, an educational institution to be designated as the Preston School of Industry.

Appropriation.

§ 2. The sum of one hundred and sixty thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the purpose of purchasing and preparing grounds for the erection of buildings thereon, for the purchase of the necessary furniture, machinery, and supplies, and for the payment of the current expenses of said school.

Government vested in three trustees. Term of office.

§ 3. The general government and supervision of said school shall be vested in a board of trustees, consisting of three citizens of the state of California, who shall be appointed by the governor. The members of said board shall hold their offices for the respective terms of two, three, and four years, from the first day of July, eighteen hundred and ninety-three, and until their successors shall be appointed and qualified, said respective terms to be designated in their appointments; and thereafter, upon the expiration of such terms, there shall be one of said board appointed, whose term of office shall be continued four years, and until his successor is appointed and qualified. Said trustees, before entering on the discharge of the duties of their office, shall each take an oath faithfully to discharge the same. [Amendment approved February 27, 1893, Stats. 1893, p. 39. In effect July 1, 1893.]

To procure site.

§ 4. The board shall, with all convenient dispatch, select and establish a site at some suitable place in said county for said institution, and procure the right of way for suitable drainage; said site to contain not less than one hundred acres nor more than three hundred acres of land, to have water facilities sufficient for the uses of said school, and for power in operating machinery; the land to be of a quality suitable for general farming purposes, and adapted to the cultivation of vines and fruit trees. The land so set apart by said purchase shall hereafter be used exclusively for the occupancy and purposes of said school. It shall be indicated by fixed corners and definite boundaries. A description thereof, together with the deed therefor, shall be

filed with the secretary of state at his office within thirty days after the purchase of the same.

Adoption of plans for grounds and buildings.

§ 5. Thereafter the board shall cause to be prepared and shall adopt plans for the grounds, buildings, and fixtures necessary for such an institution, of such form, dimensions, and style as to it shall seem best adapted to the purposes thereof. In the preparation of such plans, and in the construction of the buildings, it may employ a competent architect at a reasonable compensation.

No member to be interested in contracts.

§ 6. No member of the board or employee of the institution shall be interested in any contract or enterprise in connection with said school. [Amendment approved February 27, 1893, Stats. 1893, p. 39. In effect July 1, 1893.]

Construction of act.

§ 7. This act shall be construed as the sole and exclusive act on the subject-matter contained herein, unless specially or otherwise herein provided; and none of the provisions of an act entitled "An act to regulate contracts on behalf of the state in relation to erections of buildings," approved March twenty-third, eighteen hundred and seventy-six, or any other act, unless herein specially referred to, shall apply to or govern or limit this act, or any of the powers or duties in this act conferred upon said board.

Same.

§ 8. Nothing in this act contained shall be so construed as to permit any convict or convicts, undergoing sentence in either of the state prisons of California, to associate with or to be so employed as to mingle with any person or persons undergoing commitment in the said school.

Military discipline. Uniform.

§ 9. The said school shall be conducted on such plan as to the board may seem best calculated to carry out the intentions of this act, and its inmates shall be subject to military discipline, including daily drill. They shall be clothed in military uniform of such pattern and material as may be prescribed by the board, but under no circumstances shall such inmates be clothed in convict stripes while undergoing commitment in said school. [Amendment approved February 27, 1893, Stats. 1893, p. 39. In effect July 1, 1893.]

Expenses allowed. Salaries of employees.

§ 10. The members of the board shall receive no compensation for their services, but shall be allowed their reasonable expenses incurred while in the discharge of their official duties. The salaries or wages of all officers or employees of the school shall be fixed by the board in accordance with the law. [Amendment of May 26, 1915. In effect August 8, 1915, Stats. 1915, p. 849.]

This section was also amended February 27, 1893, Stats. 1893, p. 39.

Board to elect officers.

§ 11. The board shall elect a superintendent, a military instructor, and a secretary. The superintendent and secretary shall give such bonds for the faithful performance of their duties as the board shall determine. The bond of the superintendent shall be for a sum of not less than ten thousand dollars, and that of the secretary of not less than five thousand dollars. The military instructor must be a man who is a good disciplinarian and skilled in military tactics. He shall receive from the governor a commission with the rank of major. He shall perform such duties and receive such

salary as the board may prescribe. The board shall meet once in three months for the transaction of business. Special meetings may be called by the president when deemed necessary.

Instruction.

§ 12. The board shall cause to be organized and maintained a department in instruction for the inmates of said school, with a course of study corresponding as far as practicable with the course of study in the public schools of this state, but the course shall not be higher than the course prescribed in grammar schools. They shall adopt a system of government, embracing such laws and regulations as are necessary for the guidance of the officers and employees, for the regulation of the hours of study and labor, for the preservation of order, for the enforcement of discipline and military training, for the preservation of health, and for the industrial training of the inmates. The ultimate purpose of all such instruction, discipline, and industries shall be to qualify the inmates for honorable and profitable employment after their release from the institution, rather than to make said institution self-sustaining. The board shall also determine the number of officers and employees required, and shall prescribe their duties and fix the amount of their compensation.

Bond of superintendent. Salary. Appointments by. Duties.

§ 13. The superintendent, before entering upon the discharge of his duties, shall make and file with the board an oath that he will faithfully and impartially discharge the duties of his office. Thereupon he shall, subject to the regulations prescribed by the board, be invested with the custody of the lands, buildings, and all other property belonging to and under the control of the said institution. He shall receive for his services a salary not exceeding the sum of three thousand dollars per annum. He shall appoint, except as hereinbefore provided, all officers and employees of said institution, who shall hold office during his pleasure. He shall provide a book in which shall be registered the name, residence, occupation, and religious creed of every boy received into the school; the date of his reception, and the date and condition of his discharge; the names, residence, and occupation of his parents; whether the boy was apprenticed or not, and if so apprenticed, the name, residence, and occupation of the person to whom he was apprenticed. He shall have charge of all persons committed to the institution by any magistrate or court, shall use his best efforts to employ, instruct, discipline, and reform all such persons under his charge, and shall discharge such other duties as the said board may direct, and shall at all times be subject to removal by the board for incapacity, immorality, negligence of duty, or cruelty to the inmates.

To investigate workings of similar institutions.

§ 14. [Repealed February 27, 1893, Stats. 1893, p. 40. In effect July 1, 1893.]

Commitments.

§ 15. When any boy under the age of eighteen years shall be found guilty, by a magistrate or court of competent jurisdiction, of any offense punishable by fine, or by imprisonment, or by both, and who, in the opinion of such magistrate or court would be a fit subject for commitment to the said school, it shall be lawful for the magistrate or court to suspend judgment or sentence (except when the penalty is life imprisonment or death), and to commit such boy to the said school for a period not exceeding the time when he shall attain his twenty-first birthday, unless sooner discharged by law, or as in this act provided; but no boy who is under the age of eight years, or who is of unsound mind, shall be committed to the said school. The board shall have authority to make rules reducing, as the reward for good conduct, the time for which such person or persons have been committed. It shall be the duty of all

courts and magistrates committing any boy to such school to certify to the superintendent thereof the age of the person so committed, as nearly as can be ascertained by testimony taken under oath before such court or magistrate, or in such manner as the court or magistrate may direct.

This section, and all others relating to the mode of commitments to this institution, are superseded by the juvenile court act. See section 25, ante, Act 2341.

Approval of commitments.

§ 16. Before any commitment, made by a police court, or by a justice of the peace, under this act, shall be executed, it shall be approved by a judge of the superior court of the county in which the police court or justice of the peace has jurisdiction, and his approval indorsed on the warrant of commitment. But if such sentence shall be disapproved, the police court or justice of the peace shall then impose the ordinary sentence prescribed by law.

Dismissals.

§ 17. It shall be lawful for the board, whenever it may deem any inmate of said institution to have been so far reformed as to justify his discharge, to give him an honorable dismissal, and to cause an entry of the reasons for such dismissal to be made in the book of records prepared for that purpose. All persons thus honorably dismissed, and all those who shall have served the full term of their respective sentences, shall thereafter be released from all penalties and disabilities resulting from the offenses or crimes for which they were committed. Upon the final discharge of any inmate as in this section provided, the superintendent shall immediately certify such discharge in writing, and shall transmit the certificate to the magistrate or court by which such inmate or boy was committed. Said magistrate or court shall thereupon dismiss the accusation and the action pending against said person.

Paroles.

§ 18. There shall be established in said school a system of marking and grading upon merit or attainments in school and shop and general conduct, by which the boy committed under this act may work out his way to parole and honorable discharge. When in the opinion of the superintendent a boy, by the regulations established for that purpose, has earned the right to a parole, he shall cause to be obtained a reputable home or place of employment where said boy may be employed and earn a living by honorable labor, and then shall recommend said boy to the board for parole, and if the board is satisfied that it is for the welfare of such boy to be paroled, it shall grant such parole under such condition as it may deem best, which shall be continued until such boy has proved his ability for honorable self-support when he shall, upon the recommendation of the superintendent, be honorably discharged. Any boy who, while on parole, violates the conditions of the parole may be returned to said school. [Amendment approved April 16, 1909, Stats. 1909, p. 964.]

Incorrigible boys, return of to court.

§ 19. Any boy committed to said school who, after due trial, is found to be, in the opinion of the superintendent, incapable of reformation or so morally deficient or incorrigible as to render his retention detrimental to the interests of said school, or when it is ascertained by good and sufficient evidence that said boy has misrepresented his age to the court who sentenced him, or has been previously convicted of a felony, he may recommend such boy to the board for return to the said court, and if the board is satisfied that it is for the best interests of the school that such boy be returned, it shall so cause him to be returned to the said court, and it shall be lawful for said court to annul and set aside the previous commitment to said Preston School of Industry and resume proceedings where the same were suspended when such commitment was made. [Amendment approved April 16, 1909, Stats. 1909, p. 964.]

Transfer to, from state prison.

§ 20. Any boy under the age of eighteen years, who is undergoing sentence in any state prison in this state (except such as are undergoing a life sentence), and who shall be deemed a fit subject for training in the said school, may, upon recommendation of the state board of prison directors, with the approval of the governor, be transferred to said school for the unexpired period of his sentence, and when honorably discharged from said school, as hereinbefore provided, shall be entitled to such benefits and immunities as are provided for the other inmates of the institution.

Aiding escape.

§ 21. Any person who knowingly permits, or who aids any boy to escape from the said school, or who knowingly promotes his departure, or conceals him with the intent of enabling such escaped boy to elude pursuit, shall be guilty of a misdemeanor, and shall, upon conviction, be punished according to law. Any fugitive from said institution, or from the parties to whom he is bound out or apprenticed, may be arrested and returned to the institution by any person upon written request or order of the superintendent directed to such person.

Duties of trustees. Contracts. Security and bond of bidder.

§ 22. The board of trustees are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and other staple supplies of the school for any period of time not exceeding one year, and such contracts shall be limited to bona fide dealers in the several classes of articles contracted for. Contracts for such articles as the board may desire to contract for shall be given to the lowest bidder at a public letting thereof, and if the price bid is a fair and reasonable one, and not greater than the usual market value and prices. Each bid shall be accompanied by such security as the board may require, conditioned upon the bidder entering into a contract upon the terms of his bid, on notice of the acceptance thereof, and furnishing a bond, with good and sufficient sureties, in such sum as the board may require, and to their satisfaction, that he will faithfully perform his contract. If the proper officer reject any article as not complying with the contract, or if a bidder fail to furnish the articles awarded to him when required, the proper officer of the school may buy other articles of the kind rejected or called for, in the open market, and deduct the price thereof over the contract price from the amount due to the bidder, or charge the same up against him. Notice of the time, place, and conditions of the letting of contracts shall be given for at least two consecutive weeks in one newspaper printed and published in the city and county of San Francisco, in one newspaper printed and published in the city of Sacramento, and in one newspaper printed and published in the county of Amador. If all bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract, and may again advertise for such time and in such papers as they see proper for proposals, and may so continue to renew the advertisement until satisfactory contracts are made; and in the mean time the board may contract with any one whose offer is regarded just and equitable, or may purchase in the open market. No bid shall be accepted, nor a contract entered into in pursuance thereof, when such bid is higher than any other bid at the same letting for the same class or schedule of articles, quality considered, and when a contract can be had at such lower bid. When two or more bids for the same article or articles are equal in amount, the board may select the one which, all things considered, may by them be thought best for the interest of the state, or they may divide the contract between the bidders, as in their judgment may seem proper and right. The board shall have power to let a contract in the aggregate, or they may segregate the items and enter into a contract with the bidder or bidders who may bid lowest on the several articles. The board shall have the power to reject the bid of any person

who had a prior contract, and who had not in the option [opinion] of the board faithfully complied therewith. [Amendment approved February 27, 1893, Stats. 1893, p. 40. In effect July 1, 1893.]

Proclamation by governor.

§ 23. When the premises are ready for occupancy, the board shall certify such fact to the governor, who shall make due proclamation thereof. Thereafter it shall be lawful for any competent magistrate or court to commit juvenile offenders to the institution, as herein provided.

Controller.

§ 24. The controller of state is hereby authorized and directed, on requisition of the said board, to draw his warrant on the state treasurer in favor of said board, to pay for the necessary expenditures in the establishment and maintenance of the said school, and the state treasurer is authorized to pay the same from the appropriations provided for in this act.

Effect of other acts in conflict.

§ 25. For the purpose of giving practical effect to the provisions of this act, all laws or parts of laws which conflict with the provisions hereof are, for the purposes of this act only, suspended, and hereby made inapplicable to any boy committed to and in the custody of said school.

Sheriff's fees.

§ 26. In all proceedings relating to commitments under this act the fees and compensation of the sheriff and other officers of the court shall be such as are allowed by law for like proceedings and services in criminal cases.

Construction of act.

§ 27. This act shall be construed in conformity with the intent as well as with the express provisions hereof, and shall confer upon the board authority to do all those lawful acts, from time to time, which are necessary to promote the prosperity of the institution and the well-being and reformation of its inmates, including the organization of trade schools, the purchase and use of fixed and movable machinery, the erection of necessary buildings for machinery and other purposes, the improvement and management of a farm, orchard, and garden, the purchase of necessary supplies for the institution, and materials for manufacture, and performance of all other necessary and lawful acts, not otherwise prohibited, which may be required to comply with the purposes of this act; but nothing herein contained shall be so construed as to permit said board to incur any indebtedness or obligation in excess of the appropriations allowed by law for the establishment and maintenance of said school.

Act takes effect when.

§ 28. This act shall take effect and be in force from and after its passage.

Editor's note: By section 28 of the juvenile court law of 1909 (Stats. 1909, p. 213, and 1911, p. 673), and by section 31 of the juvenile court law of 1913 (Stats. 1913, p. 1288) and again by section 25 of the present act (Act 2341) it was provided that this law was superseded as to the mode of commitment to the Preston School of Industry. The

act, however, was left in force as to all matters concerning its management.

1. Constitutionality — Unequal punishments.—The act is not unconstitutional by reason of providing unequal punishment for the same offense.—Ex parte Nichols, 110 Cal. 651, 43 Pac. 9.

2. The school is not a state prison.—Ex parte Nichols, 110 Cal. 651, 43 Pac. 9.

TRANSFER OF INMATES.

ACT 3572—An act to authorize the superintendents of the Whittier State School and the Preston School of Industry to relinquish inmates from the control of either of said schools and to receive such inmates into the other of said schools and to provide for the expense of transferring such inmates and for the maintenance of the inmates so transferred.

History: Approved April 14, 1913. In effect immediately, Stats, 1913, p. 26.

Transfer of inmates of state schools authorized.

§ 1. The superintendent of the Whittier State School is hereby empowered to relinquish from his control, and the superintendent of the Preston School of Industry is hereby empowered to receive and transfer to the Preston School of Industry such number of boys committed to and confined in the Whittier State School as by mutual agreement said superintendents shall deem expedient and necessary to properly and safely house during the rebuilding of said Whittier State School. The expenses of transfer both ways shall be met out of the funds of the Whittier State School. The estimated cost of maintaining the boys so transferred to the Preston School of Industry while they remain in said school shall also be paid for out of the funds of the Whittier State School upon the approval of the board of control. A number of boys equal to the number of boys so transferred and remaining in the Preston School of Industry shall be transferred to said Whittier School as the needs and conveniences of said school will permit, upon mutual agreement between said superintendents and application by the superintendent of said Whittier State School, and the superintendent of the Preston School of Industry is hereby empowered to relinquish from his control and the superintendent of the Whittier State School is hereby empowered to receive and transfer to the Whittier State School such boys as may be so applied for, and the number of boys so transferred shall be deducted from the number of boys for whose maintenance the Whittier State School shall pay as provided for in this act.

Urgency measure; statement of facts.

§ 2. This act is hereby declared to be an urgency measure within the meaning of section one of article four of the constitution of the state of California, and shall take effect immediately. The following is a statement of the facts constituting the necessity for such urgency: The state department of engineering and experts engaged independently to inspect the main building of the Whittier State School have declared said building to be and the same is unsafe and unfit for human occupancy. Said building has been essential not alone to the proper conduct of the educational and other work of said institution, but also to provide living and sleeping quarters for the officers of said school and about two hundred of the boys committed thereto. The unsafe and unfit condition of such building constitutes a menace to the life and physical well-being of said officers and boys, and it is therefore deemed necessary for the immediate preservation of the public health and safety that such persons shall be at once removed from such building and that proper provision therefor should be made by law.

CHAPTER 286.

PRISONS.

References: See, generally, tits. "California Industrial Farm"; "California School for Girls"; "California State Reformatory"; "Convicts"; "Jute Goods"; "Pardon Board"; "Parole of Prisoners"; "Preston School of Industry"; "Whittier State School."

Confinement of United States prisoners, see Kerr's Cyc. Penal Code, § 1601.

County jails, see Kerr's Cyc. Penal Code, §§ 1597, et seq.

Labeling prison-made articles, see tit. "Marks and Brands," Act 2729.

Sale of ardent spirits near state prisons, see Kerr's Cyc. Penal Code, § 172.

State prisons, see Kerr's Cyc. Penal Code, §§ 1572, et seq.

CONTENTS OF CHAPTER.

ACT 3582. MATRON IN CITIES OF CERTAIN CLASSES.

3583. ACKNOWLEDGMENT OF DEEDS BY INMATES.

3600. EMPLOYMENT OF PRISONERS ON CERTAIN ROADS.

3601. EMPLOYMENT OF PRISONERS.

3601a. REVOLVING FUND FOR MANUFACTURING DEPARTMENT OF SAN QUENTIN PRISON.

3602. ROCK-CRUSHING PLANTS.

3606. PURCHASE OF CALIFORNIA-GROWN HEMP.

3608. FOLSOM STATE HOSPITAL.

3609. EMPLOYMENT OF PAROLED AND DISCHARGED PRISONERS.

MATRON IN CITIES OF CERTAIN CLASSES.

ACT 3582—An act creating the office of matron of the jail or prison in and for cities and towns of the first, first and one-half, second, and third classes, wherein official matrons or their duties are not now provided for by law, defining the duties and powers and fixing the term of office and compensation of, and providing for the appointment of, and the giving of official bond by, such matron.

History: Approved March 23, 1901, Stats. 1901, p. 573.

Appointment, powers and duties. Term of office.

§ 1. Public welfare and present necessity in the several cities and towns in this state of the first, first and one-half, second, and third classes, requiring that in such cities and towns there should be an official matron of the city or town jail or prison therein, the office of matron of the city or town jail or prison is hereby created in and for those several cities and towns in this state of the first, first and one-half, second, and third classes, and concerning which there is now no provision of law for the office of, or prescribing the duties of, matron of the jail or prison of such city or town; and the duties and powers of such matron in such cases shall be as follows: She shall have free access at all reasonable times to the immediate presence of all female prisoners in the jail or prison of which she is the official matron, including the right of personal visitation and conversation with them; and, in all cases of searching the person of female prisoners therein, such matron exclusively shall make such search; and the matron shall, by example, advice and admonition employ her best abilities at all times to secure and promote the health, welfare and reformation of all such prisoners. The term of office of such matron shall be two years from her appointment and qualification and until her successor is appointed and qualified.

Powers of governing body in relation thereto.

§ 2. The legislative board or body of each such city or town, referred to in section 1 of this act, is hereby authorized and empowered to appoint, and to provide for the payment of the compensation of, a matron of the jail or prison in and for the city or town of which such board or body is the governing board or body, and to specify the conditions and fix the amount of the matron's official bond, to be approved by such board or body.

Salaries of matrons.

§ 3. The compensation of such matrons, hereby regulated in proportion to the duties to be discharged, shall be as follows, payable monthly: In and for such cities of the first class, seventy-five dollars per month; in and for such cities of the first and one-half class and of the second class, sixty-five dollars per month; in and for such cities of the third class, fifty dollars per month.

Must not be hindered in discharge of duties. Searching female prisoners.

§ 4. To further the carrying into effect of the authority herein conferred and in furtherance of the discharge of the duties of such matrons, it is hereby enacted that no officer, deputy, policeman, constable, jailer, keeper, guard or person having charge or control of the jail or prison of any such city or town, referred to in section 1 of this act, shall refuse the matron, duly appointed and qualified hereunder, free access at all reasonable times to the immediate presence of all female prisoners therein, including the right of visitation and conversation with them, or in such jail or prison allow the searching of the person, in the case of a female prisoner, to be made except by such matron of such jail or prison, or obstruct the performance by such matron of her official duties in such jail or prison as those duties may be specified under the authority of this act or of law.

Repeal of inconsistent acts.

§ 5. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 6. This act shall take effect immediately.

Matrons in county jails, see Kerr's Cyc. Pol. Code, § 4226.

ACKNOWLEDGMENT OF DEEDS BY INMATES.**ACT 3583—An act concerning conveyances.**

History: Approved May 6, 1862, Stats. 1862, p. 496.

This act provided for the acknowledgments of deeds and instruments by prisoners.

Civil death and suspension of civil rights of persons imprisoned, see Kerr's Cyc. Penal Code, §§ 673, 674 and 675.

See, also, Estate of Nerac, 35 Cal. 392, 95 Am. Dec. 111.

EMPLOYMENT OF PRISONERS ON CERTAIN ROADS.**ACT 3600—An act directing the state prison directors of the state of California to employ at least twenty prisoners in the construction of roads to the state prisons at San Quentin and at Folsom.**

History: Approved March 12, 1903, Stats. 1903, p. 127. Prior act of March 31, 1891, Stats. 1891, p. 222; March 11, 1893, Stats. 1893, p. 141, and February 16, 1897, Stats. 1897, p. 6, were no doubt superseded by the present act.

State prisoners, employment of, on public roads.

§ 1. The state prison directors of the state of California are hereby authorized and directed to employ at least twenty prisoners daily during fair weather, in the construction and repair of such public roads as have been or shall hereafter be laid out or opened by the board of supervisors of Marin county, and which extend from San Quentin state prison, or the grounds surrounding the same, to Point Tiburon, San Rafael, and all railroad stations in Marin county which lie in the neighborhood of the said state prison; providing, that no work shall be done by such prisoners beyond a point six miles distant from said prison buildings; and also to employ at least twenty prisoners under like conditions on roads extending from the state prison at Folsom in Sacramento county or connecting therewith; providing, that no work shall be done by such prisoners beyond a point six miles distant from said prison building.

Act takes effect when.

§ 2. This act shall take effect and be in force from and after its passage.

EMPLOYMENT OF PRISONERS.

ACT 3601—An act to authorize and regulate the employment of prisoners in the state prisons of this state and to provide for the disposition of the products of their skill and labor.

History: Approved February 23, 1911, Stats. 1911, p. 71.

Employment of prisoners. Purchase of tools, etc.

§ 1. The state board of prison directors are hereby authorized and empowered to cause the prisoners in the state prisons of this state to be employed in the production and manufacture of such articles, materials, and supplies as are now, or may hereafter be, needed by the state, or any political subdivision thereof, or that may be needed for any state, county, district, municipal, school, or other public use, or that may be needed by any public institution of the state or of any political subdivision thereof. The state board of prison directors are further authorized and empowered to purchase, install, and equip, such machinery, tools, supplies, materials, and equipment as may be necessary to carry out the provisions of this act.

Kind, price, etc., of articles made.

§ 2. The state board of prison directors, in conjunction with the state board of examiners, and subject to the approval of the governor, shall, from time to time, determine the kind, quality, and quantity, of the several articles, materials, and supplies to be thus produced and manufactured, and shall also, from time to time, determine the price at which such articles, materials, and supplies, shall be sold, which price shall be as near the prevailing market price as possible.

Purchase of product.

§ 3. After the passage of this act all articles, materials, and supplies, herein authorized to be produced or manufactured, shall be purchased from the state prisons of this state, and at the prices fixed in the manner herein provided, excepting such articles, materials, and supplies as the state prisons are unable to furnish.

List of articles.

§ 4. The state board of prison directors shall, from time to time, file with the state board of examiners a statement showing the kinds of articles, materials, and supplies produced or manufactured at the state prisons.

Rules of sale.

§ 5. The state board of examiners, subject to the approval of the governor, shall establish and enforce rules and regulations under which the sale, purchase, and delivery of said articles, materials, and supplies may be made.

System of payment.

§ 6. The state board of examiners, in conjunction with the controller, and subject to the approval of the governor, shall establish and enforce a method and system of payments and accounts in connection with said purchasers, sales, and deliveries.

Product for public use.

§ 7. All articles, materials, and supplies, produced or manufactured under the provisions of this act shall be solely and exclusively for public use and no article, material, or supplies, produced or manufactured under the provisions of this act shall ever be sold, supplied, furnished, exchanged, or given away, for any private use or profit whatever.

Branding.

§ 8. Each and every article manufactured under the provisions of this act shall have plainly marked or stamped thereon either the words "San Quentin prison" or the words

"Folsom prison," according as such article may be manufactured at one or the other of said prisons.

Jute products exempt.

§ 9. Nothing in this act contained shall repeal, or in any manner affect, any of the provisions of any existing act or law relating to the purchase, manufacture, or sale of jute or jute products; nor shall anything contained in this act repeal, or in any manner affect, any of the provisions of any act or law relating to the crushing of rock or stone or the sale thereof.

§ 10. This act shall take effect immediately.

REVOLVING FUND FOR MANUFACTURING DEPARTMENT OF SAN QUENTIN PRISON.

ACT 3601a—An act to create a revolving fund for the manufacturing departments at the state prison at San Quentin and to appropriate money therefor.

History: Approved June 12, 1915. In effect immediately, Stats. 1915, p. 1490.

Appropriation: San Quentin revolving fund.

§ 1. The sum of fifty thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated, to be known as the San Quentin prison manufacturing revolving fund, which fund is hereby created; said fund shall be used to meet the expenses necessary in the purchasing of material and equipment and for maintenance of the manufacturing departments of the state prison at San Quentin. Of the money received from the sale of any goods manufactured in said manufacturing departments of San Quentin prison, so much shall be returned to said revolving fund as shall replenish the said fund and keep it intact to the extent of the amount herein appropriated for the same, and any surplus or balance remaining after the replenishment of said fund shall be paid into the San Quentin prison fund.

In effect immediately.

§ 2. This act, inasmuch as it provides for an appropriation for the usual current expenses of the state, shall, under the provisions of section one of article IV of the constitution of the state of California, take effect immediately.

ROCK-CRUSHING PLANTS.

ACT 3602—An act providing for the erection and operation of rock-crushing plants at the state prisons, for the preparation of highway material for the benefit of the people of the state, and providing for the necessary advances and appropriation of money to carry out said work.

History: Approved March 23, 1895, Stats. 1895, p. 275.

Rock-crushing plants may be established.

§ 1. The governor of the state, the state prison directors, and the bureau of highways (or if the latter shall not be established, then and in that case the two first named) shall, when satisfied that fifty thousand cubic yards of prepared road or highway metal, as hereinafter described, will be taken for highway purposes, purchase, establish, and operate at one or both of the state prisons, a rock or stone crushing plant, to be operated by convict labor and by the application of power under control of the state prison directors, and with such free labor as is necessary for superintendence and direction, to crush rock or stone into road-metal for highway purposes, of different and necessary degrees of fineness; provided, that the authority and direction hereby and herein conferred and given, shall not be exercised or employed until the governor and the state prison directors are satisfied that transportation can be

had for such highway-metal for highway purposes at just and reasonable rates, and so as to justify the setting up and operation herein provided for of said plant.

Cost of product, how to be estimated.

§ 2. When such plant described in section one is set up and operated there shall be taken into account in ascertaining the cost of producing highway-metal therefrom, only the cost of necessary explosives, oil, fuel, tools, and machinery exclusive of the plant itself, repairs, superintendence, and direction, and the preparation and maintenance of beds, boxes, crates, or other unloading devices for carriage and delivery from cars of said highway-metal.

Sale price.

§ 3. To said cost of production so ascertained, as set out in section two, there shall be added for and to each and every cubic yard of highway-metal so produced, ten per cent, and the result or product of such addition shall be the sale price of such metal delivered from the plant free on board of the cars or other vehicles of transportation.

Profit to be paid into state treasury.

§ 4. Said ten per cent shall, as realized, and not less frequently then semi-annually, be paid into the state treasury, until there shall have been paid in the full sum of twenty-five thousand dollars, and thereafter said percentage shall be reduced to five per cent, and the same, as realized, shall be paid into the fund for the support of the state prisons.

Prison directors may lease railroad cars.

§ 5. The state prison directors are hereby authorized to lease railroad cars with equipment suitable for the rapid and economical handling and delivery of highway material prepared as aforesaid, whenever in their judgment the interests of the people of the state will be conserved thereby in the matter of highway construction by the use of such highway-metal so produced, as in this act provided. The cost of such leasing shall in such case be carried into the cost of production described in section two.

Appropriation.

§ 6. The sum of thirty thousand dollars is hereby advanced by the state, for the purposes of this act, and said sum is hereby appropriated out of the general fund of the treasury, subject to the demand of the state prison directors; and the state controller shall, on presentation of such demand, in writing, draw his warrant upon the treasurer for the said sum of money in behalf of said state prison directors, and the state treasurer shall, on presentation of such warrant, pay the same. Twenty-five thousand dollars of said sum of money so advanced and appropriated shall be returned to the fund from which drawn, as is specified and directed in this act.

Revolving fund.

§ 7. The sum of five thousand dollars is hereby set apart out of the money so appropriated in the previous section, to and for the usage of the state prison directors, to provide and maintain a permanent revolving fund for the purchase of tools, machinery, and other material and appliances, exclusive of the establishment of the plant described in this act, to be used in the process of crushing and handling rock or stone at the state prisons for the purposes contemplated and set out in this act. All money taken from said revolving fund shall be used exclusively in payment for such supplemental machinery, tools, material, and appliances necessary to the proper quarrying, handling, and preparing of highway material at said state prisons; and so much of the money received for sale of highway-metal as shall be necessary to that end shall be returned to said revolving fund as is needed to keep the same constantly at the said figure of five thousand dollars.

Conflicting acts repealed.

§ 8. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Act takes effect when.

§ 9. This act shall take effect and be in force from and after its passage.

See next act.

PURCHASE OF CALIFORNIA-GROWN HEMP.

ACT 3606—An act to authorize and empower the state board of prison directors to purchase California-grown hemp, to be used in the manufacture of grain-bags, and to fix the price at which such bags shall be sold.

History: Approved March 16, 1901, Stats. 1901, p. 515.

Prison directors authorized to purchase California-grown hemp.

§ 1. The state board of prison directors are authorized and empowered to purchase California-grown hemp, to be used in the manufacture of grain-bags, and to pay for the same from the revolving fund created by law for the purchase of jute. The price for which grain-bags made at said prison from hemp shall be sold shall be fixed by the state board of prison directors, in the same manner as the price of bags made from jute is now by law fixed by said board.

Act takes effect when.

§ 2. This act shall take effect immediately.

Act relates to jute. See, ante, title "Jute."

FOLSOM STATE HOSPITAL.

ACT 3608—An act to establish a state hospital for the care, custody and maintenance of insane convicts and certain other insane persons charged with the commission of a felony, near Folsom, California, and to provide for the government and management thereof, and to direct the expenditure of money heretofore appropriated by an act entitled "An act to provide for the erection at Folsom State Prison of a building for the accommodation of insane prisoners, and making an appropriation therefor," approved March twenty-sixth, nineteen hundred and three, and declaring that the same may be used and expended for the purpose of this act, and making an additional appropriation of fifteen thousand dollars for certain improvements.

History: Approved March 18, 1905, Stats. 1905, p. 229.

Establishment of institution for insane.

§ 1. There shall be established on the land belonging to the state at the Folsom State Prison an institution for the care of such convicts and other insane as may be hereinafter described.

Name of institution.

§ 2. The said institution shall be known as the Folsom State Hospital, and is hereby declared to be a corporation.

Managers and trustees.

§ 3. The said state hospital shall have a board of five managers or trustees who shall be the members of the state commission in lunacy. Said trustees or managers shall be hereafter termed managers.

Selection of site.

§ 4. The board of managers in conjunction with the board of state prison directors shall select a site for the said state hospital.

Erection of buildings.

§ 5. As soon as possible after the selection of a site, the said board of managers shall with the co-operation of the board of state prison directors, proceed with the erection of a building or buildings for the purposes of said hospital.

Who shall be admitted. Transfer of inmates of hospitals.

§ 6. No person shall be admitted to said hospital except convicts now or hereafter confined in present state hospitals for the insane, who may be transferred directly by the state commission in lunacy; and such insane persons charged with the commission of a felony who are now or who may hereafter be confined in any of the present state hospitals for the insane and whose transfer is deemed by the state commission in lunacy to be for the best interests of said hospital and the public, who may be directly transferred by the state commission in lunacy; and such convicts as are now or may hereafter become insane in the California state prisons, who may be committed to this hospital in the manner now provided by the Penal Code for the commitment of insane convicts.

Medical superintendent, officers and employees. Appointment and compensation.

§ 7. As soon as the board of managers shall deem it necessary for the proper completion, furnishing and managing of said hospital, and as often thereafter as a vacancy occur[s], they shall appoint a medical superintendent. The medical superintendent must appoint, by and with the consent of the board of managers, such officers and employees as the board may deem necessary. The medical superintendent and other officers and employees shall receive such compensation as may be fixed by the board of managers, in no case to exceed the salaries paid in other state hospitals for the insane for similar service.

Laws governing.

§ 8. Except as herein otherwise provided, and except as inconsistent or unnecessary by reason of the fact that the board of managers shall be composed of the members of the state commission in lunacy, the said state hospital and its managers and officers shall be governed by and be subject to, and the said state hospital shall possess all of the rights and be affected by all the limitations and requirements of the provisions of chapter one of title five of part three of the Political Code.

Appropriation.

§ 9. The sum of twenty-five thousand dollars heretofore appropriated by the provisions of an act entitled "An act to provide for the erection at Folsom State Prison of a building for the accommodation of insane prisoners, and making an appropriation therefor," approved March twenty-sixth, nineteen hundred and three, and not expended, is hereby reappropriated and directed to be applied to the construction and furnishing of said Folsom State Hospital. Said appropriation shall be as available for all the purposes of this act as if the same had been specially made therefor. There is hereby appropriated out of any money in the state treasury not otherwise appropriated, the further sum of fifteen thousand dollars, to be used for sewer, water, and light connections, and for building, furnishing, and equipping quarters for officers and employees, stable, and such other outbuildings as may become necessary.

Plans, specifications, etc., sanction of.

§ 10. All plans, descriptions, bills of material, specifications and estimates requisite necessary, proper or convenient for any of the purposes aforesaid, shall receive the sanction of a majority of the state commission in lunacy, who shall cause an entry to be made in their minutes that such plans, descriptions, bills of material, specifications and estimates have been approved, and it shall not be necessary to obtain the approval

or sanction of any other board, officer or person, and the appropriation made by this act is hereby exempted from the provisions of that certain act entitled "An act to regulate contracts on behalf of the state, in relation to erections and buildings" approved March twenty-third, eighteen hundred and seventy-six, and all amendments thereto. All bills shall first be audited by the board of managers, and approved by the state board of examiners, before being allowed, and this act shall be exempt from the provisions of any other act or acts requiring the sanction or approval of any other person, officer or board not herein specially mentioned.

Controller authorized to draw warrants.

§ 11. The controller of state is hereby authorized to draw his warrant from time to time, as the work shall progress, in favor of the said board of managers, upon their requisition for the same; and the state treasurer is hereby directed to pay the same.

Repeal of conflicting acts.

§ 12. All acts and parts of acts in conflict herewith are hereby repealed.

§ 13. This act shall take effect and be in force from and after its passage.

EMPLOYMENT OF PAROLED AND DISCHARGED PRISONERS.

ACT 3609—An act to authorize the state board of prison directors to provide for assisting paroled and discharged prisoners and to secure employment for the same and making an appropriation for that purpose.

History: Approved May 14, 1917. In effect July 27, 1917, Stats. 1917, p. 528. Prior act of April 14, 1909, Stats. 1909, p. 882, was superseded by the act of June 14, 1913, in effect August 10, 1913, Stats. 1913, p. 919, which was superseded by the present act.

Authority to assist paroled and discharged prisoners.

§ 1. The state board of prison directors shall have the power and authority to provide for assisting paroled and discharged prisoners and to secure employment for the same and for that purpose they may employ necessary officers and employees, may purchase tools, and give any other assistance that, in their judgment, they may deem proper for the purpose of carrying out the objects and spirit of this act.

Moneys drawn without submitting vouchers.

§ 2. Upon this act becoming effective, the state board of prison directors may draw upon the moneys herein appropriated in the amount of one thousand dollars, without submitting vouchers thereon, which amount shall, from time to time, be replenished by demand upon said appropriation equal to the amount of expenditures represented by vouchers submitted to the state board of control and filed with the controller.

Appropriation.

§ 3. The sum of seventeen thousand dollars is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, for the purpose of this act; the state controller is hereby directed to draw his warrant therefor, payable to the state board of prison directors in such amount as may be required from time to time, and the state treasurer is directed to pay the same.

PRIZE FIGHTING.

See tit. "Infants"; Kerr's Cyc. Penal Code, § 412.

CHAPTER 287.

PROCESS.

CONTENTS OF CHAPTER.

ACT 3627. VALIDATION OF WRITS, ETC., WITHOUT SEAL.

VALIDATION OF WRITS, ETC., WITHOUT SEAL.

ACT 3627—An act to declare valid writs, processes, and certificates issued by the superior courts and the clerks thereof, before the courts had been legally provided with seals.

History: Approved March 31, 1880, Stats. 1880, p. 19.

Writs, processes or certificates declared valid.

§ 1. No writ, process, or certificate issued by any superior court, or the clerk thereof, before such court shall have been legally provided with a seal, shall be invalid, if in other respects valid, by reason of the absence of a lawful seal; but every such writ, process, or certificate, whether under the seal of one of the courts abolished on the first day of January, eighteen hundred and eighty, or under the private seal of the clerk, or under any other seal, or issued without a seal, shall have the same validity as if it had been authenticated by a legally adopted seal of the court out of which or by whose clerk it was issued.

§ 2. This act shall take effect immediately.

CHAPTER 288.

PROSTITUTION.

References: See, generally, tits. "California Industrial Farm"; "Pandering"; "Pimping." Placing married women in houses of prostitution, see Kerr's Cyc. Penal Code, § 266g. Prevention of compulsory prostitution of Chinese and Japanese women, see Kerr's Cyc. Penal Code, §§ 266a, et seq.

CONTENTS OF CHAPTER.

ACT 3634. "RED LIGHT ABATEMENT ACT."

"RED LIGHT ABATEMENT ACT."

ACT 3634—An act declaring all buildings and places nuisances wherein or upon which acts of lewdness, assignation or prostitution are held or occur or which are used for such purposes, and providing for the abatement and prevention of such nuisances by injunction and otherwise.

History: Approved April 7, 1913, in effect August 10, 1913, Stats. 1913, p. 20.

Definitions.

§ 1. The term "person" as used in this act shall be deemed and held to mean and include individuals, corporations, associations, partnerships, trustees, lessees, agents and assignees. The term "building" as used in this act shall be deemed and held to mean and include so much of any building or structure of any kind as is or may be entered through the same outside entrance.

Place of prostitution a nuisance.

§ 2. Every building or place used for the purpose of lewdness, assignation or prostitution and every building or place wherein or upon which acts of lewdness, assignation or prostitution are held or occur, is a nuisance which shall be enjoined, abated and prevented as hereinafter provided, whether the same be a public or private nuisance.

Action to abate.

§ 3. Whenever there is reason to believe that such nuisance is kept, maintained or exists in any county or city and county, the district attorney of said county or city and county, in the name of the people of the state of California, must, or any citizen of the state resident within said county or city and county, in his own name may maintain an action in equity to abate and prevent such nuisance and to perpetually enjoin the person or persons conducting or maintaining the same, and the owner, lessee or agent of the building, or place, in or upon which such nuisance exists, from directly or indirectly maintaining or permitting such nuisance.

Temporary writ.

§ 4. The complaint in such action must be verified unless filed by the district attorney. Whenever the existence of such nuisance is shown in such action to the satisfaction of the court or judge thereof, either by verified complaint or affidavit, the court or judge shall allow a temporary writ of injunction to abate and prevent the continuance or recurrence of such nuisance.

Action to have precedence. Failure to prosecute.

§ 5. The action when brought shall have precedence over all other actions, excepting criminal proceedings, election contests and hearings on injunctions, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed by the plaintiff or for want of prosecution except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal ordered by the court. In case of failure to prosecute any such action with reasonable diligence, or at the request of the plaintiff, the court, in its discretion, may substitute any such citizen consenting thereto for such plaintiff. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for said action, the costs shall be taxed against such citizen.

Violation of injunction.

§ 6. Any violation or disobedience of either any injunction or order expressly provided for by this act shall be punished as a contempt of court by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

Order of abatement.

§ 7. If the existence of the nuisance be established in an action as provided herein, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, musical instruments and movable property used in conducting, maintaining, aiding or abetting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released, as hereinafter provided. While such order remains in effect as to closing, such building or place shall be and remain in the custody of the court. For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

Proceeds of sale. Building may be sold.

§ 8. The proceeds of the sale of the property, as provided in the preceding section, shall be applied as follows:

1. To the fees and costs of such removal and sale;
2. To the allowances and costs of so closing and keeping closed such building or place;
3. To the payment of plaintiff's costs in such action;
4. The balance, if any, shall be paid to the owner of the property so sold.

If the proceeds of such sale do not fully discharge all such costs, fees and allowances, the said building and place shall then also be sold under execution issued upon the order of the court or judge and the proceeds of such sale applied in like manner.

Owner, not guilty of contempt, may pay costs.

§ 9. If the owner of the building or place has not been guilty of any contempt of court in the proceedings, and appears and pays all costs, fees and allowances which are a lien on the building or place and files a bond in the full value of the property, to be ascertained by the court, with sureties, to be approved by the court or judge, conditioned that he will immediately abate any such nuisance that may exist at such building or place and prevent the same from being established or kept thereat within a period of one year thereafter, the court, or judge thereof, may, if satisfied of his good faith, order the premises, closed under the order of abatement, to be delivered to said owner, and said order of abatement canceled so far as the same may relate to said property. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty or liability to which it may be subject by law.

Fine lien on building.

§ 10. Whenever the owner of a building or place upon which the act or acts constituting the contempt shall have been committed, or of any interest therein has been guilty of a contempt of court and fined therefor in any proceedings under this act, such fine shall be a lien upon such building and place to the extent of the interest of such person therein enforceable and collectible by execution issued by the order of the court.

§ 11. All acts and parts of acts in conflict with the provisions of this act are hereby repealed; provided, that nothing herein shall be construed as repealing any law for the suppression of lewdness, assignation or prostitution.

1. Constitutionality—Fourteenth amendment—Deprivation of property for misdemeanor ignorantly committed.—The act is not violative of the fourteenth amendment of the federal constitution by depriving the owner of his property in consequence of the commission of a misdemeanor therein without his knowledge, connivance or consent.—*People v. Casa Co.*, 35 Cal. App. 194, 169 Pac. 454; *Chown v. Alexandre*, 35 Cal. App. 194, 169 Pac. 454.

2. Same—Same—Police power not curtailed.—The police power of the states is not curtailed by the fourteenth amendment to the federal constitution.—*People v. Casa Co.*, 35 Cal. App. 194, 169 Pac. 454; *Chown v. Alexandre*, 35 Cal. App. 194, 169 Pac. 454.

3. Same—Same—Does not violate "due process" clause.—The provision of the red light abatement act authorizing the closing of the premises for a year and the sale of the personalty does not violate the due process of law clause of the constitution.—*People ex rel. Bradford v. Barbieri*, 33 Cal. App. 770, 166 Pac. 812.

4. Same—Title sufficiently broad to cover penal provisions.—The title is sufficiently comprehensive to cover the penal provisions of the act for violation of orders of abatement.—*Selowsky v. Superior Court*, 180 Cal. 404, 181 Pac. 652.

5. Same—Not invalid for unreasonableness, harshness, etc.—The act is not invalid as harsh, unreasonable and oppressive, and in effect a penalty.—*People v. Casa Co.*, 35 Cal. App. 194, 169 Pac. 454; *Chown v. Alexandre*, 35 Cal. App. 194, 169 Pac. 454.

6. Same—Not special legislation.—The act is not objectionable as special legislation.—*People v. Casa Co.*, 35 Cal. App. 194, 169 Pac. 454; *Chown v. Alexandre*, 35 Cal. App. 194, 169 Pac. 454.

7. Same—Excessive penalties for contempt.—The provisions of the acts as to penalties for contempts in excess of those usually fixed (Code Civ. Proc., § 1218) are not invalid.—*People ex rel. Bradford v. Barbieri*, 33 Cal. App. 770, 166 Pac. 812.

8. Same—Effect of code provisions.—The provisions of the act as to enjoining the

maintenance of bawdy houses are not rendered nugatory by the fact that courts already had the power given.—*Selowsky v. Superior Court*, 180 Cal. 404, 181 Pac. 652.

9. **Same—Penalty for contempt.**—The legislature may prescribe any reasonable penalty for contempt, and section 6 is not unconstitutional.—*Ex parte Selowsky*, 38 Cal. App. 569, 177 Pac. 301.

10. **Same—Not a bill of attainder.**—The object of the act is not to punish, to effect a reformation of the property; and it is not a bill of attainder, because there is no forfeiture of property.—*People v. Casa Co.*, 35 Cal. App. 194, 169 Pac. 454; *Chown v. Alexandre*, 35 Cal. App. 194, 169 Pac. 454.

11. **Same—Suit by individual citizen.**—The fact that the act authorizes the suit to be brought by an individual citizen without a showing of special damage does not render the act invalid; and the right to bring such a suit may be conferred in addition to the right to bring a suit where there is such a suit conferred by section 369, Code Civil Procedure.—*People v. Casa Co.*, 35 Cal. App. 194, 169 Pac. 454; *Chown v. Alexandre*, 35 Cal. App. 194, 169 Pac. 454.

12. **Construction—Conflict with code provisions.**—Section 6 is not in conflict with sections 1209, 1218, Code of Civil Procedure.—*Ex parte Selowsky*, 38 Cal. App. 569, 177 Pac. 301.

13. **Same — “Lewdness,” “prostitution,” “assignment.”**—The word “lewdness” is more comprehensive than either the words “prostitution,” or the word “assignment,” and it may or may not include them.—*People ex rel. Bradford v. Arcega*, 33 Cal. App. Dec. 132, 193 Pac. 264.

14. **Same — Same — Same — Same.**—The terms “lewdness,” “prostitution,” and “assignment,” as used in the act, signify illicit sexual acts or conduct amounting to or involving lewdness.—*People ex rel. Bradford v. Arcega*, 33 Cal. App. Dec. 132, 193 Pac. 264.

14a. **Same — Same — Same — Same.** — “Lewdness,” as used in the act, includes prostitution, assignment and other immoral or degenerate conduct or conversation between persons of opposite sexes.—*People v. Bay Side Land Co.*, (Cal. App.) 191 Pac. 994.

15. **Same—“May” not “must” in section 9.**—The word “may” in section 9 is not to be construed to mean “must.”—*Ryan v. Superior Court*, (Cal. App.) 192 Pac. 1036.

16. **Character of action or proceeding—Civil not criminal.**—The proceeding under the red light abatement act is civil and not criminal.—*People v. Macy*, (Cal. App.) 184 Pac. 1008.

17. **Same—Not a “prosecution.”**—The proceeding authorized by the act is not a “prosecution” within the meaning of section 20, article VI, of the constitution, requiring to be conducted in the name of the people.—*People v. Casa Co.*, 35 Cal. App. 194, 169 Pac. 454; *Chown v. Alexandre*, 35 Cal. App. 194, 169 Pac. 454.

18. **Same—Intention of legislature.**—The fact that the criminal aspect of the maintenance of the nuisance declared in the act

was fully covered by existing statutes fortifies the presumption that the legislature intended to provide a remedy for the prevention and abatement of a recognized evil, in the nature of a civil and not a criminal proceeding.—*People v. Casa Co.*, 35 Cal. App. 194, 169 Pac. 454; *Chown v. Alexandre*, 35 Cal. App. 194, 169 Pac. 454.

19. **Same—Abatement of public nuisance.**—The action is one for the abatement of a public nuisance, not one for the abatement of prostitution, assignation or lewdness, and it is not necessary in the complaint to charge the specific acts committed.—*People ex rel. Bradford v. Burch*, (Cal. App.) 189 Pac. 716.

20. **Same—Same.**—The action is an equitable proceeding to abate a nuisance and the right of trial by jury does not exist.—*People v. Peterson*, 31 Cal. App. Dec. 155, 187 Pac. 1079.

21. **Same—Proceeding in rem.**—The abatement of a nuisance is a proceeding in rem operating upon the property used in its maintenance, and the owner, although without knowledge, may be personally bound in costs, and the building and furniture proceeded against and subjected to forfeiture as prescribed in the act.—*People ex rel. Bradford v. Barbieri*, 33 Cal. App. 770, 166 Pac. 812; *People v. Casa Co.*, 35 Cal. App. 194, 169 Pac. 454; *Chown v. Alexandre*, 35 Cal. App. 194, 169 Pac. 454.

22. **Complaint—Sufficient.**—A complaint which sets forth that the premises were and are now used for purposes of lewdness, prostitution and assignation does not set forth three separate causes of action requiring to be separately stated, the gist of the action being the nuisance maintained by the commission of the criminal acts referred to.—*People ex rel. Bradford v. Laine*, 41 Cal. App. 345, 182 Pac. 986.

23. **Same—Same.**—A complaint is sufficient to support a judgment declaring the premises a nuisance and enjoining its continuance, which contains allegations that at a date named and for some time prior thereto the premises were occupied and used for the purposes of prostitution and that the women occupying it had offered to commit prostitution for a price.—*People ex rel. Bradford v. Arcega*, 28 Cal. App. Dec. 1188.

24. **Same—Same—Absence of allegation as to sexual intercourse.**—A complaint which alleges that the building was used for lewdness, prostitution and assignation and that certain named lewd persons occupied them and then and there solicited sexual intercourse, is sufficient, though it contains no allegation that sexual intercourse was committed.—*People v. Bay Island, etc., Co.*, (Cal. App.) 191 Pac. 994.

25. **Same—Same—Specific acts need not be alleged.**—A complaint under the red light abatement act is not insufficient because it fails to set forth specific acts of lewdness, prostitution and assignation.—*People ex rel. Bradford v. Arcega*, 28 Cal. App. Dec. 1188; *S. C.*, 33 Cal. App. Dec. 132, 193 Pac. 264, 268.

26. Same—Same—Same.—Specific acts of lewdness, prostitution or assignation need not be alleged.—People ex rel. Bradford v. Laine, 41 Cal. App. 345, 182 Pac. 986.

27. Same—Same—Same.—The complaint is sufficient though it alleges no specific acts of lewdness.—People ex rel. Bradford v. Laine, 41 Cal. App. 345, 182 Pac. 986.

28. Same—Same—Permission of owner need not be alleged.—It is not necessary that the complaint allege that the owners permitted or maintained the nuisance.—People v. Peterson, (Cal. App.) 187 Pac. 1079.

29. Same—Same—One cause of action.—A complaint alleging that "said premises were and now are used for purposes of lewdness, assignation and prostitution," states only one cause of action.—People ex rel. Bradford v. Laine, 41 Cal. App. 345, 182 Pac. 986.

30. Jury trial—Defendant has no right.—The defendant in a red light abatement proceeding is not entitled to a jury trial.—People v. Peterson, (Cal. App.) 187 Pac. 1079.

31. Same—Not error to deny.—It was not error to deny a jury in a prosecution under the red light abatement act.—People v. McCaddon, (Cal. App.) 192 Pac. 325.

32. Evidence—Admission governed by usual rules.—In an action under the red light abatement act the permission of evidence is governed by the general and elementary rules of evidence.—People ex rel. Bradford v. Burch, (Cal. App.) 189 Pac. 716.

33. Same—General reputation alone sufficient.—The general reputation of a place may be alone sufficient to prove its character in a proceeding under the act.—People v. Macy, (Cal. App.) 184 Pac. 1008.

34. Same—Conduct, acts, language of inmates.—Evidence as to the conduct, acts and language, used by the inmates of the place or building, is admissible.—People ex rel. Bradford v. Arcega, 33 Cal. App. Dec. 132, 193 Pac. 264.

35. Same—Promiscuous drinking of intoxicants by men and women—Presumption.—Evidence of the shameless use of intoxicants by women and their male companions in a public place tends to show that it is reasonably probable that they indulge also in immoral conduct, but it is not conclusive evidence of such conduct.—People ex rel. Bradford v. Laine, 41 Cal. App. 345, 182 Pac. 986; People ex rel. Bradford v. Burch, (Cal. App.) 189 Pac. 716.

36. Same—Unlawful sale of liquor not admissible.—Evidence of sale of liquor without license is inadmissible; but its admission is not prejudicial where there is other convincing evidence of lewdness, prostitution or assignation.—People ex rel. Bradford v. Laine, 41 Cal. App. 345, 182 Pac. 986.

37. Same—Testimony of detectives and police officers.—The testimony of detectives and police officers in a suit under the act is not to be regarded as analogous to the testimony of accomplices at a criminal trial, but may be received and is entitled to no less weight than that of any other witness.

—People ex rel. Bradford v. Arcega, 33 Cal. App. Dec. 132, 193 Pac. 264.

38. Same—Law as to entrapments does not apply.—The law relating to entrapments to crime has no application in a proceeding under the act.—People v. Macy, (Cal. App.) 184 Pac. 1008.

39. Same—Continuance of immoral condition—Presumption.—Where the existence of the immoral condition up to a certain date is shown its continuance for the usual period will be presumed under section 1963.—People v. Macy, (Cal. App.) 184 Pac. 1008.

But see, as to the limitation of the rule, People ex rel. Bradford v. Goddard, (Cal. App.) 191 Pac. 1012.

40. Findings—Knowledge of owners—Imputed, when.—A finding that the owners had the means of knowing and should have known, and by the use of reasonable and ordinary care could have known that acts of lewdness were occurring on the premises, was sufficient to support a judgment against them.—People v. Peterson, (Cal. App.) 187 Pac. 1079.

41. Same—Sufficient to support judgment.—A finding that a nuisance consisting of a place of assignation and prostitution was conducted and maintained on the premises in question was sufficient to support a judgment of abatement regardless of the owner's knowledge.—People v. McCaddon, (Cal. App.) 192 Cal. 325.

42. Conclusion of law not supported.—A conclusion that a building "now is a nuisance" is not supported by a finding that the building was on and prior to a certain day used for the purposes of lewdness, prostitution and assignation.—People ex rel. Bradford v. Goddard, (Cal. App.) 191 Pac. 1012.

43. Order—Exercise of power to order opening discretionary.—The entry of an order that the premises may be opened under the provisions of section 9 is in the discretion of the court.—Ryan v. Superior Court, (Cal. App.) 192 Pac. 1036.

44. Same—Abatement not necessary.—The act authorizes the court to enjoin the maintenance of a bawdy house without necessarily including the order of abatement provided by section 7.—Selowsky v. Superior Court, 180 Cal. 404, 181 Pac. 652.

45. Same—Keeper can not be given possession.—The court is not authorized to take possession of the premises by putting a keeper in charge thereof, nor may it before judgment order the same closed.—People ex rel. Woolwine v. Feraud, (Cal. App.) 188 Pac. 843.

46. Judgment—Sale of property not required.—Section 7 is not mandatory and does not require that the injunction include a direction that the property be sold, or that it should be closed for a year.—Ex parte Selowsky, 38 Cal. App. 569, 177 Pac. 301.

47. Same—Proof of acts of prostitution not required to support.—A judgment of abatement may be made though no acts of prostitution are shown to have been committed on the premises.—People v. Bay Side Land Co., (Cal. App.) 191 Pac. 994.

48. Same—Closing of whole building, though part only affected.—Where a cafe and hotel are under one management in the same building, the whole building may be closed, although parts were not shown to have been used for immoral purposes.—*People v. Smith*, (Cal. App.) 191 Pac. 996.

49. Same—Owner's knowledge not necessary to be shown to support.—Premises may be ordered closed in a proceeding under the act although the owner may have no knowledge of the immoral conditions, the object being to reform the property, not to punish its owner.—*People v. Bay Side Land Co.*, (Cal. App.) 191 Pac. 994.

50. Same—Same—When knowledge imputed.—Ignorance is no defense to abatement where the knowledge or gross negligence of the employees of a cafe is imputed to him.—*People v. Bay Side Land Co.* (Cal. App.) 191 Pac. 994.

51. Same—Same.—It is not necessary that the owner have knowledge of the existence of the immoral conditions to warrant the closing of the building for a year and sale of the personalty.—*People ex rel. Bradford v. Barbieri*, 33 Cal. App. 770, 166 Pac. 812.

52. Costs—Recovery purely statutory.—The recovery of costs in an action under the red light abatement act is purely statutory, although the proceeding is equitable.—*People ex rel. Woolwine v. Feraud*, (Cal. App.) 188 Pac. 843.

53. Same—Expenses of plaintiff for own benefit not included.—The provision as to costs in section 8 does not permit the taxing of the expense of plaintiff's investigations; but merely refers to the costs ordinarily allowed in equitable proceedings, where costs incurred by the prevailing party for his own benefit are not taxed.—*People ex rel. Woolwine v. Feraud*, (Cal. App.) 188 Pac. 843.

54. Same—Absence of knowledge of owner.—Where it appeared that the owner of the premises had no knowledge of their use for immoral purposes, it was proper to impose no costs in the decree against the property.—*People ex rel. Bradford v. Dillman*, 37 Cal. App. 415, 174 Pac. 951.

55. Dismissal of suit—Prior abatement.—Where it is shown that the nuisance was abated before the commencement of the action it will be dismissed.—*People ex rel. Bradford v. Dillman*, 37 Cal. App. 415, 174 Pac. 951.

56. Same—Same.—Where the nuisance had been abated and suppressed in good faith prior to the commencement of the action it will be dismissed.—*People ex rel. Bradford v. Goddard*, (Cal. App.) 191 Pac. 1012.

57. Same—Nuisance discontinued on abatement.—A disorderly house did not continue to be a nuisance after the eviction of the immoral tenants, although the furniture of such tenants remained on the premises.—*People ex rel. Bradford v. Goddard*, (Cal. App.) 191 Pac. 1012.

58. Appeal—Presumptions and intendments indulged.—In an appeal from a judgment under the red light abatement act

the usual rule applies that all intendments and presumptions will be indulged in support of the judgment and that error must be affirmatively shown, when the appeal is on the judgment roll alone.—*People ex rel. Bradford v. Arcega*, 33 Cal. App. Dec. 129 193 Pac. 268.

59. Same—Supersedeas.—Where enforcement of a judgment under the red light abatement law is threatened after an appeal has been taken, no application to the trial court for relief under section 9 of the act is necessary as a condition of the issuance of a writ of supersedeas by this court.—*People v. Laine*, 177 Cal. 742, 744, 171 Pac. 941.

60. Same—Same—Application of section 9.—The provisions of section 9 of the red light abatement law applies to a defendant who concedes the regularity of the judgment and pays the costs, and has no application to one who contends that he has been improperly and unjustly found guilty and is appealing from the judgment against him.—*People v. Laine*, 177 Cal. 742, 744, 171 Pac. 941.

61. Same—Stay bond not required.—No bond is required on appeal from a judgment under the red light abatement law to stay proceedings, and where the enforcement of the judgment is threatened, a preemptory writ of supersedeas will be issued.—*People v. Laine*, 177 Cal. 742, 744, 171 Pac. 941.

62. Same—Same—Appeal stays proceedings.—An appeal from a judgment under the red light abatement law (1913-20), including an injunction against further use and an order of vacation for a year, removal of tenants and sale of furniture as under execution, stays all proceedings except the operation of the injunction.—*People v. Laine*, 177 Cal. 742, 743, 171 Pac. 941.

63. Contempt—Jurisdiction of court.—The superior court, having enjoined the nuisance defined under the red light abatement act, may take cognizance of a contempt arising from the violation of the injunction.—*Selowsky v. Superior Court*, 180 Cal. 404, 181 Pac. 652.

64. Same—Section 6 applies to both preliminary and permanent injunction.—The contempt referred to in section 6 relates to any injunction or order issued or made under the act, including both preliminary and permanent injunction.—*Ex parte Selowsky*, 38 Cal. App. 569, 177 Pac. 301.

65. Same—Section 6 is not invalid as unreasonable classification.—The provision of section 6 of the act making the punishment for contempt for a violation of an order of abatement more severe than that generally provided, is not invalid as an unreasonable classification.—*Selowsky v. Superior Court*, 180 Cal. 404, 181 Pac. 652.

66. Same—Finding sufficient to support judgment for.—Findings that petitioner continued the use of premises for purposes of prostitution, assignation and lewdness, after an order of abatement, are sufficient to support a judgment of contempt, without a finding as to particular acts.—*Selowsky v. Superior Court*, 180 Cal. 404, 181 Pac. 652.

67. Same — Continued use sufficient to support.—An affidavit alleging a continued use of premises for purposes of lewdness, assignation and prostitution after an order

of abatement, is sufficient to support a judgment of contempt.—*Selowsky v. Superior Court*, 180 Cal. 404, 181 Pac. 652.

CHAPTER 289.

PROTECTION DISTRICTS.

References: See, generally, tits. "Drainage"; "Irrigation and Irrigation Districts"; "Levee Districts"; "Reclamation Districts"; "Storm Water Districts"; "Swamp and Overflowed Lands."

CONTENTS OF CHAPTER.

- ACT 3641. PROTECTION DISTRICT ACT OF 1895.
- 3642. PROTECTION DISTRICT ACT OF 1907.
- 3643. DISSOLUTION OF PROTECTION DISTRICTS.
- 3643a. DISSOLUTION OF PROTECTION DISTRICT No. 2.

PROTECTION DISTRICT ACT OF 1895.

ACT 3641—An act to provide for the formation of protection districts in the various counties of this state, for the improvement and rectification of the channels of innavigable streams and watercourses, for the prevention of the overflow thereof, by widening, deepening, and straightening and otherwise improving the same, and to authorize the boards of supervisors to levy and collect assessments from the property benefited to pay the expenses of the same.

History: Approved March 27, 1895, Stats. 1895, p. 247. Amended (1) March 27, 1897, Stats. 1897, p. 219; (2) March 20, 1903, Stats. 1903, p. 328; (3) April 6, 1909, Stats. 1909, p. 807; (4) March 23, 1911, Stats. 1911, p. 446; (5) May 26, 1917, in effect July 27, 1917, Stats. 1917, p. 1219; (6) May 11, 1919, in effect July 22, 1919, Stats. 1919, p. 441; (7) May 11, 1919, in effect July 22, 1919, Stats. 1919, p. 461. Prior act of April 15, 1880, Stats. 1880, p. 55, amended April 19, 1889, p. 366, was probably superseded by the present act.

Formation of protection district. Boundaries. Hearing.

§ 1. Whenever the board of supervisors of any county in this state deem it proper, for the purpose of protecting property from damage, to widen, deepen, change, straighten or otherwise improve the channel of any navigable stream, watercourse or wash within the county, or to construct a new channel therefor, in whole or in part, or to erect levees, or dikes upon or along the banks thereof, or otherwise to prevent the same from overflow, or to do any one or more or all of said things, said board may, upon petition of ten land owners, setting forth the general character of the improvements desired by them, and the boundaries of the district to be benefited by such proposed improvement, and that their land is within the same, and asking for the formation of a district under this act, pass a resolution declaring their intention to form a protection district under this act. Said resolution shall describe the exterior boundaries of the proposed district, and the general character of the improvements contemplated, either of which need not be the same as those set forth in the petition, and shall fix a time and place for the hearing of the matter, not less than thirty days after the passage thereof, and direct the clerk of said board to publish a notice of the intention of the board of supervisors to form such protection district, and of the time and place fixed for the hearing, and shall designate some newspaper of general circulation, published and circulated in said proposed district, or, if there is no newspaper so published and circulated, then some newspaper of general circulation published and circulated in the county. [Amendment approved March 23, 1911, Stats. 1911, p. 446.]

Publication of notice. Copy to each owner of land.

§ 2. Thereupon said clerk shall cause to be published in the newspaper so designated, for a period of twenty days before the date fixed for the hearing, a notice, which notice shall be headed, "notice of intention of the board of supervisors to form a protection district." Said notice shall set forth the fact of the passage of such resolution, with the date thereof, the general character of the improvements contemplated, the boundaries of the proposed district, and the time and place for the hearing, and shall state that it is proposed to assess all property embraced in said proposed protection district, for the purpose of paying the damages, costs, and expenses of constructing the proposed improvements, and the necessary expense of maintaining and repairing the said works and improvements, and shall refer to the resolution for further particulars. Said clerk shall send a copy of said notice by mail, postage prepaid, to each owner of land in the proposed district whose name appears as such on the last completed assessment-roll of the county or counties in which said proposed district lies, addressed to such owner at his address given on such assessment-roll, or if no address is so given, then to his last known address, or if it be not known then at the county seat of the county in which his land lies. Said clerk shall make and file in his office an affidavit of such mailing, showing the names and addresses of the persons to whom such notices were sent, which shall be prima facie evidence that said notices were mailed as herein required. Failure of the clerk to mail said notices as herein required shall not invalidate subsequent proceedings. [Amendment approved March 23, 1911, Stats. 1911, p. 447.]

Written objections.

§ 3. Any person interested objecting to the formation of such proposed district, or to the extent thereof, may, at or before the time fixed for the hearing of the matter, file a written objection thereto, stating briefly his ground of objection, with the clerk of said board of supervisors, who shall indorse thereon the date of its reception by him, and shall at the time fixed for the hearing, place all such objections filed with him before said board of supervisors. [Amendment approved March 23, 1911, Stats. 1911, p. 447.]

Supervisors to hear objections.

§ 4. At the time fixed for the hearing, or to which the hearing may be adjourned, the board of supervisors shall hear the objections filed, if any, and pass upon the same. Said board may, in its discretion, overrule or sustain, in whole or in part, any or all of the objections filed, and may change or alter the boundaries of such proposed district to conform to the needs of the district, provided, that they shall include therein only such land as will, in their judgment, be benefited by the proposed work or improvements, and provided, further, that if they deem it proper to include therein any territory not included in the boundaries mentioned in the resolution of intention, they shall first cause notice of their intention so to do to be published and mailed to land owners in such additional territory, as in case of the original notice, and shall, for that purpose, adjourn the hearing to some time and place to be stated in such new notice, and shall hear and pass upon any objections made by such owners as in case of other land owners in the proposed district. Said board may, in their discretion, declare such protection district formed with the boundaries designated by them and shall designate such district by name as the protection district of county (or counties). [Amendment approved March 23, 1911, Stats. 1911, p. 447.]

Eminent domain, right of. When stream forms line between counties. Municipal corporations may be included.

§ 5. The board of supervisors of such county shall also have power to condemn land for the purpose of widening, deepening and straightening any innavigable stream flow-

ing through such protection district, or forming a boundary, or any part of a boundary thereof, and for that purpose all the provisions of part three, title seven, of the Code of Civil Procedure are hereby made applicable to the exercise of the right of eminent domain for such purpose, or to any other purpose necessary to the needs of such district when formed; provided, that nothing in this act shall be construed as interfering, conflicting or abrogating reclamation districts now established by law. Whenever such innavigable streams or watercourse forms, or the portion thereof deemed proper or necessary to be improved and rectified by widening, deepening, or straightening its course, or by erecting levees or dikes upon its bank, forms the boundary line between any two or more counties in this state, the petition shall be presented to the board of supervisors of the county in which the greatest portion of lands within the proposed district are situated, signed by at least twenty of the property holders of the district, ten (10) from each of the counties to be affected, which petition shall set forth and particularly describe the proposed boundaries of such district and the other matters required by section one of the act of which this act is amendatory, and shall pray for a district to be organized under said act; and when the board of supervisors of any one of said counties has acquired jurisdiction, as provided in section four of the act of which this act is amendatory, the board of supervisors of each of the other counties, when notified, shall proceed to improve and rectify the channel of said stream or watercourse, so as to prevent the overflow of said stream or watercourse, and in accordance with the terms of said act of which this act is amendatory. And if, after notice, given in writing by the board of supervisors of the county so first acquiring jurisdiction to the board of supervisors of said other counties, either or any county so notified shall fail for sixty days to proceed to take all necessary steps under said act for the prevention of the overflow of such stream, by widening, deepening or straightening its course, or by erecting levees or dikes upon its banks, the board of supervisors having obtained jurisdiction as above provided, and giving such notice shall proceed under the terms of said act to improve and rectify the channel of such stream or watercourse, by widening, deepening, or straightening its course, or by erecting levees or dikes upon its banks, and collect by law, from the county or counties so notified, its proportion of the costs and expenses of said improvement, which shall not exceed in the case of any county one quarter of the total cost thereof; provided, said amount shall not exceed in any one case for any one county the sum of twenty-five hundred dollars. Nothing herein shall authorize the alteration of the boundary lines of any county, and said boundary lines shall remain as they are at present. Thereafter all costs of every nature that may be incurred or made necessary in the keeping up or preservation of any work or improvement done under the provisions of this section shall be borne by the county or counties affected by such work or improvement, and the lands within said district in the proportion provided in section 10 of this act.

Whenever a portion of such innavigable stream or watercourse passes through or forms the boundary line of any municipal corporation, the territory within such municipality, including the streets thereof, affected or benefited by such work or improvement may be included in proceedings instituted for the creation of said protection district, and thereupon, all such territory including the streets of such municipality, shall be subject to the provisions of this act. [Amendment approved April 6, 1909, Stats. 1909, p. 808.]

This section was also amended March 20, 1903, Stats. 1903, p. 323.

District governed by supervisors. Powers. Emergency work. Surveys, maps, plans, etc.

§ 6. Each protection district shall be governed and controlled by the board of supervisors of the county in which it is situated. Said board shall have power, in the name of the county and in behalf of the district, to purchase, receive by donation, or acquire by condemnation any rights of way or other real or personal property necessary to

carry out the purposes for which the district was formed, and for that purpose all the provisions of the Code of Civil Procedure relating to eminent domain are hereby made applicable to proceedings in behalf of such district to condemn property. The said board shall also have power to employ such engineers, surveyors and others as may be necessary to survey, plan or locate, or supervise the construction or repair of, the improvements necessary to carry out the purposes for which the district was formed; to construct, maintain and keep in repair any and all improvements, and do all other things requisite or necessary to carry out the purposes of the district; and to employ the services of any person, legal or otherwise, which in the judgment of said board, may be necessary to carry out said purposes. All work done in any district shall be ordered by the board of supervisors of the county in which said district is located and shall be under the direction of the county surveyor or county engineer. All work which shall exceed an estimated cost of one thousand dollars shall be advertised and let to the lowest bidder; provided, however, that at the time flood waters shall threaten the levee of a district the board of supervisors may order emergency work done without advertising for bids therefor. As soon as said district is formed, the board shall cause a survey of the contemplated improvements to be made, or adopt a survey already made, and shall also cause a map of such survey, and plans and specifications showing such improvements in detail, to be prepared, and they shall adopt such surveys, maps, plans and specifications, and thereafter all such improvements shall be made in accordance with the survey, maps, plans and specifications so adopted; provided, that at any time after the adoption of said survey, map, plans and specifications, and before the commissioner's report of assessment of benefits and award of damages has been finally adopted and confirmed by the board, said board may rescind their action in adopting said survey, map, plans and specifications, and may modify the same or adopt others in place thereof, in which case a new assessment shall be made, or may, by a four-fifths vote of the members thereof, abandon the contemplated improvement and dissolve the said protection district, in which case the expenses already incurred in behalf of such district shall be a county charge. [Amendment of May 11, 1919. In effect July 22, 1919, Stats. 1919, p. 461.]

This section was also amended March 27, 1897, Stats. 1897, p. 219; and March 23, 1911, Stats. 1911, p. 448.

Commissioners to assess damages and benefits. Oath. Bond.

§ 7. After adopting such survey, the board of supervisors shall appoint three commissioners to assess benefits and damages, to estimate the total cost of making the proposed improvements and performing such proposed work, which estimate shall include all expenses of every kind incurred or to be incurred, either directly or indirectly, in carrying out the said work and improvements. Before entering upon the discharge of their duties as such commissioners, they shall each take and subscribe to an oath to perform the duties of such commission to the best of their abilities, and shall each file, with the clerk of the board of supervisors, a bond to the state of California, in the sum of three thousand dollars, to faithfully perform the duties of his office as such commissioner, which said bond must be approved by the chairman of the board of supervisors. The board of supervisors may, at any time, remove any or all of said commissioners for cause, upon reasonable notice and hearing, and may fill any vacancies occurring among them from any cause.

Powers.

§ 8. The commissioners shall have all powers necessary and proper to carry out the provisions of this act, and the act of a majority shall be the act of the board.

Charges and expenses, how paid.

§ 9. All such charges and expenses shall be deemed as expenses of said work or improvement, and be a charge only upon the funds devoted to the particular work or

improvement as provided hereafter. All claims, as well for the land and improvements taken or damaged as for the charges and expenses, shall be paid as are other claims against the county and upon order of the board of supervisors, and the claims shall be itemized in the same manner as are other claims against the county.

Duty of viewers. Assessments.

§ 10. Said commissioners shall proceed to view the lands embraced within the boundaries of such protection district, and may examine witnesses under oath, to be administered by any one of them. Having viewed the land to be taken, and the improvements affected, and considered the testimony presented, they shall proceed with all diligence to determine the value of the land and damage to improvements and property affected and also the estimated amount of the costs of the proposed work or improvement and the expenses incident thereto, and having determined the same, shall proceed to assess the same to the county or counties and upon the lands embraced within the exterior boundaries of such protection district. Such assessment shall be made in the manner following, to wit: The board of supervisors shall assess to the county or counties where more than one is an interested and benefited party or parties not exceeding one-half of such assessment; provided, that in no case shall a county be liable for an amount in excess of one-fourth thereof or for any sum greater than two thousand five hundred dollars where there are two or more counties within which said district is formed, and the remainder of such assessment may be made upon the lands within said district in proportion to the benefits to be derived from said work or improvement, so far as said commission can reasonably estimate the same, including in such estimate the streets in such municipal corporation and the property of any railroad company, within said district, if such there be. And each year thereafter it shall be the duty of the assessor of the county in which the district is situated to assess and enter upon his assessment roll the property within such protection district. [Amendment of May 11, 1919. In effect July 22, 1919, Stats. 1919, p. 442.]

This section was also amended March 20, 1903, Stats. 1903, p. 329; and April 6, 1909, Stats. 1909, p. 809.

Commissioners shall make report with plat of district.

§ 11. Said commissioners, having made their assessment of benefits and damages, shall, with all diligence, make a written report thereof to the board of supervisors, and shall accompany their report with a plat of the district, showing the land taken or to be taken for the work of improvement; and the lands assessed, showing the relative location of each district, block, lot, or portion of lot or other piece of land, and its dimensions, so far as the commissioners can reasonably ascertain the same. Each block and lot, or portion of lot, or other parcel or parcels of land taken or assessed, shall be designated and described in said plat by an appropriate number, and a reference to it by such descriptive number shall be a sufficient description of it in all respects. When the report and plat are approved by the board of supervisors, a copy of said plat (appropriately designated and certified by the clerk of said board as a correct copy of the plat on file in his office) shall be, by the clerk of said board, recorded in the office of the recorder and filed in the office of the assessor of the county. Said report of the commissioners shall also contain the names of the persons owning lands taken, or to be taken, for such work or improvement; the names of the landowners who consent to give the right of way and their written consent thereto; the names of landowners who do not consent, and the amount of damage claimed by each, and the amount of damages awarded to each by the commissioners. [Amendment of May 11, 1919. In effect July 22, 1919, Stats. 1919, p. 442.]

Report shall contain what.

§ 12. Said report shall specify each lot, subdivision, or piece of property taken or injured by the widening, deepening, or straightening of such innavigable stream, or

other improvement made or work done, or assessed therefor, together with the name of the owner or claimants thereof or of persons interested therein as lessees, incumbrancers, or otherwise, so far as the same are known to the commissioners, and the particulars of their interests, so far as the same can be ascertained, and the amount of value or the amount assessed, as the case may be.

Conflicting claims.

§ 13. If in any case the commissioners find that conflicting claims of title exist, or shall be in ignorance or doubt as to the ownership of any piece of land or of any improvement thereon, or of any interest in such land or improvement, it shall be set down as belonging to unknown owners. Errors in the designation of the owner or owners of any land or improvement, or of the particulars of their interests, shall not affect the validity of the assessment, or of any condemnation of the property to be taken.

Compensation of commissioners.

§ 14. The commissioners shall receive for their services such compensation as the board of supervisors may determine from time to time; provided, that the compensation shall not exceed the sum of one hundred dollars per month each, nor continue for more than six month, unless the board of supervisors shall, by order, extend such time. The compensation of the commissioners shall be considered as an expense of the work or improvement, and shall be chargeable and payable as are other expenses thereof.

Report. Publication of. Form of notice.

§ 15. The report of such commissioners and the plat accompanying it shall be filed with the clerk of the board of supervisors, and said board shall thereupon fix a time for the hearing thereof, which shall not be less than four weeks after the filing thereof, and thereupon the clerk of said board shall give notice of such hearing by publication for at least three weeks in a newspaper of general circulation published and circulated in the said district, if such there be, or if there is no such newspaper, then in some newspaper of general circulation, published in one of the counties in which said district is situated, said newspaper to be designated by the board. Such notice shall be substantially in the following form:

Notice of the Filing of the Commissioner's Report of Protection District of
the County of

Notice is hereby given that the commissioners of the protection district of the county of, did on the day of, 19...., file their report of the assessment of benefits and award of damages with the clerk of the board of supervisors of said county, which said report is now on file in the office of said board of supervisors in the city of, said county, and that said report will be heard by said board at their office on the day of, 19...., at the hour of M. Said report and the survey, map, plans and specifications of the improvements mentioned therein are hereby referred to for further particulars. All persons interested are hereby required to show cause, if any they have, at the time fixed for said hearing, why such report should not be adopted and confirmed by said board of supervisors, and the improvements therein referred to constructed. All objections shall be in writing, signed by the person objecting; and filed with the clerk of said board at or before the time above mentioned.

(Signed),

Clerk of the board of supervisors of county.

[Amendment approved March 23, 1911, Stats. 1911, p. 449.]

Objections to report. Action of supervisors final.

§ 16. Any person interested may file with the clerk of said board, at or before the time fixed for the hearing, a written objection to said report or any part thereof, or to the survey, map, plans, or specifications for the proposed improvements, or to the making of such proposed improvements. At the time fixed for such hearing or at any other time to which the hearing may be adjourned, the board of supervisors shall hear all objections so filed, if any, and pass upon the same, and shall proceed to pass upon such report, and may confirm, correct or modify the same, or may take such advice in regard to the survey, map, plans and specifications as is authorized by section 6 of this act, or may order the commissioners to make a new assessment, report and plat, which shall be filed, heard and acted upon in the same manner and on like notice, as in the case of an original report. The action of the board upon the report and objections thereto, and upon the survey, map, plans and specifications, shall be final and conclusive as to all matters which they might have remedied or avoided; and no assessment shall be set aside, except upon such hearing, for any error, defect or informality therein or in the proceedings prior thereto, where the district has been legally formed and notice of the hearing of the report has been given as herein prescribed. When such report has been adopted and confirmed, said board may by order entered upon its minutes discharge said commissioners, and their authority shall thereupon cease. [Amendment approved March 23, 1911, Stats. 1911, p. 449.]

Powers and duties of board of supervisors relative to taxes and assessments.

§ 17. After said report has been adopted as provided in the preceding section, the board of supervisors, if they consider the sum to be raised for the payment of the expenses of such work or improvement too great to be properly expended in one year, or too great to be raised in one year by assessments against the property of such protection district, may, by order entered upon its minutes, provide that any part of such expenses shall be raised or expended in one year, and that such assessments shall continue for a number of years sufficient to raise by assessment, and expend, the total sum required by such report for the work or improvement. When the board has determined the sum to be assessed for each year, and the number of years that such assessment shall continue, they shall cause the clerk of the board of supervisors to forward to the tax collector of the county in which such district is situated, a certified copy of the report, assessment, and plat as adopted and confirmed by the said board of supervisors, together with a certified copy of the order of said board, fixing the sum to be raised by such assessment each year and the number of years such assessment shall continue, and from and after the filing of such certified copy the charges assessed upon each piece of land or improvement thereon for the first year shall become due and payable immediately and shall constitute a lien thereon; and thereafter the assessments for the succeeding years shall become due and payable on the first day of October of each year, and shall, upon becoming due and payable, constitute a lien upon the land or improvements upon which it is assessed. Before such sums become delinquent, the board of supervisors shall direct the county treasurer to transfer from the money then in the general fund of such county to the fund raised by such assessment, a sum of money to be named in the order, great enough to pay the assessment made against the county for that year for such work and improvements.

Special fund. Payments from.

§ 18. All moneys paid upon such assessments either by property owners or by the county or counties affected, shall be placed in the county treasury of the county in which such protection district was organized, to the credit of a special fund to be known as the protection district improvement fund; and shall be used only to pay the expense and cost of constructing the improvements described in the survey,

map, plans and specifications adopted by the board of supervisors; provided, that any surplus remaining after the construction thereof shall be paid into the current expense fund. Payments from said fund shall be made upon demands prepared, presented, allowed and audited in the same manner as demands upon the funds of the county. [Amendment approved March 23, 1911, Stats. 1911, p. 450.]

Duty of tax collector.

§ 19. Upon the filing of such certified copy of such report, assessment plat, and order with the tax collector of the county, as prescribed in section eighteen hereof, the county tax collector shall give notice, by ten days' publication in a newspaper printed in the county, that the assessment list of Protection District has been filed in his office, with the date of such filing; that the amounts entered thereon are due and payable; that if not paid on or before the first Monday in January next ensuing, the same will become delinquent and will be collected as are delinquent taxes. He shall note on said assessment list all assessments paid, give receipts as in the payment of taxes, and shall pay all money collected into the county treasury at the same time and in the same manner as money collected for taxes is paid into said treasury. All subsequent collections of assessments shall be made in the same manner above set forth, and the tax collector shall annually (after the first year), immediately after the first day of October, publish a notice containing all the statements required to be made as hereinbefore in this section set forth, and the same proceedings shall be had as upon the collection of the first assessment.

Delinquent assessments.

§ 20. When said assessments have become delinquent the tax collector of such county shall proceed to collect such delinquent assessments, with five per cent added thereon, and pay the same, including the five per cent so collected, over to the county treasurer, in the same manner as state and county taxes are collected and paid over; and for the purpose of collecting such assessments and delinquent assessments all of the provisions of chapter seven, title nine, part three, of the Political Code not in conflict with any of the provisions of this act are hereby made applicable to the collection of assessments and delinquent assessments in such protection districts.

Refund of unused assessments.

§ 20½. Assessments levied and collected under the terms of this act, if unused and unapplied for a period of one year after the day on which said assessments become due and payable, may be refunded by the board of supervisors in the manner provided by law for the refund of state and county taxes. [New section added May 26, 1917. In effect July 27, 1917, Stats. 1917, p. 1219.]

Protection district tax levy.

§ 21. The board of supervisors shall, at the time of making the levy of taxes for county purposes for each year, levy a tax upon the real estate in each protection district in their county sufficient in amount to raise the amount of money which will be needed for the current year for maintaining and repairing the works and improvements of said district. Any tax upon the lands within said district, levied either for the purposes specified in section seventeen or for the purposes specified in this section, shall be assessed against said lands in proportion to the benefits to be derived by said lands as shown by the report of the commission adopted by the board of supervisors as hereinbefore provided for. Said tax, when levied, shall be entered upon the assessment roll and collected in the same manner as state and county taxes. When the same is collected, it shall be placed in the treasury of the county to the credit of the current expense fund of said district, and shall be used only for the purpose for which it was raised. Payments shall be made from said fund in the same manner as from the

improvement fund of the district. [Amendment of May 11, 1919. In effect July 22, 1919, Stats. 1919, p. 462.]

This section was also amended March 23, 1911, Stats. 1911, p. 450.

Notice of award of damages. Notice to unknown owners, how given.

§ 22. When sufficient money is in such Protection District Fund to pay for the property taken and damaged, according to the award of damages made in the report adopted by the board of supervisors, as provided in section seventeen hereof, the clerk of the board of supervisors shall notify the owner, possessor, or occupant of any land or improvement thereon to whom damages shall have been awarded, that such award has been made, and the amount thereof, and that upon such person filing a claim and tendering a conveyance of any property to be taken, such claim will be allowed and such damages paid. Such notice shall be given by depositing such notice in the post office at the county seat of such county, postage prepaid, addressed to such owner, possessor, or occupant, if his name be known. In case the property is unoccupied, and the name of the owners is unknown, or in case such unoccupied property is set down as belonging to unknown owners for the reasons given in section fourteen hereof, such notice shall be delivered to the sheriff or to a constable, who shall serve the same by posting a copy in a conspicuous place upon the property named in said notice, and indorse a certificate of service upon the original notice, and file the same with the clerk of the board of supervisors.

Proof of service.

§ 23. Whenever the clerk of the board of supervisors or other officer is, by this act, empowered to serve any notice by mailing, a certificate of such mailing, in conformity to the provisions of this act and filed with the records of such supervisors, shall be sufficient proof of such service.

Institution of proceedings to procure right of way.

§ 24. If any award of damages is not accepted within fifteen days after the mailing or posting of such notice, it shall be deemed as rejected by the property owner, and thereupon the board of supervisors may direct proceedings to procure the right of way to be instituted, in the name of the county, by the district attorney, under and as provided in title seven, part three, of the Code of Civil Procedure, against all non-accepting property owners; and when thereunder the right of way is procured, the work or improvement must be commenced as hereinafter provided. In such suit no informality in the proceedings of the board of supervisors, or in the proceedings of the commissioners, shall vitiate said suit, but the said order of the board of supervisors, directing the district attorney to bring suit, shall be conclusive proof of the regularity thereof; and the said suit shall be determined by the court or jury in accordance with the rights of the respective parties as shown in court, independent of said proceedings before said board of supervisors or before said commissioners.

Procedure when right of way is defective.

§ 25. If any right of way, attempted to be acquired by virtue of this act, shall be found to be defective from any cause, the board of supervisors may again institute proceedings to acquire the right of way as in this act provided, or otherwise, or may purchase the same and include the cost thereof in the expenses of such work or improvement.

Work may be done by contract. Bids. Notice. Bond.

§ 26. The board of supervisors shall determine the amount of work to be done in each year and the place where such work is to be done, and may let a contract for any portion of such work that they may think proper. When the work is let by contract,

either as a whole work or for a portion thereof, the board shall give notice, by publication thereof, not less than ten days, in a newspaper published in such county, calling for bids for the construction of such work, or of any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. Said notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening said proposal, and how such sealed proposals shall be addressed, which, at the time and place appointed, shall be opened, and, as soon thereafter as convenient, the board shall let said work, either in portions or as a whole, to the lowest responsible bidder; or they may reject any and all bids and readvertise for proposals. Any person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said county for the use of such protection district, for double the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the board of supervisors.

What improvements may be made.

§ 27. The improvements made under this act may include the widening, deepening, changing and straightening of the channels of innavigable streams, watercourses or washes, the construction of new channels therefor, and the construction of levees, banks, dikes, conduits, ditches and canals for the conveyance of the waters of such streams, watercourses or washes, or for confining such streams, watercourses, or washes to their channels; and said work may be done either within or without the boundaries of the district, as may be necessary in order to properly prevent the overflow of said water and protect the land in said district from damage and secure a free outlet for such streams, watercourses, and washes. [Amendment approved March 23, 1911, Stats. 1911, p. 451.]

Money may be advanced out of the general fund.

§ 28. If, at any time, in the opinion of the board of supervisors, the expenditure of money is absolutely necessary to the welfare of such protection district, and there is no money in the fund of such district to make such necessary expenditure, or the money in such fund is insufficient to make such necessary expenditure, then the board of supervisors may advance such money out of the general fund of the county, and the same shall be a credit to the county as a payment of the assessments against the county to that extent; or if such money advanced shall exceed the assessments against the county, then as soon as there is sufficient money in the fund of such protection district to pay the excess, the board of supervisors shall direct the county treasurer to transfer to the general fund from the fund of such protection district, a sum great enough to balance the accounts.

Act liberally construed.

§ 29. The provisions of this act shall be liberally construed to promote the objects thereof.

This act shall take effect and be in force from and after its passage.

The amendatory act of 1911 also contained the following provision:

§ 11. This act shall take effect and be in force immediately; provided, however, that the same shall not apply to or affect any proceedings that may be pending for the organization of a protection district under the provisions of the act which is hereby amended; but, as to any proceedings so pending at the time this act takes effect, the provisions of said act hereby amended as existing prior to this amendment shall continue in force until such district is formed, or the board of supervisors have refused to form the same.

The code commissioners say of the act of 1880: "Unconstitutional in some respects. (Hutson v. Woodbridge Protection District, 79 Cal. 90, 16 Pac. 549, 21 Pac. 435.) Probably superseded by 1895, p. 247."

1. Constitutionality — Delegation of power.—The act is not unconstitutional because of the delegation to commissioners of the power to view the land, make estimates and report the result to the board, which retains the power to hear and determine the amount of the assessment.—*Barnes v. Board of Supervisors*, 13 Cal. App. 760, 110 Pac. 820.

2. Same—Not double taxation.—The act is not unconstitutional on the ground that it involves double taxation.—*Barnes v. Board of Supervisors*, 13 Cal. App. 760, 110 Pac. 820.

2a. Same—Not a "municipal affair."—The restraining of floods is more than a municipal affair when their injurious effects reach beyond the municipal boundaries, and in such case the amendment of 1909 to the protection district act of 1895, authorizing the inclusion of municipal territory in such districts, does no violence, when such is the case, to the reserved rights of the municipality.—*Pasadena Park Impr. Co. v. Lelande*, 175 Cal. 511, 515, 166 Pac. 341.

3. Not a public corporation.—A protection district formed under the authority of the present act is not a public corporation, but no more than an assessment district to pay for improvements benefiting the property assessed.—*Pasadena, etc., Co. v. Lelande*, 175 Cal. 511, 166 Pac. 341.

3a. Same.—The whole scope of the protection district act of 1895 and its 1909 and 1911 amendments is to authorize the board of supervisors of the county to create an assessment district to pay the cost according to benefits of improving and rectifying the channels of innavigable streams and water courses, and the prevention of overflows therefrom.—*Pasadena Park Impr. Co. v. Lelande*, 175 Cal. 511, 512, 166 Pac. 341.

4. Same—Quo warranto will not lie.—A protection district formed under this act has no corporate existence except its name, and has no de facto existence, and quo warranto will not lie.—*Harpham v. Board of Supervisors*, 41 Cal. App. 192, 182 Pac. 324.

4a. Same—Same.—The rule that the validity of the organization of de facto irrigation and reclamation districts can not be attacked by private individuals but only by quo warranto applies to protection districts.—*Barnes v. Board of Supervisors*, 13 Cal. App. 760, 110 Pac. 820.

See, also, *Keech v. Joplin*, 157 Cal. 1, 106 Pac. 222.

5. Authority of supervisors limited to lands of district.—Under sections 5, 7, 9, 10 and 11 of the act the authority of the supervisors in the formation of a protection district is confined to the limits of the district.—*Rudel v. Los Angeles Co.*, 118 Cal. 281, 50 Pac. 400.

6. Lands within municipality may be included.—Lands within a municipality may be included in a protection district formed

under the authority of this act.—*Pasadena, etc., Co. v. Lelande*, 175 Cal. 511, 166 Pac. 341.

7. Requirement as to notice not mandatory.—The provisions as to notice to property owners in sections 15 and 16 of the act, are mandatory and not merely directory, and failure to comply therewith invalidates the proceedings.—*Pasadena, etc., Co. v. Lelande*, 175 Cal. 511, 166 Pac. 341.

7a. Same—Notice sufficient.—Notice published under the authority of section 2 of the protection district act of 1895, which declares the nature of the work it is proposed to do, and also that it was proposed to do it in conformity with the act, the title of which was set forth in full, although unartificial because of its failure to declare in formal and precise terms that the board intended to create a protection district, is held to have conveyed adequate information to the property owner of the intention of the board and to have been sufficient.—*Pasadena Park Impr. Co. v. Lelande*, 175 Cal. 511, 514, 166 Pac. 341.

8. Review on certiorari—Proof of publication of notice of hearing.—Where on review of the proceedings for the formation of a protection district the record shows that the notice of hearing was published as required by law, and a finding to that effect was made, and not disputed, the fact that the affidavit of publication was subsequently filed does not prove or tend to prove that the board did not have sufficient and proper evidence of publication before them, and can not affect the validity of the finding.—*Barnes v. Board of Supervisors*, 13 Cal. App. 760, 110 Pac. 820.

8a. Necessity of notice—Sections 16 and 17 mandatory.—The provisions of sections 16 and 17 are mandatory and not merely directory, and a failure to give the notice therein required invalidates the proceedings thereunder.—*Pasadena Park Impr. Co. v. Lelande*, 175 Cal. 511, 520, 166 Pac. 341.

9. Same—Presumption as to acts of supervisors.—The court will presume on petition for writ of review that when the petition for the formation of a district was filed the board of supervisors required and received evidence as to the genuineness of the signatures, and that the signers were "property holders of the district."—*Barnes v. Board of Supervisors*, 13 Cal. App. 760, 110 Pac. 820.

10. Same—Want of jurisdiction shown.—Certiorari lies against the proceedings of the board of supervisors who exceeding their jurisdiction in treating a petition to form a storm water district as a petition to form a district under this act, and fixing a date for a hearing prior to any time within which a hearing could be had under the statute.—*Harpham v. Board of Supervisors*, 41 Cal. App. 192, 182 Pac. 324.

11. Resolution of intention—Purpose to form protection district sufficiently shown.—A resolution of intention declaring that it is the intention of the board to improve and rectify the channel of an innavigable stream "in conformity with an act of the

legislature entitled an act to provide for the formation of protection districts," etc., is sufficient, although it should have stated in formal and precise terms the intention to form a protection district.—*Pasadena, etc., Co. v. Lelande*, 175 Cal. 514, 166 Pac. 341.

12. Petition—Proof of genuineness of signatures.—To require proof of the genuineness of the signatures of the petitioners for the formation of a protection district, and that they are property owners of the district, at the time of the filing of the petition, is the natural order of procedure contemplated by the statute, and there seems to be no reason for repeating such proof at the hearing of objections by property owners.—*Barnes v. Board of Supervisors*, 13 Cal. App. 760, 110 Pac. 820.

13. Hearing of objections limited to objections specified.—At the hearing of objections of property owners the board of supervisors are not required to do more than hear evidence upon the objections specified.—*Barnes v. Board of Supervisors*, 13 Cal. App. 760, 110 Pac. 820.

14. Filing of affidavit of publication.—The statute does not require the filing of the affidavit of publication of notice of the hearing before the order for the formation of the district is made, although that is the natural course.—*Barnes v. Board of Supervisors*, 13 Cal. App. 760, 110 Pac. 820.

14a. Adoption of survey, maps.—The provisions of section 6 of the act of 1895 as amended in 1911, as to adoption of survey, maps, etc., of a protection district, contemplate merely a tentative and not a final adoption, and amounts to no more than approval of the plans.—*Pasadena Park Impr. Co. v. Lelande*, 175 Cal. 511, 517, 166 Pac. 341.

15. Power to change or alter boundaries.—The act gives the supervisors power to change or alter the boundaries of the pro-

posed protection district to conform to the needs of the district, and can not be said to lose their jurisdiction by making the description more definite and certain, leaving the identity of the land the same.—*Barnes v. Board of Supervisors*, 13 Cal. App. 760, 110 Pac. 820.

16. Natural stream can not be changed to injury of lands not included in district.—The formation of a protection district is no justification for changing a natural water course so as to cause an increase of flow in another water course to the injury of lands not included in the protection district so formed, and the supervisors may be enjoined.—*Rudel v. Los Angeles County*, 118 Cal. 281, 50 Pac. 400.

17. Same — Right of action against county.—An action may be maintained against a county for damages for injury to private property caused by the formation of a protection district.—*Elliott v. Los Angeles Co.*, 60 Cal. Dec. 157, 191 Pac. 899.

18. Same—Same—Allegation as to power of county to form district not required.—In an action for damages from the diversion of storm waters from their natural channel on to plaintiff's land by a protection district, it is not necessary to allege the right of the county to form a district, since the county has that power as a matter of law.—*Elliott v. Los Angeles Co.*, 60 Cal. Dec. 157, 191 Pac. 899.

19. Action to restrain assessment—Estoppel in pais must appear on face of complaint.—In a suit to restrain a protection district from casting an invalid assessment upon the lands of the district, unless the facts establishing an estoppel in pais appear on the face of the complaint itself, the defense is not available to defendants without special plea by answer.—*Pasadena Park Impr. Co. v. Lelande*, 175 Cal. 511, 521, 166 Pac. 341.

PROTECTION DISTRICT ACT OF 1907.

ACT 3642—An act providing for the organization and government of districts for the protection of the lands of farming or other communities or neighborhoods within this state from overflow or damage from the waters of any innavigable stream, watercourse, canyon, or wash extending by, through, or over such communities or neighborhoods, and to provide for the acquisition of lands, rights of way, and other property by purchase, gift, or condemnation, and for extending, straightening, locating, improving, and maintaining the channels of such streams, watercourses, canyons, or washes, and confining said waters in such channels and preventing the overflow thereof; and for the construction by such districts of the necessary works for said purposes.

History: Approved February 23, 1907, Stats. 1907, p. 16. Amended March 21, 1907, Stats. 1907, p. 850.

Protection districts, organization.

§ 1. Whenever fifty, or a majority of the owners who are also the owners of a majority of the lands of any farming or other community or neighborhood within this state, which lands lie in one body and are liable to overflow or damage from the waters of any innavigable stream, watercourse, canyon, or wash extending by, through, or over such community or neighborhood, and may be protected by the same system of

works, desire to provide for the protection of such lands from said damage, they may propose the organization of a protection district under the provisions of this act, and when so organized, such district shall have the powers, rights, and duties conferred, or which may be conferred by law upon such protection districts. The equalized county assessment-roll next preceding the presentation of a petition for the organization of a protection district under the provisions of this act, shall be prima facie evidence of ownership for the purposes of this act; provided, that no person who has received or acquired ownership of land within such proposed district for the purpose of enabling him or her to join in such petition or to become an elector of said district, shall be competent to sign such petition or vote at any election held for the purpose of its organization. Such illegal signing, however, shall not invalidate such petition when there shall be found a sufficient number of other legal petitioners.

Petition for formation of district. Bond. Publication.

§ 2. In order to propose the organization of a protection district, a petition shall be presented to the board of supervisors of the county in which the lands of the community or neighborhood and within the proposed district, or the greater portion thereof, are situated, signed by the required number of owners of lands within such proposed district, as above provided, which petition shall set forth and particularly describe the proposed boundaries of such district and the purposes of such organization, and shall pray that the same be organized under the provisions of this act. The petitioners must accompany the petition with a good and sufficient bond, to be approved by the said board of supervisors, in double the amount of the probable cost of organizing such district, conditioned that the obligors will pay all the cost in case such an organization will not be effected. The petition shall be presented at a regular meeting of said board of supervisors, and shall have been published for at least two weeks before such presentation, in some newspaper of general circulation in said community or neighborhood and printed and published in the county where the petition is presented, together with a notice stating the date of the meeting of said board at which the petition will be presented; and if any portion of the proposed district lies within another county, or counties, then said petition and notice shall be likewise published in such a newspaper printed and published in each of such counties.

Board of supervisors, hearing on petition. Boundaries.

§ 3. When such petition is presented, the board of supervisors shall hear the same, together with any objections in writing which may have been made and filed with said board by any owner of land within such proposed district, and also may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing said board shall make such changes in the proposed boundaries as may be deemed advisable by them in carrying out the purposes of this act, and shall define and establish such boundaries; but said board shall not modify said boundaries so as to exclude from such proposed district any land liable to damage from the overflow of such waters, as hereinbefore stated; nor shall said board modify said boundaries so as to include within such proposed district lands not liable to be damaged by such overflow; nor shall said board modify said boundaries so as to include any lands not included within the boundaries proposed in said petition. Any owner of lands adjacent to the borders of said district may, by his written application therefor filed with said board on or before the time of the hearing of said petition, in the discretion of said board have such lands included within said proposed district. Upon such hearing of said petition, the board of supervisors shall determine whether or not said petition complies with the requirements and purposes of this act, and must hear all competent and relevant testimony offered in support or in opposition thereto. Such determination shall be entered upon the minutes of said board of supervisors.

Election precincts. Directors.

§ 4. When under the provisions of the preceding sections the boundaries of the proposed district shall be defined and established by said board, they shall make an order dividing said district into three or five divisions, as nearly equal in size as practicable, which divisions shall be numbered consecutively and constitute election precincts for said district, and one director, who shall be an elector and resident of the precinct for which he is elected, shall be elected as hereinafter provided, by each precinct; provided that when requested in the petition, three directors, who shall be residents, and electors, of the district, shall be elected at large by the qualified electors of the district.

Notice of election. Publication. Ballots.

§ 5. Said board of supervisors shall then give notice of an election to be held in such proposed district, for the purpose of determining whether or not the same shall be organized under the provision of this act. Such notice shall designate a name for such proposed district and describe the boundaries of the precincts established therein, when more than one, together with a designation of the polling place and board of election for each precinct; and said notice shall be published for at least three weeks previous to such election, in a newspaper of general circulation within the boundaries of said proposed district and published within the county in which the petition for the organization of such district was presented; and if any portion of such proposed district is within another county, or counties, then such notice shall be published for the same length of time in such a newspaper published in each of said counties. Such notice shall require the electors to cast ballots which shall contain the words "Protection District—Yes." or, "Protection District—No," or words equivalent thereto, and also the names of one or more persons (according to the division of the proposed district as prayed for in the petition and ordered by the board), to be voted for to fill the office of director. Such election shall be conducted, as nearly as practicable, in accordance with the general laws of the state, but no particular form of ballot shall be required.

Who entitled to vote at elections held under act.

§ 6. No person shall be entitled to vote at any election held under the provisions of this act unless he possesses all the qualifications required of electors under the general election laws of the state, provided however, that any person who is an actual and bona fide owner of one or more acres of land located and situated in said district shall have the right to vote at any election held hereunder, whether he be a resident of said district or not. [Amendment approved March 21, 1907, Stats. 1907, p. 850.]

Canvass of vote. Declaration of result.

§ 7. Said election shall then be held, and the said board of supervisors shall, on the first Monday succeeding such election, if then in session, or at its next succeeding general or special session, proceed to canvass the votes cast thereat, and if upon such canvass it appear that at least two-thirds of all the votes cast are "Protection District—Yes," the board shall, by an order entered in its minutes, declare such territory duly organized as a protection district, under the name theretofore designated, and shall declare the persons receiving, respectively, the highest number of votes for directors, to be duly elected to such offices.

Copy of order to be recorded.

§ 8. Said board shall then cause a copy of such order, duly certified by the clerk of said board, to be immediately filed for record in the office of the county recorder of any county in which any portion of the lands embraced in such district is situated, and must also immediately forward a copy thereof to the clerk of the board of supervisors of each of said last mentioned counties; and no board of supervisors of any

county in which any portion of the lands embraced in such districts are situated, shall, after the date of the organization thereof, allow another district to be formed including any portion of said lands, without the consent of the board of directors of the district in which they are situated. From and after such filing, the organization of the district shall be complete.

Contest.

§ 9. Such election or organization may be contested by any person owning property within the proposed district liable to assessment. The directors elected at such election shall be made parties defendant. Such contest shall be brought in the superior court of the county where the petition for organization is filed; provided, that if more than one contest be pending, they shall be consolidated and tried together. The court having jurisdiction shall speedily try such contest, and determine upon the hearing whether the election was fairly conducted and in substantial compliance with the requirements of this act, and enter its judgment accordingly. Such contest may be brought within twenty days after the canvass of the vote and declaration of the result by the board of supervisors, but not later. The right of appeal is hereby given to either party to the record.

Directors, term of office.

§ 10. The directors elected at the election hereinbefore provided for, shall immediately enter upon their duties as such, upon qualifying in the manner herein provided. Said directors shall hold office, respectively, until their successors are elected and qualified.

Classification of directors. Organization. Secretary.

§ 11. Such directors shall, on the first Tuesday after their election after they shall have qualified, meet and classify themselves by lot into two classes, as nearly equal in number as possible, and the term of office of the class having the greatest number shall expire at the next general February election in this act provided for; and the term of office of the class having the lesser number shall terminate at the next general February election thereafter. After such classification said directors shall organize as a board, shall elect a president from their number and appoint a secretary, who shall each hold office during the pleasure of the board. The salary of the secretary and the amount of the bond to be given by him for the faithful performance of his duties shall be fixed by the board of directors.

Meetings. Minutes of proceedings. Financial statement.

§ 12. The board of directors shall hold regular meetings in their office, on the first Tuesday in March, June, September, and December, and such special meetings as may be required for the proper transaction of business; provided, that all special meetings must be ordered by a majority of the board, by an order entered in the minutes specifying the business to be transacted. Three days' notice to any member not joining in the order must be given by the secretary, and only the business specified in the order must be transacted at such special meeting. All meetings of the board must be public, and a majority of the members shall constitute a quorum for the transaction of business. A minute of all proceedings of the board shall be kept by the secretary, and all records of the board shall be open to public inspection during business hours. The board of directors shall, on the first Tuesday in March of each and every year, render, and immediately thereafter cause to be published, a verified statement of the financial condition of the district, showing particularly the receipts and disbursements of the last preceding year, together with the source of such receipts and purpose of such disbursements. Said publication shall be made at least once a week, for two weeks, in some

paper of general circulation within said district and published in the county where the office of the board of directors of such district is situated.

Conduct of affairs of district. Acquisition of land.

§ 13. The board of directors shall have the power, and it shall be their duty, to manage and conduct the business and affairs of the district; to make and execute, in the name of the district, all necessary contracts; to adopt a seal for the district, to be used in the attestation of proper documents; to provide for the payment from the proper fund of all the debts and just claims against the district; to employ and appoint engineers to survey, plan, locate, and supervise the construction of works necessary for the protection of the lands within said district from damage by overflow from the waters of said stream, watercourse, canyon, or wash, as hereinbefore stated, and to estimate the cost of such works and the land needed for right of way, also to construct, maintain, and keep in repair all works necessary for the purpose of such protection. The board and its agents and employees shall have the right to enter upon any land to make surveys, and may relocate the necessary protection works for the purpose of protecting the lands of said district from damage by the overflow of the waters of said stream, watercourse, canyon or wash. Said board shall also have the right to acquire, hold, and possess, either by donation, purchase, or condemnation, in the name and on behalf of said district, any land or other property necessary for the construction, use, maintenance, repair, and improvement of any works for the purpose of protection, as herein provided. The board may establish equitable by-laws, rules, and regulations necessary or proper for carrying on the business herein provided for.

Change of boundaries.

§ 14. The board of directors, when they deem it advisable, for the best interests of the district, and the convenience of the electors thereof, may at any time, but not less than sixty days before an election to be held in the district, change the boundaries of the election precincts of the district; provided, such changes shall be made to keep all the precincts as nearly equal in area and population as may be practicable. Such changes of boundaries of the precincts must be shown on the minutes of the board.

Condemnation proceedings.

§ 15. In case of condemnation proceedings, the board shall proceed, in the name of the district, under the provisions of Title VII, Part III, of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property which may be condemned, taken, or appropriated under the provisions of this act, is a public use, subject to the regulation and control of the state, in the manner prescribed by law.

Elections. Official bonds. Vacancies.

§ 16. In each district organized as herein provided, an election shall be held on the first Wednesday in February of each odd-numbered year, at which directors for the district shall be elected to fill the places of those whose terms then expire. The person receiving the highest number of votes for the office to be filled at such election is elected thereto. Within ten days after receiving their respective certificates of election, each of said persons shall qualify as such director by taking and subscribing the official oath and filing a bond, as herein provided. Each director shall execute an official bond in the sum of five thousand dollars, which shall be approved by the judge of the superior court of the county where the organization of the district was effected, and shall be recorded in the office of the county recorder of such county, and then, together with his official oath, filed with the secretary of the board of directors. All official bonds herein provided shall be in the form prescribed by law for the official bonds of county officers. If a vacancy shall occur in the office of director, the same shall be

filled by appointment by the remaining members of said board of directors. A director so appointed shall qualify within ten days after receiving notice of his appointment, as in said act provided, as if he were elected to such office, as hereinbefore provided; and he shall hold such office only until the next regular election for such district, and until his successor is elected and qualified.

Organization of board. Office, place of.

§ 17. On the first Tuesday in March next following the election, the directors who shall have been elected at the general February election, and those whose terms have not expired shall meet and organize a board, elect a president and appoint a secretary, who shall each hold office during the pleasure of the board. The full term of office of directors is hereby fixed at four years. The office of the board of directors of any such district may be established by said board of directors at the county seat, of the county where the same was organized, or at some proper and convenient place within the district, but after the office is once established it shall not be changed without giving notice thereof by posting in three public places in the district and by publishing a similar notice for thirty days in some newspaper of general circulation throughout said district and published in the county where the same is organized.

Notice of election. Election officers, appointment.

§ 18. Fifteen days before any election held under this act, subsequent to the organization of any district, the secretary of the board of directors shall cause notices to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a similar notice of the same in a conspicuous place in the office of said board, specifying the polling-places of each precinct, and the names of the members of the boards of election, for each precinct. Prior to the time for posting such notices, the board must appoint for each precinct, from the electors thereof, one inspector and one judge and one clerk, who shall constitute a board of election for such precinct. If the board fail to appoint a board of election, or the members appointed, or any of them, do not attend at the opening of the polls on the morning of election, the electors of the precinct present at that hour, may appoint the board, or supply the place of an absent member thereof. The board of directors must in its order appointing the board of election, designate the place within each precinct where the election must be held.

Organization of election board. Polls, when opened and when closed.

§ 19. The inspector is chairman of the election board, and may administer all oaths required in the progress of an election; and appoint judges and clerks, if, during the progress of the election, any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The board of election for each precinct must, before opening the polls, appoint two persons to act as clerks of the election. Before opening the polls, each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be open at 9 o'clock a. m., and be kept open until 4 o'clock p. m., when the same must be closed. The provisions of the general election laws concerning the form of ballots to be used shall not apply to elections held under this act.

Voting.

§ 20. Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain opened, and shall be conducted, as nearly as practicable, in accordance with the provisions of the general election laws of this state.

Election returns.

§ 21. As soon as all the votes are read off and counted, a certificate shall be drawn up on each of the papers containing the poll-list and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to fill which he was voted for, which number shall be written in figures and in words at full length. Each certificate shall be signed by the clerk, judge and the inspector. One of said certificates with the poll-list and the tally paper to which it is attached, shall be retained by the inspector, and preserved by him at least six months. The ballots shall be strung upon a cord or thread by the inspector, during the counting thereof, in the order in which they are entered upon the tally-list by the clerks; and said ballots together with the other of said certificates, with the poll-list and tally paper to which it is attached, shall be sealed by the inspector in the presence of the judges and clerks and indorsed "election returns of (naming the precinct) precinct" and be directed to the secretary of the board of directors and shall be immediately delivered by the inspector, or by some other safe and responsible carrier designated by said inspector, to said secretary, and the ballots shall be kept unopened for at least six months, and if any person be of the opinion that the vote of any precinct has not been correctly counted, he may appear on the day appointed for the board of directors to open and canvass the returns and demand a recount of the vote of the precinct that is so claimed to have been incorrectly counted.

Canvass of returns.

§ 22. No list, tally paper, or certificate, from any election, shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election to canvass the returns. If, at the time of meeting, the returns from each precinct in the district in which the polls were opened have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and computing the vote of the district for each person voted for and declaring the result thereof.

Declaration of result.

§ 23. The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such result, which statement must show: (a) the whole number of votes cast in the district and in each precinct thereof if there be more than one precinct; (b) the names of the persons voted for; (c) the office to fill which each person was voted for; (d) the number of votes given in each precinct to each of such persons; (e) the number of votes given in each division for the office of director. The board of directors must declare the persons having the highest number of votes given for each office. The secretary must immediately make out and deliver to such person a certificate of election, signed by him, and authenticated with the seal of the board.

Number of directors.

§ 24. In any district the board of directors thereof may, upon the presentation of a petition therefor, by a majority of the land owners of said district, order that on and after the next ensuing general election for the district, there shall be either three or five directors, as said board may order, and they shall be elected, by the district at large, or by divisions, as so petitioned and ordered; and after such order such directors shall be so elected.

Titles to district property, where vested.

§ 25. The legal title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such protection district, and shall be held by such district in trust for and is hereby dedicated and set apart to the uses and purposes set forth in this act. And said board is hereby authorized and empowered to hold, use, acquire, manage, occupy, and possess said property as herein provided. The said board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this act, in the name of such protection district, to and for the uses and purposes herein expressed, and to institute and maintain or defend any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this act, or acquired in pursuance thereof. And in all courts, actions, suits, or proceedings, the said board may sue, appear, and defend in person or by attorneys, and in the name of such protection district.

Employment of engineer. Plans for work. Bond election. Additional money.

§ 26. Upon the completion of the organization of such district and of its board of directors, as hereinbefore provided for, said board of directors shall employ a civil engineer, or engineers, to make a plan, or plans, for the construction of works necessary for the protection of the land of such district from overflow and damage as hereinbefore specified; and also an estimate of the cost of said works and of the lands and property necessary to be taken or injured by such construction; which engineer, or engineers, shall report in writing to said board such plans and estimates, when completed; and said board of directors, after securing such plans and estimates, shall determine therefrom and such other information and evidence as they may deem proper to secure, the probable cost of the construction of said works and the lands and property necessary to be taken and injured by such construction. Said board shall thereupon call a special election, at which shall be submitted to the electors of such district the question whether or not the bonds of said district shall be issued in the amount so determined. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper of general circulation within said district and published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, the amount of bonds proposed to be issued; and said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; provided, that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds—Yes" or "Bonds—No," or words equivalent thereto. If a majority of the votes cast are "Bonds—Yes," the board of directors shall cause bonds in said amount to be issued; if a majority of the votes cast at any bond election are "Bonds—No," the result of such election shall be so declared and entered of record. Whenever, also, the construction fund in this act provided for has been exhausted by expenditures therefrom as in this act authorized, and it is necessary to raise additional money for said purpose, the board of directors may estimate and determine the amount of the money necessary to be raised and thereupon submit to said electors the question of raising the same by the issuance of bonds in the same manner and with like effect as at such previous election hereinbefore provided for.

Bonds, when payable. Interest rate.

§ 27. All bonds issued under the provisions of this act shall be payable in gold coin of the United States, in ten series as follows, to wit: On the first day of January after the expiration of eleven years, five per cent of the whole number of said bonds; on the first day of January, after the expiration of twelve years, six per cent; on the first day of January after the expiration of thirteen years, seven per cent; on the first day of January after the expiration of fourteen years, eight per cent; on the first day of January after the expiration of fifteen years, nine per cent; on the first day of January after the expiration of sixteen years, ten per cent; on the first day of January after the expiration of seventeen years, eleven per cent; on the first day of January after the expiration of eighteen years, thirteen per cent; on the first day of January after the expiration of nineteen years, fifteen per cent; on the first day of January after the expiration of twenty years, sixteen per cent; that the several enumerated percentages being of the entire amount of the bond issue, but each bond must be made payable at a given time for its entire amount and not for a percentage. Said bonds shall bear interest at a rate to be determined by said board of directors and specified in said notice of election not to exceed six per cent per annum, payable semi-annually, on the first day of January and July of each year. The principal and interest shall be payable at the place designated therein. Said bonds shall be each of the denomination of not less than one hundred dollars nor more than five hundred dollars; shall be negotiable in form, signed by the president and secretary, and the seal of the board of directors shall be affixed and the bonds of each issue shall be numbered consecutively, and bear date at the time of their issue. Coupons for the interest shall be attached to each bond, signed by the secretary. Said bonds shall express on their face that they were signed by authority of this act, stating its title and date of approval, and shall also so state the number of the issue of which such bonds are a part. The secretary shall keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser.

Sale of bonds. Publication. Proposals.

§ 28. The board may sell said bonds from time to time, in such quantities as may be necessary and most advantageous to raise money for the construction of said works, the acquisition of said property and rights, and otherwise to fully carry out the objects and purposes of this act. Before making any sale the board shall, at a meeting, by resolution, declare its intention to sell a specified amount of the bonds, and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given, by publication thereof at least three weeks in some newspaper of general circulation in said district and published in the county where the office of the said board is located, and in any other newspaper, at its discretion. The notice shall state that sealed proposals will be received by the board at their office, for the purchase of bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals, and award the purchase of the bonds to the highest responsible bidder; provided, however, that they may reject all bids. Said board shall in no event sell any of said bonds for less than the par value thereof.

Bonds a lien against property.

§ 29. Any bonds issued under the provisions of this act shall be a lien upon the property of the district and the lien for the bonds of any issue shall be a preferred lien to that for any subsequent issue. Said bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district; and all the real property in the district shall be and remain liable to be assessed for such payments as hereinafter provided.

Assessments to be submitted to electors.

§ 30. In case the money raised by the sale of bonds issued be insufficient or in case the bonds be unavailable for the completion of the works, and additional bonds be not voted, the board of directors shall provide for the completion of said works by levying assessments therefor; provided, however, that such levy of assessment shall not be made except first an estimate of the amount required for the purpose thereof has been made by said board, and the question as to the making of said levy submitted to a vote of the electors of the district. Before such question is submitted, the order of submission shall be entered in the minutes of the board, stating the amount to be levied and the purpose therefor, and if submitted at a special election said order shall, in addition, fix the day of election. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper of general circulation in said district and published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, and the amount of assessment proposed to be levied. Said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; provided, that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words, "Assessment—Yes," or "Assessment—No," or words equivalent thereto. If a majority of the votes cast are "Assessment—Yes," the board of directors shall proceed in the manner prescribed in the sections herein provided for raising funds for the annual requirements; if a majority of the votes cast are "Assessment—No," the result of such election shall be so declared and entered of record.

New bonds.

§ 31. Whenever a district organized under the provisions of this act, has outstanding bonds, coupons, or other evidences of indebtedness, the payment thereof may be provided for by the issuance of new bonds, in the manner hereinafter prescribed.

Funding of bonds.

§ 32. In order to propose the funding of such bonds, coupons, or other evidences of indebtedness a petition shall be presented to the board of directors of such protection district, signed by a majority of the owners of the land situated therein, which petition shall set forth the amount of bonds, coupons, or other evidences of indebtedness proposed to be funded, together with a general description of same, also the total amount of the bonds sought to be issued (provided, that said amount shall in no case be greater than the total amount of bonds, coupons, and other evidences of indebtedness then outstanding and sought to be funded), together with a full and complete statement of the purposes for which such bonds are to be used. On presentation of such petition, the same shall be entered in full on the minutes of the board.

Special election.

§ 33. Immediately after the recording of said petition the board shall call a special election, at which shall be submitted to the electors of such district the question whether or not the bonds of such district in the amount set forth in said petition shall be issued. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper of general circulation in said district and published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks before such elec-

tion. Such notice must specify the time of holding the election, the amount of bonds proposed to be issued, the amount of bonds, coupons or other evidences of indebtedness proposed to be funded, together with a general description of the same. Said election shall be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions governing the election of officers; provided, that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election, the ballots shall contain the words "Bonds—Yes" or "Bonds—No" or words equivalent thereto. If two-thirds of the votes cast are "Bonds—Yes" the board of directors shall cause bonds in said amount to be issued. If more than one-third of the votes cast at such election are "Bonds—No," the result of such election shall be so declared. The result in either case shall be duly entered of record.

Refunding bonds, how payable.

§ 34. If said bonds are directed to be issued as herein provided for the board of directors shall cause the same to be issued. Said bonds shall be made payable in gold coin of the United States, in twenty series, as follows, to wit: On the first day of January after the expiration of twenty years, five per cent of the whole amount of said bonds, and on the first day of January of each year thereafter, an equal amount of such bonds until all shall have been finally paid; that is, five per cent of the whole issue of bonds—not five per cent of each bond, each being wholly payable when due. Said bonds shall bear interest at a rate to be determined by the board of directors and specified in the notice of election not to exceed six per cent per annum, payable semi-annually on the first day of January and July of each year. They shall be negotiable in form, and shall be of denominations of not less than \$100 nor more than \$500. Said bonds shall in all respects conform to the form of bonds prescribed hereinbefore.

Must sell at par.

§ 35. It shall be unlawful to sell or exchange any of the bonds as herein provided for less than their par value.

County treasurer to be custodian.

§ 36. When bonds issued under section 34 of this act shall be duly executed, they shall be deposited with the treasurer of the county wherein the district was organized, who is hereby authorized and charged with the duty of receiving the same, and his receipt shall be taken therefor, and he shall be charged with the same on his official bond, and shall have no power to deliver the same in exchange for any bonds or indebtedness proposed to be funded until the bonds or evidence of indebtedness proposed to be funded shall have been surrendered to him, and he shall have been ordered by the board of directors of the district, by an order duly entered on their records to make such delivery. When such bonds have been exchanged for other bonds, coupons, or other evidences of indebtedness, the treasurer shall at once cancel such other bonds, coupons, or other evidences of indebtedness by writing across the face thereof "canceled" and the date of cancellation, and report the same with his next regular report hereinafter provided for to the board of directors of the district designating the bond, coupon, or other evidence of indebtedness, so that it can be identified, the date of cancellation, and the person from whom it was received, together with the amount paid therefor, or the terms of exchange, in case there is an exchange.

Bonds may be sold from time to time.

§ 37. When said bonds are issued for the purpose of sale to the highest bidder, the board may sell said bonds from time to time, in such quantities as may be necessary and most advantageous, to raise money to pay bonds, coupons, or other evidences of indebtedness of the district which were outstanding at the time of the filing of said

petition, and generally described therein. Resolution of intention must be declared, and notice given, and the sale conducted in the manner prescribed in this act for the sale of original bonds. Said bonds shall in no event be sold for less than their par value including accrued interest. All moneys realized from the sale of bonds, issued under the provisions of this section, shall be paid into the hands of the said treasurer, and by him kept in a separate fund, known as the funding fund, and shall be applied exclusively to the payment of bonds, coupons, or other evidences of indebtedness of the district outstanding at the time of the filing of the said petition, and described therein.

Exchange of bonds.

§ 38. The bonds issued as herein provided for may be exchanged, at not less than their par value, including accrued interest, for any of the indebtedness set out and described in the notice of the election authorizing the issuance of said refunding bond. A contract for such exchange may be made by the board of directors upon such terms as said board may deem advisable; provided, that they must receive not less than par value for the bonds so exchanged.

Estimate of amount needed.

§ 39. The board of directors must, on or before the first meeting of the board of supervisors in September of each year, furnish the supervisors and the auditor of the county wherein the district is situated, or if such district is not entirely within one county, then as hereinafter provided, to the supervisors and auditors of each county in which any portion of the district is situated, an estimate in writing of the amount of money needed for the purposes of the district for the ensuing fiscal year. The amount must be sufficient to raise the annual interest on the outstanding bonds, to pay the estimated cost of repairs, the incidental expenses of the district, and in any year in which any bonds shall fall due, an amount sufficient to pay the principal of the outstanding bonds as they mature; and in any year when an assessment or installment thereof is payable, sufficient to pay the same.

Division of estimate.

§ 40. If such district is in more than one county the total estimate as provided for in the preceding section shall be divided by the board of directors in proportion to value of the real property of the district in each county. This value must be determined from the equalized values of the last assessment-rolls of such counties. When such division of the estimate has been made, the board shall furnish the supervisors and auditors of the respective counties a written statement of that part of the estimate apportioned to that county.

Protection district tax levy.

§ 41. The board of supervisors of each county wherein is situated a district or any part thereof organized under the provisions of this act, must, annually, at the time of levying county taxes, levy a tax to be known as the “—— (name of district) protection district tax,” sufficient to raise an amount reported to them as herein provided, by the board of directors. The supervisors must determine the rate of such tax by deducting fifteen per cent for anticipated delinquencies from the total assessed value of the real property of the district within the county as it appears on the assessment-roll of the county, and then dividing the sum reported by the board of directors as required to be raised by the remainder of such total assessed value.

Duty of county auditor.

§ 42. The tax so levied shall be computed and entered on the assessment-roll by the county auditor, and if the supervisors fail to levy the tax as provided in the preceding section, then the auditor must do so. Such tax shall be collected at the same time and

in the same manner as state and county taxes, and when collected shall be paid into the county treasury for the use of said district.

Levying and collecting tax.

§ 43. The provisions of the Political Code of this state prescribing the manner of levying and collecting taxes and the duties of the several county officers with respect thereto, are, so far as they are applicable and not in conflict with the specific provisions of this act, hereby adopted and made a part hereof. Such officers shall be liable upon their several official bonds for the faithful discharge of the duties imposed upon them by this act.

Repository of funds.

§ 44. If the district is in more than one county, the treasury of the county wherein the district was organized shall be the repository of all the funds of the district. For this purpose the treasurers of any other counties wherein is situated a portion of said district, must, at any time, not oftener than twice each year, upon the order of the board of directors, settle with said board and pay over to the treasurer of the county where the district was organized, all moneys in their possession belonging to the district. Said last-named treasurer is authorized and required to receive and receipt for the same, and to place the same to the credit of the district. He shall be responsible upon his official bond for the safekeeping and disbursement, in the manner herein provided, of these and all other moneys of the district held by him.

Apportionment of funds.

§ 45. The following funds are hereby created and established, to which the moneys properly belonging shall be apportioned by the treasurer, to wit: Bond fund, construction fund, general fund, funding fund.

Duty of county treasurer.

§ 46. The treasurer shall pay out of the same only upon warrants of the board of directors, signed by the president and attested by the secretary. The treasurer shall report in writing to the board of directors whenever requested by them or the secretary, the amount of money in the fund, the amount of receipts since his last report, and the amounts paid out.

Redemption of bonds.

§ 47. Upon the presentation of the coupons due, to the treasurer, he shall pay the same from the bond fund. Whenever said fund shall amount to the sum of ten thousand dollars in excess of an amount sufficient to meet the interest coupons due, the board of directors may direct the treasurer to pay such an amount of said bonds not due as the money in said fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising in the manner hereinbefore provided for the sale of bonds, for sealed proposals for the redemption of said bonds. Said proposal shall be opened by the board in open meeting, at a time to be named in the notice, and the lowest bid for said bonds must be accepted; provided, that no bond shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of said bonds shall desire to have the same redeemed, as herein provided for, said money shall be invested by the treasurer, under the direction of the board, in United States bonds, or the bonds of the state, which shall be kept in said "bond fund" and may be used to redeem said district bonds whenever the holders thereof may desire.

Bids for construction of works.

§ 48. After the adoption of a plan of works and providing funds for the construction of the same, and securing the necessary rights of way as in this act provided, the board

of directors shall give notice by publication thereof not less than twenty days in one newspaper published in each of the counties composing the district (provided, a newspaper is published therein) and in such other newspapers as they may deem advisable, calling for bids for the construction of such work, or of any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. Said notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening said proposals, which, at the time and place appointed shall be opened in public; and as soon as convenient thereafter the board shall let said work, whether in portions or as a whole, to the lowest responsible bidder; or they may reject any and all bids and readvertise for proposals, or may proceed to construct the work under their own superintendence. Contracts for the purchase of material shall be awarded to the lowest responsible bidder. Any person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said district for its use for fifty per cent of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer, and be approved by the board.

Warrants.

§ 49. No claim shall be paid by the treasurer until allowed by the board, and only upon a warrant signed by the president, and countersigned by the secretary.

Construction fund.

§ 50. The cost and expense of purchasing and acquiring property and constructing the works and improvements herein provided for, shall be wholly paid out of the construction fund.

Pay of directors.

§ 51. Each member of the board of directors shall receive three dollars per day and actual and necessary expenses for each day's attendance at the meetings of the board, and while engaged in official business under the order of the board.

Officers must not be interested in contracts.

§ 52. No director or any officer named in this act shall in any manner be interested, directly or indirectly in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Special assessments, elections for.

§ 53. The board of directors may at any time, when in their judgment it may be deemed advisable call a special election and submit to the qualified electors of the district the question, whether or not a special assessment shall be levied for the purpose or raising money to be applied to any of the purposes provided in this act. Such assessment may be payable in one or more equal annual installments as may be determined by the board of directors and specified in the notice of the election hereinafter provided. Such election must be called upon the notice prescribed and the same shall be held and the result thereof determined and declared in all respects in conformity with the provisions of section 26 of this act. The notice must specify the amount of money proposed to be raised and the purpose for which it is intended to be used. At such

election the ballots shall contain the words "Assessment—Yes" or "Assessment—No." If two-thirds or more of the votes cast are "Assessment—Yes," the board shall proceed in the manner hereinbefore prescribed for raising the annual funds by taxation. When collected, the money shall be paid into the district treasury for the purposes specified in the notice of such special election.

Limit of debt.

§ 54. The board of directors shall have no power to incur any debt or liability whatever either by issuing bonds or otherwise, in excess of the express provisions of this act; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void; except for the purposes of organization, or for any of the purposes of this act, the board of directors may, before the collection of the first assessment, incur an indebtedness not exceeding in the aggregate the sum of five thousand dollars, and may cause warrants of the district to issue therefor, bearing interest at the rate of not to exceed seven per cent per annum.

Tax exemption.

§ 55. The rights of way and works belonging to any protection district organized under this act shall not be taxed for state and county or municipal purposes.

Suit to determine validity of bonds.

§ 56. The board of directors shall within thirty days after the issue of any bonds in this act provided for bring an action in the superior court of the county wherein is located the office of such board, to determine the validity of any such bonds. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of summons for at least once a week for three weeks in some newspaper of general circulation in said district and published in the county where the action is pending, such paper to be designated by the court having jurisdiction of the proceedings. Jurisdiction shall be complete within thirty days after the full publication of such summons in the manner herein provided. Any one interested may, at any time before the expiration of said thirty days, appear, and by proper proceedings contest the validity of such bonds, and may in the same action or proceeding contest the validity of any bonds, coupons, or other evidences of indebtedness referred to in the petition for funding and proposed to be funded, and if any such bonds, coupons, or evidences of indebtedness be shown to be invalid, then the same shall only be funded for the amount of such proportion thereof as equals the fair and reasonable value of whatever the district may have received in consideration therefor, together with the unpaid interest thereon, and the amount of such proportion shall be determined and adjudicated by the court in said action or proceeding. Said action shall be speedily tried and judgment rendered declaring such bonds so contested either valid or invalid. Either party shall have the right to appeal from such judgment.

Same.

§ 57. If no such proceeding shall have been taken by the board of directors, then at any time after thirty days and within ninety days after the issue of any bonds under the provisions of this act, any district assessment payer may bring an action in the superior court of the county wherein the office of the board of directors is located, to determine the validity of any such bonds. The board of directors shall be made parties defendant and service of summons shall be made on the members of the board personally, if they can be found within the state; if not, then by publication for three weeks in some newspaper of general circulation in said district and published in the county wherein the office of the board of directors is located, such newspaper to be designated by the court having jurisdiction. Before such publication can be had, an affidavit, in the usual form shall be made, showing such facts. Said board shall have the right to

appear and contest such action. Notice of said action shall be given by publication of summons therein in the same manner and for the same time as required in the preceding section hereof in actions brought by the publication of such summons in the manner herein provided. Any district assessment payer or any one interested may appear and defend said action, and thereafter the same proceedings shall be had in such action as are hereinbefore provided for in the preceding section hereof in actions brought by the board of directors, and the same matters determined and adjudicated by the court therein. Such action shall be speedily tried, with the right of appeal to either party.

Proceedings.

§ 58. At the hearing of such proceedings the court shall hear and determine the sufficiency of all proceedings.

Actions consolidated.

§ 59. If more than one action shall be pending at the same time concerning similar contests in this act provided for, they shall be consolidated and tried together.

Rules of pleadings.

§ 60. The court hearing any of the contests herein provided for, in inquiring into the regularity, legality, or correctness of such proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by the Code of Civil Procedure, which are not inconsistent with the provisions of this act, are applicable to all actions or proceedings herein provided for. The costs of any hearing or contest herein provided for may be allowed and apportioned between the parties or attached to the losing party, in the discretion of the court.

Contest.

§ 61. No contest of any matter or thing herein provided for shall be made other than within the time and manner herein specified.

Boundaries may be changed.

§ 62. The boundaries of any protection district now organized or hereafter organized under the provisions of this act, may be changed, and tracts of land which were included within the boundaries of such district at or after its organization under the provisions of this act, may be excluded therefrom, in the manner herein prescribed; but neither such change of the boundaries of the districts nor such exclusion of lands from the district shall impair or affect its organization, or its right in or to property, or any of its rights or privileges of whatever kind or nature; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which said district was or may become liable or chargeable, had said change of its boundaries not been made, or had not such land been excluded from the district.

Petition for exclusion from district.

§ 63. The owner or owners in fee of one or more tracts of land which constitute a portion of a protection district, may, jointly or severally, file with the board of directors of the district a petition, praying that such tract or tracts, and any other tracts contiguous thereto, may be excluded and taken from said district. The petition shall state the grounds and reasons upon which it is claimed that such lands should be excluded, and shall describe the boundaries thereof, and also the lands of such petitioner, or petitioners which are included within such boundaries; but the description of such lands need not be more particular or certain than is required when the lands are entered in the assessment-book by the county assessor. Such petition must be

acknowledged in the same manner and form as is required in the case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such a conveyance.

Notice of petition. What notice shall state.

§ 64. The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least two weeks in some newspaper of general circulation in the district and published in the county where the office of the board of directors is situated, and if any portion of such territory to be excluded lie within another county or counties, then said notice shall be so published in a newspaper published within each of said counties; or, if no newspaper be published therein, then by posting such notice for the same time in at least three public places in said district, and in case of the posting of said notices, one of said notices must be so posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in, or who may be affected by such change of the boundaries of the district, to appear at the office of said board at a time named in said notice, and show cause, in writing, if any they have, why the change of the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be at the regular meeting of the board next after the expiration of the time for the publication of the notice.

Hearing of petition. Expenses of hearing.

§ 65. The board of directors, at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition, and all evidence of proofs that may or shall be introduced by or on behalf of the petitioner or petitioners, and all objections to such petition that may or shall be presented in writing by any person showing cause as aforesaid, and all evidence and proofs that may be introduced in support of such objections. Such evidence shall be taken down, in shorthand, and a record made thereof and filed with the board. The failure of any person interested in said district, other than the holders of bonds thereof outstanding at the time of the filing of said petition with said board, to show cause, in writing, why the tract or tracts of land mentioned in said petition should not be excluded from said district, shall be deemed and taken as an assent by him to the exclusion of such tract or tracts of land, or any part thereof, from said district; and the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof. The expenses of giving said notice and of the aforesaid proceedings shall be paid by the person or persons filing such petition.

Board may grant or deny petition to exclude.

§ 66. If upon the hearing of any such petition, no evidence or proofs in support thereof be introduced, or, if the evidence fail to sustain said petition, or if the board deem it not for the best interests of the district, that the lands, or some portion thereof, mentioned in the petition, should be excluded from the district, the board shall order that said petition be denied as to such lands; but if the said board deem it for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if no person interested in the district show cause in writing why the said lands, or some portion thereof, should not be excluded from the district, or if, having shown cause, withdraws the same, or upon the hearing fails to establish such objections as he may have made, then it shall be the duty of the board

to, and it shall forthwith, make an order that the lands mentioned and described in the petition, or some defined portion thereof, be excluded from said district.

Holders of bonds may consent to exclusion. Assent, how given.

§ 67. If there be outstanding bonds of the district at the time of the filing of said petition, the holders of such outstanding bonds may give their assent, in writing, to the effect that they severally consent that the lands mentioned in the petition, or such portion thereof as may be excluded from said district by order of said board, may be excluded from the district; and if said lands, or any portion thereof, be thereafter excluded from the district, the lands so excluded shall be released from the lien of such outstanding bonds. The assent must be acknowledged by the several holders of such bonds in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such conveyance. The assent shall be filed with the board, and must be recorded in the minutes of the board; and said minutes, or a copy thereof, certified by the secretary of said board, shall be admissible in evidence, with the same effect as the said assent, and such certified copy thereof may be recorded in the office of the county recorder of the county wherein said lands are situated.

Minutes of board to be recorded.

§ 68. In the event the said board of directors shall exclude any lands from said district upon petition therefor, it shall be the duty of the board of directors to make an entry in the minutes of the board, describing the boundaries of the district, should the exclusion of said lands from said district change the boundaries of said district, and for that purpose the board may cause a survey to be made of such portions of the district as the board may deem necessary; and a certified copy of the entry in the minutes of the board excluding any land, certified by the president and secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district; but said district, notwithstanding such exclusion, shall be and remain a protection district as fully to every intent and purpose as it would be had no change been made in the boundaries of the district, or had the lands excluded therefrom never constituted a portion of the district.

Office of director becomes vacant, when.

§ 69. If the lands excluded from any district under this act shall embrace the greater portion of any division or divisions of such district, then the office of director for such division or divisions shall become and be vacant at the expiration of ten days from the final order of the board excluding said lands; and such vacancy or vacancies shall be filled by appointment by the remainder of the board from the district at large. A director appointed as above provided, shall hold his office until the next regular election for said district, and until his successor is elected and qualified.

Election of directors. Election precincts.

§ 70. At least thirty days before the next general election of such district, the board of directors thereof shall make an order dividing said district into three or five divisions, as the case may require, as nearly equal in size as may be practicable, which shall be numbered first, second, third, and so on, and one director shall be elected by each division. For the purposes of elections in such district, the said board of directors must establish a convenient number of election precincts, and define the boundaries thereof, which said precincts may be changed from time to time, as the board of directors may deem necessary.

Guardians and executors may sign petitions.

§ 71. A guardian, an executor, or an administrator of an estate, who is appointed as such under the laws of this state, and who as such guardian, executor, or admin-

istrator, is entitled to the possession of the lands belonging to the estate which he represents, may on behalf of his ward, or the estate which he represents, upon being thereto properly authorized by the proper court, sign and acknowledge the petition in section 63 of this act mentioned, and may show cause, as herein provided, why the boundaries of the district should not be changed.

Excluded lands not released from bonded debt, when.

§ 72. Nothing herein provided shall, in any manner, operate to release any of the lands so excluded from the district from any obligation to pay, or any lien thereon, of any valid outstanding bonds or other indebtedness of said district at the time of the filing of said petition for the exclusion of said lands, but upon the contrary, said lands shall be held subject to said lien, and answerable and chargeable for and with the payment and discharge of all of said outstanding obligations at the time of the filing of the petition for the exclusion of said land, as fully as though said petition for such exclusion were never filed and said order of exclusion never made; and for the purpose of discharging such outstanding indebtedness, said lands so excluded shall be deemed and considered as part of said protection district the same as though said petition for its exclusion had never been filed or said order of exclusion never made; and all provisions which may have been resorted to to compel the payment by said land of its quota or portion of said outstanding obligations, had said exclusion never been accomplished, may, notwithstanding said exclusion, be resorted to to compel and enforce the payment on the part of said land of its quota and portion of said outstanding obligations of said protection district for which it is liable, as herein provided. But said land so excluded shall not be held answerable or chargeable for any obligation of any nature or kind whatever, incurred after the filing with the board of directors of said district of the petition for the exclusion of said lands from the said district; provided, that the provisions of this section shall not apply to any outstanding bonds, the holders of which have assented to the exclusion of such lands from said district, as hereinbefore provided.

Change of boundaries does not impair contracts.

§ 73. The boundaries of any protection district now organized or hereafter organized under the provisions of this act may be changed in the manner herein prescribed, but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; nor shall it affect, impair, or discharge any contract, obligation, lien or charge for, or upon which it was or might become liable or chargeable, had such change of its boundaries not been made.

Petition to include other lands.

§ 74. The owners of one-half or more of any body of lands adjacent to the boundary of a protection district, which are contiguous and which taken together, constitute one tract of land, may file with the board of directors of said district a petition, in writing, praying that the boundaries of said district may be so changed as to include therein said lands. The petition shall describe the boundaries of said parcel or tract of land, and shall also describe the boundaries of the several parcels owned by the petitioners, if the petitioners be the owners, respectively, of distinct parcels, but such descriptions need not be more particular than they are required to be when such lands are entered by the county assessor in the assessment-book. Such petition must contain the assent of the petitioners to the inclusion within said district of the parcels or tracts of land described in the petition, and of which said petition alleges they are, respectively, the owners; and it must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

Notice of filing of petition.

§ 75. The secretary of the board of directors shall cause a notice of the filing of such petition to be given and published in the same manner and for the same time that notices of special elections for the issue of bonds are required by this act to be published. The notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in, or that may be affected by such change of the boundaries of the district, to appear, at the office of said board, at a time named in said notice, and show cause in writing, if any they have, why the change in the boundaries of said district, as proposed in the said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioners shall advance to the secretary sufficient money to pay the estimated costs of all proceedings arising from such petition.

Hearing of petition. Failure to show cause.

§ 76. The board of directors, at the time and place mentioned in the said notice, or at such other time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all the objections thereto, presented in writing by any person showing cause as aforesaid why said proposed change of the boundaries of the district should not be made. The failure by any person interested in said district, or in the matter of the proposed change of its boundaries, to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to a change of the boundaries of the district as prayed for in said petition, or to such a change thereof as will include a part of said lands. And the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of the boundaries that they may include the whole or any portion of the lands described in said petition.

Condition precedent to granting petition.

§ 77. The board of directors to whom such petition is presented, may require, as a condition precedent to the granting of the same, that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated (the several amounts to be determined by the board), as such petitioners or their grantors would have been required to pay to such district as assessments, had such lands been included in such district at the time the same was originally formed.

Board may accept or reject petition.

§ 78. The board of directors, if they deem it not for the best interests of the district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, shall order that the petition be rejected. But if they deem it for the best interests of the district that the boundaries of said district be changed and if no person interested in said district or the proposed change of its boundaries shows cause, in writing, why the proposed change should not be made, or if, having shown cause, withdraws the same, the board may order that the boundaries of the district be so changed as to include therein the lands mentioned in said petition or some part thereof. The order shall describe the boundaries as changed, and shall also describe the entire boundaries of the district as they will be after the change thereof as aforesaid is made; and for that purpose the board may cause a survey to be made of such portions of such boundary as is deemed necessary.

Resolution of change.

§ 79. If any person interested in said district of the proposed change of its boundaries, shall show cause as aforesaid why such boundaries should not be changed, and

shall not withdraw the same, and if the board of directors deem it for the best interests of the district that the boundaries thereof be so changed as to include therein the lands mentioned in the petition, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the exterior boundaries of the lands which the board are of the opinion should be included within the boundaries of the district when changed.

Election. Ballots.

§ 80. Upon the adoption of the resolution mentioned in the last preceding section, the board shall order that an election be held within said district, to determine whether the boundaries of the district shall be changed as mentioned in said resolution; and shall fix the time at which such election shall be held, and cause notice thereof to be given and published. Such notice shall be given and published, and such election shall be held and conducted, the returns thereof shall be made and canvassed, and the result of the election ascertained and declared, and all things pertaining thereto conducted in the manner prescribed by this act in case of a special election to determine whether bonds of a protection district shall be issued. The ballots cast at said election shall contain the words "For change of boundary" or "Against change of boundary," or words equivalent thereto. The notice of election shall describe the proposed change of the boundaries in such manner and terms that it can readily be traced.

Result of election.

§ 81. If at such election a majority of all the votes cast at said election shall be against such change of the boundaries of the district, the board shall order that said petition be denied, and shall proceed no further in that matter. But if a majority of such votes be in favor of such change of the boundaries of the district, the board shall thereupon order that the boundaries be changed in accordance with said resolution adopted by the board. The said order shall describe the entire boundaries of said district, and for that purpose the board may cause a survey of such portions thereof to be made as the board may deem necessary.

Order of change to be recorded.

§ 82. Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain a protection district, as fully, and to every intent and purpose, as if the lands which are included in the district by the change of the boundaries, as aforesaid, had been included therein at the original organization of the district.

Petition to be recorded in minutes.

§ 83. Upon the filing of the copies of the order, as in the last preceding section mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition.

Guardians and executors may sign.

§ 84. A guardian, an executor or an administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward, or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in section 74 of this act mentioned, and may show cause why the boundaries of the district should not be changed.

Precinct redivision.

§ 85. In case of the inclusion of any land within any district by proceedings under this act, the board of directors must, at least thirty days prior to the next succeeding general election, make an order redividing such district, into three or five precincts, as the case may require, as nearly equal in size as may be practicable, which shall be numbered first, second, third and so on, and one director shall thereafter be elected by each precinct.

Reduction of bonded indebtedness.

§ 86. Whenever the board of directors of a protection district heretofore organized, or hereafter organized under the provisions of this act, shall determine the authorized bonded indebtedness of such protection district is greater than such district is liable to need to complete its system as planned, and there be no outstanding bonds, the board of directors may call a special election for the purpose of voting upon a proposition to reduce such bonded indebtedness to such sum as the board may determine to be sufficient for such purpose.

Notice of election therefor. Ballots.

§ 87. Notice of the said election shall be given in the same manner as provided in this act, in relation to calling special elections for issuance of bonds. The notice of election must state the amount of the authorized bonded indebtedness of such district, and the amount to which it is proposed to reduce the same; also, the date on which said election will be held, and the polling-places, as established by said board of directors. The ballots cast at said election shall contain the words, "For reducing bonds—Yes," or "For reducing bonds—No." When the vote in canvassed by the board of directors and entered of record, if a majority of the votes cast shall be "For reducing bonds—Yes," then in that event the board of directors shall only be empowered to issue or sell the amount of bonds as was stipulated in the said notice of such special election; but if a majority of said votes are not "For reducing bonds—Yes," then the authority to issue bonds shall remain the same as before said special election was held.

Assent to reduction of debt, manner of.

§ 88. In case there be outstanding bonds of any district desiring to take advantage of the provisions of section 86 and 87 of this act concerning reduction of bonded indebtedness, the assent of such bondholders may be obtained for such reduction of the bonded indebtedness, in the same manner as provided in section 67 of this act. If such assent is obtained in the manner therein provided, then, and in that event, such district shall be empowered to take advantage of all the provisions of said sections of this act, but not otherwise. No reduction of the bonded indebtedness, as in this act provided, shall in any manner affect any order of court that may have been made, adjudicating and confirming the validity of said bonds.

Unsold bonds.

§ 89. Whenever there remains in the hands of the board of directors of any protection district organized under the provisions of this act, after the completion of its protection system, and the payment of all demands against such district, any bonds voted to be issued by said district, but not sold, and not necessary to be sold for the raising of funds, for the use of such district, said board of directors may call a special election for the purpose of voting upon a proposition to destroy said unsold bonds, or so many of them as may be deemed best, or may submit such proposition at a general election.

Notice of election for destruction of unsold bonds.

§ 90. Such election shall be held in the same manner as other elections held under the provisions of this act. A notice of such election shall be given in the same manner as provided in section 26 of this act in relation to calling special elections for the issuance of bonds. The notice of election must state the amount of the bonded indebtedness of such district authorized by the vote of the district, the amount of the bonds remaining unsold, and the amount proposed to be destroyed, and the date on which such election is proposed to be held, and the polling-places as fixed by the board of directors. The ballots to be cast at such election shall contain the words "For destroying bonds—Yes" and "For destroying bonds—No," and the voter must erase the word "No" in case he favors the destruction of bonds, otherwise the word "Yes."

Destruction of bonds.

§ 91. When the vote is canvassed by the board of directors and entered of record, if a two-thirds majority of the votes cast should be found to be in favor of the destruction of said bonds, then the president of the board, in the presence of a majority of the members of the board, must destroy the bonds so voted to be destroyed, and the total amount of bonds so destroyed and canceled shall be deducted from the sum authorized to be issued by the electors of said district, and no part thereof shall thereafter be reprinted or reissued.

Act not to repeal other acts.

§ 92. This act is not intended to supersede or repeal any other act for the organization of reclamation or protection districts, or for protection purposes, but is intended as an independent and alternative means of effecting the protection herein provided for where the provisions of this act are most applicable or desirable to the parties interested.

§ 93. This act shall take effect and be in force from and after its passage.

See the previous act, Act 3641.

DISSOLUTION OF PROTECTION DISTRICTS.**ACT 3643—An act to provide the manner in which protection districts may be dissolved.**

History: Approved June 12, 1915, in effect August 11, 1915, Stats. 1915, p. 1493. Prior act of February 17, 1899, Stats. 1899, p. 13, providing for dissolution for non-user of franchise will be found in chapter on Reclamation Districts, Act 3902.

Protection districts may be dissolved.

§ 1. Any protection district organized under the provisions or an act entitled "Act 3639—to protect lands not recognized as swamp lands, from overflow (stats. 1880, page 55)," and all acts supplementary thereto or amendatory thereof, including an act entitled, "Act 3641—an act to provide for the formation of protection districts in the various counties of this state, for the improvement and rectification of the channels of unnavigable streams and water courses for the prevention of the overflow thereof, by widening, deepening and straightening and otherwise improving the same, and to authorize the board of supervisors to levy and collect assessments from the property benefited, to pay the expenses of the same (approved March 27, 1895, Stats. 1895, p. 247)," and all acts supplementary thereto or amendatory thereof including an act entitled, "An act to amend an act entitled 'An act to provide for the formation of protection districts in the various counties of this state for the improvement and rectification of the channels of unnavigable streams and water courses, for the prevention of the overflow thereof by widening, deepening and straightening and otherwise improving the same and to authorize the boards of supervisors to levy and collect assessments from the property benefited, to pay the expenses of the same, and enlarging the discretion of

boards of supervisors concerning such districts and improvements (approved March 20, 1903), ' ' and all acts supplementary thereto or amendatory thereof, including an act entitled, "An act to amend section five and section ten of an act entitled, 'To provide for the formation of protection districts in the various counties of this state, for the improvement and rectification of the channels of unnavigable streams and water courses, for the prevention of the overflow thereof by widening, deepening and straightening and otherwise improving the same, and to authorize the boards of supervisors to levy and collect assessments from the property benefited, to pay the expenses of the same (approved March 27, 1895), by enlarging the discretion of boards of supervisors concerning such districts and improvements and to include in said districts territories situated within municipal corporations (approved March 6, 1909), ' ' and all acts supplementary thereto or amendatory thereof, including an act entitled "An act to amend sections one, two, three, four, six, fifteen, sixteen, eighteen, twenty-one and twenty-seven of an act entitled, 'An act to provide for the formation of protection districts in the various counties of this state, for the improvement and rectification of the channels of unnavigable streams and water courses, for the prevention of the overflow thereof by widening, deepening and straightening and otherwise improving the same, and to authorize the boards of supervisors to levy and collect assessments from the property benefited, to pay the expenses of the same, ' ' (approved March 23, 1911), and all acts supplementary thereto or amendatory thereof, may be dissolved in the manner hereinafter provided.

Hearing on petition.

§ 2. Upon receiving a petition signed by the holders of title to the majority of acreage to real property in any protection district, requesting the dissolution of such district, the board of supervisors shall fix a time for hearing such petition, which shall be not less than thirty days after the receipt of such petition, and shall publish notice of such hearing by one insertion each week prior to such hearing in a daily, weekly or semi-weekly newspaper printed, published and circulated in said county and by posting notices thereof in three public places in said district.

At the time appointed for such hearing, or at any time to which the same may be adjourned, the board of supervisors shall hear and pass upon such petition, and may grant the same, if said petition be signed by the holders of title to the majority of acreage, to real property in any protection district.

Resolution of dissolution.

If such petition be granted the board of supervisors shall, by ordinance or resolution, order the dissolution of said district, and such district shall thereby be dissolved; provided, that if at the time of the dissolution of said district there be any outstanding bonded or other indebtedness of such district, then taxes for the payment of such bonded or other indebtedness shall be levied and collected the same as if such district had not been dissolved.

DISSOLUTION OF PROTECTION DISTRICT NO. 2.

ACT 3643a—An act to dissolve Protection District No. 2, of Yuba county, California, and providing for the liquidation and winding up of said dissolved district.

History: Approved March 21, 1907, Stats. 1907, p. 839.

CHAPTER 290.

PUBLIC BUILDINGS.

References: See tits. "Agriculture"; "Capitol"; "Ferry Depot"; "Harbor Commissioners"; "Insane Asylums"; "Prisons"; "Schools"; "University of California." Particular buildings, see particular title.

See, generally, tit. "Buildings."

CONTENTS OF CHAPTER.

- ACT 3655. COMPLETION OF UNFINISHED BUILDINGS—ACT 1887.
 3656. COMPLETION OF UNFINISHED BUILDINGS—ACT 1895.
 3657. STATE BUILDING ACT.
 3658. JOINT COUNTY AND MUNICIPAL BUILDINGS.
 3661. SAN FRANCISCO STATE BUILDING—BOND ISSUE.
 3663. SAN FRANCISCO STATE BUILDING—CONSTRUCTION, ETC.
 3664. GRANT OF SITES FOR STATE BUILDINGS BY FREEHOLDER CHARTER CITIES.

COMPLETION OF UNFINISHED BUILDINGS—ACT 1887.

ACT 3655—An act to provide for the completion of all unfinished county, city, city and county, town, and township buildings in the several counties, cities and counties, cities, and towns, throughout the state of California.

History: Approved March 10, 1887, Stats. 1887, p. 95. Amended

(1) March 11, 1891, Stats. 1891, p. 83; (2) March 11, 1893, Stats. 1893, p. 126; (3) March 26, 1895, Stats. 1895, p. 166.

Construction of unfinished buildings.

§ 1. In the event that the board of supervisors of the several counties, cities, and cities and counties of the state of California shall deem it expedient to continue the construction of any unfinished county, or city and county, or town, or township building or buildings now in the process of construction, they are hereby authorized and empowered to express such judgment, by resolution or order, in such form as they may deem proper; and for the purpose of raising the money necessary to complete said building or buildings the board of supervisors of the several counties, cities, and cities and counties of the state of California are hereby authorized and empowered to levy and collect, annually, for the fiscal year commencing July first, eighteen hundred and eighty-seven, and ending June thirtieth, eighteen hundred and eighty-eight, and each and every fiscal year thereafter during the eight fiscal years next ensuing, in the same manner and at the same times as other taxes in said counties, cities, and towns, and townships, and cities and counties are levied and collected, an ad valorem property tax on real and personal property within the said counties, or cities and counties, cities, towns, and townships, of ten cents on each one hundred dollars of value, as shown by the assessment rolls of said counties, cities, cities and counties, towns, and townships for the current fiscal year; provided, the moneys raised under the provisions of this act shall be expended only in the manner and for the purposes authorized by law or by the act or acts authorizing the construction of the building or buildings; and provided, further, that no part of said moneys shall be used for the purchase of carpets, furniture, fixtures, or other office furnishings of the rooms or offices completed and in use at the time of the passage of this act, nor for any furniture or other office fixtures or furnishings for the rooms or offices yet to be completed, save and except such office fixtures as are usually affixed to and constitute a part of the permanent structure or arrangement of such offices or rooms; and it is further provided, that whenever, in the judgment of the board of supervisors of the several counties, cities, and cities and counties, of the state of California, or of any person or persons, board or commission having charge of any building or buildings now in the process of construction, it shall be deemed necessary for the preservation of the building or buildings,

or convenient occupation thereof, or the improvement or maintenance of sanitary conditions therein, or the protection of life, to make repairs on said building or buildings, or alterations thereof not inconsistent with the accepted plan of the building or buildings, the board of supervisors, person or persons, board, or commission having legal charge of the same, shall have the power to expend in any one year on such repairs or alterations, exclusive of the cost of repairs or alterations on the roof or roofs thereof, the sum of ten thousand dollars, and no more; which sum may be expended without regard to any of the requirements of any act or acts authorizing the construction of the building or buildings, if the amount expended at any one time does not exceed the sum of one thousand dollars; but whenever an expenditure in excess of the sum of one thousand dollars should be required, it shall be made according to the provisions of the act or acts authorizing the construction of the building or buildings. [Amendment approved March 26, 1895, Stats. 1895, p. 166. In effect immediately.]

This section was also amended March 11, 1891, Stats. 1891, p. 83; and March 11, 1893, Stats. 1893, p. 126.

§ 2. All laws now in force, except in so far as they relate to the levy and collection of taxes for the completion of any county, or city and county, or city, or towns, or townships building or buildings, are hereby continued in full force and effect.

1. Superseded by Political Code.—Stats. 1871-72, p. 925, is superseded by sections 1543, 1617, 1674, Political Code, in so far as it originally applied to the erection of school buildings.—*Harris v. Cooley*, 171 Cal. 144, 147, 152 Pac. 300.

2. Definitions—"Building."—A "building" includes an iron fence around the grounds of the county court house.—*Swasey v. Shasta Co.*, 141 Cal. 392, 74 Pac. 1031.

COMPLETION OF UNFINISHED BUILDINGS—ACT 1895.

ACT 3656—An act concerning the completion of unfinished public buildings in any county, city, city and county, or town in this state, and permitting alterations of the original plans or designs for the construction thereof.

History: Approved March 26, 1895, Stats. 1895, p. 165.

Alterations may be made in plans of unfinished buildings.

§ 1. Where there are any unfinished public building or buildings now in process of construction in any county, city, city and county, or town in this state, the board of supervisors or other governing body of any county, city, city and county, or town, or any commission created by an act of the legislature, having in charge the construction of such unfinished building, shall have the right in the construction thereof to omit from the original or adopted plan therefor such part or parts as in their judgment they shall deem necessary to be left out; provided, no contract has been let for the construction of such part or parts. If, in the judgment of such officers, the public good requires, they may let contracts according to law for the construction, in whole or in part, of the unfinished portions of such public building or buildings in accordance with such altered plan. When the same shall have been construed in accordance with such altered plan, the building shall be deemed to have been completed.

Contracts made in accordance with altered plans valid.

§ 2. Whenever, during the construction of such public building or buildings, changes in the original plans or designs have heretofore been made, and contracts for the construction of the work, in whole or in part, in accordance with the altered plans or designs, have been entered into by the board of supervisors, or other governing body of any county, city, city and county, or town, or by the commission having the construction thereof in charge, the said alteration of the original plans or designs that have

been made and contracts for same that have been entered into, are hereby ratified, approved, and confirmed.

§ 3. This act shall take effect from and after its passage.

1. **Contract of San Francisco city hall commissioners validated.**—This act, it is conceded, validates the contract of the San Francisco city hall commissioners under the act of 1876.—*Laver v. Ellert*, 110 Cal. 221, 42 Pac. 806.

STATE BUILDING ACT.

ACT 3657—An act to regulate contracts on behalf of the state in relation to the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind and to repeal an act entitled, "An act to regulate contracts on behalf of the state in relation to erections and buildings," approved March 23, 1876.

History: Approved March 22, 1909, Stats. 1909, p. 656. Amended (1) June 14, 1913, in effect August 10, 1913, Stats. 1913, p. 844; (2) June 14, 1913, in effect August 10, 1913, Stats. 1913, p. 854; (3) June 8, 1915, in effect August 8, 1915, Stats. 1915, p. 1306. Prior act of March 23, 1876, Stats. 1875-76, p. 427, repealed by the present act.

State work under charge of engineering department.

§ 1. Whenever provision is made by law for the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind excepting improvements on the property of the state on the water front of the city and county of San Francisco under the jurisdiction of the board of state harbor commissioners, the total cost of which will exceed the sum of one thousand dollars, the same shall be under the sole charge and direct control of the department of engineering. Said department, before entering into any contract for the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind, shall prepare full, complete and accurate plans and specifications and estimates of cost, giving such directions for the same as will enable any competent mechanic or other builder to carry them out. The plans, specifications and estimates of cost must be approved by the advisory board of the department of engineering and the original draft thereof filed permanently in the office of the department of engineering before further action is taken. [Amendment of June 8, 1915. In effect August 8, 1915, Stats. 1915, p. 1306.]

This section was also amended June 14, 1913, Stats. 1913, p. 844.

Contract to lowest bidder. Registration of prospective bidders.

§ 2. Said department of engineering shall after the approval and filing of plans, specifications and estimates of cost, as in this act required, let such work by contract to the lowest responsible bidder or bidders upon public notice which shall be given as follows: Notice of such work must be published once a week for three consecutive weeks next preceding the day set for the receiving of bids in two trade papers of general circulation, one published in Los Angeles and one in San Francisco, devoted primarily to the dissemination of contract and building news among contracting and building material supply firms; provided, that if the work comes within the immediate supervision of the state engineer, in the record kept for that purpose the state engineer shall register any one desiring to be so registered for the purpose of becoming a prospective bidder upon state work, which registration shall be renewed on or before the beginning of each fiscal year, and whenever any state work is to be let by contract the state engineer shall cause a notice of the same to be mailed to each of the addresses so registered at least twenty-five days prior to the date set for the receiving of bids. In each case such notice must state the time and place for the receiving and opening of sealed bids and must also state that the bids will be required for the entire work and also, when advisable, for the performance of segregate parts of the entire work, such

segregation to be determined by the department of engineering and designated in such notice. [Amendment of June 8, 1915. In effect August 8, 1915, Stats. 1915, p. 1307.]

This section was also amended June 14, 1913, Stats. 1913, p. 844.

Opening of bids, etc. Contracts submitted to attorney general. Work may be done by day labor.

§ 3. On the day named in said public notice the department of engineering shall proceed to publicly open said sealed bids, and shall award such contract or contracts to the lowest responsible bidder or bidders. All bids shall be presented under sealed cover and shall be accompanied by cash, a bidder's bond, or a certified check made payable to the state engineer, for an amount equal to at least ten per cent of the amount of said bid and no bid shall be considered unless such cash, bond or check is enclosed therewith. Should the successful bidder to whom the contract is awarded fail to execute the same, such cash, bond or check shall be forfeited to the state of California and the same shall be the property of the state. All other cash, bonds and certified checks shall within ten days after the date of the award of said contract, be returned to the unsuccessful bidders who submitted the same. Such contract or contracts shall not be binding on the state until they are submitted to the attorney general and by him found to be in accordance with the provisions of this act, and his certificate thereon to that effect made. If in the opinion of such department of engineering the acceptance of the lowest responsible bid or bids shall not be for the best interests of the state, it may be lawful for them to reject all bids and advertise for others in the manner aforesaid. But after the approval of the plans, specifications and estimates of costs by the advisory board of the department of engineering, if, in the opinion of such department of engineering the acceptance of any bid or bids shall not be for the best interests of the state, or if in the opinion of such department of engineering the acceptance of any further bids after the rejection of all bids submitted shall not be for the best interests of the state, it may be legal for them to direct that the erection, construction, alteration, repair, or improvement of any state structure, building, road, or other state improvement of any kind, except as provided in section one of this act, shall be done by day's labor, under the direction and control of the department of engineering. Upon the approval of the advisory board, the state engineer or other duly authorized officers of the department of engineering may, when proceeding upon the basis of day's labor, let any subdivision or unit of said work by contract upon informal bids. All contracts shall provide that such department of engineering may, as hereinafter provided, and on the conditions stated, make any change in the plans and specifications. Certified copies of such contracts shall be filed with the controller and the board of examiners. [Amendment of June 8, 1915. In effect August 8, 1915, Stats. 1915, p. 1307.]

Change of plans after contract is let. Unit basis.

§ 4. After the contract or contracts are let no change shall be made to increase or diminish the cost of any contract in excess of five hundred dollars, except upon the approval of the advisory board of the department of engineering, and then only upon additional plans and specifications and estimates of cost being filed and approved, and amended contracts entered into and filed with the original contract. This section shall not be construed, in state road or highway work, to prevent the receipt of bids or the making of a contract upon a unit basis, that is, the bids compared upon the basis of the estimates of quantities of the work to be done, nor the increase or decrease of such quantities during the progress of the work by the department of engineering as may be deemed expedient by such department, nor the insertion of provisions in the contract for the performance of such extra work and the furnishing of such materials therefor by the contractor as may be required by such department for the proper completion or construction of the whole work contemplated; provided, that the bidders shall have had

equal opportunity of knowing what the terms proposed by the department of engineering for the performance of such extra work shall be. [Amendment of June 8, 1915. In effect August 8, 1915; Stats. 1915, p. 1308.]

No contract to exceed estimates.

§ 5. Except in unit basis contracts in state road or highway work, no contract or contracts shall be made exceeding in amount the estimates of costs approved by the advisory board of the department of engineering and no plans and specifications and estimates of cost including expense of advertising and inspection, shall be approved by said board requiring a greater expenditure of money than is appropriated for the specific purpose in the act authorizing the same. [Amendment of June 8, 1915. In effect August 8, 1915, Stats. 1915, p. 1309.]

Payments upon contracts.

§ 6. Payments upon contract shall be made as the department of engineering may prescribe upon estimates made and approved by the said department and audited by the board of examiners, but no payment shall be made in excess of ninety per cent of the percentage of actual work completed, to which has been added one-half of the value of material delivered on the ground and unused. The department of engineering shall withhold not less than ten per cent of the contract price until final completion and acceptance of the work. The controller shall draw his warrants upon estimates so made and approved by the department of engineering and audited by the board of examiners and the state treasurer shall pay the same.

Injury to state a felony.

§ 7. Any member of the advisory board or person employed under the department of engineering who shall knowingly perform any official act to the injury of the state, or any contractor or his agent or employee who shall knowingly permit the violation of the contract of such contractor to the injury of the state, or any agent or employee of any contractor who shall have knowledge of any work being done in violation of contract and does not immediately notify the department of engineering or the inspector upon said work in regard to the same is guilty of a felony and, upon conviction thereof, shall be confined in the state prison for not less than one year nor more than five years, and be liable to the state for double the amount the state may have lost, or be liable to lose by reason thereof.

When contractor is negligent.

§ 8. Whenever, in the opinion of the department of engineering, the work under any contract made in pursuance of this act, is neglected by the contractor or contractors, or the same is not prosecuted with diligence and force specified or intended in and by the terms of the contract, it shall be lawful for such department of engineering to make a requisition upon such contractor or contractors for such additional specific force, or for such additional specific material, to be brought into the work under such contract, or to remove improper materials from the grounds; of which action of said department of engineering due notice in writing of not less than five days, shall be served upon such contractor, or his or their agent having charge of the work. Such written notice may be served by personally delivering such notice to such contractor, or his agent having charge of the work, or by registered mail directed to such contractor or agent (the period of five days to run from the date of registration in the United States postoffice), or when such contractor or his agent has left the state or his address is unknown, by posting such notice in a conspicuous place upon the premises of work. If such contractor or contractors fail to comply with such requisition within five days, it shall be lawful for said department of engineering to employ upon such work the additional force, or supply the materials so specifically required as aforesaid,

or such part of either as they may deem proper, and to remove improper materials from the grounds; and it shall be the duty of such department of engineering to make separate estimates of all such additional force or materials so employed or supplied as aforesaid, and the amount so estimated shall be charged against said contractor or contractors, and deducted from his or their next, or any subsequent, estimate; or the same, or any part thereof not paid as aforesaid, may be recovered by action from such contractor or contractors and their sureties. [Amendment of June 8, 1915. In effect August 8, 1915, Stats. 1915, p. 1309.]

Time for completing work. Extensions of time. Bond covering hours of labor. No Chinese labor.

§ 9. In all contracts made under the provisions of this act, there shall be a provision in regard to the time when the whole, or any specified portion, of the work contemplated in said contract shall be completed, and also providing that for each and every day the same shall be delayed beyond such time or times so named, the said contractor or contractors shall forfeit and pay to the state a sum of money, to be fixed and determined in said contract, to be deducted from any payment or payments due, or to become due, to said contractor or contractors; provided, however, that the department of engineering may, in its discretion, grant such extensions of time as it may deem expedient and for the best interests of the state. Any such contract shall provide for the filing of a sufficient bond by the contractor to secure the payment of the claims of materialmen, mechanics, or laborers employed upon state work; a penalty of ten dollars per day to be forfeited to the state for each calendar day during which any laborer, workman or mechanic is employed or permitted to labor more than eight hours; a minimum compensation of not less than two dollars per day for labor; that no Chinese or Mongolian labor shall be employed and such other provisions as are now or may hereafter be provided by law. [Amendment of June 8, 1915. In effect August 8, 1915, Stats. 1915, p. 1309.]

Act of 1876 repealed.

§ 10. An act entitled "An act to regulate contracts on behalf of the state in relation to erections and buildings," approved March 23, 1876, and all acts amendatory thereto are hereby repealed, and all other acts or parts of acts in conflict with the provisions of this act are hereby repealed. Such repeal shall not affect, however, the operation of any other act heretofore passed, whether such act shall refer to the act hereby repealed or not, so as to exempt any public work from the provisions of this act.

Causes of action continued.

§ 11. All of the provisions of this act shall be so construed as to preserve and keep in full force and effect all causes of action and actions for penalties which have already accrued or may hereafter accrue under any contract, heretofore entered into, against any contractor or person under and by virtue of the provisions of said act entitled "An act to regulate contracts on behalf of the state in relation to erections and buildings," approved March 23, 1876, which is repealed by virtue of this act, and all such actions and causes of action may be prosecuted to final judgment and all such penalties may be imposed and collected under the provisions of said act so repealed to the same extent and in the same manner as though said act had not been repealed.

§ 12. This act shall take effect immediately.

1. **Scope of act.**—The state building act of 1909 gives the state engineering department charge of the construction of state buildings.—*Atkinson v. State Department of Engineering*, 165 Cal. 699, 133 Pac. 616.

2. **Estimates of cost required.**—Under

the act estimates of cost as to all work and materials to be included in the contract should be made, and estimates of the cost of omitted parts of the work should be deducted from the estimated cost of the entire work, and a contract is invalid

which exceeds the cost of the work covered thereby.—*Atkinson v. State Department of Engineering*, 165 Cal. 699, 133 Pac. 616.

3. Alternate schemes must be shown.—A notice for bids on the entire work according to plans and specifications, and on

portions of the work, but not showing the scheme of alternate bids based on the theory that portions of the work might be omitted, is insufficient.—*Atkinson v. State Department of Engineering*, 165 Cal. 699, 133 Pac. 616.

JOINT COUNTY AND MUNICIPAL BUILDINGS.

ACT 3658—An act to enable counties to join with incorporated cities and towns within such counties in the joint construction of public buildings to be used jointly for county and municipal purposes.

History: Approved May 29, 1913, in effect August 10, 1913, Stats. 1913, p. 331. Prior act of April 27, 1911, Stats. 1911, p. 1164, in substantially the same terms superseded by the present act.

Counties may join with cities in erecting public buildings.

§ 1. Whenever, in its discretion, the board of supervisors of any county determines that it is necessary that a public building for county purposes be erected by such county in any incorporated city or town in such county, and whenever in its discretion the city council, city commission, board of city trustees or other legislative body of such incorporated city or town determines that it is necessary that a public building be erected by and in such incorporated city or town for municipal purposes, such county and such incorporated city or town may join and each is hereby given the right to join, in the construction, erection and ownership of a public building for such county and municipal purposes in such incorporated city or town.

County not to contribute more than half cost.^a

§ 2. Said public building shall be erected on such terms and conditions as shall be agreed upon by said board of supervisors of such county and said city council, city commissioner, board of city trustees or other legislative body of such incorporated city or town and shall be owned and used jointly by such county and such incorporated city or town for county and municipal purposes; provided, that in no event shall the county contribute, or become liable for more than one-half of the cost of construction and maintenance of such joint public building.

SAN FRANCISCO STATE BUILDING—BOND ISSUE.

ACT 3661—An act to provide for the issuance and sale of state bonds to create a fund for the construction, erection, equipment, completion and furnishing of a state building or buildings upon a lot of land in the city and county of San Francisco, to be used by the officers and departments of the state which are located in said city and county of San Francisco, which lot of land has been secured from the city and county of San Francisco in exchange for the lot heretofore purchased by the state for said purposes; and to create a sinking fund for the payment of said bonds; and defining the duties of state officers in relation thereto; and making an appropriation of one thousand dollars for the printing and sale of said bonds; and providing for the submission of this act to the vote of the people.

History: Approved June 7, 1913, in effect August 10, 1913, Stats. 1913, p. 920. Submitted to the people by referendum, in accordance with its terms, November 3, 1914, and adopted, and became effective on December 1, 1914 (see § 8). An additional appropriation of \$300,000 was made by the act of May 27, 1919, Stats. 1919, p. 1287.

Bonds for state building in San Francisco. Interest. When payable. Signed by governor.

§ 1. For the purpose of providing a fund for the payment of the indebtedness authorized to be incurred by the commission for the construction, erection, equipment, completion and furnishing of a state building or buildings in the city and county of

San Francisco as provided in an act entitled "An act to provide for the construction, erection, equipment and furnishing of a building or buildings in the city and county of San Francisco and for the improvement of the grounds thereof for the use and occupancy of the officers and departments of the state government of the state of California located in said city and county of San Francisco, and repealing other acts in conflict herewith," the state treasurer shall, immediately after the issuance of the proclamation of the governor, provided for in section ten hereof, prepare one thousand suitable bonds of the state of California in the denomination of one thousand dollars each, to be numbered from one to one thousand, inclusive, and to bear the date of the second day of July, 1915; the whole issue of said bonds shall not exceed the sum of one million dollars and the said bonds shall bear interest at the rate of four per cent per annum from the time of the issuance thereof, and both principal and interest shall be payable in gold coin of the present standard value and they shall be payable at the office of the state treasurer at the times and in the manner following, to wit: The first twenty of said bonds shall be due and payable on the second day of July, 1916, and twenty of said bonds, in consecutive numerical order, shall be due and payable on the second day of July in each and every year thereafter until and including the second day of July, 1965. The interest accruing on such of said bonds as are sold shall be due and payable at the office of the state treasurer on the second day of January and on the second day of July of each year after the sale of the same; provided, that the first payment of interest shall be made on the second day of January, 1916, on so many of said bonds as may have been theretofore sold. The state treasurer shall, on the second day of July, A. D. 1965, call in, cancel and destroy all bonds not theretofore sold and issued at the date of the maturity thereof. All bonds issued shall be signed by the governor and countersigned by the state controller and shall be indorsed by the state treasurer and the said bonds shall be so signed, countersigned and indorsed by the officers who are in office on the second day of July, 1915, and each shall have the seal of the state of California stamped thereon. The said bonds so signed, countersigned, indorsed and sealed, as herein provided for, when sold, shall be and constitute a valid and binding obligation upon the state of California, though the sale thereof be made at a date or dates after the persons so signing, countersigning or indorsing, or any of them, shall cease to be the incumbents of said office or offices.

Interest coupons.

§ 2. Interest coupons shall be attached to each of said bonds so that such coupons may be detached without injury to or mutilation of the bond. Said coupons shall be consecutively numbered, and shall be signed by the state treasurer. But no interest on any of said bonds shall be paid for any time which may intervene between the date of any of said bonds, and the issue and sale thereof to a purchaser.

Appropriation.

§ 3. The sum of one thousand dollars is hereby appropriated to pay the expenses that may be incurred by the state treasurer in the printing and sale of said bonds. Said amount shall be paid out of the general fund on the state controller's warrants duly drawn for that purpose.

Sale of bonds. Notice of sale. "San Francisco state building fund."

§ 4. When the bonds authorized to be issued under this act shall be duly executed, they shall be sold by the state treasurer at public auction to the highest bidder for cash, in such parcels and numbers as said state treasurer shall determine; but said treasurer must reject any and all bids for said bonds or for any of them, which shall be below the par value of said bonds so offered for sale, and he may by public announcement at the place and time fixed for the sale, for good and sufficient cause, continue such sale as to the whole of the bonds offered or any part thereof offered, to such time

and place as he may select, not exceeding, however, sixty days. Due notice of the time and place of sale of all bonds must be given by said treasurer by publication in two newspapers published in the city and county of San Francisco, and also by publication in one newspaper published in the city of Oakland, and by publication in one newspaper published in the city of Los Angeles, and by publication in one newspaper published in the city of Sacramento, once a week during four weeks prior to such sale. The cost of such publication shall be paid out of the general fund of the state on controller's warrants duly drawn for that purpose. The proceeds of the sale of such bonds shall be forthwith paid over by said treasurer into the treasury and must be by him kept in a separate fund to be known and designated as the "San Francisco state building fund" and must be used exclusively for the construction, erection, equipment, completion and furnishing of a state building or buildings in the city and county of San Francisco. Drafts and warrants upon said fund shall be drawn upon and shall be paid out of said fund in the same manner as drafts and warrants are drawn and paid for other state work under the control of the said department of engineering.

Sinking fund. Revenue for purpose.

§ 5. For the payment of the principal and interest of said bonds a sinking fund, to be known and designated as the "San Francisco state building sinking fund" shall be and the same is hereby created as follows: The state treasurer shall, on the second day of January and on the second day of July, commencing on the second day of January, 1916, and thereafter on the second day of July and the second day of January of each and every year thereafter in which a portion of the bonds sold pursuant to the provisions of this act shall become due, transfer from the general fund of the state treasury to the said "San Francisco state building sinking fund" such an amount of the moneys appropriated by this act as may be required to pay the principal and interest of the bonds so becoming due and payable in such years. There is hereby appropriated from the general fund in the state treasury such sum annually as will be necessary to pay the principal of and the interest on the bonds, issued and sold pursuant to the provisions of this act, as said principal and interest becomes due and payable. There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the ordinary revenues of the state as shall be required to pay the principal and interest on said bonds as herein provided, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of said revenue, to do and perform each and every act which shall be necessary to collect such additional sum.

Payment of principal and interest.

§ 6. The principal on all of said bonds sold shall be paid at the time the same becomes due from the said San Francisco state building sinking fund and the interest on all bonds sold shall be paid at the time said interest becomes due from said sinking fund. Both principal and interest shall be so paid upon warrants duly drawn by the controller of the state upon demands audited by the state board of control and the faith of the state of California is hereby pledged for the payment of the principal of said bonds so sold and the interest accruing thereon.

Records and reports.

§ 7. The state controller and the state treasurer shall keep full and particular account and record of all of their proceedings under this act, and they shall transmit to the governor an abstract of all such proceedings thereunder, with an annual report to be by the governor laid before the legislature biennially; and all books and papers pertaining to the matter provided for in this act shall at all times be open to the inspection of any party interested, or the governor, or the attorney general, or a com-

mittee of either branch of the legislature, or a joint committee of both, or any citizen of the state.

In effect.

§ 8. This act, if adopted by the people, shall take effect on the first day of December, 1914, as to all its provisions, excepting those relating to and necessary for its submission to the people and for the returning, canvassing and proclaiming the votes, and as to the said excepted provisions, this act shall take effect ninety days after the final adjournment of this session of the legislature.

Act submitted to people.

§ 9. This act shall be submitted to the people of the state of California for their ratification at the next general election to be holden in the month of November, A. D. 1914, and all ballots at said election shall have printed thereon the words "For the San Francisco state building act" and in the same square, under said words, the following in brevier type: "This act provides for the issuance and sale of state bonds to create a fund for the construction, erection, equipment, completion and furnishing of a state building or buildings upon a lot of land in the city and county of San Francisco, to be used by the officers and departments of the state which are located in said city and county of San Francisco." In the square immediately below the square containing said words there shall be printed on said ballot the words "Against the San Francisco state building act" and immediately below said words "Against the San Francisco state building act," in brevier type, shall be printed "This act provides for the issuance and sale of state bonds to create a fund for the construction, erection, equipment, completion and furnishing of a state building or buildings upon a lot of land in the city and county of San Francisco, to be used by the officers and departments of the state which are located in said city and county of San Francisco." Opposite the words "For the San Francisco state building act" and "Against the San Francisco state building act" there shall be left spaces in which the voters may stamp a cross indicating whether they vote for or against said act, and those voting for said act shall do so by placing a cross opposite the words "For the San Francisco state building act," and those voting against said act shall do so by placing a cross opposite the words "Against the San Francisco state building act." The governor of this state shall include the submission of this act to the people, as aforesaid, in his proclamation calling for said general election.

Canvass of vote.

§ 10. The vote cast for or against this act shall be counted, returned and canvassed and declared in the same manner and subject to the same rules as votes cast for state officers; and if it appear that said act shall have received a majority of all the votes cast for and against it at said election, as aforesaid, then the same shall have effect as hereinabove provided, and shall be irrevocable until the principal and interest of the liabilities herein created shall be paid and discharged, and the governor shall make proclamation thereof; but if a majority of the votes cast, as aforesaid, are against this act, then the same shall be and become void.

Notice preceding election.

§ 11. It shall be the duty of the secretary of state to have this act published in at least one newspaper in each county, or city and county, if one be published therein, throughout this state, for three months next preceding the general election to be holden in the month of November, A. D. nineteen hundred and fourteen; the costs of publication shall be paid out of the general fund, on controller's warrants, duly drawn for that purpose.

Title of act.

§ 12. This act shall be known and cited as the "San Francisco state building act."

§ 13. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SAN FRANCISCO STATE BUILDING—CONSTRUCTION, ETC.

ACT 3663—An act to provide for the construction, erection, equipment and furnishing of a building or buildings in the city and county of San Francisco and for the improvement of the grounds thereof for the use and occupancy of the officers and departments of the state government of the state of California located in said city and county of San Francisco, and repealing other acts in conflict herewith.

History: Approved June 7, 1913, in effect December 1, 1913, Stats. 1913, p. 924. Prior act of June 12, 1906, Stats. 1906 (ex. sess.), p. 18, repealed by the present act (see § 4). Prior act of June 12, 1906, Stats. 1906 (ex. sess.), p. 20, was probably abrogated, though not in terms repealed.

Engineering department authorized to construct state building in San Francisco.

§ 1. The department of engineering of the state of California is hereby authorized and directed to construct, erect, equip and furnish the necessary building or buildings upon a lot of land situated in the city and county of San Francisco for the use and occupancy of the officers and departments of the state government located in said city and county, out of the proceeds of the sale of bonds to be authorized by the vote of the people in accordance with that certain act entitled "An act to provide for the issuance and sale of state bonds to create a fund for the construction, erection, equipment, completion and furnishing of a state building or buildings upon a lot of land in the city and county of San Francisco, to be used by the officers and departments of the state which are located in said city and county of San Francisco, which lot of land has been secured from the city and county of San Francisco in exchange for the lot heretofore purchased by the state for said purposes; and to create a sinking fund for the payment of said bonds; and defining the duties of state officers in relation thereto; and making an appropriation of one thousand dollars for the printing and sale of said bonds; and providing for the submission of this act to the vote of the people."

Plans.

§ 2. The plans for the construction of such building or buildings shall be prepared by said department of engineering, and before any work of construction is commenced thereon, shall be submitted to and approved by a special commission consisting of the governor, the attorney general and the chief justice of the supreme court, which said commission is hereby created for such purpose.

Supervision of building.

§ 3. The superintendent of capitol building and grounds is authorized and directed to assume entire supervision over the said building or buildings when the same are finally completed to the satisfaction of said commission and ready for occupancy, and for that purpose may employ such assistants, clerks and employees as may be necessary, the number thereof and the compensation to be paid to each to be subject to the approval of the state board of control.

In effect.

§ 4. This act shall take effect upon the first day of December, 1914, if the act mentioned in section one hereof is approved by the vote of the people, and in such event the act of June 12, 1906, entitled "An act to provide for the selection, location, acquisition and purchase of a site or sites, in the city and county of San Francisco, state of California, for the erection, equipment and furnishing of a building or build-

ings, and for the improvement of the grounds thereof, for the use and occupancy of the officers and departments of the state government of the state of California maintaining headquarters in said city of San Francisco, and making an appropriation therefor," shall then be repealed and be of no further effect.

Act of 1906, see, ante, Act 3659.

GRANT OF SITES FOR STATE BUILDINGS BY FREEHOLDER CHARTER CITIES.

ACT 3664—An act authorizing and empowering any city and county, or county, or city operating under freeholders' charter or otherwise, or any town, or any municipal corporation, in the state of California to donate and grant to the state of California any real property owned by it, or which it may hereafter acquire, within its corporate limits, for a site upon which the state of California may erect public buildings or maintain grounds in connection therewith; and also authorizing and empowering any of the same to use such part of its funds as deemed necessary toward the acquisition of such a site, also authorizing the incurring of indebtedness for any of the purposes aforesaid, and validating, legalizing and ratifying any bonded indebtedness which may be incurred in furtherance of any such purpose, and all of the proceedings leading up to the issuance and the proposed issuance of bonds for any such purpose.

History: Approved June 5, 1913, in effect August 10, 1913, Stats. 1913, p. 388.

City, etc., may grant site for state building.

§ 1. Any city and county, or county, or city operating under freeholders' charter or otherwise, or any town, or any municipal corporation, in the state of California, is hereby authorized and empowered to donate and grant to the state of California any real property owned by it or which it may hereafter acquire within its corporate limits for a site upon which the state of California may erect public buildings or maintain grounds in connection therewith.

May use funds to acquire site. May incur indebtedness. Bonds validated. Bonds not to be sold at less than par.

§ 2. Any city and county, or county, or city, operating under freeholders' charter or otherwise, or any town, or any municipal corporation, in the state of California, is hereby authorized and empowered to donate and grant to the state of California any real property owned by it or which it may hereafter acquire within its corporate limits for a site upon which the state of California may erect public buildings or maintain grounds in connection therewith and is hereby authorized and empowered to use such part of its fund as deemed necessary toward the acquisition of a site within its corporate limits, upon which the state of California may erect public buildings or maintain grounds in connection therewith. Any city and county, or county or city operating under freeholders' charter, or otherwise, or any town or any municipal corporation in the state of California, is hereby authorized and empowered to incur indebtedness for any of the purposes mentioned in this act. Where an election has been held in accordance with the laws of the state in any such city and county, or county or city operating under freeholders' charter, or otherwise, or any town or any municipal corporation in the state of California, and the necessary two-thirds of all the qualified electors voting thereat shall have voted in favor of incurring an indebtedness for any of the purposes specified in this act, all the proceedings leading up to the issuance and the proposed issuance of bonds for any such purpose are hereby legalized, ratified and declared valid to all intents and purposes, and the power to issue such bonds is hereby confirmed, and all bonds that may be sold, in accordance with the provisions of law for not less than their par value, are hereby declared to be legal and valid obligations of and against the city and county, or county or city operating under freeholders' charter,

or otherwise, or any town or any municipal corporation in the state of California so issuing them, and the faith and credit of such city and county, or county or city operating under freeholders' charter, or otherwise, or any town or any municipal corporation in the state of California, is hereby pledged for the prompt payment and redemption of the principal and interest of such bonds, in accordance with the provisions thereof; provided, that this act shall not operate to legalize any bonds which have been sold for less than their par value, or any bonds which have not, at the time this act shall take effect, been authorized by not less than two-thirds of the qualified electors of such city and county, or county or city operating under freeholders' charter, or otherwise, or any town or any municipal corporation in the state of California voting at such election.

§ 3. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

1. Act validated prior proceedings of Sacramento.—The act is retroactive and operated to validate prior proceedings of the city of Sacramento to incur indebtedness to acquire land to be donated to the state.—*City of Sacramento v. Adams*, 171 Cal. 458, 463, 153 Pac. 908.

2. Applicable to Sacramento.—The act of June 5, 1913, authorizing municipalities to grant real property owned by it to the state, and to incur indebtedness for that purpose, is applicable to the city of Sacramento.—*City of Sacramento v. Adams*, 171 Cal. 458, 463, 153 Pac. 908.

CHAPTER 291.

PUBLIC DEBT.

References: See, generally, tits. "Bonds"; "Funds"; "Municipal Corporations."
Particular debts, see particular title.

CONTENTS OF CHAPTER.

ACT 3669. PAYMENT OF INDEBTEDNESS BY CERTAIN CITIES.

3670. CREATION OF STATE INDEBTEDNESS IN EXCESS OF APPROPRIATIONS.

PAYMENT OF INDEBTEDNESS BY CERTAIN CITIES.

ACT 3669—An act to authorize cities of not less than twenty-six thousand nor more than thirty thousand inhabitants to vote upon the question of paying indebtedness incurred in the years 1889 and 1890.

History: Approved February 20, 1891, Stats. 1891, p. 8.

The code commissioners say of this act: "Unconstitutional: *Darcy v. Mayor*, 104 Cal. 642, 38 Pac. 500; *Ex parte Giambonini*, 117 Cal. 573, 49 Pac. 732; *Pasadena v. Stimson*, 91 Cal. 238, 27 Pac. 604."

CREATION OF STATE INDEBTEDNESS IN EXCESS OF APPROPRIATIONS.

ACT 3670—An act to prohibit the creation of debts against the state in excess of appropriations made by law except in cases of actual necessity, and on consent of the board of examiners.

History: Approved March 23, 1893, Stats. 1893, p. 285.

Deficiency in excess of appropriation not permissible. Indebtedness void.

§ 1. No officer or employee in the service of the state shall have power to create any deficiency in excess of any appropriation of money made by law, except in case of actual necessity, and only then upon the written authority, first obtained, of the governor, secretary of state, and attorney general; and any indebtedness attempted to be created against the state in violation of the provisions of this act shall be absolutely null and void, and shall not be allowed by the state board of examiners.

§ 2. This act shall take effect from and after its passage.

CHAPTER 292.

PUBLIC HEALTH.

References. See, generally, tits. "Buildings"; "Cemeteries"; "Dairies"; "Embalming"; "Hotels"; "Plumbers"; "Sanitary Districts"; "Tenement Houses."

Health and quarantine, see Kerr's Cyc. Political Code, §§ 3004-3035, 3042-3049, 3059-3064.

Shellfish contamination, examination of sources of, see Act 1745.

Spread of rabies, see tit. "Livestock," Act 2566.

State board of health, see Kerr's Cyc. Political Code, §§ 2978, et seq.

Vaccine agent, see Kerr's Cyc. Political Code, §§ 2993, 2994.

CONTENTS OF CHAPTER.

ACT 3675. OPERATION OF GARBAGE CREMATORIES.

3676. SANITATION OF FOOD-PRODUCING AND FOOD-STORAGE ESTABLISHMENTS.

3677. PUBLIC HEALTH ACT.

3678. ATTORNEY FOR STATE BOARD AND SAN FRANCISCO BOARD OF HEALTH.

3682. INTRODUCTION OF CONTAGIOUS DISEASES INTO CALIFORNIA.

3684. INTRODUCTION OF CONTAGIOUS DISEASES, ACT OF 1913.

3685. PURCHASE AND MANUFACTURE OF DIPHTHERIA ANTITOXIN.

3686. PURCHASE, PREPARATION AND DISTRIBUTION OF ANTI-RABIC VIRUS.

3690. SCHOOL VACCINATION ACT.

3692. DISSEMINATION OF KNOWLEDGE AS TO TUBERCULOSIS.

3693. TREATMENT FOR TUBERCULOSIS.

3694. BUREAU OF TUBERCULOSIS.

3695. STERILIZING RAGS.

3696. LOCAL HEALTH DISTRICTS.

3697. DEPARTMENT OF SANITARY ENGINEERING.

3698. DRINKING RECEPTACLES FOR PUBLIC USE.

3699. TOWELS FOR PUBLIC USE.

3699a. BUREAU OF CHILD HYGIENE.

OPERATION OF GARBAGE CREMATORIES.

ACT 3675—An act to prevent the propagation of disease through contamination of the atmosphere by gases and fumes arising from crematories for the disposition of garbage, ashes, offal, and other refuse matter, and to prescribe penalties.

History: Approved April 17, 1909, Stats. 1909, p. 978.

Operation of garbage crematories.

§ 1. No person, firm, company or corporation shall operate within any city, city and county or town of this state any crematory for the destruction by fire heat, of garbage, ashes, offal, or other refuse matter, except as hereinafter provided for.

Contamination of atmosphere.

§ 2. No such crematory shall be operated in this state except in such a manner as will prevent the propagation of disease through contamination of the atmosphere of any city, city and county or town by the gases or fumes arising from the fires or ovens of any such crematory operated for the destruction by fire heat, of garbage, ashes, offal, and other refuse matter.

Misdemeanor.

§ 3. Every such person, firm, company or corporation or officer, agent, or employee of such corporation, which burns by fire heat or destroys by cremation any such garbage, ashes, offal, and other refuse matter, in violation of the provisions of this act, shall be guilty of a misdemeanor.

SANITATION OF FOOD-PRODUCING AND FOOD-STORAGE ESTABLISHMENTS.

ACT 3676—An act providing for the sanitation of food-producing establishments, places where food is stored, prepared, kept or manufactured and in which food is distributed; regulating the health of persons by whom the materials from which food is prepared or the finished product is handled; providing for the inspection of such places, persons and things; declaring places and things in violation of this act to be nuisances, dangerous to health and providing for the abatement of the same; making violations of this act misdemeanors; and providing for the punishment of the same.

History: Approved March 6, 1909, Stats. 1909, p. 151.

Sanitation required.

§ 1. Every building, room, basement or cellar occupied or used as a bakery, confectionery, cannery, packing house, slaughter house, restaurant, hotel, grocery, meat market or other place or apartment, used for the production, preparation for sale, manufacture, packing, storage, sale or distribution of any food, shall be properly lighted, drained, plumbed and ventilated, and conducted with strict regard to the influence of such conditions upon the health of the operatives, employees, clerks or other persons therein employed, and the purity and wholesomeness of the food therein produced, kept, handled or sold; and for the purpose of this act the term "food" shall include all articles used for food, drink, confectionery or condiment, whether simple or compound, and all substances and ingredients used in the preparation thereof.

Protection of food from flies, dust, etc. Clothing of operatives.

§ 2. The floors, sidewalks, ceilings, furniture, receptacles, utensils, implements and machinery of every establishment or place where food is manufactured, packed, stored, sold or distributed, shall at no time be kept in an unclean, unhealthful or unsanitary condition; and for the purposes of this act, unclean, unhealthful and unsanitary conditions shall be deemed to exist if food in the process of manufacture, preparation, packing, storing, sale or distribution is not securely protected from flies, dust, dirt, unsanitary conditions, and as far as may be necessary, by all reasonable means from all other foreign or injurious contamination; and if the refuse, dirt, and the waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling and distributing of food, are not removed daily; and if all trucks, trays, boxes, baskets, buckets, and other receptacles, chutes, platforms, racks, tables, shelves, and all knives, saws, cleavers, and all other utensils, receptacles, and machinery, used in moving, handling, cutting, chopping, mixing, canning, and all other processes used in the preparation of food, are not thoroughly cleaned daily; and if the clothing of operatives, employees, clerks, and other persons therein employed, is unclean, or if they dress or undress, or leave or store their clothing therein.

Walls, ceilings and floors.

§ 3. The side walls and ceilings of every bakery, confectionery, hotel and restaurant kitchen, shall be well plastered, or ceiled, with metal or lumber, or shall be oil painted or kept well lime washed, or otherwise kept in a good sanitary condition and all interior woodwork of every bakery, confectionery, hotel and restaurant kitchen, shall be kept well oiled or painted with oil paint; and be kept washed clean with soap and water or otherwise kept in a good sanitary condition; and every building, room, basement or cellar, occupied or used for the preparation, manufacture, packing, storage, sale or distribution of food, shall have an impermeable floor, made of cement or tile laid in cement, brick, wood or other suitable, non-absorbent material which can be flushed and washed clean with water.

Screens.

§ 4. The doors, windows and other openings of every food producing or distributing establishment, where practicable, shall be fitted with stationary or self-closing screen doors and wire window screens, of not coarser than fourteen mesh wire gauze.

Toilets, lavatories.

§ 5. Every building, room, basement or cellar, occupied or used for the preparation, manufacture, packing, canning, sale or distribution of food, shall have convenient toilet or toilet rooms, separate and apart from the room or rooms where the process of production, manufacture, packing, canning, selling or distributing, is conducted. The floors of such toilet rooms shall be of cement, tile laid in cement, wood, brick, or other non-absorbent material, and shall be washed and scoured daily. Such toilets shall be furnished with separate ventilating pipes or flues, discharging into soil pipes, or on the outside of the building in which they are situated. Lavatories and washrooms shall be adjacent to toilet rooms, and shall be supplied with soap, running water and towels, and shall be maintained in a clean and sanitary condition. Operatives, employees, clerks and all persons who handle the material from which food is prepared, or the finished product, before beginning work and immediately after visiting a toilet or lavatory shall wash their hands and arms thoroughly in clean water.

Cuspidors. Expectorations.

§ 6. Cuspidors, for the use of operatives, employees, clerks and other persons, shall be provided, and each cuspidor shall be emptied and washed out daily with disinfectant solution and not less than five ounces of such solution shall be left in each cuspidor while in use. No operative, employee, clerk or other person, shall expectorate or discharge any substance from his nose or mouth, on the floor or interior side wall of any building, room, basement, or cellar where the production, manufacture, packing, storing, preparation or sale of any food product is conducted.

Sleeping in bake shops, etc.

§ 7. No person shall be allowed to, nor shall he, reside or sleep in any room of a bake shop, public dining room, hotel or restaurant kitchen, confectionery, or other place where food is prepared, produced, manufactured, served or sold.

Employees with infectious diseases not permitted to work.

§ 8. No employer shall require, permit or suffer any person to work, nor shall any person work, in a building, room, basement, cellar, place or vehicle, occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution or transportation of food, who is afflicted or affected with any venereal disease, small pox, diphtheria, scarlet fever, yellow fever, tuberculosis, consumption, bubonic plague, Asiatic cholera, leprosy, trachoma, typhoid fever, epidemic dysentery, measles, mumps, German measles, whooping cough, chicken pox, or any other infectious or contagious disease.

Health officers, power to inspect. Duty of district attorney.

§ 9. The members of the state board of health, inspectors and agents appointed by said board, and all local health officers and inspectors, shall have full power at all times to enter every building, room, basement, cellar, or any place occupied or used, or suspected of being occupied or used, for the production, manufacture, preparation, storage, sale or distribution of food, and to inspect the premises and all utensils, implements, receptacles, fixtures, furniture and machinery used as aforesaid, and if, upon inspection, any such building, room, basement, cellar, or any such place, vehicle, employer, operative, employee, clerk, driver, or other person, is found to be in violation or violating any of the provisions of this act, or if the production, preparation, manufac-

ture, packing, storing, sale or distribution of food is being conducted in a manner detrimental to the health of the employees or operatives or to the character or quality of the food therein being produced, manufactured, packed, stored, sold, distributed or conveyed, the officer or inspector making the examination shall at once make a written report of the same to the district attorney of the county who shall prosecute all persons violating any of the provisions of this act, and also to the state board of health. The state board of health, from time to time, as in its discretion it may determine, may publish such reports in its monthly bulletin.

Public nuisances.

§ 10. All buildings, rooms, basements, cellars, and other places and things, kept, maintained or operated, or which are, in violation of the provisions of this act or any of them, and all food produced, prepared, manufactured, packed, stored, kept, sold, distributed or transported, in violation of the provisions of this act or any of them, are hereby declared to be public nuisances, dangerous to health. Such nuisances may be abated or enjoined, in an action brought for that purpose by the local or state board of health, or they may be summarily abated in the manner provided by law for the summary abatement of public nuisances dangerous to health.

Penal clause.

§ 11. Any person, firm or corporation, whether as principal or agent, employer or employee, who violates any of the provisions of this act shall be guilty of a misdemeanor, and each day that conditions or actions, in violation of this act, shall continue, shall be deemed to be a separate and distinct offense, and for each offense, upon conviction, he shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

PUBLIC HEALTH ACT.

ACT 3677—An act for the preservation of the public health of the people of the state of California, and empowering the state board of health to enforce its provisions, and providing penalties for the violation thereof.

History: Approved March 23, 1907, Stats. 1907, p. 893. Amended (1) April 1, 1911, Stats. 1911, p. 565; (2) June 13, 1913, in effect August 10, 1913, Stats. 1913, p. 796; (3) May 24, 1917, in effect July 27, 1917, Stats. 1917, p. 920.

Public health act. How to be construed.

§ 1. This act shall be known as the public health act and its provisions are to be liberally construed, with a view to effect its purpose of preventing by uniform measures, the spread of contagious, infectious and communicable diseases and to preserve and promote the health of the people of the state. Its provisions are not intended to repeal or supersede any statutes of the state now in force, which are promotive of the general health and not in conflict with or repugnant to its provisions, but they shall be deemed supplemental to such statutes; and where the provisions of this act are not in conflict with and repugnant to such statutes, they shall be construed consistently therewith, and as continuations thereof.

Unlawful to discharge sewage in streams.

§ 2. It shall be unlawful to discharge, drain or deposit, or cause or suffer to be discharged, drained or deposited, any sewage, garbage, feculent matter, offal, refuse, filth, or any animal, mineral, or vegetable matter or substance, offensive, injurious or dangerous to health, into any springs, streams, rivers, lakes, tributaries thereof, wells or other waters used or intended to be used for human or animal consumption or for domestic purposes, or to maintain a sewer farm or to erect, construct, excavate, or main-

tain, or cause to be erected, constructed, excavated or maintained, any privy, vault, cesspool, sewage treatment works, sewer pipes or conduits, or other pipes or conduits, for the treatment and discharge of sewage or sewage effluents or impure waters, gas, vapors, oils, acids, tar, or any matter or substance offensive, injurious or dangerous to health, whereby the same shall overflow lands or shall empty, flow, seep, drain, condense into or otherwise pollute or affect any waters intended for human or animal consumption or for domestic purposes, or any of the salt waters within the jurisdiction of this state; or to add to, modify or alter any of the plant, works, system thereof or manner or place of discharge or disposal; or to erect or maintain any permanent or temporary house, camp, or tent, so near to such springs, streams, rivers, lakes, tributaries, or other sources of water supply, as to cause or suffer the drainage, seepage, or flow of impure waters, or any other liquids, or the discharge or deposit therefrom of any animal, mineral, or vegetable matter, to pollute such waters without a permit from the state board of health, as hereinafter provided.

Unlawful to moor house-boat within two miles above intake.

It shall also be unlawful for the owner, tenant, lessee or occupant of any house-boat or boat intended for or capable of being used as a residence, house, dwelling or habitation, or for the agent of such owner, tenant, lessee or occupant to moor or anchor the same or permit the same to be moored or anchored in or on any river or stream, the waters of which are used for drinking or domestic purposes by any city, town or village within a distance of two miles above the intake or place where such city, town or village water system takes water from such river or stream; provided, however, that in the transportation of any such house-boat on any such river or stream nothing herein contained shall prevent the owner, agent, tenant or occupant of such house-boat from mooring or anchoring the same when necessary within the limits herein fixed and established; provided, such house-boat shall not remain moored or anchored within such limits for a longer period than one day. [Amendment of May 24, 1917. In effect July 27, 1917, Stats. 1917, p. 920.]

This section was also amended April 1, 1911, Stats. 1911, p. 565.

Petition for permission to discharge sewage, etc., into streams. Plan of works. Hearing.

§ 3. Whenever any county, city and county, city, town, village, district, community, institution, person, firm or corporation, shall desire to deposit or discharge, or continue to deposit or discharge into any stream, river, lake or tributary thereof, or into any other waters used or intended to be used for human or animal consumption or for domestic purposes, or into or upon any place the surface or subterranean drainage from which may run or percolate into any such stream, river, lake, tributary or other waters, any sewage, sewage effluent, or other substance by the terms of section two of this act forbidden so to be deposited or discharged, or whenever any such county, city and county, city, town, village, district, community, institution, person, firm or corporation shall desire to deposit or discharge, or continue to deposit or discharge any sewage, sewage effluent, trade wastes or any animal, mineral or vegetable matter or substance, offensive, injurious or dangerous to health in any of the salt waters within the jurisdiction of this state, or to maintain a sewer farm or to permit the overflow of sewage onto any land whatever, or shall desire to erect, construct, excavate or maintain any privy, vault, cesspool, sewage treatment works, sewer pipe or conduits, or other pipes or conduits for the treatment and discharge of sewage, sewage effluents, or any matter offensive, injurious or dangerous to health, or shall desire to add to, modify or alter any of the plant, works, or system or manner or place of discharge or disposal, he or it shall file with the state board of health a petition for permission so to do, together with a complete and detailed plan, description and history of the existing or proposed works,

system, treatment plant and of such proposed addition to, modification or alteration of any of the plant, works, system or manner or place of discharge or disposal, such plans and general statement to be in such form and to cover such matters as the state board of health shall prescribe. Thereupon, a thorough investigation of the proposed or existing works, system and plant, and all circumstances and conditions by it deemed to be material, shall be made by the state board of health. As a part of such investigation, and after ten days' notice by mail to the petitioner, a hearing or hearings may be had before said board or an examiner appointed by it for the purpose. At such hearing or hearings witnesses who testify shall be sworn by the person conducting the hearing, and evidence, oral and documentary, may be required, a record of which shall be made and filed with said board. Upon the completion of such investigation said board,

Petition denied when discharge would endanger public health. Appointment of person to take charge of plant. Temporary permit.

(a) If it shall determine as a fact that the substance being or to be discharged or deposited is such that under all the circumstances and conditions it may so contaminate or pollute such stream, river, lake, tributary or other waters or lands on which it may be discharged, deposited or caused to overflow, as to endanger the lives or health of human beings or animals, or to constitute a nuisance, or does or may constitute a menace to public health or a nuisance, or that under all the circumstances and conditions it is not necessary so to dispose of such substance, the state board of health shall deny the prayer of such petition; and shall order petitioner to make such changes as the state board of health shall deem proper for the purpose of this act. The state board of health may order the appointing of a competent person, to be approved by said board, and to be paid by said petitioner, who shall take charge of and operate such plant or system so as to secure the results demanded by the state board of health; and said board may order such repair, alteration or additions to the existing system, plant and works that the sewage or substance being or intended to be discharged or disposed of shall not contaminate or pollute streams or other water supplies, or endanger the lives, health or comfort of human beings or animals; and said board may order such changes of method, manner and place of disposal and the installation of such treatment works that streams and other water supplies will not be polluted or contaminated and the works and disposal shall not constitute a menace to health of human beings or animals, or a nuisance; which orders shall designate the period within which the desired changes are to be made; provided, however, that a temporary permit may be issued by the state board of health for said period to permit compliance with such order or orders.

Petition granted when discharge would not endanger public health. Permits revocable.

(b) If it shall determine, as a fact, that the substance being or to be discharged or deposited, is not such that under all the circumstances and conditions it will so contaminate or pollute such stream, river, lake, tributary or other waters, as to endanger the lives or health of human beings or animals, or to constitute a nuisance, and that under all the circumstances and conditions it is necessary so to dispose of such substance, it shall grant to petitioner a permit authorizing petitioner so to deposit or discharge or to continue to deposit or discharge such substance; provided, however, that such permit shall not be construed to permit any act forbidden by any provision of the laws of this state relative to the preservation or propagation of fish or game, or relative to the deposit of debris into the streams of the state, or relative to the obstruction of navigation; and provided, further, that all permits issued hereunder shall be revocable by said board at any time or subject to suspension if said board shall determine, as a fact, that the substance discharged or deposited by virtue thereof causes or may cause a contamination or pollution of waters or land that does or may endanger the lives or

health of human beings or animals, or does or may constitute a nuisance; and provided, also, that nothing contained in this act shall be construed as limiting or denying the power of any incorporated city, city and county, town or village to declare, prohibit and abate nuisances, or as limiting or denying the power of the state board of health to declare or abate nuisances.

Examinations by state board of health. Report on works, etc.

The state board of health and its inspectors shall at any and all times have full power and authority to and shall be permitted to, enter into and upon any and all places, enclosures and structures for the purpose of making, and to make, examinations and investigations to determine whether any provision of this act is being violated. Whenever any petitioner shall be granted any permit by said board and under the provisions of this act, such petitioner shall furnish to said board upon demand a complete report upon the condition and operation of the system, plant or works, which report shall be made by some competent person designated for the purpose by said board, and at the sole cost and expense of the holder of the permit.

Suit to enjoin discharge of sewage into streams.

Any county, city and county, city, town, village, district, community, institution, person, firm or corporation, who shall deposit, discharge or continue to deposit or discharge, into any stream, river, lake, or tributary thereof, or into any other waters, used or intended to be used for human or animal consumption or for domestic purposes, or into or upon any place the surface or subterranean drainage from which may run or percolate into any such stream, river, lake, tributary or other waters, or into any of the salt waters, or lands, within the jurisdiction of this state, any sewage, sewage effluent or other substance by the terms of section two of this act forbidden to be so deposited or discharged, without having an unrevoked permit so to do, as in this act provided, may be enjoined from so doing by any court of competent jurisdiction at the suit of any person or municipal corporation whose supply of water for human or animal consumption or for domestic purposes is or may be affected, or by the state board of health.

Public nuisance.

Anything done, maintained, or suffered, in violation of any of the provisions of section two or section three of this act shall be deemed to be a public nuisance, dangerous to health, and may be summarily abated as such.

Penalty for violation.

Every county, city and county, city, town, village, district, community, institution, firm, corporation or person, or any officer, employee or agent thereof upon whom the duty to act is cast, who shall violate any provision or part thereof of section two or three of this act, or who shall fail to obey, observe or comply with any direction, order, requirement or demand or any part or provision thereof of the state board of health, or who aids or abets any such county, city and county, city, town, village, district, community, institution, firm, corporation or person, or any officer, employee or agent thereof in any failure to obey or comply with the provisions of this act or the orders of the state board of health as provided in this act, shall become liable for and forfeit to the state of California the penal sum of not more than one thousand dollars to be fixed by the court for each and every offense. The continued existence of any violation of this act for each and every day beyond the time stipulated for compliance with any of its provisions or of any order of the state board of health as provided herein shall constitute a separate and distinct offense. All penalties are to be recovered by the state in civil action brought by the state of California and such penalties when collected shall be paid into the general fund of the state treasury.

Every officer, agent or employee of any county, city and county, city, town, village, district, community, institution, firm, corporation or person who shall violate or fail to comply with any of the provisions of section two or section three of this act or with the order or orders of the state board of health or any part thereof, or who aids or abets in any failure to observe and comply with any such provision, order, or part thereof, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year or by both such fine and imprisonment, for each offense. Each day's violation of this provision shall constitute a separate and distinct offense. [Amendment of May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 921.]

This section was also amended April 1, 1911, Stats. 1911, p. 566; June 13, 1913, Stats. 1913, p. 796.

Pollution of waters by livestock.

§ 4. It shall be unlawful to cause or permit any horses, cattle, sheep, swine, poultry or any kind of livestock or domestic animals, to pollute the waters, or tributaries of such waters, used or intended for drinking purposes by any portion of the inhabitants of this state.

By bathing.

§ 5. No person shall bathe or wash clothes in any spring, stream, river, lake, reservoir, well or other waters which are used or intended for drinking purposes by the inhabitants of the vicinage or of any city, city and county, or town, of this state.

Ice must be stored in clean places.

§ 6. Ice offered or intended for public use or consumption shall be kept or stored in clean places free from all filth, offal, refuse, and polluted waters, and separate and removed from contact with animal or vegetable matter, and not in proximity to any cesspool, privy-vault, or sewer, nor in places where such ice may be subject to contamination from, or the action of, acids, oils, noxious, offensive, or injurious gases, smoke or vapors, and all ice kept or stored in violation of this section shall be deemed polluted ice and not fit for human consumption; and it shall be unlawful to sell, offer for sale, or store for sale such polluted ice.

Ice, certain not to be sold.

§ 7. It shall be unlawful to sell, offer, or keep for sale for public use or consumption, ice which shall have been used for the cooling of malt, vinous or spirituous liquors, or for the refrigeration of butter, milk, meat or any animal or vegetable matter or substances, or which shall have been taken from any asylum, hospital, sanitarium, sick-room, slaughter-house, or any place where human or animal remains have been kept or deposited.

Transportation of ice.

§ 8. In the transportation or carriage of ice intended for public use or consumption, care shall be taken to prevent contact with filth, offal, and other refuse, and contamination from animal and vegetable matter, and from offensive and noxious oils, acids and other substances injurious, dangerous or offensive to health.

Ice from impure waters.

§ 9. No person, firm, company, or corporation shall make or permit to be made, or offer or permit to be offered for sale for public use or consumption, any ice manufactured from impure or polluted water, or natural ice cut or taken from any corrupt or impure waters or water source; nor taken or manufactured from any waters or source of water supply after notice from the state board of health, or its secretary, that such waters are impure or polluted.

Inspection of places where ice is stored.

§ 10. In the interest of the public health, every health officer or health inspector, upon proper demand and notice of his authority, shall be permitted, during office hours, to enter and inspect the works, premises, sources of supply, and places of storage of any person, firm, company, or corporation, maintaining, selling or offering for sale, water or ice for human use or consumption, and it shall be unlawful for any person, firm, company, or corporation to refuse to permit a reasonable inspection or investigation of such works and premises or the ice and water kept or stored therein, or to impede or obstruct such officer during such investigation.

Duty of local health officers. Report to state board of health.

§ 11. It shall be the duty of every county, city and county, municipal, town, or other health officer or inspector to enforce diligently within the county, city and county, municipality, town or district of which he is such health officer, all state laws pertaining to health and sanitary matters, and all orders, rules and regulations concerning health, quarantine, and disinfection prescribed or directed by the state board of health, and all local ordinances, resolutions, orders and regulations concerning health, of the board of supervisors, which shall not be in conflict with the general laws or the orders, rules and regulations of the state board of health.

Said health officers shall report to the state board of health all violations of the state health laws and all violations of the state laws relating to registration of births, marriages, and deaths, which shall come to their knowledge.

Every county health officer, and every city and county, city or town board of health, or chief executive health officer thereof, shall report in writing to the state board of health regularly on or before the fifth day of each month, and also whenever requested by the state board of health, or its secretary, all infectious, contagious and communicable diseases in man or beast which shall come to his knowledge, upon blanks furnished by the state board of health; and he shall, in cases of local epidemic of disease, report at such times as shall be requested by the state board of health, or its secretary, all facts concerning the disease, and the measures taken to abate and prevent its spread.

It shall also be the duty of every such county health officer, and every city, city and county, and town board of health or chief executive health officer thereof, in cases of epidemic, whenever quarantine is established, promptly to transmit to the secretary of the state board of health a true copy of all quarantine rules, orders and regulations adopted by the local health board or health officer, and of all subsequent changes or modifications in the matter of such quarantine and in such local rules, orders, and regulations; and every such board of health or chief executive health officer thereof, shall promptly report, in writing, to the secretary of the state board of health any changes that may occur in their offices, and the names and residences of all newly appointed or elected officers.

Quarantine, state board of health may order.

§ 12. Whenever in the judgment of the state board of health, or when said board is not in session, whenever in the judgment of the secretary of said board, such action shall be deemed necessary to protect or preserve the public health, every county health officer, and every city and county, city or town board of health, or chief executive health officer thereof, shall, when so directed by said state board of health or its secretary, quarantine and disinfect, as required by the general and special instructions of said state board or secretary within the jurisdiction of such local board of health or health officer, persons, animals and things of whatever nature, and houses, rooms, and places, and destroy, or cause to be destroyed, bedding, carpets, household goods, furnishings and materials, clothing or animals, when such property is, by said state board of health or its secretary, deemed an imminent menace to the public health, and when ordinary

means of disinfection are deemed unsafe, and the board of supervisors, council or other governing body, where such destruction of property occurs, shall have power to make adequate provision and compensation in proper cases for those injured by such necessary destruction.

Rules in cases of quarantine.

§ 13. The following rules and requirements shall be strictly observed in all cases of quarantine subject, however, to such changes and modifications as the state board of health, or its secretary may otherwise require and direct.

Rule 1. Every county, city and county, city, or town board of health, or chief executive health officer thereof, upon receiving information of the existence of such diseases within its or his jurisdiction, must immediately quarantine each and every case of Asiatic cholera, yellow fever, typhus fever, plague, smallpox, scarlet fever, diphtheria, (and such other contagious or infectious diseases), as may from time to time be declared quarantinable, and in addition to their local rules and regulations shall follow all general and special rules, regulations, and orders of the state board of health, or its secretary.

Said health boards or officers must, within twenty-four hours after quarantine, report fully, in writing, to the secretary of the state board of health, all of such cases quarantined; provided, however, that said health officers shall immediately report by telegraph to said secretary of the state board of health every case discovered or known of plague, Asiatic cholera, yellow fever or typhus fever, and after investigation and within twenty-four hours shall report the cause, source and extent of contagion and infection, and all acts done and measures adopted in each case, and shall make such further reports as the secretary of the state board of health may require.

Rule 2. In addition to the list of quarantinable diseases given in rule 1 of this section the following is a partial list of contagious, infectious and communicable diseases, all of which, though not required to be quarantined, must be properly reported in writing to the state board of health, or its secretary, by the said local health boards or chief executive health officers, viz.: chicken-pox, erysipelas, pneumonia, uncinariasis or hook-worm, epidemic cerebro-spinal meningitis, trachoma, whooping-cough, mumps, dengue, dysentery, tuberculosis, typhoid fever, tetanus, malaria, leprosy, measles, German measles, glanders and anthrax affecting human beings, rabies, pellagra, beri-beri, syphilis, gonococcus infection, and poliomyelitis, and any disease which appears to have become epidemic. The diseases last above enumerated, and such others as from time to time may be added thereto by the state board of health or its secretary, shall be quarantined whenever in the opinion of the state board of health or its secretary such action is necessary to protect the public health, and shall be isolated whenever in the opinion of the state board of health, its secretary, or the local board of health or health officer, isolation is necessary to protect the public health. This list can be changed at any time by the state board of health or its secretary.

Rule 3. When any building, house, structure, or part thereof, or tent or other place, is quarantined because of a contagious, infectious or communicable disease, said local health boards or chief executive health officer shall cause to be firmly fastened, in the most conspicuous place upon such house, building, tent, or other place, a placard or flag, upon which is printed the name of the disease, in plain and legible letters of at least two and one-half inches in length. This placard or flag must not be removed by any person except the health officer or his deputy, and in no case until the premises have been thoroughly disinfected.

Rule 4. When persons quarantined in a house, building, structure, tent, or other place have recovered from the disease for which the quarantine is established, or when the quarantine is for exposure to a contagious, infectious or communicable disease, and

the period of incubation designated has elapsed, the quarantine shall not be raised by order of the local board of health or local health officer until every exposed room, together with all bedding, clothing, and all other personal property contained therein, has been thoroughly disinfected, or if necessary, such personal property may be destroyed, by or under the direction of the health officer or his deputy; and until all persons quarantined shall have taken a thorough antiseptic bath and put on clothing free from contagion.

Rule 5. Whenever quarantine is established by any local board of health or health officer to prevent the spread of any contagious, infectious, or communicable disease, it shall be the duty of all persons to obey the rules, orders and regulations of such health board or health officer.

Rule 6. No milkman shall take away milk bottles or other receptacles for milk from any building, house, structure, tent, or other place, in which a contagious, infectious or communicable disease exists or has existed, nor from any place within any quarantined district, nor at any time after such quarantine has been removed, unless with the written permission of the local health officer, and after such milk bottles or receptacles have been disinfected and cleaned to the satisfaction of such officer.

Rule 7. Whenever there exists in the house of any milkman, milk dealer or milk distributor, any case of cholera, typhus fever, plague, scarlet fever, diphtheria, membranous croup, leprosy, anthrax, glanders, cerebro-spinal meningitis, whooping-cough, typhoid fever, dysentery, trachoma or tetanus, then it shall be unlawful for such milkman, milk dealer, or milk distributor, to continue the sale or distribution of milk until the local board of health or chief executive health officer has appointed at the expense of the county where such milkman, dealer or distributor lives a person to superintend his cows, dairy or other place where such milk is sold, or from which it is delivered or distributed, and all cows, bottles, vessels and milk utensils. Such person so appointed by the local board of health, or chief executive officer, shall strictly require that all persons attending to the cows, dairy, sheds, milk cans, bottles, vessels, and milk utensils, shall not have access to the infected house, nor any communication with the persons who reside in such infected house, except with the permission and under the inspection of the local health officer.

Rule 8. Every person subject to quarantine, residing or being in a quarantined building, house, structure or tent, shall not go beyond the lot upon which such building, house, structure or tent is situated, nor put himself in immediate communication with any person not subject to quarantine, other than the health officer and physician. The local board of health or local chief executive health officer maintaining a quarantine shall appoint, or cause to be appointed, a suitable person to perform necessary outside services for the necessary wants of the person quarantined. Such person so appointed shall never enter the building, house, structure, or tent nor come in personal contact with any of the persons quarantined, but shall leave at the entrance of the building, house, structure or tent, or at such other place as may be designated by the health officer or deputy, all articles which he may have brought, and he shall strictly observe the orders of the local health officer. [Amendment approved April 1, 1911, Stats. 1911, p. 568.]

Places of quarantine.

§ 14. Every county, city and county, city, and town board of health, or chief executive health officer thereof, whenever required by the state board of health, or its secretary, shall establish and maintain places of quarantine or isolation, which shall be subject to the special directions of said state board, or its secretary.

Quarantine against other towns or counties.

§ 15. No quarantine shall be established by one county, or city, city and county, or town, against another city, city and county, county, or town, without the written consent of the state board of health, or its secretary.

Persons ill of contagious diseases, report of fact.

§ 16. All physicians, nurses, clergymen, attendants, owners, proprietors, managers, employees, and persons living in or visiting any sick person in any hotel, lodging-house, house, building, office, structure, or other place where any person shall be ill of any infectious, contagious, or communicable disease, shall promptly report such fact to the county, city and county, city, or other local health board or health officer, together with the name of the person, if known, and place where such person is confined, and nature of the disease, if known.

Protection to schools.

§ 17. No instructor, teacher, pupil, or child affected with any contagious, infectious, or communicable disease which is or might be the subject of quarantine, or has been declared reportable, or who resides in any house, building, structure, tent, or other place where such disease exists or has recently existed, shall be permitted, by any superintendent, principal or teacher of any college, seminary, public or private school, to attend such college, seminary, or school, except by the written permission of the local health officer.

Embalming.

§ 18. No embalming fluid or methods of embalming not approved by the state board of health shall be employed by any person in the case of death from contagious, infectious or communicable diseases, or in cases where the remains are to be transported or carried upon trains or vessels or other public conveyances for interment or cremation within this state or for transportation without the state.

Same.

§ 19. No person shall embalm a body of any person who has died from an unknown cause, except with the written permission of the local health officer.

Rules for transportation of dead.

§ 20. The following rules and requirements in cases of the transportation of the dead shall be strictly observed, subject, however, to such changes and modifications as the state board of health or its secretary may otherwise require and direct:

Rule 1. The transportation within the boundaries of the state of California, from any other state, territory, district, or islands of the United States, or from any foreign country, of remains or bodies dead from plague, Asiatic cholera, yellow fever, typhus fever, anthrax, or glanders, or the transportation of the same from this state to any part of the United States, or any foreign country, is absolutely prohibited.

No remains or bodies of those dead from any of said diseases shall be transported within this state to any place beyond a distance of twenty-five miles except by permission and under the direction of the state board of health or its secretary, and subject also to the conditions provided in rules 2, 5 and 6 of this section hereinafter set forth.

Rule 2. The bodies of persons dead of Asiatic cholera, yellow fever, diphtheria, membranous croup, scarlet fever (scarlatina, scarlet-rash), erysipelas, glanders, anthrax, or leprosy, shall not be accepted for transportation unless prepared for shipment by (a) arterial and cavity injection with a disinfecting fluid approved by the state board of health; (b) disinfection and stopping of all orifices with absorbent cotton, and (c) washing the body with a disinfectant; (d) such body shall be enveloped in a layer of dry cotton not less than one inch thick, completely wrapped in a sheet securely fastened,

and encased in an air-tight zinc, tin, copper, or lead-lined coffin or iron casket, all joints and seams hermetically sealed, and all inclosed in a strong, tight, wooden box; provided, that instead of such zinc, tin, copper or lead-lined coffin or iron casket, the body having been prepared for shipment by disinfecting and wrapping as above, may be placed in a strong coffin or casket, or tin-lined box, all joints and seams hermetically soldered.

In the shipment of bodies dead from any disease named in this rule, such body must not be accompanied by persons or articles which have been exposed to the infection of the disease, unless certified by the health officer to have been properly disinfected.

Rule 3. The bodies of those dead from typhoid fever, puerperal fever, tuberculosis, measles, or other contagious or infectious diseases not enumerated under rules 1 and 2 of this section, may be received for transportation when prepared for shipment by arterial and cavity injection with an approved disinfecting fluid, washing the exterior of the body with the same, and enveloping the entire body with a layer of cotton not less than one inch thick, and wrapped in a sheet securely fastened, and encased in an air-tight metallic coffin or casket or an air-tight metallic box; provided, that this shall apply only to bodies which can reach their destinations within thirty hours from the time of death.

Rule 4. The bodies of those dead from any cause not stated in rules 1, 2 and 3 of this section, may be received for transportation when encased in a sound coffin or casket and inclosed in a strong outside wooden box; provided, they can reach their destination within thirty hours from the time of death. If the body cannot reach its destination within thirty hours from the time of death, it must be prepared for shipment by arterial and cavity injection with an approved disinfecting fluid, washing the exterior of the body with the same, and enveloping the entire body with a layer of dry cotton not less than one inch thick, and wrapped in a sheet securely fastened, and encased in an air-tight metallic coffin or casket or an air-tight metal-lined box.

Rule 5. Every dead body must be accompanied by a transit permit showing physician's or coroner's certificate, and as far as obtainable, showing name of deceased, age, date, place and cause of death, and all other matters required by an act of the legislature of the state of California approved March 18, 1905, and entitled "An act for the registration of deaths, the issuance and registration of burial and disinterment permits, and the establishment of registration districts in counties, cities and counties, cities and incorporated towns, under the superintendence of the state bureau of vital statistics and prescribing the powers and duties of registrars, coroners, physicians, undertakers, sextons, and other persons in relation to such registration, and fixing penalties for the violation of this act."

Said transit permit shall indicate the place to which the body is to be transported and the name of the consignee or person to whom it is to be delivered, and shall include the registrar's or health officer's permit showing whether death resulted from a communicable or noncommunicable disease, and also the undertaker's certificate, showing the manner in which the body had been prepared for shipment.

The transit permit must be made in triplicate, and the signatures of physician or coroner, health officer, registrar, and undertaker must be upon the original and the duplicate and triplicate copies.

The physician's certificate and transit permit shall be delivered to the passenger or agent, if any, in charge of the body. The whole duplicate copy shall be sent to the officer in charge of the baggage department of the initial line and by him to be forwarded to the state board of health or other proper health authority of the state or territory, foreign country or place of destination, and the triplicate copy shall be transmitted to the secretary of the state board of health of California, at Sacramento.

Rule 6. When bodies are shipped by express, as described in rule 5 of this section, a transit permit must be made out in triplicate. The undertaker's certificate and paster of the original shall be detached from the transit permit and securely fastened in a conspicuous place on the coffin box. The physician's certificate and transit permit shall be attached to and accompany the express waybill covering the remains, and be delivered with the body at the point of destination to the person to whom it is consigned. The whole duplicate copy shall be sent by the forwarding express agent to the state board of health of the state from which said shipment was made, and the triplicate to the secretary of the state board of health of California, at Sacramento.

Rule 7. disinterred bodies or remains of persons who have died from any disease or cause shall be treated as infectious or dangerous to the public health, and shall not be accepted for transportation in or removed from this state unless said removal has been approved by the state board of health or its secretary. If the disinterment be in this state the consent of the health board or chief executive health officer of the locality where the body is to be reinterred shall be first obtained. No dead body shall be brought into this state without the approval of the health authorities of the state, territory, District of Columbia or foreign country from which such body shall be removed and no such body shall be received, transported, or buried in this state unless satisfactory evidence of compliance with the rules of the state board of health respecting the same shall be submitted to the secretary of the state board of health and his written consent obtained to such transportation, receipt or burial; and no disinterred body shall be shipped or transported from one place to another in this state without the written permission of the secretary of the state board of health and full compliance with the rules of this board respecting disinterment of bodies. And all such disinterred remains or the coffin or casket containing the same, must be wrapped in a woollen blanket thoroughly saturated with a 1-1000 solution of corrosive sublimate and inclosed in a hermetically soldered zinc, tin or copper-lined box. Bodies deposited in or taken from vaults shall be treated and considered the same as buried bodies.

The permission of the state board of health, or its secretary, shall not be required in cases of disinterment nor shall this rule be applicable where the remains are to be reinterred within the same city or town, or where such remains are to be reinterred in an adjoining county, city and county, city or town where the distance between the place of disinterment and the place where the remains are to be reinterred does not exceed thirty miles; provided, however, that the consent of the local health authorities shall be first obtained and all local health regulations strictly observed.

Penalty.

§ 21. Any person violating any of the provisions of this act, whether acting for himself, or as the agent or servant of another person, or of a firm, company or corporation, or as an officer, agent, employee or representative of any municipal corporation, or of the state, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five nor more than five hundred dollars, or by imprisonment for a term of not more than ninety days, or by both such fine and imprisonment. Each day that in violation of any provision of this act shall continue, and each day that any thing forbidden by the terms hereof to be erected, constructed, maintained, operated or permitted, shall continue to exist, or be maintained, operated or permitted, shall constitute a separate offense. [Amendment approved April 1, 1911, Stats. 1911, p. 571.]

§ 22. This act shall take effect from its passage.

1. County ordinance not conflicting with act held valid.—A county ordinance imposing a fee for a permit to disinter a dead body, unless such body is to be reinterred in the same county, does not conflict with the public health act, and is not invalid.—*Ex parte Lee John*, 17 Cal. App. 58, 118 Pac. 722.

ATTORNEY FOR STATE BOARD AND SAN FRANCISCO BOARD OF HEALTH.

ACT 3678—An act to create the office of attorney for the state board of health and the board of health of the city and county of San Francisco.

History: Approved March 31, 1891, Stats. 1891, p. 209.

Creation of office. Appointment by governor.

§ 1. The office of attorney for the state board of health and the board of health of the city and county of San Francisco is hereby created; such attorney shall be appointed by the governor, and shall hold his office as such attorney for the term of four years, and until his successor is elected and qualified.

Duty of the attorney.

§ 2. It shall be the duty of such attorney to act for and represent the state board of health and the board of health of the city and county of San Francisco in all legal matters which may require their attention as such boards of health, and to specially represent and act for and in co-operation with said boards of health, when required by them, in the prevention of all acts and things which, in the judgment of said boards of health, or either of them, may have a tendency to be detrimental to the health of the people of the state; and in such other matters pertaining to the health of the state in general and the duties of said boards of health, to assist and aid them with his advice, and to represent and act for them in court.

Salary.

§ 3. The salary of such attorney shall be three thousand dollars per annum, and shall be paid out of the state treasury, upon warrants drawn by the controller, in the same manner as the salaries of other state officers are paid.

§ 4. All acts and parts of acts in conflict with this act are hereby repealed.

§ 5. This act shall take effect and be in force from and after its passage.

INTRODUCTION OF CONTAGIOUS DISEASES INTO CALIFORNIA.

ACT 3682—An act to prevent the introduction of contagious or infectious diseases into the state of California.

History: Approved March 15, 1883, Stats. 1883, p. 376.

Railroad cars to be inspected.

§ 1. Whenever there shall exist, in the opinion of the state board of health, imminent danger of the introduction of contagious or infectious diseases into the state of California, by means of railroad communication with other states, the said state board of health are authorized, and it is hereby made their duty, to make or cause to be made, by any accredited agent or inspector, an inspection of all railroad cars, coming into the state at such point, or between such points within the state limits as may be selected for the purpose.

Detention of train a minimum.

§ 2. Such inspection shall be made, where practicable, during the ordinary detention of a train at a station, or while in transit between stations, and in all cases shall be so conducted as to occasion the least possible detention or interruption of travel or inconvenience to the railroad companies, so far as consistent with the purposes of this act.

Infected cars to be sidetracked.

§ 3. Should the discovery be made of the existence among the passengers of any case or cases of dangerous, contagious, or infectious disease, the said board of health, or their agent, or inspector, under rules and conditions prescribed by them as being

applicable to the nature of the disease, shall have power to cause the sidetracking or detention of any car or cars so infected, to isolate the sick or remove them to a suitable place for treatment, to establish a suitable refuge station, to cause the passengers and materials in such infected car to be subjected to disinfection and cleansing before proceeding further into the state, and, in the case of smallpox, to offer free vaccination to all persons exposed in any car or at any station.

Appropriation.

§ 4. The sum of five hundred dollars is hereby appropriated out of any moneys in the treasury not otherwise appropriated, to be expended solely for the purposes of this act, and all expenditures herein authorized shall be specified in an itemized account to be presented to the state board of examiners, and paid as other demands on the treasury are paid; provided, that in no case shall the sum expended exceed that herein specially appropriated for the purpose.

§ 5. This act shall take effect from and after its passage.

1. Appointment of attorney.—The act provides for the appointment not only of the first attorney, but of each and every successor to such first appointee.—*People ex rel. Spencer v. Knight*, 116 Cal. 108, 47 Pac. 925.

2. Same—No provision for election.—The words "until his successor is elected and qualify" can not overcome the previous declaration as to appointment, particularly

in view of the fact that no provision is made for election.—*People ex rel. Spencer v. Knight*, 116 Cal. 108, 47 Pac. 925.

3. Same—Same.—Intention of legislature that not only the first but future incumbents of the office should be appointed corroborated by the fact that no provision was made for his election.—*People ex rel. Spencer v. Knight*, 116 Cal. 108, 47 Pac. 925.

INTRODUCTION OF CONTAGIOUS DISEASES—ACT OF 1913.

ACT 3684—An act to prevent the introduction, and provide for the investigation and suppression of contagious or infectious diseases, and appropriating money to be used for such purpose.

History: Approved June 7, 1913, in effect immediately, Stats. 1913, p. 868. Amended May 18, 1917, in effect July 27, 1917, Stats. 1917, p. 671. Prior act of March 20, 1903, Stats. 1903, p. 255, with the same title, appropriating \$100,000 for the purpose indicated, was probably superseded, if any vitality remained, by the present act. The later act of May 18, 1915, Stats. 1915, p. 502, appropriated \$50,000 for the same purpose and provided for its expenditure under the terms of § 2 of the present act.

Appropriation: prevention of contagious and infectious diseases.

§ 1. The sum of one hundred thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be expended by the state board of health, under the direction of the governor, for the prevention of the introduction of Asiatic cholera, bubonic plague, smallpox or other contagious or infectious disease into this state, and for their investigation and suppression in case of their origin or introduction. The claims for such expenditures must be audited by the board of control, except that when, in the opinion of the governor, an emergency arises which demands or necessitates the immediate use of money for the purposes herein provided, the controller must draw his warrant in the name of the governor without such audit, on account of the sum hereby appropriated, upon the order of the governor, in such sums, from time to time, not exceeding one thousand dollars at any one time, as he may direct. In cases where sums are so drawn upon the order of the governor, without audit by the board of control, vouchers must be thereafter filed with the controller, showing the manner and the purposes for which such sums have been expended. Such portion of the sum provided by this section as may be deemed advisable by the state board of health and approved by the governor, may be used in accordance with the provisions of this section and section 2, provided that all expenditures connected there-

with shall be audited by the board of control and paid by the state treasurer upon warrants drawn by the controller, in accordance with the provisions of this section.

Extermination of rodents, insects, vermin, etc., by property owners. Extermination by state board of health.

§ 2. Whenever any land, place, building, structure, wharf, pier, dock, vessel or water craft, or other property is infested with rodents, insects, or other vermin which are liable to convey or spread contagious or infectious disease from an existing focus declared by the state board of health, it shall be the duty of said board to at once notify the person, firm, copartnership, corporation, city, city and county, county, or district, owning said land, place, building, structure, wharf, pier, dock, vessel or water craft, or other property of the existence of said rodents, insects or other vermin, and said notice, shall direct said owner to proceed immediately to exterminate and destroy said rodents, insects, or other vermin, and to continue in good faith such measures as may be necessary to prevent their return. Service of such notice upon a trustee, executor or administrator of the estate of the recorded owner of said property shall be deemed sufficient notice to the owner as provided herein and in the event the owner is absent from the state or can not with due diligence be found, said notice shall be mailed to such owner addressed to his address given on the last completed assessment roll of the county, or city and county in which said property is situate, or if no address be so given, then to his last known address and a copy of said notice shall be posted in a conspicuous place upon said property for a period of ten days. In the event that said owner fails, refuses or neglects to proceed and continue as above provided, within ten days from date of receipt of said notice, the state board of health may proceed to destroy said rodents, insects or other vermin, and take other appropriate measures to prevent their return, and the cost thereof shall be repaid to the state board of health by the owner of said land, place, building, structure, wharf, pier, dock, vessel, water craft or other property; provided, however, that said owner shall not be liable for expenditures in any one year, in excess of ten per cent of the assessed valuation of such property, and the appropriation provided in section one of this act shall be reimbursed by the amount so paid, and may be again expended in a similar manner. [Amendment of May 18, 1917. In effect July 27, 1917, Stats. 1917, p. 671.]

Lien on property for payment of expense of extermination.

§ 3. Any and all sums so expended by said state board of health shall be a lien upon the property on which such rodents, insects or other vermin shall have been destroyed, or other appropriate measures taken. The state board of health shall cause to be filed in the office of the county recorder of the county wherein said property is situated a notice setting forth the amount so expended by the state board of health and claiming a lien upon such property for the amount of such expenditures. Such claim of lien must be filed within six months after the first item of expenditure. An action to foreclose such lien shall be commenced within six months after the filing and recording of said notice of lien, which action shall be brought by the state board of health through its attorney and for its benefit; provided, however, that the lien provisions of this act shall not apply to the property of any county, city and county, municipality, district, or other public corporation, but it shall be the duty of the governing body of such county, city and county, municipality, district or other public corporation to repay the state board of health the amount expended by it upon such property under the provision of this act upon presentation by said state board of health of a verified claim or bill showing the amount of such expenditures.

Disposition of proceeds.

When the property is sold, enough of the proceeds to satisfy such lien and the costs of foreclosure shall be paid into the state treasury for the benefit of the fund herein

created and the overplus, if any there be, shall be paid to the owner of the property if known, and if not known, shall be paid into the court for the use of such owner when ascertained.

Receiver. Bond.

When it appears from the complaint in such action that the property on which such lien is to be foreclosed is likely to be removed from the jurisdiction of the court, the court may appoint a receiver to take possession of the property and hold the same while the action may be pending or until the defendant shall execute and file a bond, with sufficient sureties, conditioned for the payment of any judgment that may be received against him in the action and all costs. [Amendment of May 18, 1917. In effect July 27, 1917, Stats. 1917, p. 672.]

Current expenses.

§ 4. This act, inasmuch as it provides for an appropriation for the usual current expenses of the state, shall, under the provisions of section 1 of article IV of the constitution of the state of California, take effect immediately.

PURCHASE AND MANUFACTURE OF DIPHTHERIA ANTITOXIN.

ACT 3685—An act to authorize the state board of health to purchase and manufacture diphtheria antitoxin, and to appropriate six thousand dollars therefor.

History: Approved March 12, 1895, Stats. 1895, p. 45.

PURCHASE, PREPARATION AND DISTRIBUTION OF ANTI-RABIC VIRUS.

ACT 3686—An act to authorize the state board of health to purchase, or prepare and distribute, free of cost, to certain persons, anti-rabic virus, and making an appropriation therefor.

History: Approved June 13, 1913, in effect August 10, 1913, Stats. 1913, p. 843.

Board of health to purchase anti-rabic virus.

§ 1. The state board of health is hereby empowered and directed to purchase, or prepare, and distribute free of cost, under such regulations as may be necessary, anti-rabic virus to be used in the treatment of persons exposed to rabies when said persons shall declare that it would be a hardship for them to pay for anti-rabic treatment.

Appropriation.

§ 2. The sum of five thousand dollars is hereby appropriated for the purposes of this act.

§ 3. The state controller is hereby authorized to draw his warrant for the same, and the state treasurer is hereby authorized to pay the same.

SCHOOL VACCINATION ACT.

ACT 3690—An act to encourage and provide for a general vaccination for all public and private schools of California, specifying the duties of certain officers and persons with relation thereto making violations of its provisions a misdemeanor, providing penalties, and repealing an act entitled "An act to encourage and provide for a general vaccination in the state of California," approved February 20, 1889.

History: Approved March 7, 1911, Stats. 1911, p. 295. Prior act of February 20, 1889, Stats. 1889, p. 32, repealed by the present act.

Filing certificate of vaccination. Form of certificate. Successful vaccination. Duty of physician.

§ 1. Within ten days after this act goes into effect, and thereafter within five days after any child or person shall be enrolled or entered in, or shall have entered, enrolled,

or shall have been received or employed or commenced work in any school, college, university, academy, or other educational institution, within the state of California, whether the same be public or private, sectarian or nonsectarian, such child or person shall file with the teacher, instructor, principal, superintendent or other person or persons who shall or may be in charge of or in authority over such school, college, university, academy or other educational institution, either a certificate signed by a duly licensed and practicing physician showing that such child or person has been successfully vaccinated (giving the date thereof) within seven years prior to the date when same shall be filed, or a certificate signed by the health officer or board of health, within whose territorial jurisdiction such institution may be located, stating that such child or person has been examined by him and has presented satisfactory evidence that he or she has been successfully vaccinated (giving the date thereof) within such period of seven years, or the statement or certificate provided for in section 2 of this act.

§ 1a.

VACCINATION CERTIFICATE.

This is to certify that was vaccinated on 19.., with proper aseptic precautions, and with vaccine prepared under U. S. government license. Full instructions were given for home-care during the progress of the vaccinia.

I have this day 19.., completed by observations of the case and certified that the vaccination was successful.

.....,

Signature of Vaccinator.

....
Vaccine number.	Limitation date.	Manufacturer.

Successful vaccination means that there has been evidence of a normal vaccinia, and that ordinarily the person so vaccinated may be assured of immunity to smallpox for at least five years without repetition of the vaccination.

Notice to the Vaccinator.—If repeated vaccinations fail to “take,” read in the instructions in section 9 of the vaccination law.

It shall be the duty of every physician and person who shall vaccinate any child or person to take proper aseptic precautions, to use only vaccine prepared under United States government or state of California license, to give to the child or person full instructions for home-care during the progress of the vaccinia, and when observation of the case is completed and found to be successful, to furnish a vaccination certificate in the form prescribed by the terms of this section.

In lieu of certificate.

§ 2. In lieu of the certificates provided for in section 1 of this act, and within the same period and with the same person or persons, such child or person may file annually a statement in writing, signed by his or her parent, or guardian, if such child or person be a minor, and by himself, in other cases, stating that such parent, guardian or person is conscientiously opposed to the practice of vaccination and will not consent to the vaccination of such child or person, or the certificate of a duly licensed and practicing physician stating that the physical condition of such child or person is, at the time, such that vaccination would seriously endanger the life or health of such child or person, and thereupon such child or person shall be exempt from the provisions of section 1 of this act as otherwise provided.

Blank.

§ 2a. The school trustees or directors in each school district, city, city and county within this state shall furnish such parent, guardian or person a printed blank to be

filled out in writing as provided in section 2 hereof. This blank shall be substantially in the following form:

City or town

Date

I hereby declare that I am conscientiously opposed to the practice of vaccination and will not consent to the vaccination of

(Signed)

Parent or Guardian.

List of vaccinated children. Of those not vaccinated.

§ 3. The person with whom such certificates are required to be filed, as aforesaid, shall forthwith deliver them to the health officer within whose territorial jurisdiction such institution may be situated, and such health officer or other proper person shall at once examine the same and make and preserve a list of those children and persons who have been successfully vaccinated within seven years prior to the said date of filing (with the date of such vaccination) and a separate list of those who have not been so vaccinated. Such health officer or other proper person shall thereupon return the vaccination certificates provided for in section 1 of this act, to the person from whom he received them, who shall surrender them to their respective owners, and such health officer shall preserve in his office the statements and certificates provided for in sections 2 and 2a of this act.

Failure to file certificate or statement.

§ 4. Any child or person who shall fail, neglect, or refuse to file a certificate or statement as required by section 1 and section 2 and section 2a, of this act, within ten days after this act goes into effect, or who shall thereafter so fail, neglect or refuse to file such certificate or statement within said period of five days, shall thereupon be excluded from admission to, attendance upon, from the benefits of, and from service in connection with such institution, until such time as he or she shall file such certificate or statement, and it shall be the duty of every teacher, instructor, principal and other person in charge of or in authority over such institution so to exclude such child or person.

Children not vaccinated to be excluded from schools whenever cases of smallpox exist in district.

§ 5. Whenever any case or cases of smallpox shall exist in any school district, incorporated city or town, or city and county, it shall be the duty of the state board of health to make, or cause to be made a thorough investigation as to whether such smallpox does exist, and as to whether any child or person enrolled or entered in, or employed or working in any such school, college, university, academy or other educational institution, within the state of California, whether the same be public or private, sectarian or nonsectarian, has been exposed to the contagion or infection of such smallpox. If upon such examination the state board of health shall find that smallpox does exist therein, all children or persons, who have not been successfully vaccinated, within seven years then last past, shall be excluded forthwith and continuously from admission to, attendance upon, the benefits of, or service in connection with any and all schools, colleges, universities, academies and other educational institutions situated in such school district, city, town, or city and county until such children shall have been successfully vaccinated, or until such time as such smallpox shall cease to exist in such school district, city, town, or city and county, and it is further provided, that such other vaccinated children or persons shall be excluded from all the rights and privileges as in this section contained as the state board of health or its representatives may direct; provided, that in cities, cities and counties, and districts, where two or more schools are maintained, the state board of health shall subdivide such cities, cities and counties or

districts, and for such period as it shall determine to be advisable, unvaccinated children and persons may be permitted to attend schools in subdivision in which no smallpox exists.

Duty of health officer whenever cases of smallpox exist.

§ 6. Whenever any such case or cases of smallpox as in section 5 contained shall exist in any school district, city or city and county, within this state, the health [officer] or other proper person or health officers within whose territorial jurisdiction such district, city or city and county may be situated, shall forthwith furnish to the teacher, instructor, principal, superintendent, or other person in charge of or in authority over, each of the schools, colleges, universities, academies and other educational institutions, situated within his jurisdiction, a certificate showing the existence of such smallpox in such district, city or city and county, and a list of the unvaccinated children or persons in attendance upon or employed in connection with such schools, respectively, and requiring that such unvaccinated children and persons be excluded as provided in section 5 of this act.

State board to decide in case of question.

§ 7. Whenever any question shall arise as to whether smallpox does or does not exist in any district, city, or city and county, the state board of health shall make, or cause to be made an investigation and the determination of said board, or that of its secretary, if said board is not in session, shall be final as to the question of fact.

Penalty for violation.

§ 8. Every person who shall violate any provision of this act shall be deemed to be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than three hundred dollars, or by imprisonment for a period of not more than thirty days, or by both such fine and imprisonment.

Child not able to be vaccinated.

§ 9. Whenever any child or person shall file, as in this act provided, a certificate signed by a duly licensed and practicing physician and showing that within one year of the date of filing, such child or person has used due diligence and can not be successfully vaccinated, such child or person shall be exempt from the provisions of this act for the period of one year therefrom.

Construction of act.

§ 10. Nothing in this act shall be construed to be in conflict with or contrary to any of the rules, regulations or requirements of any private school, academy, college, university, or other educational institution which may at any time provide for excluding all unvaccinated children and persons therefrom.

§ 11. An act entitled "An act to encourage and provide for a general vaccination in the state of California," approved February 20, 1889, is hereby repealed.

§ 12. This act shall take effect from the time of its passage.

1. **Constitutionality — Title sufficiently expressed subject.**—The title of the act of 1889 sufficiently expresses the subject of the act.—*Abeel v. Clark*, 84 Cal. 226, 24 Pac. 383.

2. **Same—Same.**—The title of the act of 1889 substantially complies with the constitutional requirements.—*French v. Davidson*, 143 Cal. 658, 77 Pac. 663.

3. **Same—But one subject embraced in act.**—The act of 1889 embraces but one

subject which is expressed in its title.—*Abeel v. Clark*, 84 Cal. 226, 24 Pac. 383.

4. **Same—Not repugnant to fourteenth amendment.**—The act of 1889 is not repugnant to the fourteenth amendment of the federal constitution.—*French v. Davidson*, 143 Cal. 658, 77 Pac. 663.

5. **Same—Not special legislation.**—The act of 1889 is not obnoxious as special legislation.—*French v. Davidson*, 143 Cal. 658, 77 Pac. 663.

6. Same—Valid exercise of police power.—The act of 1889 is a valid exercise of the police power.—*French v. Davidson*, 143 Cal. 658, 77 Pac. 663.

7. Same—Same.—The act of 1889 is within the police power and is constitutional.—*State Board of Health v. Board of Trustees*, 13 Cal. App. 514, 110 Pac. 137.

8. Same—Operates uniformly on definite class.—The act of 1889 operates uniformly on a definite class.—*French v. Davidson*, 143 Cal. 658, 77 Pac. 663.

9. Same—Proper classification — Proper exercise of police power.—Scholars in the public schools constitute a general class, as to which the legislature was empowered to require vaccination as the most effective method known to prevent the spread of smallpox.—*Abeel v. Clark*, 84 Cal. 226, 24 Pac. 383.

10. Same—General in scope.—The act of 1889 is general in scope, though it does not include all classes.—*Abeel v. Clark*, 84 Cal. 226, 24 Pac. 383.

12. Requirement as to compulsory vaccination mandatory.—The requirement of the act of 1889 directing the exclusion of unvaccinated persons from the benefits of the public schools is mandatory and not directory, and the boards of trustees must obey it, and are subject to mandamus if they do not.—*State Board of Health v. Board of Trustees*, 13 Cal. App. 514, 110 Pac. 137.

13. Regents of university have power without statute.—No statute is required to empower the regents of the University of California to make and enforce a reasonable rule as to vaccination as a requisite to admission.—*Williams v. Wheeler*, 23 Cal. App. 619, 138 Pac. 937.

14. Regents of university have power in absence of limiting statute.—The regents of the University of California have the power, in the absence of statutory limitation, to make and enforce a reasonable rule making vaccination a prerequisite to admission.—*Williams v. Wheeler*, 23 Cal. App. 619, 138 Pac. 937.

15. Same—Exemption clause of act does not apply.—The provision of the act exempting persons from compulsory vaccination on conscientious grounds is not available to a person seeking admission to the University of California in the face of a rule of the regents requiring vaccination as a prerequisite to admission.—*Williams v. Wheeler*, 23 Cal. App. 619, 138 Pac. 937.

16. Not repealed by compulsory education act of 1905.—The act of 1889 was not repealed by the compulsory education act of 1905.—*State Board of Health v. Board of Trustees*, 13 Cal. App. 514, 110 Pac. 137.

17. Compulsory vaccination, as to, see 25 L. R. A. 142; 26 Id. 728; 39 Id. 152; 42 Id. 175; 49 Id. 588; 80 Am. St. Rep. 230; 103 Am. St. Rep. 864.

DISSEMINATION OF KNOWLEDGE AS TO TUBERCULOSIS.

ACT 3692—An act providing for the dissemination of knowledge among the people of California as to the best means of preventing the spread of tuberculosis, and for investigation of its prevalence and making an appropriation therefor.

History: Approved May 1, 1911, Stats. 1911, p. 1350. Prior acts of March 21, 1907, Stats. 1907, p. 846, and March 15, 1909, Stats. 1909, p. 368, were probably superseded by the present act.

Board of health to investigate tuberculosis.

§ 1. It shall be the duty of the state board of health to cause special investigation of the prevalence of tuberculosis in California and the effects of localities, employments, conditions and circumstances on the health of those developing the disease, and to determine the best means for its eradication.

To publish printed matter.

§ 2. The state board of health shall publish, or procure and distribute free to the people of the state of California, printed matter, charts, pictures or models, or demonstrate to them in any practical way the prevalence of tuberculosis, the danger of infection therefrom and the means of prevention and cure.

Appropriation.

§ 3. The sum of five thousand dollars is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, for the purpose of this act, and the state controller is hereby directed to draw his warrant in favor of the state board of health for sums aggregating that amount, these claims having been audited by the state board of examiners, and the state treasurer is directed to pay the same.

§ 4. This act shall be in effect from its passage.

TREATMENT FOR TUBERCULOSIS.

ACT 3693—An act to provide for the medical treatment of indigent residents afflicted with incipient pulmonary tuberculosis; and to prescribe the duties of the state board of health and other public officials with relation thereto.

History: Approved April 14, 1909, Stats. 1909, p. 899.

Medical treatment of patients having tuberculosis. Contracts by institutions.

§ 1. Until such time as there shall be established by law in this state a state hospital for the medical treatment of persons afflicted with incipient pulmonary tuberculosis, the state board of health is hereby authorized and empowered to enter into appropriate contracts with the board of managers, or other executive head, of any institution which is now or may hereafter be established and maintained in this state for the express purpose of affording approved medical treatment to patients having incipient pulmonary tuberculosis, wherein there shall be made provision for the treatment at public expense of indigent residents of this state afflicted with such disease. In making such contracts, the board shall be guided by general considerations of public health and safety, together with the approved teachings of medical science touching upon the location, altitude and climatic conditions of the institutions offering to enter into such contracts. The board of managers, or other executive head, of each institution desiring to enter into such contracts and receive and treat patients, under the provisions of this act, must, in writing, apply to the secretary of the state board of health for an inspection and examination of such institution, and must give all such information concerning the location, climatic surroundings, methods of treatment or other details of management, as the board may require. Such information shall be given upon forms prepared for the purpose by the board of health, and shall be signed by the medical superintendent of such institution. In the event such institution, its management and methods of treatment be approved by the board of health, the board of managers, or other executive head thereof, shall, within ten days after receipt of notice of such approval, forward to the secretary of the board, a written offer in behalf of such institution to receive, medically treat, and otherwise care for, such patients as might be sent there under the provisions of this act, not exceeding a stated number in all, at a uniform charge, which shall in no case exceed one dollar per day for each of such patients; further agreeing in behalf of said institution to furnish to the secretary of the board, on forms prepared by him, all such reports as the state board of health may, from time to time, require, together with full and complete information concerning any new or important discoveries made in the methods of treating, checking, preventing, or curing said disease, and such recommendations regarding the same as may be deemed beneficial to the interest of the public. Upon receipt of such offer, the board may, if it so elects, proceed to enter into a contract with such institution for the maintenance and treatment therein of county patients, the form of which shall be approved by the attorney general prior to execution. Every institution entering into such a contract shall be required to give bonds in the sum of five thousand dollars, conditioned for the faithful performance of the obligations by it assumed in such contract. Upon the execution of the contract and the filing of the bond, the secretary of the state board of health shall certify to the clerk of the board of supervisors of each county in this state the name and location of such institution and such other details concerning the same as he may deem appropriate.

Counties may maintain indigent patients.

§ 2. Each county of this state is hereby given the privilege of maintaining in said institutions, at the expense of such county, such number of indigent patients as its board of supervisors may determine; provided, however, that the total number of such patients shall not exceed the aggregate capacity of the institutions making such contracts; and provided further, that no county shall be required to pay more than one dollar per day per patient for all medical and other services rendered such patient.

Applications for admission of patients. Examinations.

§ 3. Indigent persons who are afflicted with incipient pulmonary tuberculosis, and who have been residents of this state for not less than one year prior to making application therefor, may be admitted to any such institution selected as in section one hereof provided, and receive treatment therein at the expense of the county in which he or she resides, in the manner and upon the terms and conditions hereinafter prescribed. Any person desiring to receive such treatment must make written application therefor to the board of supervisors of the county in which he or she resides, stating the name, age, sex, place of residence, and such other data concerning the applicant as the state board of health may, from time to time, prescribe. Such application must be verified by the oath or affirmation of the applicant. If the board be satisfied as to the truth of such declarations, and if there be then a vacancy in the number of indigent patients to be supported by such county, the board shall require the applicant to submit to a proper bacteriological and clinical examination by the county physician, or, if there be none, by the county health officer, for the purpose of ascertaining whether or not the condition of the applicant is such as to afford a reasonable hope of cure by a course of treatment in one of such institutions. The state board of health shall make bacteriological examinations under this act whenever demanded by the county physician or county health officer. If, in the judgment of the medical officer making such examination, the applicant is afflicted with incipient pulmonary tuberculosis and there is a reasonable hope that such person may be cured, he shall so certify to the board, and the board may thereupon order that the applicant be maintained as a patient in one of the institutions named by the state board of health until cured, or until discharged as hereinafter provided. The necessary expense of transporting such patient to the institution selected shall be advanced and paid by the county.

Allowance of claims for maintenance.

§ 4. The medical superintendent of each institution in which there are maintained any patients under the provisions of this act shall, monthly, render to the board of supervisors of each county from which patients have been received an itemized claim, duly verified, showing the number of patients from such county so maintained in such institutions during the month last preceeding, or any part thereof, the name of each patient, and the amount due such institution. It shall be the duty of the board of supervisors to audit and allow such claim in the manner provided by law, and to order a warrant drawn for the amount thereof in favor of such institutions. It shall be the duty of the county auditor to draw such warrant, and of the county treasurer to pay the same.

Discharge of patients.

§ 5. If, in the judgment of the medical superintendent of any institution mentioned in this act, any patient has become cured of his disease, he shall discharge such patient and shall furnish him with transportation to the county seat of the county whence he came. The amount advanced for such transportation shall be included in the next monthly bill and shall be audited and paid as are the other items thereof. Or, if any patient be deemed hopelessly incurable, the superintendent shall report such fact to the secretary of the state board of health, and shall, subject to the approval of the secretary, discharge such patient and return him to the county whence he came, at the expense of such county, as hereinabove provided.

Tuberculosis declared to be infectious.

§ 6. Pulmonary tuberculosis is hereby declared to be an infectious and communicable disease, dangerous to the public health, and all proper expenditures which may be made by any county of this state, pursuant to the provisions of this act, are hereby declared

to be necessary for the preservation of the public health of the county, within the meaning of section forty-two hundred twenty-five of the Political Code.

BUREAU OF TUBERCULOSIS.

ACT 3694—An act to provide for the establishment and maintenance of a bureau of tuberculosis under the direction of the state board of health; defining its powers and duties; providing for the granting of state aid to cities, counties, cities and counties and groups of counties for the support and care of persons afflicted with tuberculosis; making an appropriation therefor; and repealing certain acts of the legislature of the state of California.

History: Approved June 12, 1915, in effect August 11, 1915, Stats. 1915, p. 1530. Amended May 22, 1919, in effect July 22, 1919, Stats. 1919, p. 853. Prior act of June 13, 1913, in effect August 10, 1913, Stats. 1913, p. 813, repealed by the present act.

Bureau of tuberculosis.

§ 1. The state board of health shall maintain a bureau of tuberculosis for the complete and proper registration of all tuberculous persons within the state; for supervision over all hospitals, dispensaries, sanatoria, farm colonies and other institutions for tuberculosis, both public and private; for advising officers of the state penal and charitable institutions regarding the proper care of tuberculous inmates, and for such educational and publicity work as may be necessary; for administration of the fund for state aid to cities, counties, cities and counties and groups of counties for the care of patients who are county charges in city, county, or city and county tuberculosis wards or hospitals or in tuberculosis wards and hospitals maintained by any group of counties, and for the performance of such other duties as may be assigned by the said board.

Director. Duties.

§ 2. The state board of health shall appoint a director of the bureau, who shall be duly qualified and trained in public health work, whose salary shall be fixed by the board in an amount not to exceed three thousand dollars per annum, and such other employees as may be deemed necessary, and shall fix their compensation. The director and all employees of the bureau shall come within the jurisdiction of the civil service law. In addition to the administration of the bureau, under the supervision of the state board of health, it shall be the duty of the director, and he is hereby invested with full power, to inspect and investigate, and have access to all records and departments of all institutions, both public and private, where tuberculosis patients are treated. He shall prepare annually for each institution a report of its rating on sanitary construction, enforcement of sanitary measures, adequate provision for medical and nursing attendance, provision for proper food, and such other matters of administration as may be designated. Administration of the fund for the care of patients who are county charges in city, county, and city and county tuberculosis wards and hospitals and the tuberculosis wards and hospitals maintained by any group of counties shall be based upon his reports and under the rules and regulations of the board. The director and other employees of the bureau shall be allowed their actual and necessary traveling expenses incurred in the performance of their duties.

Compensation of cities, etc., maintaining tuberculosis wards. May receive pay patients.

§ 3. Every city, county, city and county, or group of counties is hereby authorized and empowered to establish and maintain a tuberculosis ward or hospital for the treatment of persons in the active stages of tuberculosis. Every city, county, city and county, or group of counties which establishes and maintains a tuberculosis ward or hospital shall receive from the state the sum of three dollars per week for each person suffering from tuberculosis, cared for therein at public expense who is unable to pay

for his support and who has no relative legally liable and financially able to pay for his support and who has been a bona fide resident of the city, county, city and county, or group of counties for one year; provided, that the city, county, city and county, or group of counties shall not become entitled to receive such state aid unless the tuberculosis ward or hospital conforms to the regulations of and is approved by the state bureau of tuberculosis. Said hospitals shall be allowed to receive pay patients. The medical superintendent of each hospital receiving state aid under this act shall render semiannually to the state bureau of tuberculosis a report under oath showing, for the period covered by the report, (1) the number of patients suffering from tuberculosis cared for therein at public expense, unable to pay therefor, and (2) the number of weeks of treatment of each such patient.

Delegates from group of counties.

Every group of counties desiring to establish and maintain a tuberculosis ward or hospital for the treatment of persons suffering from tuberculosis shall appoint, by its board of supervisors, one of its members as a delegate, who shall attend the general meetings of the delegates of each county in said group; the necessary expense incurred in attending such meetings shall be a county charge.

Hospital central committee.

The body thus formed shall be called the hospital central committee. The said delegates from each county are authorized and empowered to enter into an agreement with the other counties for and on behalf of the county appointing them binding said county to the joint enterprise and apportioning the cost of constructing and establishing said hospital and also apportioning cost of maintaining same.

All sums found due from any county according to its agreement duly entered into shall be a debt against said county and may be collected in the manner provided by law by the said hospital central committee or in its behalf by the board of supervisors of any county in said groups in any county thereof, by action instituted and tried in the county in which said hospital is situated.

Building committee.

The hospital central committee shall have power to appoint a committee to supervise and superintend the construction of the building, approve the bills, and do the usual things required of a building committee.

Hospital central committee governing body.

The hospital central committee shall constitute the governing body of said hospital and shall have the same powers and duties in regard thereto that a board of supervisors has over the county hospital, and shall hold meetings to be governed, as provided by rules duly adopted by said committee for its government, which rules may provide for the addition of other counties to the group, and shall have power to appoint such committees as necessary and prescribe their duties.

Acquisition and disposal of land.

Any land required may be acquired or disposed of by the hospital central committee in such manner as it may be determined by a three-fourths vote of the members thereof; provided, that all counties comprising a group shall have had notice of the intention to acquire or dispose of the same. Title to land may be held in the name of the entire group or in any county composing the same as trustee for the use and benefit of all, as may be determined by said hospital central committee.

Each county to pay proportionate share.

Each county in said group is authorized, empowered, and directed to pay its proportionate share to the hospital central committee, of such amount as the said com-

mittee may designate, to constitute a cash revolving fund to carry on the usual work and expense of the hospital. Each month a statement of the expenses of said hospital shall be sent to the board of supervisors, of each county, together with a claim for its proportionate share of said expenses. Said amounts when collected shall be paid into said cash revolving fund. [Amendment of May 22, 1919. In effect July 22, 1919, Stats. 1919, p. 853.]

Appropriation.

§ 4. The sum of two hundred thousand dollars is hereby appropriated, in addition to any amounts heretofore appropriated, out of any money in the state treasury not otherwise appropriated, to be expended by the state board of health in carrying out the provisions of this act; provided, however, that not more than the sum of thirty thousand dollars shall be available for the purposes of said act other than the state aid therein provided. All claims against this appropriation shall be submitted for approval and audit to the state board of control, and shall be paid in accordance with law; provided, that there may be withdrawn from such appropriation with the permission of the state board of control and without at the time furnishing vouchers and itemized statements a sum not to exceed five hundred dollars. Said sum so drawn shall be used as a revolving fund where cash advances are necessary and at the close of each fiscal year or at any other time upon the demand of the board of control must be accounted for and substantiated by vouchers and itemized statements submitted to and audited by the board of control and the controller. [Amendment of May 22, 1919. In effect July 22, 1919, Stats. 1919, p. 824.]

Repealed.

§ 5. An act entitled "An act to provide for the establishment and maintenance of a department of tuberculosis under the direction of the state board of health; defining its powers and duties; and making an appropriation therefor," approved June 13, 1913, is hereby repealed.

§ 6. All acts or parts of acts inconsistent with this act are hereby repealed.

1. Constitutionality—Valid exercise of police power.—The act is a valid exercise of the police power.—Sacramento Co. v. Chambers, 33 Cal. App. 142, 164 Pac. 613.

2. Same—Not violative of section 13, article XI, constitution.—The act is not violative of section 13, article XI, of the constitution, prohibiting the delegation of certain powers to special commissions, etc.—Sacramento Co. v. Chambers, 33 Cal. App. 142, 164 Pac. 613.

3. Same—Not violative of section 31, article IV, constitution.—The act is not violative of section 31, article IV, of the constitution denying legislative power to lend

the credit of the state and its subordinate political subdivisions for the payment of liabilities of corporations and individuals.—Sacramento Co. v. Chambers, 33 Cal. App. 142, 164 Pac. 613.

4. Same—Counties not corporations—Not violative of section 22, article IV, constitution.—Counties are not corporations and this act does not violate section 22, article IV, of the constitution, prohibiting the payment of state money for the benefit of corporations and institutions not under exclusive state control.—Sacramento Co. v. Chambers, 33 Cal. App. 142, 164 Pac. 613.

STERILIZING RAGS.

ACT 3695—An act regulating the cleaning, laundering, sale, offering for sale, and furnishing for use to employees, of wiping rags; authorizing counties, cities and counties, cities and towns, to enact ordinances prohibiting the cleaning, laundering, sterilizing, and sale of wiping rags without a permit, and to issue and revoke permits to clean, launder, and sell wiping rags within their respective jurisdictions; authorizing peace and health officers to make inspections of wiping rags, and making violations of this act a misdemeanor.

History: Approved April 25, 1913, in effect August 10, 1913, Stats. 1913, p. 86. Amended June 1, 1917, in effect July 31, 1917, Stats. 1917, p. 1609.

Wiping rags to be sterilized.

§ 1. Every person or corporation who supplies or furnishes to his or its employees for wiping rags, or who sells or offers for sale for wiping rags, any soiled wearing apparel, underclothing, bedding, or parts of soiled or used underclothing, wearing apparel, bedclothes, bedding or soiled rags and cloths, unless the same have been sterilized by a process of boiling for forty minutes in a solution containing five per cent of caustic soda, and unless before such boiling, the sleeves, legs and bodies of garments are ripped and made into flat pieces, is guilty of a misdemeanor.

Wiping rags defined.

§ 2. Wiping rags within the meaning of this act are cloths and rags used for wiping and cleaning the surfaces of machinery, machines, tools, locomotives, engines, motor cars, automobiles, cars, carriages, windows, and furniture, and surfaces of articles, appliances and engines in factories, shops, steamships and steamboats, and generally used for cleaning purposes in industrial employments, and also used by mechanics and workmen for wiping from their hands and bodies soil incident to their employment.

Not to be cleaned in laundry.

§ 3. Any person or corporation who shall wash, cleanse or launder soiled rags or soiled cloth material for wiping rags by the same machinery or appliances by which clothing and articles for personal wear or household use are laundered, shall be guilty of a misdemeanor. [Amendment of June 1, 1917. In effect July 31, 1917, Stats. 1917, p. 1609.]

Inspection.

§ 4. Every peace officer, health officer or health inspector, upon proper demand and notice of his authority, shall be permitted, during business hours, to enter factories, shops, yards, ships, boats and premises where wiping rags are used, or are kept for sale, or offered for sale, and inspect such wiping rags; and it shall be unlawful for any person, firm, company or corporation to refuse to permit such inspection, or to impede or obstruct such officer during such inspection.

Local regulation of wiping rag business.

§ 5. Each county, city and county, city and town, may regulate the business of laundering, and sterilizing, and the business of selling wiping rags, by enacting ordinances prohibiting the laundering, sterilizing and sale, and offering for sale, of wiping rags, or cloth material for wiping rags, within their respective jurisdictions, without a permit issued by the board of supervisors of the county, or board of health or health officer of the city and county, city and town, and for the issuance of certificates of inspection of wiping rags offered for sale. Such permit shall be granted as of course on a first application therefor, and may be revoked by the board or officer authorized to issue the same for a violation of this act or for a violation of such ordinance by the holder of such permit. The board, department or officer authorized to issue permits to launder, sterilize, or sell wiping rags shall keep a register of the names and places of business of persons to whom such permits are issued, and the date of issue and number of said permit, and a record of revocation of issued permits.

Packages to be marked.

§ 6. Every package or parcel of wiping rags must, before being sold or offered for sale, be plainly marked "sterilized wiping rags," with the number and date of permit given for the conducting of the laundry in which the rags contained in such package or parcel were laundered and sterilized, and the name of the board or officer issuing

the permit; or with the name and location of the laundry in which such rags were laundered and sterilized.

Penalty.

§ 7. Any person, firm or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor.

LOCAL HEALTH DISTRICTS.

ACT 3696—An act to provide for the formation, government, organization, operation and dissolution of local health districts in any part of the state and for changing the boundaries thereof, the appointment and compensation of local district health officers, their deputies and assistants; defining the qualifications, powers and duties of such officers; and to provide for the assessment, levy, collection, custody and disbursement of taxes therein.

History: Approved May 21, 1917, in effect July 27, 1917, Stats. 1917, p. 791.

Local health district may be organized.

§ 1. A local health district may be organized, incorporated and managed as herein provided, and may exercise the powers herein granted or necessarily implied. Such a district may include incorporated or unincorporated territory or both, in any one or more counties; provided, that the territory of the district consists of contiguous parcels and that the territory of no municipal corporation is divided.

Petition of voters. Publication.

§ 2. Whenever the formation of a local health district is desired, a petition, which may consist of any number of instruments, may be presented at a regular meeting of the board of supervisors of the county in which the proposed district or portion thereof is situated, signed by registered voters of each unit of the district equal in number to at least ten per cent of the number of votes cast in each unit respectively for the office of governor at the last preceding general election at which a governor was elected. For the purposes of this act all unincorporated territory in a proposed district and in one and the same county shall be regarded as an entirety and as a unit, and each incorporated city or town in a district shall likewise be regarded as a unit. If an incorporated city or town is included, the common council, board of trustees or other governing body thereof shall, by resolution duly authenticated, request the inclusion of the city or town in the proposed district. The petition shall set forth and describe the proposed boundaries of the district and shall pray that the same be created under the provisions of this act. Prior to the time at which the petition is to be presented, the text thereof shall be posted for thirty successive days in three public places in each incorporated city or town and unincorporated district; and a reference to said text shall be published along with the notice herein mentioned in this paragraph and the following paragraph for four successive publications in a daily, semiweekly or weekly newspaper of general circulation printed and published in each incorporated city or town included therein, and if there is no such newspaper published in the city or town, then the text of the petition shall be posted for the same length of time in three public places as herein specified. The text of the petition so posted and published by reference as herein mentioned shall have annexed thereto a notice stating the time and place of the meeting of the board of supervisors at which the same will be presented. When the petition is composed of more than one instrument, one copy only thereof need be published or posted as herein specified in the posting and publication of the text and notice. No more than five of the names attached to the petition need appear in such publication or posting, but the number of signers must be stated. At least one month prior to the

time at which the petition is to be presented, a copy of the text, notice and petition must be filed with the state board of health and board of supervisors of the county or counties.

Hearing. Boundaries.

With such publication there shall also be published, and if posted, there shall also be posted, a notice of the time of the meeting of the board when such petition will be presented and that all persons interested therein may then appear and be heard. At such time the board of supervisors shall hear the petition and those appearing thereon, and also all protests and objections to the same, and may adjourn such hearing from time to time, not exceeding two months in all. No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures thereto, shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto. On the final hearing the board shall make such changes in the proposed boundaries as may be deemed advisable and shall define and establish such boundaries; provided, that if the board deems is proper to include therein any territory not included within the proposed boundaries, they shall first give notice of their intention so to do, in the same manner as required for notice of the initial hearing.

Testimony. Order establishing district. Certificate of incorporation.

§ 3. Upon the hearing of the petition the board of supervisors shall determine whether it complies with the provisions of this act and whether the public necessity or the welfare of the inhabitants of the proposed territory requires the formation of the district, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. The findings of the board shall be final and conclusive against all persons except the state of California upon suit commenced by the attorney general. If it appears to the board that the petition complies with the provisions of this act and that the public necessity or the welfare of the inhabitants requires the formation of the district, it shall by an order entered on its minutes so declare its findings, and shall further declare and order that the territory within the boundaries so fixed and determined be established as a local health district, under an appropriate name selected by the board, which name shall include the words "local health district." The county clerk shall immediately file a certified copy of the order with the secretary of state and with the county clerk of each county in which the district or any portion thereof is situated. Within ten days of such filing the secretary of state shall issue and deliver to the county clerk a certificate reciting that the local health district (naming it) has been duly incorporated under the laws of the state of California. The county clerk shall deliver this certificate to the board of trustees of the district at the first meeting of the board. From and after the date of the certificate of the secretary of state, the district named therein shall be deemed incorporated as a local health district with all the rights, privileges and powers set forth in this act and necessarily incident thereto.

Board of trustees. Number. Vacancy. Term.

§ 4. Within thirty days of the issuance by the secretary of state of the certificate of incorporation of the district, a board of trustees for the district shall be appointed. The board shall consist of one trustee to be appointed from each unit in the case of unincorporated territory by the board of supervisors, and in the case of an incorporated city or town, by the local governing body thereof; provided, that if the board of trustees thereby created consists of less than five members, then the board of supervisors shall appoint from the district at large enough additional members to make a board of five trustees, if the unit of the district at large is within one county; and if there are several units of the district at large in more than one county, then by the board of supervisors of the

county where such unit is situated; and by the boards of supervisors jointly if the district at large constitutes units in several counties and one additional member is to be appointed. A vacancy shall be filled by the appointing power for the unexpired term. The governing board of the district shall be called "the board of trustees of local health district" (inserting the name of the particular district). The trustees shall hold office for the term of two years from and after the second day of the calendar year next succeeding their appointment; provided, however, that the first board of trustees appointed in a district shall at their first meeting so classify themselves by lot that one-half of their number, if the total membership is an even number, and if uneven, then that a bare majority of their number, shall go out of office at the expiration of one year, and the remainder at the expiration of two years from the second day of the calendar year next succeeding their appointment.

Officers. Expenses. Meetings.

§ 5. The members of the board of trustees shall meet on the first Monday subsequent to thirty days after the issuance of the certificate of incorporation by the secretary of state, and shall organize by the election of one of their members as president and one as secretary. The members of the board shall serve without compensation except that each shall be allowed his actual necessary traveling and incidental expenses incurred in attending meetings of the board. The board shall provide for the time and place of holding its regular meetings and the manner of calling the same and shall establish rules for its proceedings and may adopt such rules and regulations not inconsistent with law as may be necessary for the exercise of the powers conferred and the performance of the duties imposed upon the board. Special meetings may be called by three trustees and notice of the holding thereof shall be mailed to each member at least forty-eight hours before the meeting. All of its sessions, whether regular or special, shall be open to the public, and a majority of the members of the board shall constitute a quorum for the transaction of business.

Powers.

§ 6. Each local health district shall have and exercise the following powers:

- (1) To have and use a corporate seal and alter it at pleasure;
- (2) To sue and be sued in all courts and places and in all actions and proceedings whatever;
- (3) To purchase, receive, have, take, hold, lease, use and enjoy property of very kind and description, both within and without the limits of the district, and to control, dispose of, convey and encumber the same and create a leasehold interest in same for the benefit of the district;
- (4) To acquire, construct, maintain and operate all works and equipment necessary for the inspection of water, milk, meat and other foods, the extermination of rodents and the disposal of garbage and waste;
- (5) To employ public health nurses and health visitors and to co-operate with educational authorities in health inspection in public or private schools in the district;
- (6) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district;
- (7) To enforce all statutes relating to the public health and vital statistics, and all orders, quarantine regulations and rules prescribed by the state board of health;
- (8) To enforce such local orders and ordinances pertaining to health and sanitary matters within the district as may be authorized by the appropriate local authorities;
- (9) To unite with any other local health district or districts in the exercise of any of the powers herein granted to and vested in each district, the cost thereof to be paid by

each district in such proportion as may be agreed upon by the respective district boards of trustees;

(10) To exercise all other needful powers for the preservation of the health of the inhabitants of the district, whether such powers are herein expressly enumerated or not;

(11) This grant of power is to be liberally construed for the purpose of securing the well-being of the inhabitants of the district.

District health officer.

§ 7. The board shall appoint and fix the compensation of a district health officer, who may be removed by the board only by a two-thirds vote of the members thereof. He shall be the holder of a degree in medicine, sanitary engineering or public health and shall have had at least one year's experience in public health work. He shall devote his entire time to the duties of his office and is expressly prohibited from engaging in any other occupation or business. The board shall provide suitable supplies, equipment and office facilities for the health officer and, upon the recommendation of the health officer, shall fix the compensation and define the powers and duties of such deputies and assistants to the health officer as the board may deem necessary to carry out the provisions of this act. If a meat inspector is employed, he shall be a graduate veterinarian legally qualified to practice veterinary medicine in the state of California.

Expenses. Powers. Appointment of district officers, etc.

The health officer, his deputies and assistants, shall receive their actual necessary expenses incurred in the performance of their duties. In enforcing state statutes, orders, regulations and rules and local orders and ordinances the health officer shall have such powers as are or may be hereafter conferred by general law upon county or municipal health officers. All district officers, deputies and assistants other than the health officer and the members of the board of trustees shall be appointed and may be removed by the board of trustees on the recommendation of the health officer, subject to such rules and regulations as the board of trustees, in its discretion, may adopt for the appointment and employment of deputies and assistants, based on merit, efficiency, character and industry.

Health officer administrative head.

§ 8. The health officer shall be recognized as the administrative head of the district and, except as herein otherwise prescribed, shall exercise the powers granted to and vested in the district; provided, that he may not purchase property or incur expenditures without the approval or ratification of the board of trustees.

Estimate of amount needed. Levy of tax. Apportioned among counties.

§ 9. Annually, at least fifteen days before the first day of the month in which county taxes are levied, the board of trustees of each local health district shall furnish to the board of supervisors of the county in which the district or any part thereof is situated an estimate in writing of the amount of money necessary for all purposes required under the provisions of this act during the next ensuing fiscal year. Thereupon it shall be the duty of the board of supervisors to levy a special tax upon all taxable property of the county lying within the district sufficient in amount to maintain the district. The tax shall in no case exceed the rate of fifteen cents on each one hundred dollars of the assessed valuation of all taxable property within the district, but it may be in addition to all other taxes allowed by law to be levied upon such property. The tax shall be computed, entered upon the tax rolls and collected in the same manner as county taxes are computed, entered and collected. All moneys so collected shall be paid into the county treasury to the credit of the particular local health district fund and shall be paid out of the order of the district board signed by the president and secretary

thereof. If the district embraces territory lying in more than one county, the amount estimated shall be ratably apportioned among the several counties in the district in proportion to the assessed value of the property in the several counties included within said district as shown upon the last assessment rolls of the said counties, and the estimate apportioned to the several counties shall be rendered to their respective boards of supervisors and the tax shall be levied and collected by the officials of each county upon the property of the district lying therein.

Annexation of territory. Petitions. Proposition submitted to electors. If majority favor. Annexation of municipal corporation.

§ 10. Any territory, incorporated or unincorporated, lying adjacent and contiguous to a local health district, may be added and annexed to such district at any time upon proceedings being had and taken as in this act prescribed; provided, that in such annexation the territory of no municipal corporation may be divided. The board of trustees of such district, upon receiving a written petition therefor containing a description of the new territory sought to be annexed to such district, signed by the owners comprising more than one-half of the assessed value of such territory as shown by the last county assessment roll, must thereupon submit to the electors of the district and also to the electors residing in the territory sought to be annexed, the proposition of whether such proposed territory shall be annexed and added to such district. The proposition to be submitted to the electors at such election, both within said district and within said territory so proposed to be annexed, shall be as follows: "For annexation," or "Against annexation," or words equivalent thereto. Such election must be called and held, and notice thereof shall be published for at least four weeks prior to such election in a newspaper printed and published in such district, and also in a newspaper printed and published in such territory so proposed to be annexed. The board of trustees shall canvass, separately, the votes cast within said district, and the votes cast within said territory so proposed to be annexed, and if it shall appear from such canvass that a majority of all the ballots cast in such district and a majority of all the ballots cast in such territory so proposed to be annexed are in favor of annexation, the board of trustees shall certify such fact to the secretary of state describing said property proposed to be annexed and upon receipt of such last mentioned certificate, the secretary of state shall thereupon issue his certificate reciting that the territory (describing the same) has been annexed and added to the local health district (naming it), and a copy of such certificate of the secretary of state shall be transmitted to and filed with the county clerk of each county in which such local health district or any portion thereof is situated. From and after the date of such certificate the territory named therein shall be deemed added and annexed to and shall form a part of said local health district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. If the property so proposed to be annexed includes a municipal corporation, consent to annexation shall first be obtained from the governing board thereof, and an authentic copy of the resolution or order of such board so consenting to such annexation shall be attached to the petition and be made a part thereof.

Dissolution of district.

§ 11. A district may at any time be dissolved upon the vote of two-thirds of the qualified electors thereof, upon an election called by its board of trustees upon the question of dissolution and the proposition which shall be submitted to the electors at such election shall be as follows: "Shall the district be dissolved?" Such election must be called and held, and notice thereof shall be published for at least four weeks prior to such election in a newspaper printed and published in the district. If two-thirds of the votes at such election shall be in favor of the dissolution of the district, the board of trustees shall certify such fact to the secretary of state, and upon receipt of such

last-mentioned certificate, the secretary of state shall thereupon issue his certificate reciting that the local health district (naming it) has been dissolved, and a copy of such certificate of the secretary of state shall be transmitted to and filed with the county clerk of each county in which the district or any portion thereof is situated. From and after the date of such certificate the district named therein shall be deemed discontinued and the property of the district shall be ratably apportioned among the several municipalities included in the district and the county or counties in which the district or any portion thereof is situated, in proportion to the assessed value of the property included within said district as shown upon the last county assessment roll or rolls.

Conditions.

§ 12. Whenever it appears that the territory of the proposed district is in more than one county, it is to be expressly understood in this act that the phrase "board of supervisors" shall include plural as well as singular and that the same procedure and law as herein set forth for the establishing of such local health district in a county only shall likewise apply to the adjoining county or counties whose territory or portion thereof is included in the proposed local health district, and that no district involving more than one county shall be formed without the concurrent consent of the respective board of supervisors of each of said counties, as well as the consent of the municipalities included therein, and that such district shall be officially incorporated under the laws of the state of California when the respective counties have fully complied with the laws herein specified, and when the secretary of state has received the respective certified copies of the orders of the counties and delivered to the respective county clerks within the time in this act specified his certificate reciting that the local health district has been duly incorporated under the laws of the state of California.

Constitutionality.

§ 13. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

DEPARTMENT OF SANITARY ENGINEERING.

ACT 3697—An act to provide for the establishment and maintenance of a department of sanitary engineering under the direction of the state board of health and making an appropriation therefor.

History: Approved May 24, 1915, in effect August 8, 1915, Stats. 1915, p. 800.

Sanitary engineering department. Director. Appropriation.

§ 1. The state board of health shall maintain a department of sanitary engineering which shall have charge of such matters and shall have such powers as may from time to time be referred and delegated to it by the state board of health. The board shall appoint a director of the department, who shall be a graduate sanitary engineer, whose salary shall be four thousand dollars per annum. The state board of health may employ and fix the compensation of other additional professional and clerical assistants and such compensation shall be paid from the funds provided for the maintenance of the department of sanitary engineering. The sum of thirty thousand dollars is hereby appropriated for the purpose of this act. Claims against the fund shall be audited by the state board of health and by the board of control and shall be paid by the state treasurer upon warrants drawn by the state controller.

DRINKING RECEPTACLES FOR PUBLIC USE.

ACT 3698—An act to prevent the providing for common use of receptacles for drinking purposes in public places, and prescribing penalties for violations thereof.

History: Approved June 1, 1917, in effect July 31, 1917, Stats. 1917, p. 1517.

Drinking cups for common use unlawful.

§ 1. It shall be unlawful for any person, firm or corporation conducting, having charge of, or control of, any hotel, restaurant, saloon, soda fountain, store, theater, public hall, public or private school, church, hospital, club, office building, park, playground, lavatory or wash room, barber shop, railroad train, boat, or any other public place, building, room or conveyance, to provide or expose for common use, or permit to be so provided or exposed, or to allow to be used in common, any cup, glass, or other receptacle used for drinking purposes.

“Common use” defined.

§ 2. For the purposes of this act the term “common use” when applied to a drinking receptacle shall be defined as its use for drinking purposes by, or for, more than one person without its being thoroughly cleansed and sterilized in boiling water or steam between consecutive uses thereof; provided, that nothing in this act is to be construed as prohibiting the use of cups or devices for individual use only; provided, further, that the state board of health may by resolution prescribe other acceptable methods of sterilization which may be used in place of the methods specified in this act.

Protection of water cooler used for supplying drinking water.

§ 3. No cask, water cooler or other receptacle shall be used for storing or supplying drinking water to the public or to employees unless it is covered and protected so as to prevent persons from dipping the water therefrom or contaminating the same. All such containers shall be provided with a faucet or other suitable device for drawing the water; provided, that jugs, cans, buckets, and similar receptacles without faucets or other devices for withdrawing water may be used if the water is protected against contamination and is withdrawn by pouring only.

Duty of health officers.

§ 4. It shall be the duty of the state board of health and of all health officers of counties, municipalities and health districts to enforce the provisions of this act.

Penalty for violation.

§ 5. Any person, firm or corporation violating any provision of this act is guilty of a misdemeanor and shall be liable to a fine not exceeding twenty-five dollars for each offense.

TOWELS FOR PUBLIC USE.

ACT 3699—An act to prevent the keeping of towels for common use in public places and prescribing penalties for violations of the provisions thereof.

History: Approved June 1, 1917, in effect July 31, 1917, Stats. 1917, p. 1518.

Towel for common use unlawful.

§ 1. No person, firm or corporation conducting, operating, having charge of, or control of, any hotel, restaurant, factory, store, barber shop, office building, school, public hall, railroad train, railway station, boat, or any other public place, room or conveyance, shall maintain or keep in or about any such place any towel for common use.

“Common use” defined.

§ 2. For the purpose of this act the term “common use” when applied to a towel shall be defined as its use by, or for, more than one person without its being laundered by a process involving exposure to boiling water or steam between consecutive uses of such towel; provided, that the state board of health may by resolution prescribe other acceptable methods of sterilization which may be used in place of the methods specified in this act.

Duty of health officers.

§ 3. It shall be the duty of the state board of health and of all health officers of counties, municipalities and health districts, to enforce the provisions of this act.

Penalty for violation.

§ 4. Any person, firm or corporation violating any of the provisions of this act is guilty of a misdemeanor and shall be liable to a fine not exceeding twenty-five dollars for each offense.

BUREAU OF CHILD HYGIENE.

ACT 3699a—An act to provide for the establishment and maintenance of a bureau of child hygiene under the direction of the state board of health, prescribing its powers and duties and making an appropriation to carry out the provisions hereof.

History: Approved May 27, 1919, in effect July 27, 1919, Stats. 1919, p. 1234.

Bureau of child hygiene established.

§ 1. The state board of health shall maintain a bureau of child hygiene which in addition to the duties and powers hereinafter prescribed shall have charge of such matters and shall have such powers as may, from time to time, be referred to and delegated to it by the state board of health. Said board shall appoint a director of said bureau who shall be a duly licensed and practicing physician of any system of therapeutics and whose salary shall be fixed by the state board of health. The state board of health may also employ and fix the compensation of other additional professional and clerical assistants and such compensation shall be paid from the funds provided for the maintenance of the bureau of child hygiene.

Powers and duties of bureau.

§ 2. This bureau shall have the power under the direction and supervision of the state board of health to investigate conditions affecting the health of the children of this state and to disseminate educational information relating thereto; provided, however, that nothing in this act shall be construed as giving the said bureau of child hygiene the power to force compulsory medical or physical examination of children. It shall be the duty of said bureau, upon request, to advise all public officers, organizations and agencies interested in the health and welfare of children within the state of California.

Appropriation.

§ 3. The sum of twenty thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated to be expended in accordance with law for the purpose of carrying out the provisions of this act. All claims against this appropriation shall be audited by the state board of health and by the board of control, and shall be paid by the state treasurer upon warrants drawn by the state controller.

CHAPTER 293.

PUBLIC INSTITUTIONS.

References: See, generally, tits. "California Industrial Farm"; "California School for Girls"; "California State Reformatory"; "Deaf, Dumb and Blind Asylum"; "Feeble Minded Children"; "Insane Asylums"; "Preston School of Industry"; "Whittier State School."

CONTENTS OF CHAPTER.

ACT 3700. EXCHANGE OF COMMODITIES.

EXCHANGE OF COMMODITIES.

ACT 3700—An act providing for the exchange of commodities between the public institutions owned or managed and controlled by the state, or the political divisions thereof.

History: Approved March 18, 1905, Stats. 1905, p. 185.

Exchange of commodities between public institutions.

§ 1. It shall be the duty of the state board of examiners, within six months after the passage of this act, to arrange, so far as may be practical, for an exchange of surplus products, either manufactured or natural, between the several public institutions owned or managed and controlled by the state or the political divisions thereof.

Duty of state board of examiners. Surplus products not to be sold as long as there is a demand.

§ 2. It shall be the duty of the state board of examiners to so distribute and arrange, with the assistance of the boards of managers, directors or trustees of the several institutions referred to in section 1 of this act, the labor and industry of their inmates that it will prove conducive to their mutual assistance, with a view of advancing the economic management of all the institutions owned or managed and controlled by the state, or the political divisions thereof; and all such surplus products shall not be sold or disposed of to any individual, corporation or association not connected with the state, or any political division thereof, so long as there shall be any demand for any such products by any public institutions owned or managed and controlled by the state, or the political divisions thereof.

Value of products, how estimated.

§ 3. In estimating the value of such articles for the purpose of such exchange or sale between public institutions, the cost of producing or raising such products, with ten per cent added, shall be the sale price thereof.

Board of examiners to be notified of surplus products.

§ 4. Each institution shall notify the state board of examiners what surplus products they have to dispose of, as set forth in this act, and the state board of examiners shall notify all other institutions owned or managed and controlled by the state, or the political divisions thereof, that such articles can be procured and where, and thereupon the provisions of section 2 of this act shall become effective, and the state board of examiners shall allow no claims for the purchase of any products from any individual, corporation or association so long as the same might have been procured from a state institution after it had been duly notified of that fact.

Inconsistent acts repealed.

§ 5. All acts and parts of acts inconsistent with this act are hereby repealed.

CHAPTER 294.

PUBLIC LANDS.

References: Endowment grant for agricultural and mechanical colleges, see tit. "Colleges."

Lands uncovered by recession or drainage of inland lakes, see Kerr's Cyc. Political Code, §§ 3493n, et seq.

Protection of settlers on public land, see Kerr's Cyc. Penal Code, § 420.

Public lands, general code provisions, see Kerr's Cyc. Political Code, §§ 3395, et seq.

Reclamation districts, formation and government of, see Kerr's Cyc. Political Code, §§ 3446, et seq.

Relations in land matters with United States, see tit. "United States."

School lands, sale of, see Kerr's Cyc. Political Code, §§ 3494, et seq.

Swamp, overflowed, salt marsh and tide lands, see Kerr's Cyc. Political Code, §§ 3440, et seq.

Tide lands, in particular, see particular title.

Unsegregated swamp and overflowed lands, see Kerr's Cyc. Political Code, §§ 3493n.

See, generally, "Conservation"; "Drainage"; "Forestry"; "Irrigation and Irrigation Districts"; "Levee Districts"; "Protection Districts"; "Reclamation Districts"; "Swamp and Overflowed Lands."

CONTENTS OF CHAPTER.

ACT 3715. WITHDRAWING CERTAIN SCHOOL LAND FROM SALE.

3715a. SALE OF SCHOOL LANDS CONTAINING MINERALS.

3716. RESERVATION FROM SALE OF CERTAIN SCHOOL LAND.

3717. MANAGEMENT AND SALE OF STATE LANDS.

3719. SURVEY AND DISPOSITION OF CERTAIN SALT MARSH AND TIDE LANDS.

3720. DISTRIBUTION OF SWAMP LAND FUND.

3720a. SALE OF CERTAIN LANDS.

3721. SALE AND CONVEYANCE OF CERTAIN LANDS.

3721a. SALE OF CERTAIN LANDS IN RECLAMATION DISTRICT 1600.

3721b. SALE OF SCHOOL LANDS NOT SUITABLE FOR CULTIVATION.

3721c. SALE OF SCHOOL LANDS SUITABLE FOR CULTIVATION.

3721d. PREFERENTIAL RIGHT TO PURCHASE.

3722. PURCHASE OF SCHOOL LANDS.

3724. POSSESSORY ACTIONS.

3725. PROTECTION OF ACTUAL SETTLERS.

3726. BETTER PROTECTION OF SETTLERS.

3727. PROTECTION OF SETTLERS ON LANDS CLAIMED BY STATE.

3729. PROTECTION OF PRE-EMPTION AND HOMESTEAD CLAIMANTS.

3730. PROTECTION OF BONA FIDE SETTLERS.

3731. RELIEF OF PURCHASERS OF STATE LANDS.

3734. LEGALIZING APPLICATIONS TO PURCHASE.

3735. LEGALIZING PAYMENTS FOR SCHOOL LAND.

3735a. FORFEITURE FOR NON-PAYMENT OF INTEREST.

3735b. JUDICIAL DETERMINATION OF FORFEITURE—REINSTATEMENT.

3736. REDEMPTION FROM FORFEITURE FOR NON-PAYMENT OF INTEREST.

3737. FORFEITURE ACT OF 1889.

3737a. RIGHTS OF PARTIES IN FRESNO AND KERN COUNTIES.

3738. RELIEF OF JOHN D. JUSTICE.

3739. RELIEF OF PETER ANDERSON.

3739a. RELIEF OF MARY ANN BATH AND OTHERS.

3739b. RELIEF OF HEIRS AT LAW OF P. W. FAHEY.

3739c. RELIEF OF ELLA GLENN LEONARD AND OTHERS.

3739d. RELINQUISHMENT OF TITLE TO CERTAIN LANDS TO GEORGE HERGET.

3740. RELIEF OF PURCHASERS OF SCHOOL LANDS.

3740a. RESTITUTION APPROPRIATIONS—PRINCIPAL.

3740b. RESTITUTION APPROPRIATIONS—INTEREST.

3740c. PAYMENT OF CERTAIN SWAMP LAND WARRANTS.

3741. CANCELLATION OF UNLOCATED SCHOOL LAND WARRANTS.

3742. FORFEITURE OF PAYMENTS ON FRAUDULENT TITLES.

3743. REMOVAL OF IMPROVEMENTS MADE UNDER VOID LOCATION.

- 3744a. QUIETING TITLE TO CERTAIN SWAMP LANDS IN YOLO AND COLUSA COUNTIES.
- 3744b. TITLE TO CERTAIN LIEN LANDS VALIDATED.
- 3745. QUIETING TITLE TO CERTAIN SWAMP LANDS.
- 3745a. RESELECTION IN CASE OF CANCELED OR REJECTED SELECTIONS.
- 3745b. RESELECTION ACT OF 1919.
- 3745c. AMENDMENT OF BASE LAND SELECTIONS.
- 3745d. QUIETING TITLE TO CERTAIN LAND IN YOLO COUNTY.
- 3745e. QUIETING TITLE TO CERTAIN LAND IN YOLO COUNTY.
- 3746. CANCELLATION OF LIEN LAND APPLICATIONS.
- 3746a. RELINQUISHMENT OF LIEN LANDS.
- 3747. CANCELLATION OF TAX LIENS ON CERTAIN SCHOOL LANDS.
- 3748. "CAREY ACT COMMISSION."
- 3749. SCHOOL LAND LEASING ACT OF 1917.
- 3750. EFFECT OF STATE LAND PATENTS.
- 3751. OFFICIAL MAP OF PATENTED STATE LANDS.
- 3752. CONSENT OF STATE TO PROVISIONS OF ACT OF CONGRESS AS TO WITHDRAWAL OF MINERAL LANDS.
- 3753. SWAMP AND OVERFLOWED LANDS, DETERMINATION AS TO CHARACTER.

WITHDRAWING CERTAIN SCHOOL LANDS FROM SALE.

ACT 3715—An act withdrawing from sale all sixteenth and thirty-sixth sections of school land belonging to the state of California, situated within the exterior boundaries of a military, Indian or forest reservation created by authority of the United States, or of a national forest, national park or national monument, or within the exterior boundaries of lands withdrawn from public entry for forest purposes, and providing for the cancellation of all applications for such lands on which certificates of purchase have not been issued, and prescribing the duties of the surveyor general in relation thereto, and repealing all acts and parts of acts in conflict herewith.

History: Approved May 1, 1911, Stats. 1911, p. 1408. This act was supplementary to the act of March 24, 1909, Stats. 1909, p. 680, amending §§ 3398, 3406, and 3407, repealing § 3410, and adding §§ 3406a, 3408a, 3408b, 3408c, 3408d, and 3408e, of the Political Code.

School sections withdrawn from sale.

§ 1. All sixteenth and thirty-sixth sections of school land, belonging to the state of California, and situated within the exterior boundaries of a military, Indian or forest reservation created by authority of the United States, or of a national forest, national park or national monument, or within the exterior boundaries of lands withdrawn from public entry, for forest purposes, are hereby withdrawn from sale by the state of California.

Applications null and void.

§ 2. Any and all applications heretofore filed in the office of the surveyor general for any of the lands mentioned in section 1 of this act, or tendered or presented for filing, and upon which said application no certificates of purchase have been issued, are hereby declared to be null and void, and shall be canceled by the surveyor general, and the surveyor general is hereby prohibited from taking any further action on said applications other than canceling the same.

Does not prevent indemnity selection.

§ 3. Nothing in this act contained shall be construed as preventing the use of said sixteenth and thirty-sixth sections as bases for indemnity selections, as provided by law, and, likewise, nothing in this act contained shall be construed as a recognition that prior to the passage hereof the said sixteenth and thirty-sixth sections, in section 1 hereof referred to, have not heretofore been withdrawn from sale by the state.

§ 4. All acts and parts of acts in conflict with this act are hereby repealed.

§ 5. This act shall take effect immediately from and after its passage.

1. Act modification of section 3408b, Political Code.—This act slightly modified section 3408b of the Political Code.—*Deseret, etc., Co. v. State*, 167 Cal. 147, 138 Pac. 981.

2. Purchase of school lands in national forests—Effect of act.—Where applications to purchase school lands within a national forest were offered and refused by the surveyor general, and such lands were withdrawn from sale by this act two days afterwards, and before such applications could be approved or the price paid, the appli-

cants could not maintain mandamus there-after against the surveyor general, even though it be conceded that such refusal to file was unauthorized.—*Ayers v. Kingsbury*, 25 Cal. App. 183, 143 Pac. 85.

3. Same—Same.—The withdrawal of school lands in national forests from sale, pending preliminary proceedings for purchase, terminated all such proceedings.—*Ayers v. Kingsbury*, 25 Cal. App. 183, 143 Pac. 85.

SALE OF SCHOOL LANDS CONTAINING MINERALS.

ACT 3715a—An act regulating the sale of mineral lands belonging to the state.

History: Approved March 28, 1874, Stats. 1873-74, p. 766. Amended (1) February 3, 1876, Stats. 1875-76, p. 20; (2) April 6, 1880, Stats. 1880, p. 26; repealed April 1, 1897, Stats. 1897, p. 438.

The repealing act contained the following sections:

School lands containing minerals, withholding sale of.

§ 2. When it shall be shown by affidavits or otherwise, to the satisfaction of the surveyor general, that any portion of a sixteenth or thirty-sixth section belonging to the state is valuable for its mineral deposits, the surveyor general shall not approve any application to purchase the same, nor shall the register of the state land office issue a certificate of purchase therefor, until the question of the character of the land has been referred for determination to a court of competent jurisdiction, in the manner provided by section thirty-four hundred and fourteen of the Political Code, and adjudged not to be valuable as mining land.

School lands containing minerals open to exploration.

§ 3. The sixteenth and thirty-sixth sections belonging to the state, in which there may be found valuable mineral deposits are hereby declared to be free and open to exploration, occupation, and purchase of the United States, under the laws, rules, and regulations passed and prescribed by the United States for the sale of mineral lands.

§ 4. This act shall take effect from and after its passage.

1. Mining rights may exist on school lands.—It is a matter of common knowledge, and recognized by this and other legislative enactments that mining rights and privileges may exist on school lands of

the state of California.—*Graciosa Oil Co. v. Santa Barbara Co.*, 155 Cal. 140, 99 Pac. 483, 20 L. R. A. (N. S.) 211.

See, also, *Wedekind v. Craig*, 56 Cal. 642.

RESERVATION FROM SALE OF CERTAIN SCHOOL LAND.

ACT 3716—An act to reserve from sale certain lands.

History: Approved April 1, 1876, Stats. 1875-76, p. 679.

This act reserved the north half of section 16, in township 7 south, and range 3 east, Mt. Diablo meridian.

MANAGEMENT AND SALE OF STATE LANDS.

ACT 3717—An act to provide for the management and sale of lands belonging to the state.

History: Approved March 28, 1868, Stats. 1867-68, p. 507. Amended (1) January 21, 1870, Stats. 1869-70, p. 14; (2) April 4, 1870, Stats. 1869-70, p. 814; (3) April 4, 1870, Stats. 1869-70, p. 875; (4) March 16, 1872, Stats. 1871-72, p. 383; (5) March 28, 1872, Stats. 1871-72, p. 668; (6) March 28, 1872, Stats. 1871-72, p. 685; (7) April 1, 1872, Stats. 1871-72, p. 858; supplemented April 4, 1870, Stats. 1869-70, p. 878. Continued in force as to certain features by subdivision 25, § 19, Political Code (see notes). No doubt superseded or obsolete in most respects at the present time.

Codified in part: See Kerr's Cyc. Pol. Code, §§ 3395, et seq. See, also, Laguna D. Dist. v. Chas. Martin Co., 144 Cal. 209, 211, 77 Pac. 933; San Francisco Sav. Union v. Reclamation Dist., 144 Cal. 639, 644, 79 Pac. 374.

Repealed all prior acts on the same subject: Kings Co. v. Tulare Co., 119 Cal. 509, 512, 51 Pac. 866; People, ex rel. Thisby v. Reclamation Dist., 130 Cal. 607-610, 63 Pac. 27, and cases cited in those decisions.

Repeal by code provisions.—Part II of this act contained provisions for forming and managing reclamation districts, and it was held that the Political Code had not repealed that portion of the act in the matter of the assessment of taxes, citing subdivision 25, section 19, Political Code.—See Reclamation Dist. v. Goldman, 61 Cal. 205.

CITATIONS.

Stats. 1867-8, 507—Generally.—Forestier v. Johnson, 164 Cal. 24, 36, 37, 127 Pac. 156. § 4—Young v. Shinn, 48 Cal. 26, 28. § 12—Messenger v. Kingsbury, 158 Cal. 611, 615, 617, 112 Pac. 65. §§ 12, 52—Oakley v. Stuart, 52 Cal. 521, 534. §§ 16, 23—Rowell v. Perkins, 56 Cal. 219, 223. § 17—People v. Carrick, 51 Cal. 325, 328; Perri v. Beaumont, 91 Cal. 30, 33, 27 Pac. 534. § 22—Klauber v. Higgins, 117 Cal. 451, 457, 49 Pac. 466. § 23—People ex rel. Lynch v. Martz, 74 Cal. 110, 111, 15 Pac. 449. § 27—Forestier v. Johnson, 164 Cal. 24, 33, 127 Pac. 156. §§ 28, 29—Waters v. Pool, 149 Cal. 795, 799, 87 Pac. 374. § 29—Hopkins v. Orcutt, 51 Cal. 537. §§ 29, 33, 34—Hagar v. Board Supervisors, 51 Cal. 474-476. §§ 30, 31—People v. Haggin, 57 Cal. 579, 585; Laguna, etc., Dist. v. Martin, 144 Cal. 209, 211, 212, 213, 77 Pac. 933. § 30—People v. Reclamation Dist., 121 Cal. 522, 523-527, 50 Pac. 1068, 53 Pac. 1085; San Francisco Savs. Union v. Rec. Dist. No. 124, 144 Cal. 639, 643, 644, 646, 79 Pac. 374. §§ 30, 31, 35—People v. Haggin, 57 Cal. 575, 579. §§ 30-43—Reclamation Dist. v. Goldman, 65 Cal. 635, 636, 4 Pac. 676. § 32—People ex rel. Thisby v. Rec. Dist. No. 556, 130 Cal. 607, 615, 63 Pac. 27. §§ 32, 33, 35, 46—People v. Hagar, 52 Cal. 171, 181-188. §§ 32, 47, 71—People ex rel. Thisby v. Reclamation Dist., 130 Cal. 607, 609, 63 Pac. 27. §§ 33-36—Moulton v. Parks, 64 Cal. 167, 175, 30 Pac. 613. §§ 33, 34—Swamp L. Dist. v. Haggin, 64 Cal. 204, 206-209, 30 Pac. 631. §§ 33-35—Reclamation Dist. v. Parvin, 67 Cal. 501, 502, 8 Pac. 43. § 34—Reclamation Dist. v. Hagar, 66 Cal. 54, 56, 4 Pac. 945. § 35—People v. Ahern, 52 Cal. 208, 211; People v. Hagar,

52 Cal. 171, 181; Reclamation Dist. v. Goldman, 61 Cal. 205, 207. § 43—People ex rel. Attorney-General v. Parvin, 74 Cal. 549, 550, 16 Pac. 490. § 51—Rowell v. Perkins, 56 Cal. 219, 223. § 52—Gilson v. Robinson, 68 Cal. 539, 542, 10 Pac. 193. §§ 52, 53—Woods v. Sawtelle, 46 Cal. 389, 391. §§ 53-58—Cuca-monga F. L. Co. v. Moir, 83 Cal. 101, 106, 22 Pac. 55, 23 Pac. 359. § 55—People v. Gardner, 55 Cal. 304, 307. § 65—People v. Herman, 45 Cal. 689, 692. § 66—Goddard v. Emerson, 15 Cal. App. 440, 442, 115 Pac. 163. §§ 66, 67—Hyde v. Redding, 74 Cal. 493, 502, 16 Pac. 380. § 67—Lawrence v. Booth, 46 Cal. 187, 189. § 69—People v. Blake, 84 Cal. 611, 615, 22 Pac. 1142, 24 Pac. 313. § 70—Easton v. O'Reilly, 63 Cal. 305, 308; Klauber v. Higgins, 117 Cal. 451, 460, 49 Pac. 466; People v. Hagar, 49 Cal. 229-232; People v. Houston, 54 Cal. 536, 537; Johnson v. Squires, 55 Cal. 103, 104; People v. Gardner, 55 Cal. 304, 306; Upham v. Hosking, 62 Cal. 250, 258; Heath v. Wallace, 71 Cal. 50, 53, 11 Pac. 842; Manley v. Cunningham, 72 Cal. 236, 238, 13 Pac. 622; Marshall v. Farmers' Bank, 115 Cal. 330, 333, 42 Pac. 418, 47 Pac. 52; Hooper v. Young, 140 Cal. 274, 279, 98 Am. St. Rep. 56, 73 Pac. 140; Miller v. Grunsky, 141 Cal. 441, 446, 66 Pac. 858, 75 Pac. 48; Messenger v. Kingsbury, 158 Cal. 611, 617, 112 Pac. 65.

See, also, Kimball v. Rec. Fund Commrs., 45 Cal. 344, 357; Read v. Caruthers, 47 Cal. 181, 182; Christman v. Brainard, 51 Cal. 534, 537; Bolsa L. Co. v. Burdick, 151 Cal. 254, 258, 90 Pac. 532.

Stats. 1871-2, 858.—Swamp Land Dist. v. Haggin, 64 Cal. 204, 209, 30 Pac. 631; Reclamation Dist. v. Goldman, 65 Cal. 635, 638, 4 Pac. 676.

Stats. 1869-70, 875, 878.—§ 2—Cox v. Jones, 47 Cal. 412, 413; Christman v. Brainard, 51 Cal. 534, 537. §§ 11, 12—Rogers v. Shannon, 52 Cal. 99, 106. § 12—Gilson v. Robinson, 68 Cal. 539, 543, 10 Pac. 193. § 23—Rowell v. Perkins, 56 Cal. 219, 224. § 53—Copp v. Harrington, 47 Cal. 236, 240. § 55—People v. Gardner, 55 Cal. 304, 307; Ramsey v. Flournoy, 58 Cal. 260, 261; People v. Donnelly, 58 Cal. 144, 145; Easton v. O'Reilly, 63 Cal. 305, 309; People ex rel. Eadie v. Noyo Lumber Co., 99 Cal. 456, 460, 34 Pac. 96.

See, also, Swamp Land Dist. No. 121 v. Haggin, 64 Cal. 204, 209, 30 Pac. 631; Fredericks v. Zumwalt, 134 Cal. 44, 48, 66 Pac. 38; Waters v. Pool, 149 Cal. 795, 798, 799, 800, 87 Pac. 617.

SURVEY AND DISPOSITION OF CERTAIN SALT MARSH AND TIDE LANDS.

ACT 3719—An act to survey and dispose of certain salt marsh and tide lands belonging to the state.

History: Approved March 30, 1868, Stats. 1867-68, p. 716. Supplemented and amended April 1, 1870, Stats. 1869-70, p. 541; March 30, 1874, Stats. 1873-74, p. 858. Continued in force by the Political Code, see Kerr's Cyc. Political Code, § 3488. The code commissioners say of this act: "Repealed amendments to the codes, 1875-76, p. 15. But see Political Code, § 3488, as amended in 1891 and 1903." Former acts: Act of April 28, 1855, Stats. 1855, p. 189, relating to the sale of swamp and overflowed lands; repealed April 21, 1858, Stats. 1858, p. 201, 1867-68, p. 529. Act of April 21, 1858, Stats. 1858, p. 198, providing for the sale and reclamation of swamp and overflowed lands; amended April 18, 1859, Stats. 1859, p. 340; repealed March 28, 1868, Stats. 1867-68, p. 529. Act of April 27, 1863, Stats. 1863, p. 591, relating to the sale of swamp lands, marsh and tide lands; repealed March 28, 1868, Stats. 1867-68, p. 530.

DISTRIBUTION OF SWAMP-LAND FUND.

ACT 3720—An act to provide for the proper distribution, in the several county treasuries, of funds arising from the sale of swamp-lands. [Stats. 1873-74, p. 770.]

History: Approved March 28, 1874, Stats. 1873-74, p. 770.

Swamp-land fund, setting apart of.

§ 1. Whenever hereafter a swamp-land district shall be organized, and in all cases where districts have heretofore been organized, the board of supervisors of each county in which any portion of the lands of such district are located, shall, upon the application of any party interested, direct the auditor and treasurer to set apart from the swamp-land fund, in the county treasury, all the money which has been or shall hereafter be received in payment of principal and interest on such lands, as a fund to the credit of such district, except such money as may have previously been expended from the swamp-land fund for the benefit of land within the district.

How used.

§ 2. The money in the district fund, created by section one of this act, shall be paid out only for the purpose of reclaiming said land, or to the owners of such land after reclamation, as now provided by law; and in all cases where moneys paid in upon such lands have been diverted to the use and benefit of other lands, they shall be replaced out of the first receipt from the land so benefited. In all cases where any expense has been paid from the county swamp-land fund for attorney's fees in the examination of the character of any land, in any reclamation district, or when any expenses have been paid from the county swamp-land fund pertaining to the land in said district, the county treasurer shall deduct said amount from the amount otherwise found due to the land for which said expense was paid, and only return to the owner of the land so much of the money paid into the treasury on said land as shall remain after deducting the said amount paid for expense pertaining to said land.

To what districts applies.

§ 3. This act shall not apply to districts upon which controller's warrants are outstanding, until after all of such warrants are paid.

1. **Act does not affect state's title to swamp and overflowed lands.**—The state did not by this act part with the title to its swamp and overflowed lands, or the fund arising from the sale thereof, to the counties of the state.—*Kings Co. v. Tulare Co.*, 119 Cal. 509, 51 Pac. 866.

SALE OF CERTAIN LANDS.

ACT 3720a—An act to authorize the state board of control to sell certain lands.

History: Approved June 1, 1917, in effect July 31, 1917, Stats. 1917, p. 1634.

Authority to sell certain lands.

§ 1. The state board of control is hereby authorized and empowered to sell in such manner and method and at such time as said board may deem best all or part of that certain property situated in the county of San Joaquin, state of California, and described as follows, to wit:

A portion of the east one-half of section eighteen of C. M. Weber's Grant El Rancho Del C. de Los Franceses, and being the south fifteen acres of the following described piece of land: Commencing for the same at a stake situated at the southwest corner of the Maxwell tract, and running thence along Betts west line south sixteen degrees, fifty-five minutes east, thirty-four and fifty one-hundredths chains to a stake; thence south seventy-three degrees five hundredths minutes west, eight and sixty-two and one-half one-hundredths chains to a point in the center line of a proposed road, said center line of said road being the easterly line of land now owned by Edw. Floyd Jones; thence along said easterly line of said land of said Edw. Floyd Jones north sixteen degrees and fifty-five minutes west, thirty-four and fifty hundredths chains to a point in Gray south line; thence along said Gray south line north seventy degrees and fifty-one minutes east eight and sixty-two and one-half one-hundredths chains to the point of beginning, containing thirty acres, more or less. Also an undivided one half interest in the right of way granted by A. McCloud to Samuel Hewlett by deed dated the eleventh day of October, eighteen hundred sixty-nine.

Expenses.

§ 2. The state board of control is hereby authorized to pay out of the proceeds of said sale, the expenses necessarily incurred by said board in making such sale; which said proceeds, less the expenses so paid, shall be duly transferred by said board to the state treasurer.

Deed.

§ 3. The governor is hereby authorized and directed to execute to the purchaser or purchasers of said property for and on behalf of and in the name of the state of California, a deed of conveyance of said property in the usual form of grant, bargain and sale and to deliver the same upon the payment of the full amount of the purchase price of said property; and said deed shall be effectual to pass and convey to said purchaser or purchasers all of the right, title, interest and estate of the state of California in and to said property.

SALE AND CONVEYANCE OF CERTAIN LANDS.

ACT 3721—An act to authorize the governor and surveyor general to sell and convey certain lands.

History: Approved March 31, 1891, Stats. 1891, p. 251.

This act authorized the sale of certain lands to the claimants and occupants thereof.

SALE OF CERTAIN LANDS IN RECLAMATION DISTRICT 1600.

ACT 3721a—An act authorizing the sale of certain property belonging to the state of California, and located in what is known as Reclamation district 1600 in Yolo county.

History: Approved June 1, 1915, in effect August 8, 1915, Stats. 1915, p. 1066.

This act authorized the state board of control to sell certain land approximating two hundred and thirty-three hundredths acres, in reclamation district sixteen hundred, in Yolo county, subject to assessment levied against it by the reclamation district.

SALE OF SCHOOL LANDS NOT SUITABLE FOR CULTIVATION.

ACT 3721b—An act providing for the sale of certain state lands.

History: Approved May 19, 1915, in effect August 8, 1915, Stats. 1915, p. 605. Entire act, except title, amended May 6, 1919, in effect July 22, 1919, Stats. 1919, p. 306.

Sale of school lands authorized.

§ 1. The unsold portions of the sixteenth and thirty-sixth sections of school lands not included within the exterior boundaries of national reservations, the unsold portions of the five hundred thousand acres granted to the state for school purposes, and the unsold portions of the listed lands selected of the United States in lieu of the sixteenth and thirty-sixth sections and losses to the school grant which are not suitable for cultivation shall be sold at public auction to citizens of the United States by the surveyor general under rules and regulations prescribed by him, payment to be made as follows: The full purchase price of the land, or ten per cent thereof and interest to the first day of January following at the rate of six per cent per annum on the unpaid balance of the purchase price, to be paid at the time of sale; the unpaid balance of the purchase price shall bear interest at the rate of six per cent per annum, payable in advance on the first day of each year, at which time the purchaser may pay as many one-tenths of the purchase price as he may desire; provided, that the legislature may require the payment of the unpaid balance of the purchase price within five years after the passage of an act requiring such payment. All payments to be made to the county treasurer of the county in which the land is situated.

§ 2. From and after the date upon which this act takes effect, the surveyor general may sell in like manner and upon like conditions as to payment and interest any of the lands heretofore reserved from sale by the provisions of section three thousand four hundred eight b of the Political Code which have not been used as bases for indemnity selections, as provided in section three thousand four hundred six a of said code, or otherwise disposed of under any law of this state; provided, however, lands which in his judgment contain growth valuable for forest-cover protection to watersheds, or are valuable for reservoir sites, shall not be sold or exchanged under the provisions of this act.

Exchange for lands of United States.

Whenever he shall deem it to the advantage of the state so to do, he may, with the concurrence of the state board of control, exchange for lands of the United States of equal area, pursuant to law, any of said reserved lands in place, and the lands so acquired in exchange may be thereafter sold in the same manner and upon like conditions as to payment and interest as hereinabove set forth. Nothing herein contained shall be construed to affect the right of the surveyor general to use as bases for indemnity scrip, as provided in sections three thousand four hundred six a, three thousand four hundred eight b, three thousand four hundred eight c and three thousand four hundred eight d of the Political Code, any of said reserved lands not otherwise disposed of under the provisions of this act.

Purchase of land by settler.

§ 3. Whenever any person shall make actual settlement, in good faith, upon any such land, with intent to purchase the same pursuant to the provisions of an act entitled "An act providing for the sale of certain state lands suitable for cultivation," approved May 19, 1915, and the surveyor general shall, thereafter, upon an examination of such lands, determine it to be unsuitable for cultivation, he may, with the concurrence of the state board of control, fix a price at which such land may be sold to such actual settler, as provided in the act last named, and such actual settler shall have the right to purchase such land, at the price so fixed, at any time within a period of six months thereafter. The purchase price of all timber lands shall be paid in full at the time of sale.

Rejection of bids.

§ 4. In any and all notices of public sale, the surveyor general shall reserve the right to reject any and all bids.

Patent.

§ 5. When the full purchase price has been paid the purchaser shall be entitled to a patent for the land.

Repealed.

§ 6. Those parts of all acts in conflict with this act are hereby repealed.

SALE OF SCHOOL LANDS SUITABLE FOR CULTIVATION.**ACT 3721c—An act providing for the sale of certain state lands suitable for cultivation.**

History: Approved May 19, 1915, in effect August 8, 1915, Stats. 1915, p. 634. Entire act, except title, amended May 6, 1919, in effect July 22, 1919, Stats. 1919, p. 308.

School lands suitable for cultivation to be sold. Price.

§ 1. The unsold portions of the sixteenth and thirty-sixth sections of school lands not included within the exterior boundaries of national reservations, the unsold portions of the five hundred thousand acres granted to the state for school purposes, and the unsold portions of the listed lands selected of the United States in lieu of the sixteenth and thirty-sixth sections and losses to the school grant, which are suitable for cultivation shall be sold to actual settlers in quantities not exceeding three hundred twenty acres to any one person under the provisions of section three thousand four hundred ninety-five of the Political Code, at a price to be fixed by the state board of control and the state surveyor general, payment to be made as follows: The full purchase price of the land, or ten per cent thereof and interest to the first day of January following, at the rate of six per cent per annum on the unpaid balance of the purchase price; the unpaid balance of the purchase price shall bear interest at the rate of six per cent per annum, payable in advance on the first day of each year, at which time the purchaser may pay as many one-tenths of the purchase price at he may desire; provided, that the legislature may require the payment of the unpaid balance of the purchase price within five years after the passage of an act requiring such payment.

Actual settlers defined.

§ 2. Actual settlers, within the meaning of this act, are persons who have resided in good faith on the land for a period of not less than one year, to the exclusion of any other residence or fixed place of habitation during such time.

Purchase of land by settler.

§ 3. Any person who shall in good faith settle upon any land in the belief that the same was suitable for cultivation shall, in the event the surveyor general, upon inspection, determines said land to be unsuitable for cultivation, be a preferred purchaser for a period of six months from the date of such decision; provided, that in cases where the surveyor general has heretofore decided that lands settled upon were unsuitable for cultivation said settlers shall be preferred purchasers for a period of six months from the date that this act takes effect.

PREFERENTIAL RIGHT TO PURCHASE.**ACT 3721d—An act providing for the preferential rights of certain persons to purchase public lands of the state.**

History: Became a law, under constitutional provision, without Governor's approval, May 7, 1915, in effect August 8, 1915, Stats. 1915, p. 377.

Right to purchase lands after cancellation of patent.

§ 1. Whenever a court of competent jurisdiction shall by final decree cancel any patent to state lands heretofore issued, on account of its being obtained by fraud, or in any manner contrary to law, thereupon any person duly qualified to purchase state lands whose application to purchase any land included in such canceled patent was in the hands of the surveyor general on the first day of January, one thousand nine hundred fifteen, shall have the first and prior right to purchase the land described in his said application for a period of six months after the entry of such final decree, in accordance with the provisions of article IIa, chapter I, title VIII, of the Political Code.

PURCHASE OF SCHOOL LANDS.

ACT 3722—An act to provide for the applications for purchase of sixteenth and thirty-sixth sections, and to regulate the application for purchase of such sections, and requiring a deposit to accompany all applications for the purchase of the same.

History: Approved March 20, 1889, Stats. 1889, p. 434.

Purchase of sixteenth and thirty-sixth sections.

§ 1. Every application to purchase any portion of the sixteenth and thirty-sixth sections shall be accompanied by a deposit of twenty dollars, in addition to the fee for filing now required by law, for which the surveyor general shall give the applicant a receipt, which receipt shall be accepted by the county treasurer in part payment of the purchase price of said land. If the applicant shall abandon or forfeit his said application, or shall fail to make proper proof as to the character of the said land, or as to his residence thereon, within the time allowed by law, or if his application shall be rejected by reason of any false statement in the affidavit herein contained, the twenty dollars thus paid shall go to the state school fund. If it is found that the surveyor general erred in receiving the application, or that the state cannot make a good title to the land, then the applicant or his assigns may surrender to the surveyor general the said receipt, and receive in exchange therefor a certificate showing the amount so paid, and the reason why the application could not be approved or perfected, and the controller, upon the surrender to him of the said surveyor general's certificate, shall issue to the applicant, or his assigns, a warrant for the said amount.

Filings.

§ 2. Any number of filings on any section of land is hereby permitted and allowed under the provisions of this act. Should the first filing be abandoned by the applicant, the next filing on such section, in order, shall have the same right as if it had been the first filing.

Moneys to go to school land deposit fund.

§ 3. The moneys received by the surveyor general under the provisions of this act, except the moneys forfeited under section 1, shall be paid to the state treasurer at the close of each month, and must be placed in a fund, to be called "School Land Deposit Fund," to the credit of the county in which the lands applied for are situated. When any moneys are placed in the "School Deposit Fund" to the credit of a county, the controller, at the next settlement with the controller by the treasurer of such county, must draw his warrant upon the state treasurer for the amount in the fund to the credit of the county; provided, that the direction herein to the controller is exempted from the operations of section 672 of the Political Code.

1. Act supplemental to code provisions.—This act is undoubtedly supplemental to and in aid of the various provisions of the Political Code, previously enacted, relative to the procedure in initiating the purchase of

II Gen. Laws—47

public lands, and is to be so considered and construed.—*Ayers v. Kingsbury*, 25 Cal. App. 183, 143 Pac. 85.

2. Deposit with application—Second application—Mandamus.—Where an applica-

tion was refused for failure to deposit twenty dollars therewith, as provided by the act, mandamus will not lie to compel the surveyor-general to file the second application, accompanied with the deposit, as of the date of the original application.—*Buttie v. Wright*, 139 Cal. 625, 79 Pac. 454.

3. Same—Not part of purchase price.—The deposit required by the statute to accompany the application to purchase was

intended to be a mere conditional deposit, evidencing good faith, and that the receipt given therefor does not become a part of the purchase price, and can not be accepted as such before the application has been approved.—*Ayers v. Kingsbury*, 25 Cal. App. 183, 143 Pac. 85.

See, also, *Pacific Power Co. v. State*, 31 Cal. App. 719, 162 Pac. 643.

POSSESSORY ACTIONS.

ACT 3724—An act prescribing the mode of maintaining and defending possessory actions on public lands.

History: Passed April 20, 1852, Stats. 1852, p. 158. Amended March 7, 1859, Stats. 1859, p. 94; April 10, 1861, Stats. 1861, p. 143. Prior act of April 11, 1850, Stats. 1850, p. 203, repealed by present act.

1. Act was not repealed or abrogated by the code.—The act is consistent with code provisions and not within the terms of section 18, Political Code, and was not repealed or abrogated by the code.—*Gray v. Dixon*, 74 Cal. 508, 16 Pac. 305.

2. Act intended for benefit of actual occupant.—The only purpose of the act was to prescribe a method not for acquiring title but to protect the occupant in the temporary possession of a limited portion of the public land.—*Farish v. Cook*, 40 Cal. 33.

3. Same—"Occupy" equivalent to "reside upon."—The term "occupy" as used in the act is equivalent to "reside upon."—*Wolfskill v. Malajowich*, 39 Cal. 276.

4. Same—Actual residence essential.—The right to be protected under the act is a personal right, and, if assignable at all, can be assigned only to one who actually resides on the land.—*Wolfskill v. Malajowich*, 39 Cal. 276.

5. Same—Same.—Only persons actually residing on the land are entitled to the benefit and protection of the possessory act.—*Wolfskill v. Malajowich*, 39 Cal. 276.

6. Same—Actual settlers.—The rights under the possessory act were intended for actual settlers, and do not apply to a party who never resided on the land.—*Gird v. Ray*, 17 Cal. 352.

7. Same—Right can not be acquired by proxy.—The right of possession contemplated by the act could not be acquired by proxy.—*Sweetland v. Froe*, 6 Cal. 144.

8. Occupation for grazing or cultivation—Tide lands.—The act contemplates the occupation of public lands "for the purpose of cultivating or grazing the same"; and does not apply to possession of lands, such as tide lands, not suitable for these purposes.—*San Pedro, etc., Co. v. Hamilton*, 161 Cal. 610, 119 Pac. 1073.

9. Act does not apply to San Francisco lands.—The act has no application to the lands of the city of San Francisco.—*United, etc., Ass'n v. Pacific, etc., Co.*, 139 Cal. 370, 69 Pac. 1064.

10. Compliance with act necessary.—The possessory act confers no rights sufficient to maintain ejectment until all the acts required by it are performed, and it makes

no difference that such performance has been prevented by force.—*Crowell v. Lanfranco*, 42 Cal. 654.

11. Same.—Compliance with the provisions of the act is a necessary prerequisite to a right of action thereunder.—*Sweetland v. Froe*, 6 Cal. 144.

12. Same—Right to bring forcible entry and detainer—No treble damages.—One who entered upon unoccupied land, marked it out so that its boundaries could be readily traced, began to build a house thereon, and was ousted, may recover possession in an action of forcible entry and detainer, but can not have treble damages.—*Stark v. Barnes*, 4 Cal. 412.

13. Same—Non-compliance because of force no excuse.—Where plaintiff filed his affidavit of location and, within ninety days thereafter, hauled to the land lumber to build a house, which was removed during the night, and when he attempted to replace it next day, was driven off by armed men, he acquired no right under the possessory act to maintain ejectment against those who drove him off.—*Crowell v. Lanfranco*, 42 Cal. 654.

14. Possession—Railroad land—Rented for private use.—The renting by a railroad company of land obtained by it under the act of May 20, 1861 (607) to certain employees for use for barn, outbuildings and residence purposes, was not a use for railroad purposes within the meaning of the act.—*People v. Southern Pacific Co.*, 166 Cal. 630, 632, 138 Pac. 100.

15. Same—Same—Abandonment of use for railroad purposes.—Under the provisions of sections 20 and 22, of the act of May 20, 1861 (607), a railroad company ceased to be entitled to the possession of land obtained pursuant to that act, where it has abandoned its use for railway purposes, and has persisted in such abandonment for ten years.—*People v. Southern Pacific Co.*, 166 Cal. 630, 632, 138 Pac. 100.

16. Same—Question of fact.—Possession is a question of fact, to be determined by the jury.—*Hicks v. Davis*, 4 Cal. 68.

17. Same—Mere residence, tracing lines and setting stakes for boundary.—Merely residing on a part of the land, and tracing lines and putting up stakes for the bound-

ary is not sufficient under the act.—Wright v. Whitesides, 15 Cal. 47.

18. Same—Survey and marking lines.—The mere survey and marking lines of boundary without an enclosure of the premises, is not a possession in law, unless made so by complying with the statute.—Bird v. Dennison, 7 Cal. 297.

19. Same—Fencing part of tract insufficient.—Evidence that plaintiff built a fence on one side of a tract of land, ran furrows with a plow around the whole tract, and set stakes at the corners and along the lines, held to be insufficient to show actual possession.—Hughes v. Hazard, 42 Cal. 149.

20. Same—Same—Erroneous judgment.—Where plaintiff claimed possession of an entire tract, but his actual possession did not extend beyond his improvements, a judgment for the defendant for the entire tract was erroneous, and plaintiff should have been awarded the improvements to which he was entitled by actual prior possession.—Kile v. Tubbs, 23 Cal. 431.

21. Same—Entry without compliance with act.—Mere entry on public land, without enclosing it does not give a right under the act.—Wright v. Whitesides, 15 Cal. 47.

22. Same—Same.—The mere fact that a man enters upon a portion of the public land, and builds or occupies a house or corral on a small part of it, gives him no claim to the whole subdivision, even as against one entering upon it without title; but it would be different if he claimed under the possessory act and made entry under the presumption laws of the United States.—Garrison v. Simpson, 15 Cal. 93.

23. Same—Conditions prerequisite to right of action.—The plaintiff in a possessory action must be a citizen of the United States, must file the affidavit required by section 2, and must make his improvements within ninety days.—Wright v. Whitesides, 15 Cal. 47.

24. Possession essential.—Where plaintiff never entered into possession of any part of a tract of land except constructively of a portion which he purchased and upon which he allowed the grantor to remain in possession, he was not entitled to recover the same.—Hughes v. Hazard, 42 Cal. 149.

25. Same—Constructive possession.—Constructive possession of public land can be established only in the manner prescribed by the act.—Wolfskill v. Malajovich, 39 Cal. 276.

26. Same—Party out of possession has no right.—A party out of possession, and having no interest in the improvements, can not by making a survey and filing affidavit without county recorder, acquire any right of possession to land in the actual possession of another.—Sweetland v. Froe, 6 Cal. 144.

27. Same—Water right.—It was held in this case that the work done by the plaintiff did not constitute possession of a water right, and neither his intentions, declarations, nor preparations were equivalent to actual possession.—Taylor v. Abbott, 103 Cal. 421, 37 Pac. 408.

28. Does not apply where actual possession in issue.—The "possessory act" of 1852 (158) does not apply to a case where actual possession is in issue.—Hart v. Cox, 171 Cal. 364, 369, 153 Pac. 391.

29. Miners' right.—Miners have a right to enter land in the possession of another, whether enclosed or taken up under the possessory act.—Clark v. Duval, 15 Cal. 86.

30. Same.—The act gives no right to possession against one who enters land for the purpose of mining.—Stoakes v. Barrett, 5 Cal. 37.

31. Mining right subject to regulations and restrictions.—The right of a miner to go upon the land of another for the purpose of mining is subject to such regulations and restrictions as the legislature may see fit to impose.—Rupley v. Welch, 23 Cal. 452.

32. Action commenced prior to passage of act.—The benefits of the act can not be claimed by plaintiff successfully in an action commenced prior to its passage.—O'Conner v. Corbitt, 3 Cal. 370.

33. Evidence—Enclosure of part of tract.—In an action for possession under the act it was error to exclude evidence that defendant enclosed a portion of the land with a fence prior to the filing of the possessory claim.—Hicks v. Whitesides, 23 Cal. 404.

34. Same—Oral evidence of transfer not admissible.—Oral evidence of a transfer of title or interest in land claimed under the possessory act is not admissible.—Buel v. Frazier, 38 Cal. 693.

35. Same—Building house.—It is improper in ejectment to exclude evidence that plaintiff built a house on the land, the building of improvements being one of the requirements of the act.—Gray v. Dixon, 74 Cal. 508, 16 Pac. 305.

PROTECTION OF ACTUAL SETTLERS.

ACT 3725—An act for the protection of actual settlers and to quiet title to lands.

History: Approved March 26, 1856, Stats. 1856, p. 54.

Code commissioners' note: "In many respects unconstitutional (*Billings v. Hall*, 7 Cal. 7; *Lathrop v. Mills*, 19 Cal. 513; *Pioche v. Paul*, 22 Cal. 105); and the parts not unconstitutional are probably superseded by 'the codes.'"

See, also, *Anderson v. Fisk*, 36 Cal. 625, 632, 633, 634.

BETTER PROTECTION OF SETTLERS.

ACT 3726—An act for the better protection of settlers on public lands.

History: Approved April 26, 1858, Stats. 1858, p. 344.

Editor's note: This act provided for the redress of parties ousted under a foreign grant which was afterward rejected or did not include the land.

A former act (Stats. 1856, p. 54, ante, Act 3725) was held unconstitutional in several decisions.

The act here inserted, however, is limited to a specific subject, and does not fall within the objections made to the act of 1856.

PROTECTION OF SETTLERS ON LAND CLAIMED BY STATE.

ACT 3727—An act for the protection of settlers on public lands claimed by the state.

History: Approved March 10, 1874, Stats. 1873-74, p. 327. Amended March 7, 1881, Stats. 1881, p. 73. This act was probably superseded, see Kerr's Cyc. Political Code, §§ 3441, 3443.

This act was probably superseded. see Kerr's Cyc. Political Code, §§ 3441, 3443.

This act provided that no claim should be made by the state for any land as swamp or overflowed and that land should not be segregated for which pre-emption or homestead patents had been issued to bona fide settlers.

1. Land already patented by U. S. certificate void.—Under this act a certificate issued by the register of state lands to a forty-acre tract, as swamp land, patented in 1861 by the United States, is void.—Fredericks v. Zumwalt, 134 Cal. 44, 66 Pac. 38.

PROTECTION OF PRE-EMPTION AND HOMESTEAD CLAIMANTS.

ACT 3729—An act for the protection of pre-emption and homestead claimants.

History: Approved March 23, 1874, Stats. 1873-74, p. 543.

Under this act pre-emption and homestead claimants were regarded as having title as against trespassers and persons not having a superior title.

1. Trespassers can not prevent homestead entries.—Under this act a mere trespasser with an enclosure erected and maintained contrary to the act of congress of 1885,

can not thereby prevent a homestead entry, made peaceably by a citizen, of a portion of the tract, in compliance with the law.—Whittaker v. Pendola, 78 Cal. 296, 20 Pac. 680; Kitts v. Austin, 83 Cal. 167, 23 Pac. 290; Wormouth v. Gardner, 105 Cal. 149, 38 Pac. 646.

PROTECTION OF BONA FIDE SETTLERS.

ACT 3730—An act to protect bona fide settlers upon public lands.

History: Approved March 23, 1874, Stats. 1873-74, p. 543.

This act protected the rights of settlers on land within the survey of a Mexican

grant and which had been restored to the public domain.

See Act 3729, notes.

RELIEF OF PURCHASERS OF STATE LANDS.

ACT 3731—An act for the relief of purchasers of state lands.

History: Approved March 27, 1872, Stats. 1871-72, p. 587. Amended April 1, 1878, Stats. 1877-78, p. 914.

This act provided for the vesting of the title in purchasers of state lands.

1. Act not repealed by section 3518, Political Code.—The act was not repealed by the amendment of 1874 to section 3518, Political Code.—Cerf v. Reichert, 73 Cal. 360, 15 Pac. 10.

2. Act prevails over code provisions.—The act prevails over code provisions passed at the same session.—Cerf v. Reichert, 73 Cal. 360, 15 Pac. 10.

But see dictum in People ex rel. Eadie v. Noyo Lumber Co., 99 Pac. 456, 34 Pac. 96; and see Baird v. Board of Supervisors, 74 Cal. 397, 16 Pac. 205.

3. Effect of act.—Under the act an appli-

cant acquired a right to complete his purchase, even if, when the application was made, there was an entire failure to comply with the law, or the state did not own the lands, or there was no legislation for their disposition, where payment had been made in whole or in part, and a certificate of purchase issued.—Rowell v. Perkins, 56 Cal. 219.

4. Same—Validates certificate—Does not vest title until full payment.—The effect of the act is to validate the certificate of purchase, but does not pass the title until full payment.—Yoakum v. Brower, 52 Cal. 373.

5. Act vests state's title.—The act vests

whatever title the state possessed in land prior to its enactment.—*Fletcher v. Mower*, 55 Cal. 119.

5a. Void sale can not be confirmed by executive officers.—A void sale of state land may be ratified and confirmed by the state but not by the executive officers.—*People v. California Fish Co.*, 166 Cal. 576, 612, 138 Pac. 79.

5b. Act of executive officer in receiving price in void sale creates no equity against state.—The act of state officers in receiving the price, where there has been no valid application or survey of the land, is void as an official act, and creates no equity in the land as against the state.—*People v. California Fish Co.*, 166 Cal. 576, 612, 138 Pac. 79.

5c. Void sale—Issue of patent void.—A patent for state land issued by the officers in a case where there has been no valid application or survey approved, nor any valid payment of the price, is, of course, void as against the state.—*People v. California Fish Co.*, 166 Cal. 576, 612, 138 Pac. 79.

5d. Acts of executive officers void.—The rule regarding sales of public lands is that the acts of administrative officers of the state toward such sale, in respect to the lands which the state has withheld from sale, or which are not yet subject to sale, are void, not merely avoidable but absolutely void for want of power in the officers, and no subsequent action by the officers themselves can give validity to the void act or ratify it in any way.—*People v. California Fish Co.*, 166 Cal. 576, 611, 138 Pac. 79.

6. Act retroactive—Sale to county surveyor validated.—This act was retroactive and legalized a purchase on an invalid application by one who, at the time of filing such application, was county surveyor, and charged with duties relating to the sale of state lands, where he ceased to be such surveyor before the approval of the application, and payment made as provided by law, and a certificate issued prior to any other application for the land.—*Yoakum v. Brower*, 52 Cal. 373.

7. Act not prospective in operation.—The act was not prospective in its operation and did not cure a defective application made after its enactment.—*Gilson v. Robin-*

son, 68 Cal. 539, 10 Pac. 193; *Barker v. Freeman*, 85 Cal. 533, 24 Pac. 926; *Johnson v. Squires*, 55 Cal. 103.

8. Amendment of 1878—Effect of.—The amendatory act of 1878 did not affect cases in which payment had been made and certificates issued at the date of its passage.—*Rowell v. Perkins*, 56 Cal. 219.

9. Application validated by act.—Under the circumstances of the present case the court held that the application in question was validated by the act.—*Muller v. Carey*, 58 Cal. 538.

10. Proviso applied only to valid applications.—The act operated not only upon applications defective in form but those also which were defective in substance, and the proviso refers only to valid applications.—*Muller v. Carey*, 58 Cal. 538.

11. Prior applications for school land purchases in excess of 320 acres, not shown to be within the terms of the act, are not within the proviso as to more than that quantity.—*Rowell v. Perkins*, 56 Cal. 219.

12. Application not cured where state had no title until 1878.—An application to purchase land to which the state had no title until after the passage of the "Booth act" in 1877, was not cured by the present act.—*Cucamonga Fruit-Land Co. v. Moir*, 83 Cal. 101, 23 Pac. 359.

But see *People ex rel. Eadie v. Noyo Lumber Co.*, 99 Cal. 456, 34 Pac. 96, and *People ex rel. Lynch v. Harrison*, 107 Cal. 541, 40 Pac. 956.

13. Defective application cured.—An affidavit which does not state the desire of an applicant to purchase or contain a description of the land was insufficient and the purchase void, but its defects were cured by the present act.—*Rowell v. Perkins*, 56 Cal. 219.

14. Payment—Resort to general law to determine when and to whom, to be made.—Resort to the general law must be had to determine when and to whom payment must be made to vest title under the act.—*Yoakum v. Brower*, 52 Cal. 373; *Rowell v. Perkins*, 56 Cal. 219.

15. Submerged land—Sale validated.—The act validated sale of submerged land made under act of 1868, although that act did not authorize such sales.—*Upham v. Hosking*, 62 Cal. 250.

But see *People ex Inf. Webb v. California Fish Co.*, 166 Cal. 576, 138 Pac. 79.

LEGALIZING APPLICATIONS TO PURCHASE.

ACT 3734—An act to legalize applications heretofore made for the purchase of lands belonging to this state, and to confirm the title of the purchasers under such applications.

History: Approved March 27, 1872, Stats. 1871-72, p. 622. Prior act of same general tenor and effect, act of March 24, 1870, Stats. 1869-70, p. 352.

1. Act did not validate applications for reserved lands.—The act validated defective applications for lands subject to sale, not for those not subject to sale.—*Klauber v. Higgins*, 117 Cal. 451, 49 Pac. 466.

See, also, *People ex Inf. Webb v. California Fish Co.*, 166 Cal. 576, 138 Pac. 79.

LEGALIZING PAYMENTS FOR SCHOOL LAND.

ACT 3735—An act to legalize certain payments of money on account of the purchase of state school lands.

History: Approved February 21, 1872, Stats. 1871-72, p. 137.

This act legalized payments theretofore made where such payments were made in the wrong counties.

FORFEITURE FOR NONPAYMENT OF INTEREST.

ACT 3735a—An act to provide for the forfeiture of certain lands to the state in the event of the nonpayment of delinquent interest upon any part of the unpaid portion of the purchase price thereof, together with penalties and costs as herein provided, as well as for the forfeiture of all moneys previously paid thereon, whether for principal or interest; prescribing the duties of certain public officers with respect thereto; providing for the giving of notice hereof; prescribing certain remedies; and making an appropriation for the purposes of this act.

History: Approved May 24, 1917, in effect July 27, 1917, Stats. 1917, p. 926.

Lands to be sold unless interest and penalties paid.

§ 1. All lands sold by this state for which certificates of purchase were issued prior to the first day of May, A. D. one thousand nine hundred eleven, for which full payment was not made at the time of purchase, and upon which any interest upon any part of the unpaid portion of the purchase price thereof is delinquent at the time this act shall take effect, shall be forfeited to the state, without the necessity of re-entry or judicial ascertainment, and shall revert to the particular class of land to which it originally belonged, to be resold under the provisions of existing law, or any future law, unless all such delinquent interest, together with all additional interest becoming due on the first day of January, A. D. one thousand nine hundred eighteen, and all penalties and costs herein specified, shall be fully paid, as herein provided, on or before the thirtieth day of June, A. D. one thousand nine hundred eighteen.

List of lands upon which payments delinquent.

§ 2. On or before the first day of October, A. D. one thousand nine hundred seventeen, the register of the state land office shall prepare, or cause to be prepared, statements showing, by counties, and by proper legal descriptions, all lands in each of the several counties in this state for which there are outstanding and not annulled as provided by article VI of chapter one of title eight of part three of the Political Code any certificate or certificates of purchase which were issued prior to the first day of May, A. D. one thousand nine hundred eleven, and upon which any interest upon any part of the unpaid portion of the purchase price is delinquent at the time this act shall take effect. Such statements shall also show the name and post-office address of the purchaser as the same may appear upon the records of the register's office, and the name and post-office address of the assignee, grantee or successor in interest of such purchaser in all cases wherein notice of any assignment of such certificate of purchase, or of any conveyance or other transfer of title of any part of the lands therein described shall have been filed in said office prior to the date herein first mentioned. Such statement shall also show the number and date of the survey or location and of the certificate of purchase, the amount of interest paid, the amount of interest unpaid, and the amount of interest then due. No lands within any reclamation district must be embraced in any such statement if the certificate of the board of supervisors that works of reclamation have been commenced in such district has been filed in the register's office prior to the taking effect of this act.

Demand for payment of delinquent interest.

§ 3. Demand is hereby made upon all persons who are or who may become liable for the payment of any interest which is delinquent upon any part of the unpaid portion of the purchase price of any of the lands embraced within any of such statements for the payment of all such delinquent interest, together with the costs hereby imposed, on or before the thirty-first day of December, A. D. one thousand nine hundred seventeen; and in the event of the nonpayment of any portion of such delinquent interest, as above provided, a penalty of twenty per cent of the aggregate amount then delinquent is hereby imposed, in each case, upon the person or persons liable for the payment thereof. Except as otherwise provided in sections four, five and six of this act, in the event any portion of such delinquent interest, together with such penalty and costs, and all additional interest falling due on the first day of January, A. D. one thousand nine hundred eighteen, be not paid on or before the thirtieth day of June, A. D. one thousand nine hundred eighteen, all lands on account of the purchase price of which such delinquency shall then exist are hereby declared to be forfeited to the state, together with all moneys previously paid on account of the purchase price thereof, whether for principal or interest, and all such certificates of purchase are hereby declared to be ipso facto null and void from and after such date last mentioned.

Where owner has died without disposing of land.

§ 4. In the event the owner of any such certificate of purchase shall have died, without disposing of the lands therein described, and no administration of his estate has been had, the time of payment limited by the provisions of the preceding section is hereby extended for a period of six months; provided, however, that appropriate probate proceedings must be commenced in each case not later than December thirty-first, A. D. one thousand nine hundred seventeen, and written notice thereof forwarded by registered mail to the register of the state land office. In such cases the twenty per cent penalty imposed by section three hereof shall not attach until July first, A. D. one thousand nine hundred eighteen, and such forfeiture shall not become operative until December thirty-first of said year.

Lands conveyed exempted from forfeiture, when.

§ 5. Any person having a conveyance of the whole or any portion of the lands described in any certificate of purchase included in any such statement, but to whom the certificate has never been surrendered, may protect his lands from forfeiture by paying such proportion of the interest delinquent upon all the lands in such certificate described as the acreage claimed by him bears to the aggregate acreage embraced in such certificate. He shall first, however, file with the register of the state land office satisfactory evidence of his possessory right to such land, and obtain from the latter a certificate, directed to the treasurer of the proper county, permitting such payment and stating the amount to be paid, which shall in all cases include the costs imposed by section nine hereof. Upon such payment being made within the time herein limited such land shall be, and hereby is, excepted from the forfeiture prescribed in this act. Said certificate of purchase shall become null and void only as to the remaining lands therein described and the register in preparing for record the notices of forfeiture provided for in section ten hereof shall omit therefrom all lands upon which the delinquent interest has been paid as in this section permitted. Should due compliance be made with all other provisions of law governing the issuance of patents, a patent shall issue in the name of the original purchaser of such excepted land, but shall be delivered to the person by whom such payment was made, and the title thereby granted shall inure to the benefit of such person, his heirs or assigns.

Lands included.

§ 6. This act shall extend to and include all unlisted lien lands and all unsegregated swamp and overflowed lands sold under the authority of any law of this state; subject to the proviso that instead of the land itself becoming forfeit for nonpayment of delinquent interest, all right, title and interest therein or thereto heretofore acquired or hereafter to be acquired prior to June thirtieth, A. D. one thousand nine hundred eighteen, by the original purchaser, his heirs and assigns, shall become and hereby is declared to be forfeit to the state in the event of such nonpayment; and subject to the further proviso that all purchasers of such unlisted lien lands or of such unsegregated swamp and overflowed lands, their heirs and assigns, who protect themselves against such forfeiture by making the payments required by this act, shall not thereby be deprived of any existing right to receive restitution of all sums paid on account of the purchase price of such lands, whether for principal or interest, upon duly complying with all provisions of law governing such restitution.

Payment of interest by December 31, 1917. Penalties. Publication of notice.

§ 7. Upon completing the statements required by section two hereof, the register shall add thereto a demand that all interest shown to be delinquent therein shall be paid on or before December thirty-first, A. D. one thousand nine hundred seventeen, to the treasurer of the proper county, together with the sum of three dollars costs, and a notice that if the same be not so paid a penalty of twenty per cent will be added thereto as provided in section three hereof, and a further notice that unless the whole sum delinquent, together with such costs and penalty, and all additional interest falling due January first, A. D. one thousand nine hundred eighteen, be paid on or before June thirtieth, A. D. one thousand nine hundred eighteen, the lands in said statements described, together with all moneys previously paid on account of the purchase price thereof, whether for principal or interest, will be forfeit to the state in accordance with the provisions hereof, and that all such certificates of purchase will become ipso facto null and void. He shall thereupon cause each such statement, together with such demand and notice, to be published once a week for four weeks successively in some newspaper published in the county wherein the lands described in such statement are situate, or, if there be no newspaper published in such county, such publication shall be made in a newspaper published in an adjoining county.

Copies sent to county officers and persons interested in lands. Duty of assessor.

§ 8. In addition to such publication, the register shall, not later than October fifteenth, A. D. one thousand nine hundred seventeen, forward copies of such statements, demands and notice, by registered mail to the treasurer and to the auditor and to the assessor of each county wherein any of said lands may be situate, and shall likewise forward by registered mail to each person shown by the records of his office to have any interest in any of such lands, either as purchaser, or as assignee, grantee, distributee, or other successor in interest of such purchaser, a copy of so much of said statements as pertains to the lands wherein such person may appear to have any interest, together with such demand and notice, directed to such person at his last known place of residence or of business as the same appears upon the records of the register's office.

It shall be the duty of each county assessor to whom a copy of any such statement shall be sent, immediately upon receipt thereof, to cause the same to be carefully compared with the records of assessments in his office of all tracts of land appearing in such list, and in the event it shall appear from such comparison that any person or persons whose names are not included in the register's statement are shown by such assessment records to have any interest in any part of the lands described in such statement, the assessor must forthwith return, by registered mail, to the register of the state land office a statement containing a description of the land affected and the names

and addresses, as the same appear upon his records, of all persons appearing to have any interest therein and not included in the register's statement. In every such case the assessor must return his statement to the register within ten days after the receipt by him of the register's statement. Upon receipt of any such return the register shall without delay, forward to each person therein named, in the same manner as above provided, a copy of so much of said statement as pertains to the lands wherein such person is shown by the assessor's return to have any interest, to which shall be appended such demand and notice.

Costs.

§ 9. The sum of three dollars to cover the costs of such publication and of such mailing is hereby imposed upon the owner or owners of each such certificate of purchase, as well as upon each person who may have acquired by purchase an interest in all or some portion of the lands in such certificate described, but to whom the certificate has never been surrendered, and it shall be the duty of the treasurer of each county wherein any part of such land may be situate to require the payment of such costs, in all cases, in addition to the delinquent interest, and penalty, if any, and to account for the same in his settlements with the state controller and treasurer, who are hereby authorized and directed to pay all sums so collected for costs into the general fund of the state treasury.

Notice of forfeiture.

§ 10. Immediately following the thirtieth day of June A. D. one thousand nine hundred eighteen, the register shall note upon the records of his office the forfeiture herein and hereby declared, and shall forward to the recorder of each county wherein any of said lands may be situate a notice of such forfeiture, in which there shall be embodied the same data required by section two hereof, supplemented by a statement of the costs, penalties and additional interest accrued at the date of forfeiture. It shall be the duty of the recorder to receive and file such notice and to record the same in a book of deeds. Such notice from the time it is filed with the recorder for record is constructive notice of the contents thereof to subsequent purchasers and mortgagees and to all other persons who may thereafter attempt to acquire any interest in, or lien upon, any of the lands in such notice described. In the event any additional forfeiture shall occur on the first day of January, A. D. one thousand nine hundred nineteen, as provided in section four hereof, the register and each county recorder shall proceed with respect to such lands as before, and with like force and effect.

Action to annul forfeiture.

§ 11. In the event any land shall be forfeited under the provisions hereof upon which all interest, costs, penalties and accruing interest had been actually paid prior to such forfeiture, though for any reason not properly credited, the person or persons having a beneficial interest therein may, within one year following the date of such forfeiture, commence an action in the superior court of the county of Sacramento against the register of the state land office for the purpose of having such forfeiture annulled and set aside. And if it be proven to the satisfaction of the court, at the trial of such action, that such payment was in fact made prior to the date upon which such forfeiture occurred, the court shall render judgment annulling and setting aside such forfeiture, and thereupon the plaintiff or plaintiffs in such action shall be restored to his or their former estate in said land, upon making payment of all interest accruing thereon to the date of restoration.

Right of state to enforce payment.

§ 12. This act is cumulative and shall not be construed to deny to the state the right to institute any legal proceedings that may be deemed necessary to enforce the payment of all such delinquent interest, or to procure judgments foreclosing the interests of any

and all persons in any of such lands, and annulling any or all of such certificates of purchase. Nor shall anything herein contained ever be deemed, held or construed to give to or confer upon the holder or holders of any of such certificates of purchase, as against the state of California, any other or greater right to any land therein described than is now possessed by the holder or holders of such certificates.

Appropriation.

§ 13. The sum of four thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the state treasury not otherwise appropriated, to be used in accordance with law to defray the costs of the publication and mailing herein provided for.

See supplementary act, Act 3735b.

JUDICIAL DETERMINATION OF FORFEITURE—REINSTATEMENT.

ACT 3735b—An act to provide for a judicial determination of whether or not certain lands have been forfeited to the state under the provisions of an act entitled "An act to provide for the forfeiture of certain lands to the state in the event of the nonpayment of delinquent interest upon any part of the unpaid portion of the purchase price thereof, together with penalties and costs as herein provided, as well as for the forfeiture of all moneys previously paid thereon, whether for principal or interest; prescribing the duties of certain public officers with respect thereto; providing for the giving of notice hereof; prescribing certain remedies; and making an appropriation for the purposes of this act," approved May 24, 1917, and to provide for reinstatement of delinquent purchasers in certain cases.

History: Approved May 20, 1919. In effect July 22, 1919. Stats. 1919, p. 804.

Action to have forfeiture annulled. Reinstatement of purchasers.

§ 1. In the event that any lands shall appear to have been or to be forfeited under any of the provisions of the act entitled "An act to provide for the forfeiture of certain lands to the state in the event of the nonpayment of delinquent interest upon any part of the unpaid portion of the purchase price thereof, together with penalties and costs as herein provided, as well as for the forfeiture of all moneys previously paid thereon, whether for principal or interest; prescribing the duties of certain public officers with respect thereto; providing for the giving of notice hereof; prescribing certain remedies and making an appropriation for the purposes of this act," approved May 24, 1917, when in fact all interest, costs, penalties, and accruing interest due and payable thereon and thereunder had been actually paid or in good faith tendered prior to such forfeiture, though for any reason not properly credited or accepted, the person or persons having a beneficial interest therein may, within one year from the taking effect of this act, commence an action in the superior court of the county of Sacramento against the register of the state land office for the purpose of having such forfeiture annulled and set aside. And if it be proven to the satisfaction of the court, at the trial of such action, that such payment was in fact made or tendered prior to the date upon which such forfeiture occurred, the court shall render judgment annulling and setting aside such forfeiture, and thereupon the plaintiff or plaintiffs in such action shall be restored to his or their former estate in said land, upon making payment of all interest accruing thereon to the date of restoration; provided, nevertheless, that where such tender was made after the commencement of proceedings to foreclose the certificate of purchase under which said interest was delinquent, and was refused upon the ground that the costs of said proceedings and district attorneys fees had not been paid, then, in that event, the said person or persons having such beneficial interest, shall, upon payment to the county treasurer of the county in which the land is situated, not later than

December 31, 1919, of the amount so tendered together with such costs and attorneys fees, accrued to the time of such tender, be forthwith restored to his or their former estate in said land without the necessity of commencing such action.

REDEMPTION FROM FORFEITURE FOR NONPAYMENT OF INTEREST.

ACT 3736—An act to enable purchasers of state lands to redeem them where their titles have been or may hereafter be foreclosed for nonpayment of interest.

History: Approved March 7, 1881, Stats. 1881, p. 66.

When purchasers of state lands may redeem for nonpayment of interest.

§ 1. In all cases where the title of purchasers of land from the state has been foreclosed, or attempted to be foreclosed, or that may hereafter be foreclosed, for nonpayment of interest, said purchasers, their executors, administrators, or successors in interest shall have, twelve months after said foreclosures are or have been completed, within which to redeem such land, by paying to the county treasurer, for the benefit of the fund, or parties entitled thereto, all delinquent interest, and interest that would have accrued in case there had been no foreclosure; also, all costs of foreclosure to be paid to the fund, or the parties who paid said costs. When said payments are made, and indorsed on the certificate of purchase, specifying the amount paid as interest and for costs, and duly reported to the register of the land office, the annulments shall be canceled by said officer, and the rights of the purchaser shall thereby be fully restored.

§ 2. This act shall take effect and be in force from and after its passage.

1. **Act supersedes section 3550, Political Code, as to time for redemption.**—The act of 1881 changes and enlarges the right of redemption by the holder of the certificate of purchase given by section 3550, Political Code, and provides that that right may be exercised at any time within twelve months after entry of judgment.—*Goddard v. Emerson*, 15 Cal. App. 440, 115 Pac. 63.

FORFEITURE ACT OF 1889.

ACT 3737—An act respecting the payment in full by holders of certificates of purchase for lands sold by the state of California prior to March 27, 1872, and for which the said state has at any time heretofore issued certificates of purchase to subsequent purchasers.

History: Approved March 20, 1889, Stats. 1889, p. 428.

When holders of certificates of purchase of state lands deemed to have forfeited their rights therein.

§ 1. Whenever application has been made to purchase land from this state, and payment only in part has been made to the treasurer of the proper county for the same, and a certificate of purchase has been issued to the applicant prior to the twenty-seventh day of March, eighteen hundred and seventy-two, and whenever such applicant, his assignee or assignees, shall have failed for five years to pay to the state the arrears of principal or of interest due to the state for said land, and the state shall at any time heretofore have issued a certificate of purchase for the same land, or any part thereof, to a subsequent purchaser, then, unless the holder or holders of such prior certificate shall pay the entire residue of the interest remaining unpaid for such purchase within six months from and after the passage of this act, such holder or holders shall be deemed to have lost all right to the land described in said certificate, or to complete the purchase of such land, and all moneys heretofore paid to the state of California on such purchase shall be deemed and taken to be forfeited to the state. Nothing herein contained, however, shall be deemed or taken to give to or confer upon the holder or holders of such prior certificates, or any of them, as against the state of California, or any subsequent purchasers therefrom, or against the holders of subsequent certificates of purchase, any other or greater right to the lands herein referred to than is now held by the

holder or holders of such prior certificates, or to confer upon such holder or holders any new right, or to affect or impair the rights of such subsequent purchasers or their assigns.

Previous part payment confers no special rights. Does not apply.

§ 2. The mere fact of previous part payment shall not of itself confer on such prior purchaser or his assigns any right to complete the purchase, if he or they be not otherwise entitled so to do, as against the state, and a subsequent purchaser or his assigns; provided, that this act shall not apply to any action now pending commenced within five years.

§ 3. This act shall take effect from and after the date of its passage.

1. Constitutionality.—Not impairment of obligation of contract.—The act of 1882, providing for rescission of a purchase of school lands without a restoration of money paid thereon, when the purchaser is in default, is not unconstitutional as an impairment of the obligation of a contract of purchase under the act of 1868, nor as the taking of property without due process of law.—*Aikins v. Kingsbury*, 170 Cal. 674, 678, 151 Pac. 145.

2. Same.—Same.—Different method of declaring forfeiture.—The procedure provided in the act of 1867-68 (526) for terminating the rights of a defaulting purchaser of school lands is not exclusive, and such a purchaser can not complain because the

state has established a different method of declaring a forfeiture from that authorized by the statute at the time of his purchase.—*Aikins v. Kingsbury*, 170 Cal. 674, 678, 151 Pac. 145.

3. Statute of limitations.—A purchaser of school lands under the act of 1868, who has defaulted in the payment of interest for thirty-eight years, is barred by the statute of limitations and by laches, the state having, in the meantime, attempted a forfeiture under the act of 1868, and given constructive notice by the act of 1889, of a purpose not to recognize rights asserted by defaulting purchasers, unless arrears were paid.—*Aikins v. Kingsbury*, 170 Cal. 674, 682, 151 Pac. 145.

RIGHTS OF PARTIES IN FRESNO AND KERN COUNTIES.

ACT 3737a—An act providing for determining rights of parties in certain swamp and overflowed lands in Fresno and Kern counties.

History: Approved March 20, 1878, Stats. 1877-78, p. 358.

The legislature granted to W. F. Montgomery certain land in the county named, and this act permitted parties claiming interests in said lands to appear in an action to cancel the patents.

See *People v. Center*, 61 Cal. 191, 5 Pac. 263; *S. C.*, 66 Cal. 522, 6 Pac. 481.

RELIEF OF JOHN D. JUSTICE.

ACT 3738—An act to cure defects in the application of John D. Justice to purchase lands from the state of California.

History: Approved March 26, 1878, Stats. 1877-78, p. 535.

RELIEF OF PETER ANDERSON.

ACT 3739—An act for the relief of purchasers of state lands.

History: Approved June 12, 1913. In effect August 10, 1913, Stats. 1913, p. 625.

RELIEF OF MARY ANN BATH, AND OTHERS.

ACT 3739a—An act to authorize the repayment to Mary Ann Bath, Carrie F. Stone, Alice B. Walker and John Thaddeus Bath, as heirs at law of John F. Bath, deceased, of moneys paid by said deceased in his life time to the state of California, for the purchase of certain indemnity or lieu land certificates, and which indemnity or lieu land certificates have been surrendered to the state, said moneys amounting to the sum of six hundred forty dollars, and for such purpose authorizing the state register to issue a certificate to said heirs of John F. Bath, deceased, for the amount so paid for said indemnity certificates, and authorizing the state controller to draw his warrant on the state treasurer for said sum, and authorizing the state treasurer to pay the same, said sum having heretofore been paid into the state school land fund.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 463.

This act provided for an indemnity payment to the heirs of John F. Bath, deceased, of money paid by him for scrip which he returned to the surveyor general for certain lands located thereunder, but of which, by reason of his death before receipt of the notice of hearing, he did not complete the purchase in the manner provided by law.

RELIEF OF HEIRS AT LAW OF P. W. FAHEY.

ACT 3739b—An act authorizing the issuance of letters patent to the heirs at law of P. W. Fahey, deceased, for certain swamp and overflowed land in Tuolumne county, California.

History: Approved May 21, 1917. In effect July 27, 1917. Stats. 1917, p. 771.

RELIEF OF ELLA GLENN LEONARD AND OTHERS.

ACT 3739c—An act authorizing the state board of control for and on behalf of the state of California to retransfer a certain tract of land back to original owners.

History: Approved May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1282.

This act authorized the board of control to make a deed for the state to Ella Glenn Leonard, F. B. Glenn and Charles H. Glenn of Glenn county to a tract of land on the Sacramento river near the town of Jacinto.

RELINQUISHMENT OF TITLE TO CERTAIN LANDS TO GEORGE HERGET.

ACT 3739d—An act to quiet title to land in Yolo county.

History: Approved April 1, 1878, Stats. 1877-78, p. 943.

RELIEF OF PURCHASERS OF SCHOOL LANDS.

ACT 3740—An act for the relief of purchasers of school lands.

History: Approved June 3, 1913. In effect August 10, 1913. Stats. 1913, p. 376; amended April 5, 1917. In effect July 27, 1917. Stats. 1917, p. 62.

Relief of school land purchasers.

§ 1. When application has been made to purchase lands from this state and payment of twenty per cent of the purchase price has been made to the treasurer of the proper county for the same and a certificate of purchase was issued on or after May 1, 1911, to the applicant therefor, and such applicant has failed to pay the interest on the unpaid balance of the purchase price of such land, said certificate shall be in full force and effect; provided, all interest due on the balance of the purchase price is paid to the proper county treasurer on or before December 31, 1917, together with a penalty of ten per centum of the amount of all interest on the unpaid portion of the purchase price of said lands for each year that the annual interest on the balance of the purchase price of said lands has not been paid since the date of the issuance of the certificate of purchase; and provided, further, that the lands described in said certificate of purchase are open to entry and sale under any law of this state at the time this act shall take effect. [Amendment of April 5, 1917. In effect July 27, 1917, Stats. 1917, p. 62.]

RESTITUTION APPROPRIATIONS—PRINCIPAL.

ACT 3740a—An act to provide for making restitution to the persons who are or may become entitled thereto in accordance with the provisions of sections three thousand four hundred eight d, three thousand five hundred seventy-one and three thousand five hundred seventy-two of the Political Code, of the principal sums by them, or by their respective predecessors in interest, paid to the state of California and thereafter deposited in the state treasury to the credit of the state school land fund pursuant to law, prescribing certain duties of the register of the state land office, the state controller and the state treasurer with respect thereto; and making an appropriation for such purpose.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 468.

Appropriation from state school land fund for making restitution.

§ 1. From the moneys in the state treasury to the credit of the state school land fund there is hereby appropriated the sum of twenty-five thousand dollars, to be used exclusively for the purpose of making restitution to the persons who are or may become entitled thereto, in accordance with the provisions of sections three thousand four hundred eight d, three thousand five hundred seventy-one and three thousand five hundred seventy-two of the Political Code, of the principal sums by them, or by their respective predecessors in interest, paid to the state of California and thereafter deposited in the state treasury to the credit of the state school land fund, pursuant to law.

Register's certificate.

§ 2. In addition to the matters now required by law to be recited in the certificate of the register of the state land office, provided for in section three thousand five hundred seventy-one of the Political Code, he shall also incorporate in such certificate a statement showing what portion of the whole sum due to the claimant thereunder has been paid to the state on account of the purchase price of such land, or of such indemnity scrip, as the case may be, and what, if any, portion of such sum has been paid as interest upon the unpaid balance of the purchase price of such land.

Controller's warrant.

§ 3. Upon delivery of any such certificate to the state controller, it shall be his duty to draw his warrant, in favor of the person therein named, upon the state school land fund for the amount of such purchase price, as set forth in said certificate, and the state treasurer shall pay the same; provided, however, that the aggregate sum of all warrants so drawn and paid shall not exceed the amount by this act appropriated.

Unexpended balance reverts to state school land fund.

§ 4. Any balance of said appropriation remaining unexpended on the first day of September, A. D. 1917, shall, without further action, revert to and become a part of the state school land fund.

RESTITUTION APPROPRIATION—INTEREST.

ACT 3740b—An act to provide for making restitution to the persons who are or may become entitled thereto, in accordance with the provisions of sections three thousand five hundred seventy-one and three thousand five hundred seventy-two of the Political Code, of the sums by them, or by their respective predecessors in interest, paid to the state of California as interest upon the unpaid balance of the purchase price of lands wrongfully sold, or to which the state is unable to pass title, and thereafter deposited in the state treasury to the credit of the state school fund pursuant to law; prescribing certain duties of the register of the state land office, the state controller and the state treasurer with respect thereto; and making an appropriation for such purpose.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 469.

Appropriation: restitution in case of state lands wrongfully sold.

§ 1. From the moneys in the state treasury to the credit of the state school fund there is hereby appropriated the sum of two thousand five hundred dollars, to be used exclusively for the purpose of making restitution to the persons who are or may become entitled thereto, in accordance with the provisions of sections three thousand five hundred seventy-one and three thousand five hundred seventy-two of the Political Code, of the sums by them, or by their respective predecessors in interest, paid to the state of California as interest upon the unpaid balance of the purchase price of lands wrongfully sold, or to which the state is unable to pass title, and thereafter deposited in the state treasury to the credit of the state school fund, pursuant to law.

Statement of register.

§ 2. In addition to the matters now required by law to be recited in the certificate of the register of the state land office, provided for in section three thousand five hundred seventy-one of the Political Code, he shall also incorporate in such certificate a statement showing what portion of the whole sum due to the claimant thereunder has been paid to the state on account of the purchase price of such land, and what, if any, portion of such sum has been paid as interest upon the unpaid balance of the purchase price of such land.

Controller's warrant.

§ 3. Upon delivery of any such certificate to the state controller, it shall be his duty to draw his warrant, in favor of the person therein named, upon the state school fund for the whole amount of such sums so paid as interest, as set forth in said certificate, and the state treasurer shall pay the same; provided, however, that the aggregate sum of all warrants so drawn and paid shall not exceed the amount by this act appropriated.

Balance.

§ 4. Any balance of said appropriation remaining unexpended on the first day of September, A. D. 1917, shall, without further action, revert to and become a part of the state school fund.

PAYMENT OF CERTAIN SWAMP LAND WARRANTS.

ACT 3740c—An act providing for payment of certain controller's swamp land warrants.

History: Approved April 1, 1872, Stats. 1871-72, p. 873.

This act pledged payments on swamp lands to the redemption of warrants.

CANCELLATION OF UNLOCATED SCHOOL-LAND WARRANTS.

ACT 3741—An act providing for the presentation and cancellation of unlocated school-land warrants of the state of California, issued under the act of the state of California, approved May third, eighteen hundred and fifty-two, providing for the disposal of the five hundred thousand acres of land donated to the state of California by the government of the United States, and authorizing the controller of this state to draw his warrant on the state treasurer for the sum of two dollars per acre, in favor of any bona fide owner and holder of any such land warrant, for every acre represented by such land warrant.

History: Approved March 23, 1893, Stats. 1893, p. 181. The prior act of March 20, 1889, Stats. 1889, p. 434, was of a similar character, and for the same purpose.

Bona fide holders entitled to warrants for two dollars per acre. Duty of controller.

§ 1. It is hereby enacted that each and every bona fide owner and holder of any unlocated school-land warrant or warrants of the state of California, issued under and by virtue of the act of the legislature of the state of California, approved May third, eighteen hundred and fifty-two, providing for the disposal of the five hundred

thousand acres of land donated to the state of California by the government of the United States, shall be and is entitled to a warrant upon the state treasurer of this state for the sum of two dollars per acre for every acre of land provided for by any such school-land warrant; and the controller of the state, upon the presentation to him of any such warrant, is hereby authorized to draw his warrant on the state treasurer, payable out of the fund into which the purchase price of such school-land warrant was deposited, in favor of any such owner and holder of any such school land warrant, for such sum as is herein provided for; provided, that before the receipt of said controller's warrant any such person presenting any such school-land warrant shall surrender to said controller his warrant for cancellation, and shall, at the same time file with the controller his or her written release of all claims and demands against the state of California, from any matter or thing growing out of or in any manner connected with any such land warrant so redeemed.

Provisions of section 672 of Political Code not applicable.

§ 2. The provisions of section six hundred and seventy-two of the Political Code of this state are hereby declared and made non-applicable to the provisions of this act.

§ 3. This act shall take effect immediately.

FORFEITURE OF PAYMENTS ON FRAUDULENT TITLES.

ACT 3742—An act forfeiting to the state of California all payments for state lands where a fraudulent title was sought to be obtained thereto.

History: Approved March 20, 1905, Stats. 1905, p. 388.

Title fraudulently obtained. Payments to revert to state. Land restored to public entry.

§ 1. Whenever it shall appear by final decree of any court of competent jurisdiction that title to any lands subject to sale by the state of California was obtained, or sought to be obtained, by fraudulent means, or in any manner contrary to the laws of this state relating to the acquisition of its public domain, all payments made in the interest of said fraudulent title shall revert to the state of California without suit, and it shall thereupon become the duty of the state surveyor general and ex officio register of the state land office to cancel all evidence of title to any land embraced in such fraudulent or invalid location, and to restore said land to public entry.

§ 2. This act shall take effect from and after the date of its passage.

REMOVAL OF IMPROVEMENTS MADE UNDER VOID LOCATIONS.

ACT 3743—An act to authorize certain persons to remove improvements placed upon public lands after said lands have become private property.

History: Approved March 30, 1868, Stats. 1867-68, p. 708.

1. Constitutionality—Act invalid as to improvements attached to the soil.—The legislature has no power to authorize the removal of improvements which have become a part of the realty placed on public lands of the United States, after the same have passed into private ownership.—*Pennybecker v. McDougal*, 48 Cal. 160.

2. Same—Same.—In respect to improvements attached to the soil and had become a part of the realty the act interferes with the primary disposal of the public lands by

the United States, and is in violation of the act of admission.—*Collins v. Bartlett*, 44 Cal. 371, reaffirmed in *Pennybecker v. McDougal*, 48 Cal. 160.

3. Same—Unattached improvements may be removed.—Where improvements are not attached to the soil and have not become a part of the realty, the United States has no interest in them, can not pass them to its grantee, and the owner may remove the same after patent issue.—*Pennybecker v. McDougal*, 48 Cal. 160.

QUIETING TITLE TO CERTAIN SWAMP LANDS IN YOLO AND COLUSA COUNTIES.

ACT 3744a—An act to quiet title to certain land in the counties of Yolo and Colusa, in the state of California.

History: Approved March 30, 1874, Stats. 1873-74, p. 818.

This act relinquished title to certain swamp and overflowed lands that had been sold by the United States to actual settlers.

TITLE TO CERTAIN LIEU LANDS VALIDATED.

ACT 3744b—An act validating the title to lands selected by the state in lieu of surveyed school sections situated within the exterior boundaries of national reservations created by proclamations of the President of the United States and vesting the title of the state to such surveyed school sections in the United States.

History: Approved April 24, 1909, Stats. 1909, p. 1091.

Title to certain lieu lands validated.

§ 1. The selection of all lands heretofore made by the surveyor general from the government of the United States in lieu of surveyed school sections situated within the exterior boundaries of national reservations created by proclamation of the president of the United States and which have been listed to the state of California and also all such selections which are now pending before the land department of the United States, when listed to the state, are hereby declared to be good and valid and to vest the title of the United States and the state when said state shall have issued its patent therefor, to such lands in the applicant, his successors or assigns, for whom such selection was made, and the title of the state of California in and to such surveyed school sections so used as bases for such indemnity selections shall vest in the United States at the date of such listing to the state and the title of the said state shall be deemed to be released and quitclaimed to the said United States at the time of such listing to the state as aforesaid.

§ 2. This act shall take effect from and after its passage.

QUIETING TITLE TO CERTAIN SWAMP LANDS.

ACT 3745—An act to quiet title to certain lands.

History: Approved March 30, 1874, Stats. 1873-74, p. 803

This act confirmed the title of J. P. Counts and Myron Smith to certain swamp lands that had been sold to actual settlers by the United States.

RESELECTIONS WHERE ORIGINAL SELECTIONS WERE CANCELED OR REJECTED.

ACT 3745a—An act to provide for the reselection by the state of lands heretofore selected and sold by the state where the selection has been rejected or canceled because of the subsequent exclusion of the base lands from a national forest; and prescribing certain maximum fees to be charged by agents or attorneys for services performed hereunder, and prescribing penalties for the violation hereof.

History: Approved May 16, 1917. In effect July 27, 1917. Stats. 1917, p. 1218. Amended May 6, 1919. In effect July 22, 1919. Stats. 1919, p. 313.

Reselection of land when selection rejected.

§ 1. Where the state has made a selection of other land in lieu of a sixteenth or thirty-sixth section located within a national forest which had been created by proclamation of the President of the United States at or prior to the date when such selection was made and said selection has been or may be held for cancellation, or canceled, because the base land was thereafter excluded from such national forest, the surveyor general shall make an amendatory selection or a new selection upon application of the

record owner of the certificate of purchase issued for the selected land; provided, that the applicant for a reselection forwards to the surveyor general the fees required by the United States land office; and, provided, further, that nothing herein contained shall be construed to require the surveyor general to make any such amendatory selection or new selection in any case wherein the base land originally assigned in support of such selection was situate within an area temporarily withdrawn from entry for purposes of examination, by order of the secretary of the interior, and was thereafter restored to the public domain without ever having been in fact incorporated within a national forest or a permanent forest reserve. [Amendment of May 6, 1919. In effect July 22, 1919, Stats. 1919, p. 313.]

Penalty for charging fee over \$25.

§ 2. No person who, as attorney or agent for the owner of the certificate of purchase embracing the selected land, applies to the state surveyor general to amend such state selection or to reselect the land embraced therein, shall charge, demand, or receive for such service any fee or other compensation in excess of the sum of twenty-five dollars. Any violation of the provisions of this section shall be a misdemeanor and shall be punished by a fine not to exceed one hundred dollars, or by imprisonment in the county jail not to exceed thirty days or by both such fine and imprisonment; provided, however, that nothing herein contained shall be held, deemed, or construed, to apply to any person who also acts as agent or attorney for such owner before the general land office of the United States at Washington, D. C., or before the secretary of the interior, in case it becomes necessary to take any action to protect such selection against adverse proceedings.

Original selection need not be permanently withdrawn.—The act does not require that the lands originally selected should have been permanently included in a national forest, but it is sufficient if they have been withdrawn from entry and settlement pending determinations as to whether they should be included in the forest or not.—Walker v. Kingsbury, 36 Cal. App. 617, 173 Pac. 95.

RESELECTION ACT OF 1919.

ACT 3745b—An act providing for the reselection by the state of lands heretofore selected and sold by the state where the selection has been canceled or held for cancellation because the base lands have been used for another selection or were incorrectly described.

History: Approved May 6, 1919. In effect July 22, 1919. Stats. 1919, p. 322.

Reselection of lands where selection canceled. Area temporarily withdrawn from entry.

§ 1. Where, under authority of section two thousand two hundred seventy-five of the revised statutes of the United States, the state has made a selection of other land in lieu of a sixteenth or thirty-sixth section within any Indian or military reservation, or within a permanent forest reserve or national forest established by proclamation of the President of the United States, and where through inadvertence or mistake the surveyor general of the state has designated as base for such selection land which has also been used as the basis for some other selection or has incorrectly described the base and where such selection has been or may be canceled or held for cancellation by the general land office of the United States for the reason that the base designated therefor has been so used or was incorrectly described, the surveyor general may, in his discretion, where the state has sold the selected lands, and upon application by the record owner of the certificate of purchase therefor, make an amended selection or reselection of such land upon valid base of the character designated for the original selection, whenever such base is available; provided, that the party applying for relief under this act shall pay all fees and expenses required under the rules of the United States land office; and provided, further, that nothing herein contained shall be held, deemed, or

construed to require the surveyor general to make any amended selection or reselection in any case where the base land designated in support thereof was within an area temporarily withdrawn from entry by the secretary of the interior and subsequently restored to the public domain without having been incorporated within any such permanent forest reserve or national forest.

AMENDMENT OF BASE LAND SELECTIONS.

ACT 3745c—An act providing for the amendment of the base land offered by the state of California in satisfaction of the state school land grant where the selection has become invalid by reason of the restoration to validity of a certificate of purchase embracing the base land, by the vacating of a judgment of annulment.

History: Approved April 15, 1919. In effect July 22, 1919. Stats. 1919, p. 81.

Relief of lieu land owners.

§ 1. Where, under authority of acts of congress of the United States and of the legislature of the state of California, the state of California has made a selection of United States lands in lieu of losses to the state school land grant and the base offered therefor became invalid by reason of the restoration to validity of a certificate of purchase embracing the base land, by the vacating of a judgment of annulment, the surveyor general may, in his discretion, and upon application of the record owner of the certificate of purchase, amend the selection by the substitution of valid base; provided, that the party applying for relief shall pay all fees and expenses incident to such amendatory selection.

QUIETING TITLE OF CERTAIN LAND IN YOLO COUNTY.

ACT 3745d—An act to quiet title to certain lands in Yolo county.

History: Approved April 1, 1872, Stats. 1871-72, p. 803.

This act relinquished title to lands segregated as swamp and overflowed lands which had been sold to actual settlers before segregation.

QUIETING TITLE TO CERTAIN LANDS IN YOLO COUNTY.

ACT 3745e—An act to quiet title to certain lands in Yolo county.

History: Approved March 20, 1874, Stats. 1873-74, p. 492.

This act released the state title to certain school lands to the United States and its grantees.

CANCELLATION OF LIEU LAND APPLICATIONS.

ACT 3746—An act to provide for the cancellation of application for lieu lands made prior to March 24, 1909, wherein selections were not made and forwarded to the United States land office by the surveyor general on or before March 24, 1909, and for the cancellation of all applications for such lieu lands made prior to March 24, 1909, where the selections of the lands described therein were not duly forwarded to and received by the register and receiver of the local United States land office and given a register and receiver's number, and forwarded to the general land office, at Washington, D. C., and of record therein.

History: Approved March 8, 1911, Stats. 1911, p. 310.

Cancellation of lieu lands applications.

§ 1. Any and all applications for lieu lands, made prior to March 24, 1909, wherein the selections of the lands applied for were not made and forwarded by the surveyor general to the United States land office on or before March 24, 1909, are hereby declared to be null and void, and shall be canceled by the surveyor general; and, likewise, any and all applications for lieu lands made prior to March 24, 1909, where the selections

of the lands described in said applications were not duly received by the register and receiver of the local United States land office, and given a register and receiver's number, and which were not duly forwarded to the general land office at Washington, D. C., and which did not become and are not now a part of the records of such general land office at Washington, D. C., are hereby declared to be null and void and of no force or effect and shall be canceled of record by the surveyor general.

§ 2. All acts and parts of acts in conflict herewith are hereby repealed.

§ 3. This act shall take effect immediately from and after its passage.

RELINQUISHMENT OF LIEU LANDS.

ACT 3746a—An act to authorize the surveyor general of the state of California to relinquish certain lieu lands to the United States.

History: Approved April 29, 1915. In effect August 8, 1915. Stats. 1915, p. 305.

Surveyor general may relinquish certain lieu lands.

§ 1. The surveyor general of the state of California is hereby authorized to relinquish to the United States any unlisted lieu land for which there is no pending application to purchase from the state, or upon the request of the holder of a certificate of purchase for such land, upon the surrender of the certificate of purchase issued by the state for the land; the holder of the certificate of purchase to convey to the state of California his interest in and to the land by a quitclaim deed and to furnish the surveyor general with satisfactory evidence that whatever title was conveyed by the state through the issuance of the certificate of purchase is reverted in the state of California.

CANCELLATION OF TAX LIENS ON CERTAIN SCHOOL LANDS.

ACT 3747—An act providing for the cancellation of all liens for taxes on any sixteenth or thirty-sixth section, or legal subdivision thereof, which sixteenth or thirty-sixth section, or legal subdivision thereof, has been or may hereafter be used as bases for lieu selections, in accordance with the provisions of section 3406 of the Political Code.

History: Approved May 1, 1911, Stats. 1911, p. 1416. Amended April 21, 1913. In effect August 10, 1913. Stats. 1913, p. 43.

Cancellation of liens for taxes on sections 16 and 36.

§ 1. It shall be the duty of the board of supervisors of each county in the state, upon petition of the surveyor general of the state of California, at the first meeting of the board following the receipt of said petition, to order the cancellation of all liens for taxes on any sixteenth or thirty-sixth section, or legal subdivision thereof, which sixteenth or thirty-sixth section, or legal subdivision thereof, has been, subsequent to March 24, 1909, or may hereafter be, used as bases for lieu selections, or which are to be used as bases for selections or conveyed to the federal government in accordance with, or pursuant to, the provisions of an act entitled "An act to authorize the adjustment and settlement of a controversy existing between the United States and the state of California, in relation to the grants made by congress to the state of California for the benefit of the public schools, and internal improvements, authorizing the conveyance of land by officers of the state for the purpose of making such adjustment and settlement, and making an appropriation to carry out the provisions hereof," approved December 24, 1911. A certificate from the surveyor general setting forth the fact that any sixteenth or thirty-sixth section is necessary to be used as bases for lieu selections, or is intended to be conveyed to the federal government in pursuance of the provisions of the act last hereinbefore referred to, shall be authority for the action of the board of supervisors in ordering the cancellation of liens for taxes on such lands. [Amendment approved April 21, 1913, Stats. 1913, p. 43. In effect August 10, 1913.]

Report of cancellation of liens.

§ 2. The cancellation of the liens shall be reported by the board of supervisors to the surveyor general of the state of California and to the county recorder to be noted by him upon his records.

§ 3. This act shall take effect immediately from and after its passage.

“CAREY ACT COMMISSION.”

ACT 3748—An act in relation to the act of congress known as the Carey act, and all acts amendatory thereof and supplemental thereto, and giving authority to a commission in the investigation, selection, reclamation, control and disposal of all lands granted the state under the provisions thereof.

History: Approved June 4, 1915. In effect August 8, 1915. Stats. 1915, p. 1140.

State accepts conditions under act of August 18, 1894. Carey act commission.

§ 1. The state of California hereby accepts the conditions of section four of an act of congress entitled, “An act making appropriation for sundry civil expenses of the government for the fiscal year ending June 30, 1894, and for other purposes,” approved August 18, 1894, together with all the grants of land to the state under the provisions of the aforesaid act. The selection, reclamation and disposal of said land shall be vested in a commission which shall consist of the secretary of the department of natural resources, whenever such officer shall be appointed and until such appointment is made, one of the members of the state water commission to be named by said commission, the state engineer and the surveyor general and which commission shall hereafter be designated the “Carey Act Commission.” The secretary of agriculture whenever such officer shall be appointed, and until such appointment, the dean of the college of agriculture of the University of California, and the president of the state water commission shall act as an advisory board to the said Carey act commission.

President. Secretary.

§ 2. The commission shall elect from among its members, a president and a secretary. The president of the commission shall preside at all meetings of the commission and shall have authority to call special meetings of the commission and he shall do so when requested by any one of the other members.

The secretary of the commission shall execute the will of the commission in all matters relating to this act. He shall have the custody of the records of the commission and shall receive and file all proposals for the construction of irrigation works to reclaim lands selected under the provisions of this act. The surveyor-general shall be register of all lands which may be selected and shall keep for public inspection maps or plats on a scale not less than two inches to the mile of all lands selected, receive entries of settlers on these lands and hear or receive the final proof of their reclamation and do any and all work required by the commission in carrying out the provisions of this act, relating to the disposal of such lands. He shall have authority to administer oaths, whenever necessary, in the performance of the duties of register.

Reclamation of desert lands. Temporary withdrawal of lands.

§ 3. Whenever it shall appear to the board of supervisors of any county that it would be advisable to reclaim by irrigation, under the provisions of this act, any desert public land, situated within such county, such board may by appropriate resolution, petition the state engineer to make such an investigation as would determine the feasibility of such reclamation. Whereupon the state engineer shall make or cause to be made an investigation of such lands, and if it should be the opinion of the state engineer that it is feasible to reclaim by irrigation such lands, he shall report the fact to the

commission, and, thereupon the commission shall direct the state engineer to make, when necessary, such further investigations as would determine the location and description of the lands, which may be thus reclaimed. The commission may make application to the United States department of the interior upon behalf of the state of California for the temporary withdrawal of such land, pending a more complete investigation and survey preliminary to the filing of the maps and plats and application for segregation.

State engineer's investigation.

§ 4. As soon as such temporary withdrawal of land shall have been made by the secretary of the interior, it shall be the duty of the state engineer to make an investigation of the water supply and make such surveys as will determine the feasibility of irrigating such lands and the approximate cost of the same. If it should appear from such investigation and surveys that the irrigation of the lands would not be feasible, the state engineer shall so report to the commission and it shall then be the duty of the commission to so notify the department of the interior, in order that such lands may be restored to the public domain; but, if the commission shall be satisfied that there is an adequate supply of water for the irrigation of such lands and that the construction of works for the irrigation of such lands is entirely feasible and the commission should decide that the state would be benefited through the irrigation and settlement of such lands, the commission shall direct the state engineer to make such additional investigations and surveys and prepare such plans as may be necessary to determine the cost of such works as would be needed to irrigate such lands and the commission may then enter into a contract on behalf of the state of California, with the United States, for the construction of such works as may be necessary for the proper irrigation of such land in pursuance of the act of congress known as the Carey act, and the rules and regulations of the department of the interior relating thereto; provided, however, that such project shall have first been approved by the state engineer, and by both members of the advisory board.

Report of water commission. Agricultural report.

§ 5. Before finally deciding as to the feasibility of irrigating lands under this act, the commission shall request the state water commission to report, in writing, their opinion as to whether or not an adequate supply of unappropriated water is available for the irrigation of such lands. It shall be the duty of the state water commission to make such report and recommendations in writing. At the same time and in the same manner the secretary of agriculture or the dean of the college of agriculture, as may be, shall be requested to report his opinion in relation to the land of such project as to its character and fertility, and as to soil or drainage problems then existing or which may follow the irrigation of the lands, and if it should be his opinion that the value of such land, or any portion of such land, after irrigation would not fully justify the estimated cost of such irrigation, the commission shall not enter into a contract for the irrigation of any of the lands which may be adversely reported upon. All such written reports and advice shall be furnished to the commission free of charge.

Designation of project. Surveys and location of works. Conveyances, leases. Rules and regulations.

§ 6. Whenever a contract shall have been entered into by the commission with the United States department of the interior for the irrigation of desert public lands under the provisions of this act, the lands of such project shall be designated by the commission and be known as the (name to be given) state irrigation district, and the commission shall have the power and it shall be its duty to provide for the construction of the necessary works for the irrigation of such lands, to manage and conduct the business affairs of such district, to make and execute all necessary contracts of employment and appoint such agents, officers and employees as

may be required and prescribe their duties. The commission and its agents and employees shall have the right to enter upon any land, to make surveys and locate the necessary irrigation works and the line for any canal or canals and the necessary branches for the same on any lands which may be deemed best for such location. Such commission shall also have the right to acquire by purchase, lease, contract, condemnation or other legal means all lands and waters and water rights and other property necessary for the construction, use, supply, maintenance, repair and improvements of said canal or canals and works, including canals and works constructed and being constructed by private owners, lands for reservoirs for the storage of needful waters and all necessary appurtenances and also, where necessary or convenient to said ends, to acquire and hold the stock of other corporations owning waters, canals, waterworks, franchises, concessions or rights. Such commission may also construct the necessary dams, reservoirs and works for the collection and distribution of water for said district and do any and every lawful act necessary to be done that sufficient water may be furnished to all of the lands of such district for irrigation and domestic purposes. The said commission is hereby authorized and empowered to take conveyances, leases, contracts or other assurances for all property acquired by it under the provisions of this act in the name of the state in behalf of such state irrigation district to and for the uses and purposes herein expressed and to institute and maintain any and all actions and proceedings, suits at law or in equity necessary or proper, in order to fully carry out the provisions of this act or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this act or acquired in pursuance thereof. And in all courts, actions, suits or proceedings the said commission may sue, appear and defend, in person or by attorneys and in the name of the state in behalf of such state irrigation district. It shall be the duty of said commission to establish equitable by-laws, rules and regulations for the distribution and use of water for the lands of such district, and for the administration and disposal of the lands of such district, which must be printed in convenient form for distribution. Said commission shall have power, generally, to perform all such acts as shall be necessary to fully carry out the purposes of this act.

Appropriation of water.

§ 7. Whenever it shall appear to the commission that the irrigation of public land of a proposed state irrigation district under the provisions of this act would be feasible and that an adequate supply of water exists and is available for the purpose, it shall be the duty of the commission to appropriate in the name of the state of California for such state irrigation district an amount of unappropriated water as may be available and necessary for the irrigation of such land, such appropriation to be made in pursuance of the provisions of the water commission act and acts amendatory thereof, and the rules and regulations of the state water commission; but no fees shall be paid to the state water commission for any services which may be rendered by such commission in connection with any permit or license which may be granted under any such appropriation; but such charge as may be provided by law for the diversion of water for irrigation shall be paid to such state water commission as soon as any of the water thus appropriated shall be diverted for use upon the land of any district and for the quantity of water thus diverted.

Raising additional money. Estimated costs. Bonds.

§ 8. For the purpose of constructing necessary irrigation canals and works and acquiring the necessary property and rights therefor and for the purpose of acquiring waters, water rights and other property necessary for the purposes of a state irrigation district and otherwise carrying out the provisions of this act, the commission may as soon after a contract has been entered into with the United States for the irrigation of the

lands of a district and also whenever thereafter the construction fund has been exhausted by expenditures herein authorized therefor and it is necessary to raise additional money for such purposes, estimate and determine the amount of money necessary to be raised. For the purpose of ascertaining the amount of money necessary for such purposes or any of them said commission shall cause such surveys, examinations, drawings and plans to be made of a district as shall furnish the proper basis for an estimate of the cost of irrigating the lands of such district. All such surveys, examinations, drawings, plans and the estimate of cost based thereon shall be made by or under the direction of the state engineer and shall be certified by him and a report of such irrigation plans shall be prepared by him which report shall contain a description of the lands to be irrigated, the works to be constructed and shall also state his conclusions as to the supply of water available for the use of the district. The estimated cost of a project under this act shall include in addition to the cost of the works proposed and the purchase of land and other rights of way needed for their construction and for the use of such district, the estimated discounts or cost of credit which it would be necessary to establish; interest during the period of construction; overhead and other carrying charges and reasonable contractor's profit commensurate with the risks involved; and the total estimate thus obtained shall be the estimated reasonable expense of irrigation or the "irrigation charge" against the lands to be irrigated. After receiving such report the commission, if it shall be convinced and shall declare by resolution that the supply of water available for the use of the district is sufficient for all purposes and that the said project is in all other respects feasible, shall make an order determining the amount of bonds that should be issued in order to raise the amount of money needed for the purpose or purposes for which said bonds are desired; and, said bonds may be issued as provided by this act and when so issued shall constitute a lien or liens against the lands of a district to be thus reclaimed as contemplated by the act of congress, approved June 11, 1896, (29 Stats. 413-434) and shall be valid on and against the separate legal subdivisions of land thus reclaimed and irrigated, for the actual cost and necessary expense of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and after the reclamation and settlement of any lands thus reclaimed such bonds shall remain a lien against such lands and shall be superior and prior to any other lien which may be created until paid, and the commission is hereby authorized to issue bonds under such lien to be secured by the same and may, from time to time, as provided in section 9 of this act, sell said bonds, the proceeds to be used only for the reclamation of such lands, such total issue of bonds to have a par value not to exceed the total estimated irrigation charge against the lands of such district.

Sale of bonds.

§ 9. The commission may sell such bonds, from time to time, and in such quantities as may be necessary and most advantageous to raise money for the construction of such canals and works, the acquisition of property and rights, or the acquisition of any water or water rights or otherwise to fully carry out the objects and purposes of this act. Before making any such sale, the commission shall, at a meeting, by resolution, declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes and notice of the sale to be given by publication thereof, for at least three weeks, in some newspaper published in the county in which the district is situated and in any other newspaper at its discretion. The notice shall state that sealed proposals will be received by the commission at their office for the purchase of bonds till the day and hour named in the resolution. At the time appointed the commission shall open the proposals and award the purchase of the bonds or any portion or portions thereof to the highest bidder or bidders; provided, however, that they may reject any or all bids.

Assessments.

§ 10. In case the money raised by the sale of bonds issued be insufficient or in case the bonds be not available for the completion of the plan of canal and works adopted and the acquisition of the necessary property, waters and water rights therefor and additional bonds be not voted, it shall be the duty of the commission to provide for the completion of said plan and the acquisition of such necessary property, waters and water rights by levy of assessments therefor on or before the first Monday in August in each year, and the commission shall levy an assessment against all the land included in a district which may be subject to assessment to raise the annual interest on the outstanding bonds of such district; and, in any year in which any bond shall fall due it must increase such assessment to an amount sufficient to raise a sum sufficient to pay the principal of the outstanding bonds as they mature and pay the cost of operating and maintaining the canal system of the district; also sufficient to pay in full all sums due or that shall become due from the district before the time of levying the next annual assessment on account of rentals or charges for lands, water, or water rights acquired by said district under lease or contract; also sufficient to pay in full the amount of any other contract or obligation of the district which shall have been reduced to judgment; provided, also, that the commission shall have authority to charge a toll or rental for the delivery of water in an amount sufficient to pay the cost of operating and maintaining the canal system; or, such expense may be met by both assessment and tolls in such proportion as the commission might decide would be most advantageous to the land owners of such district.

Series of bonds.

§ 11. All bonds issued under the provisions of this act shall be payable in gold coin of the United States in twenty series, as follows, to wit:

At the expiration of twenty-one years from the date of any issue of the said bonds, two per centum of the whole amount of such issue; at the expiration of twenty-two years from said date two per centum of the whole amount of such issue; at the expiration of twenty-three years from said date, three per centum of the whole amount of such issue; at the expiration of twenty-four years from said date three per centum of the whole amount of such issue; at the expiration of twenty-five years from said date four per centum of the whole amount of such issue; at the expiration of twenty-six years from said date four per centum of the whole amount of such issue; at the expiration of twenty-seven years from said date, four per centum of the whole amount of such issue; at the expiration of twenty-eight years from said date four per centum of the whole amount of such issue; at the expiration of twenty-nine years from said date, five per centum of the whole amount of such issue; at the expiration of thirty years from said date, five per centum of the whole amount of such issue; at the expiration of thirty-one years from said date, five per centum of the whole amount of such issue; at the expiration of thirty-two years from said date five per centum of the whole amount of such issue; at the expiration of thirty-three years from said date six per centum of the whole amount of such issue; at the expiration of thirty-four years from said date six per centum of the whole amount of such issue; at the expiration of thirty-five years from said date six per centum of the whole amount of such issue; at the expiration of thirty-six years from said date six per centum of the whole amount of such issue; at the expiration of thirty-seven years from said date, seven per centum of the whole amount of said issue; at the expiration of thirty-eight years from said date seven per centum of the whole amount of such issue; at the expiration of thirty-nine years from said date, eight per centum of the whole amount of such issue; at the expiration of forty years from said date, eight per centum of the whole amount of such issue.

Each bond due entire. Date of issue. Interest. Denomination. Interest coupons.

While the foregoing several enumerated percentages are of the entire amount of the bond issue, each bond must be made payable at a given time for its entire amount and not for a percentage. The date of the issue of any bond authorized under this act shall be deemed to be the apparent date of issue of the said bonds appearing upon the face thereof, which date shall be subsequent to the date of the resolution of the commission authorizing the issue of the said bonds and prior to the date of actual delivery of said bonds to the purchaser thereof. Said bonds shall bear interest at a rate to be determined by the commission, but not exceeding six per cent per annum, payable semi-annually on the first day of January and the first day of July of each year. Principal and interest shall be payable at the place designated therein. Said bonds shall be each of the denomination of not less than one hundred (\$100) dollars nor more than one thousand (\$1,000) dollars as the commission may determine. They shall be negotiable in form, signed by the president and secretary of said commission and the seal of the commission shall be affixed thereto. Each issue shall be numbered consecutively as issued and the bonds of each issue shall be numbered consecutively and bear date at the time of their issue. Coupons for the interest shall be attached to each bond signed by the secretary. Said bonds shall express on their face that they were issued by authority of this act, stating its title and date of approval and also stating the number of the issue of which such bonds are a part. The secretary shall keep a record of the bonds sold, their number, the date of sale, the price received and the name of the purchaser. The provision of this section defining what shall constitute the date of issue of bonds shall apply to any and all bonds issued in pursuance of this act.

Payment of interest and principal.

§ 12. Upon the presentation of the coupons due on bonds issued against the land of any said irrigation district to the state treasurer he shall pay the same from the bond fund of such district. Whenever such fund shall amount to the sum of \$10,000 in excess of an amount sufficient to meet the interest coupons due, the commission may direct the treasurer to pay such an amount of such bonds due as the money in said fund will redeem at the lowest value at which they may be offered for liquidation after advertising in the manner hereinbefore provided for the sale of bonds, for sealed proposals for the redemption of such bonds. Said proposals shall be opened by the commission in open meeting at a time to be named in the notice and the lowest bid for said bonds must be accepted; provided, that no bond shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of said bonds shall desire to have the same redeemed as herein provided for said money shall be invested by the state treasurer under direction of the commission in United States bonds or the bonds of the state which shall be kept in the bond fund of such district and may be used to redeem such district bonds whenever the holders thereof may desire.

Annual assessment.

§ 13. The bonds issued and the interest thereon shall be paid by revenue derived from an annual assessment upon the land of the district against which such bonds may have been issued on the basis provided in section 19 of this act and all the land in such district shall be and remain liable to be assessed for such payments as herein provided.

District superintendent, appointment, duties, etc. District advisory board.

§ 14. The commission shall have power to appoint a representative of any state irrigation district who shall reside within the limits of such district, and who may be empowered to act for the commission in all matters relating to the affairs of such district; the commission shall fix his compensation and he shall hold office at the pleasure of such commission. Before assuming the duties of such office, such representative

shall execute an official bond in a sum not to exceed fifty thousand dollars and not less than ten thousand dollars. Such official bond shall be in the form prescribed by law for the official bonds of county officers. Such representative may be given authority to represent such commission during the construction of the works; to receive applications for the entry of land under the provisions of this act; receive annual and final proofs and issue certificates relating to the same. He may be empowered to prepare the annual assessment rolls and collect and receive such assessments on behalf of such commission. Such representative of the commission shall be designated "district superintendent." The commission is hereby authorized to appoint a district advisory board of any state irrigation district, consisting of three members who shall be residents of such district and who shall hold office at the pleasure of the commission and shall serve without compensation. The commission is hereby empowered to extend such authority to such district advisory board as may be deemed for the best interests of such district.

Bids on construction of work. Certified checks. Financial standing of successful bidder.

§ 15. When the commission shall have made an estimate of the cost of a project, it shall invite bids or proposals for the construction of the necessary works by publication, for a period of six weeks in not more than six newspapers of weekly issue as in the opinion of such commission would be most likely to bring the matter to the attention of persons best able to undertake the construction of the works proposed. Such notice shall contain a brief description of the works proposed the volume and kind of material to be moved, the kind of structures to be built, and the total estimated cost of the project and the place or places where plans, estimates and specifications can be inspected. Such bids or proposals shall be received by the commission on the day and hour stated in the publication and such commission shall thereupon examine all such bids or proposals as may be submitted and shall accept the proposals of the lowest and most responsible bidder, provided the price at which it is proposed such work would be constructed is not greater than the total estimated cost of such project as prepared by such commission or such commission may reject any or all of such bids. If the price submitted for the construction of such works should be greater than the total estimated cost prepared by the commission, the commission shall arrange for a public hearing and may summon witnesses to testify as to the reasonableness of any price or terms which may have been submitted or may receive other proposals and the commission may, after a careful consideration of all evidence which may be submitted and representations that may be made at such hearing, accept a proposal for a price greater than the estimated cost of the project prepared by such commission. Each bid or proposal that may be submitted shall be accompanied by a certified check made payable to the commission, equal in amount to two per cent of the estimated cost of such project, which check shall be forfeited to such commission if the individual, firm, association or corporation submitting such bid or proposal shall, after its acceptance by the commission, refuse to enter into a contract with the commission for the construction of the works of such project as provided by the general terms of such proposal and such commission shall deposit with the state treasurer the amount thus forfeited and the state treasurer shall place the same to the credit of the bond guarantee fund created under the provisions of section 38 of this act; provided, further, that no proposal for the construction of irrigation work shall be accepted until the commission shall have satisfied itself that the individual, firm, association or corporation submitting the same is financially able to carry the undertaking to completion within the time specified and under the terms provided and for the amount agreed to in such proposal.

Contract to be entered into. Bond. Plans part of contract. Beginning of work. Failure to complete.

§ 16. The individual, firm, association or corporation, whose proposal for the construction of the works of any irrigation project to be constructed under the provisions of this act has been accepted by the commission shall, within a period of thirty days from the date of such acceptance be prepared to enter into a contract with such commission for the construction of such works in accordance with the plans, specifications and terms upon which the acceptance of such proposal is based, such contract to be accompanied by a satisfactory bond on the part of the proposed contractor for the construction of such works, which bond shall be in a penal sum equal to fifteen per cent of the estimated cost of the works and shall be conditioned for the faithful performance of the provisions of the contract with the state of California, but the commission shall have the authority to extend the time of entering into such agreement, but such time shall not be extended more than ninety days from the date of the acceptance of such proposal. The plans, specifications and terms upon which the accepted proposal is based, shall be made a part of the contract; the time for the completion of the works shall also be stated, which shall not be more than five years from the date of the acceptance of the proposal; but, in the case of works of great magnitude the commission shall have authority to extend the time for completion not exceeding two years. All contracts shall state that work shall begin within three months from the date of the contract and that such work shall be prosecuted diligently and continuously and at a rate commensurate with the magnitude of the undertaking and which would, at all times, insure its completion by the time agreed to in such contract; provided, further, that if there shall be an interruption of work on any of the controlling features of such project, as may be determined by the state engineer, caused by flood, storms, or other natural causes, the commission may grant an extension equal to such delay. All work to be done under the provisions of this act shall be in pursuance of plans and specifications to be prepared by the state engineer and all such work shall be under his supervision and shall be completed to his satisfaction. A failure to complete the works within the time required by the contract or an extension thereof as herein provided shall forfeit to the state all rights under the same.

Failure to begin on time. Proposal to complete.

§ 17. Upon the failure of any parties having a contract with the state for the construction of irrigation works to begin the same within the time specified by the contract or to complete the same within the time or in accordance with the specifications of the contract to the satisfaction of the commission, it shall be the duty of the commission to give such parties written notice of such failure and if after a period of thirty days from the sending of such notice, they shall fail to proceed with the work or to conform to the specifications of their contract with the state, the bond and contract of such parties and all work that may have been performed under such contract and all the material entering therein or which may be delivered or the works constructed or to be constructed thereunder shall be at once and thereby forfeited to the state; and it shall be the duty of the commission at once to so declare and give notice once each week for a period of four weeks in some newspaper in general circulation in the county or counties in which the work is situated and in one newspaper at the state capital, in like manner and for a like period of the forfeiture of such contract and that upon a fixed day, proposals will be received at the office of the commission for the completion of such contract and the time for receiving said proposals shall be at least sixty days subsequent to the issuing of the last notice of forfeiture. And the commission shall have authority to accept a proposal for such completion and may enter into a contract for the same as in the case of an original proposal; and if by reason of a failure or forfeiture under a contract or for any other cause the total cost of a project should exceed the original

estimated irrigation charge, the commission shall have the authority to make such equitable distribution or addition of any such excess or increased cost to any or all of the farm units of such district as, in the judgment of such commission may be deemed just and such adjusted or increased irrigation charge shall, thereafter, be the basis for all assessments against such farm units as contemplated by the provisions of this act.

Payments to contractor.

§ 18. The contract for the construction of works of a district shall provide that payments shall be made to the contractor only as lands are open to entry from time to time and there shall be due and payable at such times only such amounts as would equal the total irrigation charge against such land as shall have been provided with means of irrigation.

Classification of lands. Farm units.

§ 19. As soon as the estimated irrigation charge shall have been determined, it shall be the duty of the state engineer to make a classification of the lands of such district, dividing it into farm units and noting the location and area of the irrigable and non-irrigable land of each of such farm units, which may be of varying size, but none of such farm units shall be greater than one hundred sixty acres or less than twenty acres and he shall charge the irrigation charge or cost of the project against such farm units in the proportion of the benefits which it is estimated would be derived by each of such farm units from the construction of such works; and the amount thus charged against any farm unit, or the proportion which such charge bears to the total cost of such project, shall be the basis of assessment during the period of construction and when construction is completed and the irrigation charge is finally adjusted shall be and remain the basis of all assessments which may thereafter be made against such farm units under the lien that may be created against any or all of the lands of such project in pursuance of the provisions of this act, and of the act of congress approved June 11, 1896. [29 Stats. 413-434.]

Map filed with recorder. Resolution recorded. Private lands within project.

§ 20. Whenever the commission shall decide to proceed with the construction of works for the irrigation of the lands of a state irrigation district and to issue bonds for the payment of the same, and before any of such lands shall be open for entry, the commission shall file for record in the office of the county recorder, in the county or counties in which such lands may be situated, a map on tracing linen, on a scale not less than two inches to the mile, on which shall be shown the lands of such state irrigation district that are to be irrigated, subdivided into farm units, together with a list of such farm units; and there shall be noted on such map in each farm unit subdivision and on such list of lands the irrigation charge which has been made against each of such farm units, which charge shall serve as a basis for assessments as provided in section nineteen of this act. And there shall also be recorded a certified copy of the resolution of the commission providing that such irrigation charge shall become a lien against the lands of the district and the subdivisions thereof on the basis indicated on such map and list; also a certified copy of the resolution or resolutions providing for the issuing of bonds for the construction of such works shall be filed for record by the commission with such recorder or recorders. Any owner of private lands, situated within the limits of a project to be constructed under the provisions of this act may have such lands included in such project, by entering into an agreement with the commission, which agreement shall provide that an equitable portion of the cost of such works shall be charged against such land on the same basis and in the same manner followed in the case of the public lands of the project and that any area of land in private ownership, which it may be desired to thus include, in excess of any farm unit area which shall be decided by the commission and not to exceed 160 acres, shall be subdivided

vided by the state engineer into farm units and sold by the commission at a price and on terms to be agreed to with the commission, the price at which such land may be sold to be not greater than two and one-half times its assessed value at the time such agreement is made; and such owner shall also agree that the cost of irrigation shall be a first lien against his land, the terms of such lien to be the same in every respect as the lien which may be created against the public land of the project; and he shall execute a mortgage against such land as would enable the commission to establish such a lien; also that such land shall be incorporated into and be subject to all assessments which may be made by order of such commission; and, when the owner of any privately owned lands shall have thus entered into such contract the commission may, if it shall be deemed to be the best interests of the project, declare such privately owned lands a part of the project and of the state irrigation district, which is to be created or may have been created and shall indicate each unit of such lands, with the irrigation charge noted, on the map of such district and shall add such lands to the list of lands to be recorded as herein provided.

Amended map filed on completion of works.

§ 21. Upon the final completion of the works of a project the commission shall file for record with the county recorder of the county or counties in which the project is situated, an amended map of the project and a list of all lands on which shall be noted the irrigation charges as they may finally be adjusted by the commission, together with appropriate resolutions in relation thereto, and such amended map and list and resolution shall then become the final basis of all future assessments to be made against the lands of such project in carrying out the provisions of this act; and, the recorder of a county in which such project or any portion of a project is situated shall at the request of the commission receive and record all resolutions of the commission relating to the creation of a lien against the lands of a state irrigation district and the list of the lands thereof and shall file in a plat book to be provided for such purpose all the maps and plats of the lands of such district that may be offered for record.

Assignment of entry. Cancellation of entry.

§ 22. No entry of land made under the provisions of this act shall be assignable except to the state of California, and shall not be re-entered until at least sixty days after such assignment and not until the register has by publication, once each week for a period of four weeks in a newspaper published in the county in which such land is situated and in another newspaper of general circulation to be selected by the register advertised that such land will be open to re-entry at the office of the commission or its agent in the county in which such land is situated at an hour and date which shall be not less than fifteen nor more than thirty days subsequent to the last date of such publication and describing such land and the appraised value of any improvements which may have been placed upon the same as determined by the commission and stating that the right to re-enter any such farm unit or units will be awarded to the highest qualified bidder for the same; and the commission shall not be obliged to return to the previous entryman all or any portion of any amount which may thus be received from the sale of the improvements which may have been placed upon such entry by him, the value of which shall have been appraised, but the commission may place any or all of the money thus received in the bond guarantee fund of such district. The commission shall cancel any entry for non-compliance with the provisions of this act relating to the payment of tolls, water rentals or assessments or for failure to cultivate or reside upon such entry in the manner provided by this act and in accordance with the rules and regulations in relation to the same as may be provided by such commission, and, in the event of such cancellation such entry shall be re-entered in the manner herein provided.

Entryman to become resident. Final proof. Patent. Rules of commission.

§ 23. Within six months after entering land under the provisions of this act the entryman shall become an actual and bona fide resident upon such land and shall continue to reside upon such land during at least six months of each year until patent shall have been granted to him for the land embraced in such entry. And within the irrigation season next following the date of entry of land the entryman shall prepare for irrigation and shall irrigate and cultivate to crops twenty-five per cent of the irrigable area of such entry and during the second irrigation season he shall prepare for irrigation and shall irrigate and cultivate to crops one-half of the irrigable area of such entry; and, during the third irrigation season he shall prepare for irrigation and shall irrigate and cultivate to crops seventy-five per cent of the irrigable land of such entry. Such classification as to irrigability to be made by the state engineer, as provided in section 19 of this act. Four years from the date of entry the entryman shall offer final proof of residence upon and cultivation of his entry before the register or a representative of such register in the county in which such land is situated and if such final proof is accepted the commission shall issue a patent in the name of the state to such entryman; provided, that at the time of such final proof seventy-five per cent of the irrigable area of such entry shall have been prepared for irrigation and shall be irrigated and cultivated. The commission shall provide suitable rules for the filing of proposals for constructing irrigation works and for the entry of and the payment for the land by settlers; for offering annual and final proof and for the forfeiting of entry upon failure to comply with the provisions of this act, and in relation to other duties and obligations of the entryman in carrying out the provisions of the act. Such rules and regulations shall be designed to carry out the chief purpose of this act which is that speculation in such lands may be prevented and that they may be entered by actual settlers who will put them to the beneficial use intended so repayment of the cost of reclamation may be assured.

Order of construction of works. Open to public.

§ 24. The construction of all irrigation works of a state irrigation district shall be prosecuted in regular order beginning at the upper end of such district to be irrigated and continuing towards the lower end, and all diverting works, main canals, laterals and structures shall be completed as such work proceeds, so that all the land tributary thereto may be irrigated and whenever irrigation facilities shall have been completed for the irrigation of one-fifth of the area of an irrigation district the commission shall accept such works, provided they shall have been completed to the satisfaction of the state engineer; and thereupon the commission shall, within thirty days from such acceptance declare open to public entry such portions of the lands of such project as have been provided with irrigation facilities and for which water is available for irrigation; and it shall be the duty of the commission, by publication once each week in some newspaper of the county in which such lands are situated and one newspaper each in Sacramento, San Francisco, and Los Angeles, for a period of four weeks to give notice that said land is open for settlement, the price for which said land will be sold to settlers by the state and the average irrigation charge against such land and the terms of payment; also any privately owned lands which may be held under contract for sale by the commission and the price at which such land will be sold to actual settlers and the terms of the same; and, from time to time thereafter as works are completed for the irrigation of the lands of such district such works shall be accepted and such land shall be thrown open to entry; but each of the first four public openings of lands of a district shall contain an area not less than one-fifth of the total area of the district unless one of such openings shall include all the remaining lands of such district.

Qualifications of applicants. First payment. Price of lands.

§ 25. Any citizen of the United States or any person having declared his intentions to become a citizen of the United States, excepting married women, unless head of a family, over the age of twenty-one years, may make application, under oath to the register, or his agent, to enter a single farm unit and such application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the act of congress and the laws of this state relating thereto, and that the applicant has never received the benefit of the provisions of this act and that such application is made subject to such rights of way as may be deemed necessary by the commission for the construction of irrigation works and their proper operation and maintenance thereafter, and to all the provisions of this act with respect to the lien against such land which may have been created or may be created by the authority of the commission, and subject to the authority of the commission in all matters relating to the levying and collecting of assessments, tolls and water rentals of every kind and subject to the authority of the commission in relation to the control and operation of the irrigation system. All applications for entry shall be accompanied by a payment of one dollar per acre, which will be returned to the applicant if the application is not allowed. If the application is allowed a certificate shall be issued to the applicant and all certificates when issued shall be recorded in a book to be kept for that purpose. The commission will dispose of all lands accepted by the state under the provisions of this act, at a uniform price of one dollar per acre. The application shall also be accompanied by any amounts or charges which may have been assessed against such land and which are due and payable; also by a payment of not less than ten per cent, nor more than twenty per cent of the irrigation charge made against the farm unit applied for, as the commission, in its discretion may decide, and such payment shall be a uniform percentage of such irrigation charge against all the lands of such district and such payment shall be deposited by the commission with the state treasurer, in a fund to be known as the state irrigation district bond guarantee fund to be employed by the commission as provided by section 38 of this act, and a similar payment shall be made by the owner or holder of any privately owned land which may have been included in such district and by the purchaser or purchasers of any of such land which may be sold by the commission under contract provided in section 20 of this act and the payment thus made shall also be placed in such bond guarantee fund; provided, in the case of such private lands the payment of such percentage of the irrigation charge shall be made at the time such lands are included in such district or when such lands are sold by the commission or under its authority.

Assessments based on irrigation charge.

§ 26. On or before the first Monday in August in each year the commission shall prepare or cause to be prepared a list of assessments to be levied under the provisions of this act, such assessments to be based upon the irrigation charge made against the lands of such district on the basis provided in section 19 of this act. Such commission shall compute and enter in a separate column of the assessment book the respective sums in dollars and cents to be paid as an assessment on the property therein enumerated. When collected the assessment shall be paid by the commission into the office of the state treasurer, there to be apportioned to the several funds as herein provided. The assessment upon the lands of the district is a lien against the property assessed from and after the date of such assessment and the lien for the bonds and other charges of such district shall be a preferred lien and superior to any other lien which may be created and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof.

Notice that assessments are due. Delinquent list.

§ 27. On or before the first day of September the commission shall publish a notice in the newspaper of general circulation published in each county in which any portion of the district may lie that such assessments are due and payable and will become delinquent at six o'clock p. m. on the last Monday of October next thereafter and that unless paid prior thereto ten per cent will be added to the amount thereof and also the time and place at which payment of assessments may be made, which notice shall be published for the period of two weeks. The commission or its representative must attend at the time and place specified in the notice to receive assessments which must be paid in gold or silver coin. He must mark the date of payment of any assessment in the assessment book opposite the name of the person paying and give a receipt to such person specifying the amount of the assessment and the amount paid with the description of the property assessed; and on the last Monday in October at 5 p. m. of each year if unpaid assessments are delinquent and thereafter the commission must collect thereon for the use of the district an addition of ten per cent.

Publication of delinquent list.

§ 28. On or before the first day of December the commission shall publish the delinquent list which must contain the names of the persons and the description of the property delinquent and the amount of the assessments and costs due, opposite each name and description. There shall be appended to and published with the delinquent list a notice that unless the assessments delinquent, together with cost and percentage are paid the property upon which such assessments are a lien will be sold at public auction. If the land on which such assessment is delinquent is held under a possessory right under the provisions of this act, such publication shall state that such possessory right is subject to cancellation by the commission, and if the assessments against such land are not paid within sixty days from the date of such delinquency such right shall be canceled and the land offered for re-entry in the manner provided by section 22 of this act. The publication must be made once a week for three successive weeks in a newspaper of general circulation published in the county in which the property delinquent is situated, but if any property assessed to the same person shall lie in more than one county then such publication may be made in each county in which any portion of such property may lie. The publication must designate the time and place of sale; the time of sale must be not less than twenty-eight days from the first publication and the place must be at some point designated by the commission within the district; provided, however, that if there should occur any error in the publication of the sale of the delinquent property which might invalidate a sale made thereunder and such error is discovered prior to the sale thereunder, the commission shall at once republish the sale of the property affected by such error, making such publication conform to the provisions of this act and the time of sale designated in such republication must not be less than twenty-one nor more than twenty-eight days from the first republication and the place of sale must be at some point designated by the commission within the district and stated in such republication.

Collection in addition to assessments. Sale.

§ 29. The commission must collect in addition to the assessments due on the delinquent list and ten per cent added, fifty cents on each lot, piece or tract of land separately assessed. On the day fixed for the sale or some subsequent day to which the commission may have postponed it, notice of which must be given, the commission or their representative, between the hours of 10 o'clock a. m. and 3 o'clock p. m. must commence the sale of the property advertised, commencing at the head of the list and continuing alphabetically or in numerical order of the lots or blocks until completed. The

commission may postpone the day of commencing the sale from day to day, but the sale must be completed within three weeks from the day first fixed.

Sale of certificate.

§ 30. After receiving the amount of assessments and costs the commission must make out, in duplicate, a certificate dated on the day of sale, stating when known the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for assessments, giving the amount and year of the assessment and specifying the time when the purchaser will be entitled to a deed. The certificate must be signed by the commission or its representative and one copy delivered to the purchaser and the other filed in the office of the county recorder of the county in which the land is situated.

Record of lands sold.

§ 31. The commission or its representative before delivering any certificate must in a book enter a description of the land sold, corresponding with the description in the certificate, the date of the sale, purchasers' names and amount paid, regularly number the description on the margin of the book and put a corresponding number on each certificate. Such book must be open to public inspection without fee during office hours when not in actual use. On filing the certificate with such county recorder the lien of the assessments vests in the purchaser and is only divested by the payment to him or to the commission for its use of the purchase money at two per cent per month from the day of sale until redemption.

Assessment book, etc., as evidence.

§ 32. The assessment book or delinquent list or a copy thereof certified by the commission or its representative showing unpaid assessments against any person or property is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of assessments due and unpaid and that all the forms of the law in relation to the assessment and levy of such assessments have been complied with.

Sale of part of land. Resale. When no purchaser appears.

§ 33. The owner or person in possession of any property offered for sale for assessments due thereon may designate in writing to the commission prior to the sale what portion of the property he wishes sold, if less than the whole. But if the owner or possessor does not, then the commission may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest and pay the assessments and costs due, including two dollars for the duplicate certificate of sale is the purchaser. If the purchaser does not pay the assessments and costs before 10 o'clock a. m. the following day the property on the next sale day must be resold for the assessments and costs. But in case there is no purchaser in good faith for the same on the first day that the property is offered for sale then when the property is offered thereafter for sale and there is no purchaser in good faith for the same, the whole amount of the property assessed shall be struck off to the commission as the purchaser and a certificate of sale shall be issued therefor. The commission as a purchaser at such sale shall be entitled to the same rights as a private owner and the title so acquired by the commission, subject to the right of redemption herein provided, may be conveyed by deed, executed and acknowledged by the president and secretary of such commission; provided, that authority to so convey must be offered by resolution of the commission, entered on its minutes, fixing the price at which such sale may be made and such conveyances shall not be made for a less sum than the reasonable market value of such property.

Redemption of property.

§ 34. A redemption of the property sold may be made by the owner or any party in interest within one year from the date of purchase or at any time thereafter before a deed has been made and delivered. Redemption must be made in gold or silver coin, as provided for the collection of state and county taxes and when made to the commission it shall credit the amount paid to the person or his assignee. On receiving the certificate of sale the county recorder must file it and make an entry in the book similar to that required of the commission. On the presentation of the receipt of the person named in the certificate or of the commission for its use, of the total amount of the redemption money the recorder must mark the word "redeemed," the date and by whom redeemed on the certificate and on the margin of the book where the entry of the certificate is made. If the property is not redeemed within the time herein specified the commission upon demand must make to the purchaser or his assignee a deed of the property reciting in the deed substantially the matters contained in the certificate and that no person redeemed the property during the time allowed by law for its redemption; provided, that where the property has been sold to the commission it may be redeemed as herein provided, at any time before the commission has disposed of the same. The commission shall receive from the purchaser for the use of the district two dollars for making such deed.

Recital in deed.

§ 35. The matter recited in the certificate of sale must be recited in the deed and such deed duly acknowledged or proved is prima facie evidence that, (a) the property was assessed as required by law; (b) that the assessments were levied in accordance with law; (c) the assessments were not paid; (d) at the proper time and place the property was sold as prescribed by law and by the proper officer; (e) the property was not redeemed; (f) the person who executed the deed was the proper officer.

Deed conveys title.

Such deed, duly acknowledged, or proved, is (except for actual fraud) conclusive evidence of the regularity of all the proceedings from the assessment by the commission to the execution of the deed. The deed conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except when the land is owned by this state in which case it is prima facie evidence of the right of possession.

Mistakes do not render sale void.

§ 36. When land is sold for assessments properly imposed, as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof affects the sale or renders it void or voidable.

Legal title vests in state. Sale of property no longer necessary.

§ 37. The legal title to all property acquired under the provisions of this act shall immediately, and by operation of law vest in the state of California, and shall be held in trust for and is hereby dedicated and set apart to the uses and purposes of the state irrigation district for whose benefit such property or rights may have been acquired and said commission is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided. Said commission may determine by resolution duly entered upon their minutes that any property, real or personal, held for any state irrigation district is no longer necessary to be maintained for the uses and purposes thereof, and may thereafter sell such property and a conveyance of any property thus held for any irrigation district, executed by the president and secretary thereof, in accordance with the resolution of such commission, when sold for a valuable consideration, shall convey good title to the property so conveyed.

Disposition of entryman's payments.

§ 38. All payments received from entrymen at the time of entry on account of the irrigation charge against the lands of a district shall be placed by the commission with the state treasurer, in a fund to be known as the bond guarantee fund of the state irrigation district and shall be available for the payment of assessments which may have become delinquent from time to time or for the payment of assessments against unentered land. Any one applying to enter land on which any assessment has been paid from such guarantee fund shall pay to the commission such assessment or assessments before the commission shall receive such application and the amount thus paid shall be deposited by the commission to the credit of such guarantee fund.

Fund available for delinquent assessments.

§ 39. The bond guarantee fund of any said irrigation district which is provided for in section 38 of this act shall be available for the payment of delinquent assessments until the completion of the works of such district. After such completion if such delinquency does not exceed in any one year five per cent of the total of the assessments, tolls and water rentals for such year such fund may be employed by the commission in the payment of assessments which may be levied for the payment of the interest or principal of the bonds or of both interest and principal and no further assessments for such purpose need be collected until such fund shall have thus been exhausted.

Deposits in state treasury.

§ 40. All moneys deposited with the state treasurer by the commission shall be placed to the credit of the several funds of a state irrigation district, as may be directed by such commission; and the state controller is hereby authorized and directed to draw warrants upon such funds, from time to time, upon the requisition of the commission, approved by the state board of control, and the state treasurer is hereby authorized and directed to pay such warrants, but all payments due on the bonds of any such district shall be paid by the state treasurer when due from the bond fund of such district without such authorization.

Expenses of state officers. Warrants for work done.

§ 41. As provided in the act of congress, known as the Carey act, all moneys received by the commission from the sale of lands selected under the provisions of this act shall be deposited with the state treasurer and such sums as may be necessary shall be available for the payment of the expenses of the commission, the register, and of the state engineer's office, incurred in carrying out the provisions of this act. And the state controller is hereby authorized and directed to draw warrants upon such sum from time to time upon the requisition of the commission approved by the state board of control and the state treasurer is hereby authorized and directed to pay such warrant for the work performed under the direction of the commission, the register and the state engineer and any balance remaining over and above the expenses necessary to carry out the provisions of this act shall constitute a trust fund in the hands of the state treasurer to be used only for the reclamation of other arid lands.

Duties of register.

§ 42. The register shall be the custodian of all papers, documents, maps and plats relating to the disposal of said lands and shall receive and receipt for all fees and payments required to be made under the provisions of this act or any rule or regulation of said commission, and shall deposit the same with the state treasurer to the credit of the land reclamation trust fund; he shall conduct all correspondence relating to such lands, after they shall have been segregated and perform such other duties in the premises as may be required. The president of such commission is hereby named as the authorized agent of the state to enter into and to execute for and in behalf of the state, the agree-

ment prescribed by the secretary of the interior binding the state in respect to the disposal of lands under the Carey act, such contract to be attested by the state engineer and approved by the governor.

Fees.

§ 43. The following fees shall be collected by the commission under the provisions of this act and deposited with the state treasurer to be placed in the land reclamation trust fund; for filing each application of entry, two dollars; for taking evidence of annual proof of cultivation, one dollar and fifty cents; for issuing each certificate of location, one dollar; for issuing each patent, one dollar; for making certified copies of papers or records, twenty cents per folio for the original and five cents per folio for each carbon copy thereof by the same applicant.

Disposition of proceeds.

§ 44. Subject to the provisions of the act of congress approved August 18th, 1894, the proceeds derived by the state from fees and the sale of desert public lands, and by this act required to be deposited in the land reclamation trust fund, shall be subject to control and disposition by said commission, from time, to time, for the following purposes, and for none other:

First—For the payment of expenses necessary to the administration and conduct of said commission;

Second—For the reclamation by and under the control and direction of the commission, of desert lands in the state, or in co-operation with the United States;

Third—For such experimentation in agriculture, horticulture and forestry as shall aid in the reclamation of the desert lands of the state;

Fourth—For such advertisement and publicity of the desert lands of the state as may advance their settlement and reclamation.

Monthly accounting.

§ 45. On the first Monday in each month the commission shall account for all moneys collected for assessments and pay the same over to the state treasurer and file in the office of such treasurer a statement showing an account of all such transactions and receipts since the last assessment and that all moneys collected by such commission has been thus deposited.

Investigations of commission.

§ 46. The commission is hereby authorized to investigate the costs, supply, and irrigation resources of the state and the feasibility of irrigating public and other lands in this state in co-operation with the United States; provided, the costs of such investigations shall be shared equally by the state and the United States and that such co-operation work shall be done under the joint supervision and direction of the commission and a representative of the United States and any surveys, maps, plans, estimates and reports relating to such investigation shall be placed at the disposal of the state; provided, also, that the commission is hereby authorized to co-operate with the United States for the construction of the works of any state irrigation district that may be undertaken under the provisions of this act but such co-operative work shall not in any way involve the credit of the state.

Annual report.

§ 47. The commission at the close of each fiscal year shall submit a report, in detail of the transactions under this act to the governor and on its approval, such number of copies thereof shall be printed for gratuitous distribution as may be deemed necessary; but all pending proceedings before the commission and the state water commission, shall not be made public or be opened to public inspection until the application for temporary withdrawal or segregation is filed in the United States land office.

Attorney general legal adviser. District attorney to represent commission.

§ 48. The attorney general shall be the legal adviser of the commission in matters relating to this act and shall represent or shall cause the state to be properly represented in all suits, actions, contests, or controversies relating to or involving the rights or interests of the state under the provisions of this act, before the several land officers in this state, before the general land officer at Washington, D. C., and before the courts of this state and of the United States, and may employ a competent attorney or attorneys for that purpose, who shall be paid out of any fund which may be available for such purpose to the credit of any state irrigation district or from any general appropriation which may be available for such purpose. And the district attorney of any county or counties in which any state irrigation district may lie shall represent the commission in any action which may be brought or which may be defended by the commission in the courts of such county or counties when so directed by the attorney general and he shall not receive any additional compensation for such services, but shall be allowed such reasonable and necessary expenses which may be incurred by him while performing such service.

State not liable.

§ 49. Nothing in this act shall be construed as authorizing the commission to obligate the state to pay for any work constructed under any contract or to hold the state in any way responsible to settlers for the failure of the contractors to complete the work, according to the terms of their contracts with the state.

By-laws.

§ 50. Said commission is hereby authorized and empowered to adopt such by-laws and to establish and require the observance of such rules and regulations as it may deem necessary, proper or expedient, not in conflict with law, or the regulations of the department of the interior with respect to the administration of the provisions of this act, and which shall be published from time to time in pamphlet form for free distribution.

Meetings. Quorum.

§ 51. The by-laws to be prepared by the commission shall provide for regular meetings to be held once every three months, but special meetings may be held at the call of the secretary of the commission or of a majority of the commission. A majority of the commission shall constitute a quorum for the transaction of all business coming before the commission in pursuance of the provisions of this act.

SCHOOL LAND LEASING ACT OF 1917.

ACT 3749—An act providing for the leasing of certain state lands and making an appropriation for the purposes of this act.

History: Approved May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 576.

Application to lease land. Fee.

§ 1. Any person, firm or corporation desiring to lease any of the unsold portions of the sixteenth and thirty-sixth sections of school lands and the unsold portion of the listed lands selected from the public lands of the United States in lieu of the sixteenth and thirty-sixth sections and losses to the school grant must make application therefor to the surveyor general of the state, describing the lands sought to be leased by legal subdivisions. The application must be accompanied by the filing fee of five dollars. All applications to lease lands under this act shall be approved or rejected by the surveyor general within ninety days after the receipt thereof.

Annual rental.

§ 2. Upon receipt of an application to lease any of the lands under this act the surveyor general shall appraise such lands and fix the annual rental per acre therefor; such charge to be approved by the state board of control.

Lease executed.

§ 3. Whenever any lease is delivered to the applicant by the surveyor general the lessee shall within fifteen days thereafter, execute and return such lease to the state surveyor general and make payment of the first annual rental. The surveyor general shall receive the money and give a receipt therefor. All subsequent annual payments of rental must be paid to the state surveyor general in like manner fifteen days after they become due. In case payments are not made as herein provided, the lease and all rights thereunder shall cease and terminate.

Term of lease.

§ 4. No lease shall be for a period longer than ten years, and such lease shall terminate upon the sale of said lands, or any portion thereof, by the state and the lessee shall be notified by registered mail by the state surveyor general upon the sale of said land at public auction to the highest bidder as provided in that certain act entitled "An act providing for the sale of certain state lands," approved May 19, 1915. The date of the termination of the lease shall be on the date the certificate of purchase is issued to the purchaser of the land from the state of California by the register of the state land office, except when a lease embraces land suitable for cultivation and an application from an actual settler to purchase said land is received and filed by the surveyor general, then the lease shall terminate on the date said application is filed of record in the surveyor general's office and the lessee is to be notified by registered mail of the filing of said application to purchase said land, or any portion thereof, from the state and of the termination of the lease. Possession under any lease hereby authorized shall not be held, deemed or construed to be adverse to that of any person who becomes an actual settler upon any portion of land in such lease described, with intent to purchase the same in the manner provided by law.

Land designated as bases for indemnity selections.

§ 5. Any lease for sixteenth and thirty-sixth sections or any portion thereof which may now or may hereafter be included within the exterior boundaries of a national reservation or of a reserve, or within the exterior boundaries of lands withdrawn from public entry, shall terminate whenever the state of California shall designate said lands as bases for indemnity selections as provided by law. The lessee is to be notified by the surveyor general by registered mail whenever the state of California designates the land as bases for indemnity selection or selections.

Surrender of lease.

§ 6. If a lease is terminated by reason of the filing of an application to purchase land suitable for cultivation, or by the sale of land at public auction, or by the designation of land as bases for indemnity selection or selections, the lessee shall surrender the lease to the surveyor general and receive in exchange therefor from the surveyor general a certificate showing the proportionate amount of the annual payment to be refunded to the lessee, for the tract or tracts of land that have been disposed of by the state of California, and the state controller, upon the surrender to him of the said surveyor general's certificate, with the approval of the board of control endorsed thereon, shall issue to the lessee a warrant for the said amount payable out of the state school land fund and the state treasurer shall pay the same. If all the tracts of land described in said surrendered lease have not been disposed of by the state, the lessee

shall be entitled, without the payment of any additional fee, to a new lease for the remaining tracts of land for the balance of the unexpired term of the surrendered lease, at the same annual rental per acre.

Duty of surveyor general.

§ 7. The surveyor general is hereby authorized to prepare, make, execute and deliver all papers, instruments, and documents and to do any and all things necessary to carry out the provisions of this act.

Payment of moneys.

§ 8. All moneys received as rental for such lands above mentioned shall be paid into the state school fund.

Appropriation.

§ 9. There is hereby appropriated out of any moneys in the state treasury to the credit of the state school land fund, not otherwise appropriated, the sum of three thousand dollars, or so much thereof as may be necessary, to be used in refunding unearned rentals under the provisions of section six of this act.

EFFECT OF STATE LAND PATENTS.

ACT 3750—An act to determine and to declare the effect of state land patents in certain cases.

History: Approved May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 570.

Quitclaim deed ineffective if restitution not made.

§ 1. Whenever any person has, in conformity to the provisions of existing law, conveyed any land to the state of California by quitclaim deed, duly executed, delivered, and accepted by the register of the state land office, for the purpose of receiving restitution of the purchase price thereof, as provided by law, and such restitution has not been made, and a patent for such land shall thereafter issue in the name of the original purchaser, the title granted by such patent shall vest in, and inure to the benefit of, such original purchaser, his heirs, assigns, and successors in interest, notwithstanding the execution, delivery and acceptance of such quitclaim deed, as fully and completely as if such quitclaim deed had never been made, executed, delivered, or accepted.

Certificate of register of state land office.

§ 2. Upon the issuance of such patent, the register of the state land office shall make and issue to the patentee therein named, his heirs, assigns, and successors in interest, a certificate under the seal of his office, reciting the making, execution, delivery and acceptance of such quitclaim deed, and further reciting the fact that no restitution of the purchase price of such land was made. Upon the presentation of such certificate to the county recorder of the county wherein such land is situate, it shall be the duty of the recorder to record the same in a book of deeds in the records of such county.

OFFICIAL MAP OF PATENTED STATE LANDS.

ACT 3751—An act permitting persons in possession of state lands claiming under patent issued by the state of California, which patent incorrectly describes the land, to have an official map or plat made of such land, such map or plat to be approved by the surveyor general and filed and recorded, and providing that thereafter such owner may file a petition in the superior court of the county in which the land or part thereof is located and that after due notice to all parties whose land may be affected thereby the court may enter a decree establishing the correct descriptions and providing for the apportionment of costs incurred under a proceeding brought under this section.

History: Approved May 24, 1915. In effect August 8, 1915. Stats. 1915, p. 818.

New survey for lands incorrectly described.

§ 1. When payment has been made in full for any lands which were public lands of the state and patent has been issued therefor and the purchaser or his successor in interest has, for a period of five years, been in possession, claiming under such patent the lands intended to be described therein and thereby but which lands are incorrectly described in such patent, the party so in possession of such lands may have a new and correct survey made of the land or lands covered by such patent, the plat or map and field notes constituting such survey to be made and certified by the county surveyor of the county in which the land is located or by other licensed surveyor of the state of California.

New map recorded.

§ 2. After the said map or plat and field notes constituting such survey have been made as aforesaid, the field notes and the map or plat so made shall be submitted to the surveyor general for his approval and if approved by him, he shall so certify and a copy of the same shall be filed in the office of the surveyor general and a copy recorded in the office of the county recorder of the county in which the land is situated. Such map or plat shall thereafter be and constitute the official map or plat of such land so surveyed.

Petition to court for correction. Hearing.

§ 3. After the filing and recording of the said map or plat and field notes as aforesaid, the purchaser or his successors in interest holding lands under such patent may file a verified petition in the superior court of the county in which all or the greater part of the said property is located for the correction of the errors in such description in which petition he shall set forth a copy of the patent, together with a statement showing a correct description of the lands intended to be described therein as is shown upon the said plat or map and field notes referred to in sections one and two of this act, and praying that a decree be entered by said court confirming such descriptions as so amended. Upon the filing of such petition, the court shall set a day for the hearing thereof not less than twenty days from the date of the filing of said petition. A copy of such petition and order fixing time of hearing shall be served upon all owners of lands which are or may be affected by such decree of confirmation at least ten days before such hearing and such owners may appear upon the day fixed and oppose such petition.

Decree of court.

§ 4. If, after such hearing, the court is satisfied that such description as corrected are the true descriptions, it shall render a decree confirming such descriptions which thereafter shall have the same effect as if such patent described said land in accordance with such corrected description.

Cost of survey.

§ 5. The cost of making the said survey, map or plat and field notes and all other necessary costs incurred in a suit brought under this act shall be apportioned among the petitioners and owners of lands affected by such decree in such proportions as the court may deem equitable.

Copies of decree.

§ 6. Certified copies of the decree entered in said suit shall be filed in the office of the county recorder and in the office of the surveyor general.

Owners may unite.

§ 7. Any number of land owners whose lands are not contiguous or would be affected by such decree may unite in one petition hereunder.

CONSENT OF STATE TO PROVISIONS OF ACT OF CONGRESS AS TO WITHDRAWAL OF MINERAL LANDS.

ACT 3752—An act to authorize the surveyor general of the state of California to consent to the provisions of the act of congress approved July 17, 1914, entitled "An act to provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas or asphaltic minerals."

History: Approved April 14, 1915. In effect August 8, 1915. Stats. 1915, p. 70.

Surveyor general to accept benefits under act of congress.

§ 1. The surveyor general of the state of California is hereby authorized and empowered to accept the benefits of the act of congress approved July 17, 1914, entitled "An act to provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals," and on behalf of the state of California, or of any assignee of the state of California, to accept and receive lists and patents to lands selected by the state of California as agricultural lands, which were subsequently withdrawn, classified or reported as being valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, and containing a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, together with the right to prospect for, mine and remove the same, as provided in said act of congress.

SWAMP AND OVERFLOWED LANDS—DETERMINATION AS TO CHARACTER.

ACT 3753—An act to determine that lands of this state are swamp and overflowed when returned as such by the United States surveyor general.

History: Approved March 31, 1891. Stats. 1891, p. 221.

§ 1. Lands within this state which have been or may hereafter be returned by the United States surveyor general as swamp and overflowed lands, and shown as such on approved township plats, shall, as soon as patents have been or may be issued therefor by this state, be held to be of the character so returned; provided, however, that nothing herein contained shall be construed to affect the rights of any homestead or pre-emption settler claiming under the laws of the United States, nor shall it affect any suit now pending in any court as between the parties thereto; provided, that nothing contained in this act shall be construed to prejudice the rights of any settler now or hereafter located upon said lands to perfect title to the same, if permitted under existing laws.

§ 2. This act shall take effect from and after its passage.

CHAPTER 295.

PUBLIC MUSEUMS.

CONTENTS OF CHAPTER.

ACT 3755. PUBLIC MUSEUMS.

PUBLIC MUSEUMS.

ACT 3755—An act to provide for the establishment and maintenance of public museums of natural and historical objects within municipalities of the fourth, fifth, and sixth class.

History: Approved March 20, 1909. Stats. 1909, p. 547.

Establishment of, power and duty of supervisors.

§ 1. The common council, board of trustees, or other legislative body of any incorporated city or town in the state of California of the 4th, 5th and 6th class, may, and upon being requested to do so by one-third of the electors of such municipal corporation

in the manner hereinafter provided, must, by ordinance, establish in and for such municipality a public museum of natural and historical objects; provided, there be none already established therein.

Petition for.

§ 2. The request referred to in the preceding section may be by a single petition, or by several petitions; provided, that such several petitions be substantially in the same form, and that such single petition has, or such several petitions in the aggregate have, the signatures of the requisite number of electors.

Management of. Trustees, number, appointment, term of office, compensation, eligibility.

§ 3. Such public museum shall be managed by a board, designated as the board of museum trustees, consisting of five members to be appointed by the mayor, president of the board of trustees or other executive head of the municipality, by and with the consent of the legislative body of said municipality. Such trustees shall severally hold office for three years, serving without compensation; provided, that the members of the first board appointed shall so classify themselves by lot that one of their number shall go out of office at the end of the current fiscal year, two at the end of one year thereafter, and the other two at the end of two years thereafter. Men and women shall be equally eligible to such appointment, and vacancies shall be filled by appointment for the unexpired term in the same manner.

Meetings of trustees. Quorum. President. Records. Certificate of establishment, filing of.

§ 4. Boards of museum trustees shall meet at least once a month at such times and places as they may fix by resolution. Special meetings may be called at any time by three trustees, by written notice served upon each member at least three hours before the time specified for the proposed meeting. A majority of the board shall constitute a quorum for the transaction of business. Such boards shall appoint one of their number president, who shall serve for one year and until his successor is appointed, and in his absence shall select a president pro tem. Such boards shall cause a proper record of their proceedings to be kept, and at the first meeting of the board of trustees of any museum formed under the provisions of this act, it must immediately upon organization, cause to be made out and filed with the state superintendent of public instruction at Sacramento, a certificate, showing that such museum has been established, with the date thereof, the names of the trustees, and of the officers of the board chosen for the first year.

Powers of trustees.

§ 5. Boards of museum trustees shall have power:

1. To make and enforce all rules, regulations and by-laws necessary for the administration, government and protection of the museum under their management, and all property belonging thereto.
2. To administer any trust declared or created for such museums, and receive by gift, devise or bequest and hold in trust or otherwise, property situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of such museums.
3. To prescribe the duties and powers of the curator, secretary and other officers and employees of any such museums; to determine the number of and appoint all such officers and employees, and fix their compensation, which said officers and employees shall hold their offices or positions at the pleasure of said boards.
4. To purchase necessary publications, objects of natural or historical value and other personal property.

5. To purchase such real property, and erect or rent and equip, such building or buildings, room or rooms, as may be necessary, when in their judgment a suitable building, or portion thereof, has not been provided by the legislative body of the municipality for such museum.

6. To borrow objects of natural or historical value from, lend such objects to, and exchange the same with other museums, to allow non-residents to borrow such objects, and to accept loans of such objects from any person, association or corporation, upon such conditions as they may prescribe.

7. To do and perform any and all other acts and things necessary or proper to carry out the provisions of this act.

Annual reports.

§ 6. Boards of museum trustees shall, on or before the last day of July in each year, make a report to the legislative body of their municipality, giving the condition of the museum on the thirtieth day of June preceeding, together with a statement of their proceedings for the year then ended, and must immediately upon the publication of such report, forward a copy thereof for filing to the state board of education at Sacramento.

Tax levy for maintenance.

§ 7. The legislative body of any municipality in which a public museum has been established in accordance with this act, shall in making the annual tax levy and as part thereof, if the maintenance of the museum has not been otherwise provided for, levy a tax for the purpose of maintaining such museum and purchasing property necessary therefor, which tax shall be in addition to other taxes, the levy of which is permitted in the municipality; provided, that after two years from the passage of this act as to existing museums, and after two years from the establishment of new museums thereunder, where a maintenance corresponding thereto has not been otherwise provided, such levy shall not exceed two mills on the dollar of assessed valuation.

Disposition of funds.

§ 8. The revenue derived from said tax, together with all money acquired by gift, devise, bequest, or otherwise, for the purposes of the museum, shall be apportioned to a fund to be designated the museum fund, and be applied to the purposes herein authorized. If such payment into the treasury should be inconsistent with the conditions or terms of any such gift, devise, bequest, the board shall provide for the safety and preservation of the same, and the application thereof to the use of the museum, in accordance with the terms and conditions of such gift, devise or bequest. Payments from said fund shall be made in the manner provided for the payment of other demands against the municipality; provided, that demands upon said fund shall be presented to the board of museum trustees for allowance rather than to the legislative or other body of the municipality.

Museum must be free.

§ 9. Every museum established under this act shall be forever free to the inhabitants and non-resident taxpayers of the municipality, subject always to such rules, regulations and by-laws as may be made by boards of museum trustees; and, provided that for violations of the same a person may be fined or excluded from the privileges of the museum.

Title in whom vests.

§ 10. The title to all property acquired for the purposes of such museums, when not inconsistent with the terms of its acquisition or otherwise designated, shall vest in the municipalities in which such museums are, or are to be, situated, and in the name of the municipal corporations may be sued for and defended by action at law or otherwise.

Disestablishment.

§ 11. Any ordinance establishing a museum adopted under the provisions of section one of this act may be repealed by the body which adopted the same upon being requested to do so by one-half of the electors of such municipal corporation, in the manner provided in section two of this act, and upon the repeal of such ordinance such museum shall be disestablished in such municipal corporation.

§ 12. This act shall take effect immediately.

CHAPTER 296.**PUBLIC PARKS.**

References: See tits. "California Redwood Park"; "Forestry"; "Public Lands."
Conveyance of unused lands to cities, see Kerr's Cyc. Political Code, § 4052b.

CONTENTS OF CHAPTER.

- ACT 3760. MAINTENANCE OF PUBLIC PARKS.
- 3761. PARK AND BOULEVARD ACT.
- 3762. MAINTENANCE OF PUBLIC PARKS IN CITIES.
- 3763. ACCEPTANCE OF DONATIONS—GOLDEN GATE PARK.
- 3764. ROADS AND BOULEVARDS TO PUBLIC PARKS.
- 3765. JURISDICTION OF CITIES OVER PARKS OUTSIDE LIMITS.
- 3766. CONSENT OF STATE TO RESERVATION OF CERTAIN LANDS BY CONGRESS.
- 3767. ACCEPTANCE OF BIDWELL GRANT IN BUTTE COUNTY.
- 3768. PUBLIC PARK AND PLAYGROUND ACT.
- 3769. ABANDONMENT OF PARKS.

MAINTENANCE OF PUBLIC PARKS.

ACT 3760—An act to authorize the common councils and boards of supervisors of the several cities, counties, and cities and counties in this state to levy taxes for the maintenance of public parks having an area of over ten acres each within their respective limits.

History: Approved March 8, 1887, Stats. 1887, p. 52.

Supervisors authorized to levy tax.

§ 1. The common council and the board of supervisors of any city, county, or city and county of this state, are hereby authorized and empowered to levy a yearly tax of not to exceed three cents upon every one hundred dollars' assessed valuation of property, real and personal, in such city, county, or city and county, for the purpose of maintaining and improving any public park or parks, having an area of ten acres each, therein situated.

Manner of collecting tax.

§ 2. All moneys arising from the tax authorized to be levied by the preceding section, shall be collected by the tax collector of the city, county, or city and county wherein said park or parks may be situated, and shall be kept by the treasurer of said city, county, or city and county, subject only to the order of the public officer or officers, or board of commissioners, having legal charge and control of the management and maintenance of said park or parks.

Definition of "common council" and "board of supervisors."

§ 3. The terms common council and board of supervisors are hereby declared to include any body or board which, under the law, is the legislative department of the government of any city, county, or city and county.

§ 4. This act shall be enforced from and after its passage.

PARK AND BOULEVARD ACT.

ACT 3761—An act to enable incorporated "cities and counties" and "cities" and "towns," to acquire, maintain and improve public parks and boulevards.

History: Approved March 19, 1889, Stats. 1889, p. 361.

Acquiring of land authorized.

§ 1. Any incorporated "city and county" or "city" or "town" in this state may acquire and hold land for the uses and purposes of public parks, or public boulevard, or both, either by purchase, with the consent of the owner, or by condemnation, under the provisions of the Code of Civil Procedure of the state of California, title seven, of part three.

§ 2. The land to be so acquired and held may be within the corporate limits of the "city and county" or "city" or "town," or conveniently adjacent thereto; and in either case it shall be subject to the jurisdiction of the municipality acquiring it, and to the laws, ordinances, rules, and regulations thereof.

Determination of lands necessary.

§ 3. The board of supervisors, city council, trustees, or other municipal legislative board, or body of any incorporated "city and county," or "city," or "town," may, by ordinance, or in such manner as other municipal legislative acts are enacted, under its charter or act of incorporation, determine what lands are necessary and proper to be acquired for the uses and purposes aforesaid.

Tax levy.

§ 4. Any incorporated "city and county," or "city," or "town," may, in addition to the annual tax, levy for other municipal purposes, and at the same time and in the same manner cause to be assessed and levied upon the taxable property within the municipality an annual tax in such amount as may be deemed necessary and proper for the acquisition or maintenance or improvement of its public parks or boulevards, or both, and the revenue so obtained shall be applied to no other use or purpose.

Election to issue bonds to maintain.

§ 5. The board of supervisors, city council, trustees, or other municipal legislative body or board of any incorporated "city and county," or "city," or "town," may by ordinance or in such manner as other municipal legislative acts are enacted under its charter or act of incorporation, call an election and submit to the qualified electors of the municipality, the proposition to issue the bonds of the municipality, to a specified amount, the proceeds of the sale of which shall be applied exclusively to the acquisition, maintenance, and improvement of its public parks, or boulevards, or both. Such election shall be conducted, and the result determined substantially as are other local municipal elections of the municipality in which it is held.

Issuance of bonds. Maturity. Interest.

§ 6. If at such an election two-thirds of the qualified electors voting an assent to the issuance of the bonds, then the "city and county" or "city" or "town," having held such election may, by ordinance or in such manner as other municipal legislative acts are enacted under its charter or act of incorporation, provide for the issuance, and cause to be issued, its bonds to the amount specified and so voted for; provided, however, that said bonds shall mature and become due and payable at a time not exceeding twenty years, and shall bear interest at a rate not exceeding five per centum per annum, payable annually, and that before or at the time of the issuance of said bonds, provision shall be made for the collection of an annual tax sufficient to pay the interest thereon as it falls due, and also to constitute a sinking fund to pay the principal thereof at maturity, and not exceeding twenty years from the date thereof.

Number of. Name. Denomination.

§ 7. The bonds shall be numbered consecutively from one upwards, and shall be issued in the order of their respective numbers, commencing with number one, and there shall be attached thereto coupons for the payment of the annual interest. They shall be known and designated either as the "park and boulevard," or "park," or "boulevard" bonds of the municipality issuing them. Each bond shall not exceed in the amount of its principal one thousand dollars, and may be in any smaller amount.

How sold.

§ 8. The bonds or any number thereof so issued shall be sold to the highest bidder, after advertised notice for sealed proposals thereof; but no bid shall be accepted at less than the par value thereof, nor shall any bonds be sold during any one year in excess of the actual expenditures incurred in that year.

Proceeds, how kept and used.

§ 9. The money obtained from the sale of the bonds shall be kept in a separate fund, and shall be used exclusively for the acquisition, or maintenance, or improvement of the public parks or boulevards, or both, of the municipality issuing them, and for no other use or purpose.

Redemption.

§ 10. Whenever and as often as there shall be in the sinking fund an amount deemed sufficient for the purpose, the board of supervisors, city council, trustees, or other municipal legislative board or body of the municipality issuing the bonds, may, by ordinance or in such manner as other municipal legislative acts are enacted under its charter or act of incorporation, cause notice to be given by advertisement, that the amount (stating it) is in the sinking fund for the redemption of said bonds, and inviting sealed proposals for the redemption, surrender, and cancellation of bonds, with the interest thereon, to the specified amount in the sinking fund; and at the date designated in the notice the bids shall be opened, if any there be, and the bid or bids offering to surrender bonds for the lowest sum, not more than par value, shall be accepted. If sufficient bids shall not be received to consume the money in the sinking fund, and the whole or a portion deemed sufficient for the purpose shall still remain in the sinking fund, notice shall be given by advertisement for not less than thirty days, stating that there is an amount, to be specified in the notice, still remaining in the sinking fund to be applied to the redemption of the bonds with interest thereon having the highest numbers (specifying the numbers), and if said bonds be not presented for redemption, surrender, and cancellation within the time specified in the notice, they shall thereafter cease to draw interest, and the amount in the sinking fund shall be kept for their redemption when presented, but no more shall be paid therefor than the amount of principal and interest due at the expiration of the time specified in the aforesaid notice.

Further conditions for issue, sale and redemption of bonds.

§ 11. Any incorporated "city and county," or "city" or "town," in this state, availing itself of the privileges, benefits, and powers of this act, may, by ordinance or in such manner as other municipal legislative acts are enacted under its charter or act of incorporation, prescribe such further conditions and provisions for the issuance and sale of the bonds herein provided for and for the redemption thereof as are not inconsistent with the constitution of this state, or the provisions of this act, or its charter or act of incorporation.

Manner of advertising.

§ 12. All notices and advertisements provided for in this act shall be given by publication in a newspaper, if there be one published within the municipality; if there be

none, then by posting in at least three public places within the municipality; and when no other time is prescribed in this act, they shall be for such length of time as may by the board of supervisors, city council, trustees, or other municipal legislative board or body of the municipality be deemed and determined to be reasonable; but the bonds issued under the authority of this act, and sold to purchasers in good faith, shall not be held to be invalid for any defect in any of the notices herein provided for.

§ 13. This act shall take effect and be in force from and after the date of its passage.

1. Act superseded by San Francisco charter.—The act was superseded by the San Francisco charter, under the operation of section 8, article XI, of the constitution. —Fritz v. San Francisco, 132 Cal. 373, 64 Pac. 566.

2. Act contains complete scheme, and bonds voted under it can not be issued under charter provisions.—Where bonds were voted in San Francisco under the park and boulevard act, and the act was superseded by the charter after the election but before the bonds were issued, the bonds could not be issued under the scheme laid down in the charter, the scheme provided by the act being complete in itself. —Fritz v. San Francisco, 132 Cal. 373, 64 Pac. 566.

3. The act does not provide the sole method.—Stats. 1901, p. 27, furnishes an-

other.—The legislature may provide two independent schemes for acquiring public parks and boulevards, to either of which the municipality may resort, and the present act is not the sole method provided, the act of 1901 (Stats. 1901, p. 27), furnishing another. —Oakland v. Thompson, 151 Cal. 572, 91 Pac. 387.

See, also, San Diego v. Potter, 153 Cal. 288, 95 Pac. 146.

4. Two-thirds of the votes cast are necessary to authorize bonds.—"An" read "and."—Under section 6 the word "an" in the first sentence is evidently a typographical error, and the phrase should be read "voting and assent," so that two-thirds of the votes cast is required to authorize the issuance of the bonds. —Fritz v. San Francisco, 132 Cal. 373, 64 Pac. 566.

MAINTENANCE OF PUBLIC PARKS IN CITIES.

ACT 3762—An act to provide for the maintenance and support of the public parks heretofore created within the various cities and cities and counties of the state, and to amend the existing acts in relation thereto.

History: Approved March 14, 1889, Stats. 1889, p. 143. Amended (1) March 4, 1893, Stats. 1893, p. 79; (2) March 24, 1893, Stats. 1893, p. 343.

Management and control of.

§ 1. All lands, parks, highways, and avenues in any city or city and county in this state, which have been heretofore set apart by law as and for public parks, and which have been placed under the management or control of a board or of boards of park commissioners, shall hereafter remain and continue to be public parks, and subject to the management and control of the board or boards of park commissioners of said respective cities or cities and counties in the manner specified in this act; and such board or boards of park commissioners, and the members thereof, shall be appointed and constituted in the manner and for the terms and shall have the qualifications set forth in this act.

Park commissioners. Appointment. Term of office. Vacancies. Qualifications. Commission and oath. Quorum. Powers. Cities between 50,000 and 100,000.

§ 2. Every such board of park commissioners (except in cities which, at the last federal census, had a population of more than fifty thousand and less than one hundred thousand inhabitants, and which cities have adopted a charter according to the constitution and laws of this state, as hereinafter provided) shall consist of three persons, who shall be appointed by the governor of the state, and shall hold their offices for four years, respectively, and shall receive no compensation for their services. In case of a vacancy in the membership of the board, the same shall be filled by an appointee of the remaining members of the board, for the residue of the term then vacant; but all vacancies caused by the expiration of the term of office of any member of such board, or

by the failure or neglect to qualify of any person appointed to such board by the governor, shall be filled by the governor by the appointment of a new member. Each member of every board of park commissioners shall be a freholder and a resident of the city, or city and county, in which the board of which he is a member is to act. The governor of the state shall issue a commission to every such commissioner appointed by him, and each such commissioner shall, within twenty days after the receipt thereof, take and subscribe the oath of office prescribed by law. In every such board of park commissioners two members of the board shall constitute a quorum for the transaction of business; and the concurrent action of two members of such board shall be sufficient to enable the said board to make any contracts pertaining to the park or parks under the control of such board, or to draw and expend any moneys which shall have been lawfully appropriated or set apart for the support of such park or parks, or which shall constitute any portion of the funds legally applicable to the support of the same; provided, however, that in all cities which, at the last federal census, had a population of more than fifty thousand and less than one hundred thousand inhabitants, and which cities have adopted a charter according to the constitution and laws of this state, that such board of park commissioners shall consist of the same number and shall be appointed in the manner provided by such charters. They shall also have such powers as are therein provided, and shall be governed in all matters by the provisions of such charters. All provisions herein, and also in the act to which this is amendatory, which are not in conflict with such charters, shall apply to such board of park commissioners when so appointed. [Amendment of March 4, 1893, Stats. 1893, p. 79.]

[The amendatory act of 1893, page 79, also contained the following section: "§ 3. This act shall take effect and be in force immediately after its passage, and after which time the boards of park commissioners in cities which, at the last federal census, had a population of more than fifty thousand and less than one hundred thousand inhabitants, and which have adopted charters under the constitution and laws of this state, and which boards have heretofore been appointed under the provisions of the act to which this is amendatory, shall serve only as such board of park commissioners until a board of park commissioners is appointed under the provisions of such charters."]

Powers of commissioners.

§ 3. Every such board of park commissioners shall have the full and exclusive power to govern, manage, and direct the parks, avenues, and grounds which have been or shall be placed under its care and charge; to employ and appoint such superintendents, laborers, clerks, or secretaries, attorney, surveyors, engineers; to engage and employ musicians for service in the park, and other officers and assistants, as to said board shall seem necessary and expedient for the proper management of the said parks and of its affairs; to prescribe and fix the duties, authority, and compensation of such appointees and employees, and to have the management and disbursement of all funds legally appropriated or provided for the support of said parks and grounds; provided, that no moneys shall for any of said purposes be paid out of the treasury of any city, or city and county, except upon warrants duly signed by a majority of the board of park commissioners thereof, and duly audited by the auditor of such city, or city and county. [Amendment of March 24, 1893, Stats. 1893, p. 343.]

Not to be interested in contract or work. Punishment.

§ 4. It shall be a felony for any park commissioner to be interested, directly or indirectly, in any contract or work of any kind connected with the park or grounds under the control of the board of which he shall be a member; and it shall be the duty of any commissioner or other person who shall know or be informed of the violation of the section, forthwith to report the same to the governor, who shall hear the allegations and proofs in regard thereto; and if, after such hearing, he shall be satisfied of the

truth of said charge, he shall immediately remove the commissioner who has been guilty of the offense.

Annual report to supervisors and legislature.

§ 5. Every such board of park commissioners shall annually, and on the first Monday of July of each year, make to the legislature of the state, and to the board of supervisors or other municipal council of the city, or city and county, in which such board shall be acting, a full report of the proceedings, and a detailed statement of its receipts and expenditures. [Amendment of March 24, 1893, Stats. 1893, p. 343.]

This section was also amended March 4, 1893, Stats. 1893, p. 80.

Power to lease. Disposition of rents.

§ 6. It shall be lawful for every such board of park commissioners to let or lease any portion of the parks or grounds under their control, not exceeding one acre in extent, to any one party, and the lease therefor shall be unassignable, nor shall any portion of such park be leased to any street or other railroad company for terms not exceeding three years, until the grounds so leased shall be required for the improvements of such parks, or for public use as a park thereof. All moneys realized from such leases shall be paid into the treasury of the city, or city and county, in which such parks shall be situated, and shall be added to the funds otherwise appropriated or provided for the support of such parks. [Amendment of March 24, 1893, Stats. 1893, p. 343.]

Power to pass ordinances. Violation of.

§ 7. It shall be lawful for every such board of park commissioners to pass and adopt such ordinances as they may deem necessary for the regulation, use, and government of the parks and grounds under their supervision, not inconsistent with the laws of the state of California. Such ordinances shall, within five days after their passage, be published for ten days, Sunday excepted, in a daily newspaper published in the city or city and county in which such board shall be acting, to be selected by the said board. All persons violating or offending against any such ordinances shall be deemed guilty of a misdemeanor, and shall be punished therefor on conviction in any court of competent jurisdiction.

Putting prisoners to work on parks.

§ 8. Prisoners over the age of twenty-one years, and sentenced to hard labor in any of the jails, prisons, houses of correction, workhouses, or other penal establishment of any such city or city and county, may, upon the request and requisition of the board of park commissioners of such city or city and county, be put to work upon the parks and grounds which are under the control of such board.

Donations.

§ 9. Every such board of park commissioners is authorized and empowered to accept and receive donations and aid from individuals and corporations, and legacies and bequests by the last wills of deceased persons, for the aid or improvement of the parks and grounds under the control of such board; and all moneys that shall be derived by any such board from such donations, legacies, and bequests shall, unless otherwise provided by the terms of such gift, legacy, or bequest, be deposited in the treasury of the city or city and county in which said parks and grounds shall be situated, and shall be withdrawn therefrom and paid out in the same manner as is provided for the payment of moneys legally appropriated for the support and improvement of such parks and grounds; provided, however, that if the moneys derived from such gifts, bequests, or legacies shall at any time exceed in amount the sum necessary for immediate expenditure on said parks and grounds, or if, in the judgment of the said board of park commissioners, it should be advisable to invest the same, or a part thereof, in some interest-bearing or productive investment, the said board of park commissioners

are hereby authorized to invest the said moneys or any part thereof in interest-bearing bonds of the government of the United States, or of the state of California, and thereafter to sell and dispose of said bonds, or to change the form of said investment, as to said board shall seem best.

Levy of tax. Disposition of proceeds.

§ 10. The board of supervisors, municipal council, or other legislative body of any city, or city and county in the state, having within its limits parks or grounds under the control and management of a board of park commissioners, and of an area or acreage of more than ten acres, is hereby authorized and empowered to levy and collect each year, in the mode prescribed by law for the levy and collection of taxes, a tax of not less than six nor more than ten cents upon each one hundred dollars assessed valuation of taxable property within such city, or city and county, for the purpose of preserving, maintaining, and improving the parks and grounds under the control of such board of park commissioners. All moneys collected and arising from the said tax shall be paid by the tax collector, or other officer collecting the same, into the treasury of said city, or city and county, and shall be deemed to be thereupon appropriated and set apart for the maintenance, preservation, and improvement of said parks and grounds, and shall be paid out by the treasurer upon warrants signed by a majority of the said board of park commissioners, and audited by the auditor of such city, or city and county. [Amendment of March 24, 1893, Stats. 1893, p. 343.]

Debts and expenses not to exceed appropriation.

§ 11. No board of park commissioners shall in any year incur any debt or liability nor expend any money beyond the amount of moneys legally applicable during such year to the support, preservation, and improvement of the parks and grounds under the control of such board.

Repeal of conflicting acts.

§ 12. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 13. This act shall take effect and be in force from and after its passage.

ACCEPTANCE OF DONATIONS. GOLDEN GATE PARK.

ACT 3763—An act authorizing the commissioners of any public park in this state, and especially the park commissioners of Golden Gate Park, in San Francisco, to accept donations and bequests in aid of the improvement and embellishment of their respective parks, and to invest the funds derived therefrom.

History: Approved March 9, 1885, Stats. 1885, p. 38.

Commissioners authorized to receive bequests or aid from Park Aid Improvement Company.

§ 1. The commissioners of any public park in this state, and especially the park commissioners of Golden Gate Park, in the city and county of San Francisco, are hereby authorized and empowered to accept and receive donations and aid from individuals and corporations, and to receive legacies and bequests by the last wills and testaments of deceased persons, and especially to receive aid and contributions from that certain corporation organized and incorporated under the laws of the state of California, known as the Park Aid Improvement Company, and the moneys derived and to be derived therefrom shall be and are hereby recognized as a portion of the public funds belonging to said park commissioners, and applicable under the direction of the said park commissioners to the purposes of preserving and embellishing the parks under their respective management and control.

Funds, investment of.

§ 2. If the funds derived as aforesaid shall, at any time, exceed in amount the sum necessary for immediate expenditure on the said park grounds, or if, in the judgment of the said park commissioners, it should be advisable to invest the same and make the same productive, the said park commissioners are hereby authorized to invest the same, or any portion thereof, in interest-bearing bonds of the government of the United States, or of the state of California, and to use the interest and income thereof for the purposes aforesaid, with the like power to sell and dispose of the said bonds if, in their discretion, the principal thereof shall be necessary for the purposes aforesaid.

§ 3. This act shall take effect and be in force immediately.

ROADS AND BOULEVARDS TO PUBLIC PARKS.

ACT 3764—An act to authorize cities and towns owning public parks outside of their limits, to lay out, construct, and maintain roads, streets, and boulevards from the boundaries of such cities or towns to, into, and through such parks, and to acquire lands for that purpose.

History: Became a law under constitutional provision, without governor's approval, March 1, 1897, Stats. 1897, p. 45.

§ 1. It shall be lawful for the council, board of trustees, or other governing body of any city or town, to lay out, open, construct, and cause to be constructed, maintain and control all roads, streets, and boulevards, which may be necessary or requisite for the purpose of connecting such city or town with any public park situated wholly or partly outside of the limits of such city or town, of which it shall be the owner, and to acquire by gift, purchase, or condemnation, in the manner required by the law of eminent domain, any land or rights of way lying between the limits of such city or town and the exterior limits of such park, for the purposes aforesaid.

§ 2. This act shall take effect immediately.

See next following statutes, also the preceding statute.

JURISDICTION OF CITIES OVER PARKS OUTSIDE LIMITS.

ACT 3765—An act to extend the jurisdiction and authority of cities and towns over parks owned by them situated beyond the limits of such cities and towns, and over streets and avenues leading to the same.

History: Became a law under constitutional provision without governor's approval, March 1, 1897, Stats. 1897, p. 47.

§ 1. The municipal authority of the several cities and towns in this state, which now own or shall hereafter own any parks situated outside of the limits of such city or town, shall have the same power, authority, and jurisdiction over such parks, and over streets and avenues leading therefrom to said parks, and over persons and property therein, as they now or hereafter may have over said cities and towns and over persons and property therein; and the local courts of said cities and towns shall have the same jurisdiction, both civil and criminal, over said parks, streets, and avenues, and over persons and property therein, as they may have over the parks, streets, and avenues within such cities or towns respectively.

§ 2. This act shall take effect immediately.

CONSENT OF STATE TO RESERVATION OF CERTAIN LANDS BY CONGRESS.

ACT 3766—An act giving the consent of the state of California to the reservation of certain lands by congress.

History: Approved March 14, 1891, Stats. 1891, p. 107.

§ 1. The state of California hereby consents to the reservations created by the act of Congress, approved September twenty-fifth, eighteen hundred and ninety, entitled

"An act to set apart a certain tract of land in the state of California as a public park," and the act of Congress, approved October first, eighteen hundred and ninety, entitled "An act to set apart certain tracts of land in the state of California as forest reservations;" and no further sales of school lands within the exterior boundaries of the tracts so reserved, as aforesaid, shall be made by the state.

§ 2. This act shall take effect from and after its passage.

ACCEPTANCE OF BIDWELL GRANT IN BUTTE COUNTY.

ACT 3767—An act to authorize the governor to accept on behalf of the state the grant of certain lands in Butte county.

History: Approved March 22, 1909, Stats. 1909, p. 666.

This act authorized the state to accept a grant of lands in Butte county by Anna E. K. Bidwell for a park.

PUBLIC PARK AND PLAYGROUND ACT.

ACT 3768—An act to provide for the acquisition by municipalities of land for public park or playground purposes by condemnation, and for the establishment of assessment districts and the assessment of property therein to pay the expenses of acquiring such land.

History: Approved April 22, 1909, Stats. 1909, p. 1066. Amended (1) December 23, 1911, Stats. 1911 (ex. sess.), p. 17; (2) June 6, 1913, in effect August 10, 1913, Stats. 1913, p. 414; (3) April 22, 1917, in effect July 27, 1917, Stats. 1917, p. 205.

Purposes for which land may be acquired.

§ 1. Whenever the public interest or convenience may require, the city council of any municipality shall have full power and authority to acquire by condemnation any land situate in such municipality for public park, public playground, or public library purposes. [Amendment approved December 23, 1911, Stats. 1911, p. 17, extra session.]

Declaration of intention.

§ 2. Before ordering the acquisition of any land or lands for any purpose authorized in section one of this act, the city council shall pass an ordinance declaring its intention so to do. Such ordinance shall state the purpose for which such land is to be acquired, and shall describe the land necessary or convenient to be taken therefor and shall describe the exterior boundaries of the district to be benefited by the acquisition of such land and to be assessed to pay the damages and costs of such acquisition, hereinafter designated an improvement, and to be known as the assessment district.

Street superintendent to post notices of improvement. Publication. Notice mailed to owners. Form of notice to owners. Affidavit of clerk.

§ 3. The street superintendent shall thereupon cause to be conspicuously posted as near as may be along the exterior boundary lines of the land proposed to be condemned, as described in the ordinance of intention, at not more than one hundred feet in distance apart notices (not less than three in all) of the passage of said ordinance. Said notice shall be headed "Notice of public improvement" in letters not less than one inch in length, shall be in legible characters, and shall state the fact and date of the passage of said ordinance, and briefly describe the improvement proposed and refer to said ordinance for further particulars. Said street superintendent shall also cause a notice similar in substance to be published for a period of five days in a daily newspaper published and circulated in said municipality and designated by said city council for that purpose, or if there is no such daily newspaper so published, then by four successive insertions in a weekly or semi-weekly newspaper, so published, circulated and designated. The city clerk shall immediately upon the passage of said ordinance mail, postage prepaid, to each owner of property in the district to be assessed to pay the costs

and expenses of said improvement, at his last known address as the same appears on the tax roll of said city, a postal card containing a notice which will be in the following or substantially the following forms (filling blanks):

You are hereby notified that on the day of 19.. the city council of the city of, California, by virtue of the "Park and playground act of 1909" passed an ordinance of intention numbered for the condemnation of certain land for park or playground purposes. You are hereby referred to said ordinance of intention for further particulars. Property belonging to you is in the district to be assessed for this improvement.

.....

City Clerk.

The city clerk shall immediately upon the completion of the mailing of said postal cards file in the office of the superintendent of streets an affidavit setting forth the time and manner of his compliance of this requirement; provided, however, that the failure of the city clerk to mail said cards or the failure of the property owners to receive same shall in no wise affect the validity of the proceedings or prevent the city council from acquiring jurisdiction to order the improvement; provided further, however, that the city council shall not pass any ordinance ordering the improvement until such affidavit is made and filed as herein prescribed. [Amendment approved June 6, 1913, Stats. 1913, p. 414. In effect August 10, 1913.]

Affidavit of person posting notices. Objection to sufficiency of notices. Determination of. Reposting notices. Protest. Hearing. Ordinance ordering work.

§ 3½. Upon the completion of the posting of the notices as provided in section three, the street superintendent shall cause to be made and filed in his office an affidavit of the person or persons who posted said notices to the effect that said notices were posted as near as possible along the exterior boundary lines of the land, as described in the ordinance of intention, which it is proposed to condemn, at not more than one hundred feet apart and not less than three in all, and shall cause a notice to be published by one insertion in a daily, weekly or semi-weekly newspaper published and circulated in said city stating, in substance that the affidavit or affidavits of posting said notices as near as possible along the exterior boundary lines of the land described in the ordinance of intention, which it is proposed to condemn, has been filed in his office, specifying the date of such filing and that all persons desiring to object to the sufficiency of such posting shall file written objections thereto with the city council not more than twenty days after the publication of said notices. Any property owner in the assessment district shall have the right to object to the sufficiency of the posting of said notices within twenty days after the publication of said notice that the affidavit or affidavits of the posting of notices has been filed. If any such objection shall be filed within the time herein provided the city council shall set a time for the hearing of the same, which time of hearing shall not be later than ten days after the expiration of said twenty days herein allowed for the filing of the objections to the sufficiency of the posting of said notices, and the clerk of the city council shall, in writing, notify each protestant of the time and place of such hearing. At such hearing the city council shall have power to overrule or sustain any such objection and its determination thereon shall be final and conclusive as to the sufficiency of said posting. If the city council shall sustain any such objection it shall direct the street superintendent to post or repost the notices as near as possible along the exterior boundary lines of the land proposed to be condemned as described in the ordinance of intention, whereon it shall have been determined by the city council that the posting of said notices was insufficient. Upon being so directed, the street superintendent shall post notices as directed by the city council and cause to be made and filed in his office an affidavit to the effect that said notices have been posted in the manner and location designated by

the city council in its order directing the said notices to be so posted or reposted. He shall also cause to be published by one insertion in a daily, weekly or semi-weekly newspaper published and circulated in said city, a notice to the effect that such posting has been made in accordance with the direction of the city council and notifying all owners of property within the assessment district that they have ten days from the date of the said publication in which to file any protest provided for in section 4 of this act, and any owner of property within the assessment district may within ten days file such protest. Any protest filed must comply with the provisions of section 4 hereof in all respects, except as to the time of the filing of the same, and shall have the same force and effect as protests as those provided for by said section 4. Upon the filing of such protests the city council shall fix a time and place for the hearing thereof, which shall be not later than fifteen days from the filing of such protests. Upon such hearing the city council shall pass upon such protests in the manner and with the effect provided in section 4 of this act and if an ordinance ordering said improvement has been passed prior to the filing of any objection to the sufficiency of the posting of notices and on such subsequent hearing it is found that the protests are signed by the owners of a majority of the frontage of the property fronting on streets or parts of streets within the assessment district, or if said city council shall sustain such protests such ordinance ordering the work shall be repealed. If any such objections are filed and the city council, after hearing, determine that the posting of said notices was sufficient, it may pass an ordinance ordering the work provided no such ordinance has already been passed. If no objections to the sufficiency of the posting of the notices are filed within the time herein allowed for the filing of such objections, or if objections are filed and overruled by the city council, as herein provided, all persons shall forever be precluded from raising any objection to the validity of the proceedings on the ground that the notices were not posted as required by law. [New section approved June 6, 1913, Stats. 1913, p. 415. In effect August 10, 1913.]

Protests. Contents. Protest signed by owners of majority of frontage. Protest not signed by owners of majority of frontage.

§ 4. Any person interested, objecting to said improvement, or to the extent of the assessment district described in said ordinance of intention, may file a written protest with the clerk of the city council, within thirty days after the first publication of the notice required by section three of this act. Every such protest must contain a description of the property in which each signer thereof is interested, sufficient to identify the same, and must set forth the nature of his interest therein, and must be accompanied by the affidavit of one of the signers thereof that each signature thereof is the genuine signature of the person whose name is thereto subscribed; and in case any signature is made by an agent, there must be attached to the protest the affidavit of the agent that he is duly authorized to sign such protest. Any protest not complying with the foregoing requirements, shall not be considered by the city council. In the case of property held by tenancy in common, if any co-tenant sign such protest, only the proportionate share of the frontage thereof represented by his interest therein, shall be counted in determining the amount of frontage represented by such protest. The clerk shall indorse on every such protest the date of its reception by him, and at the next regular meeting of the city council, after the expiration of the time for filing protests, shall present to said city council all protests so filed with him. If such protests are against said improvement, and said city council at said meeting or at any other time to which the hearing of said protests may be adjourned, finds that the same are signed by the owners of a majority of the frontage of the property fronting on streets or parts of streets within said assessment district, all further proceedings under said ordinance of intention shall be barred, and no new ordinance of intention for the same improvement shall be passed within six months after the presentation of such protests to the city

council, unless the owners of a majority of the frontage of the property fronting on streets or parts of streets within said assessment district shall, in the meantime, petition therefor. If such protests are against the improvement and the council finds that they are not signed by the owners of a majority of the frontage of the property fronting on streets or parts of streets within the assessment district, or if such protests are only against the extent of the assessment district, the council shall hear said protests at said meeting, or at any time to which the hearing thereof may be adjourned, and pass upon the same, and its decision shall be final and conclusive. If such protests are sustained, no further proceedings shall be had under said ordinance of intention, but a new ordinance of intention for the same improvement may be passed at any time. If such protests are denied, the proceedings shall continue as if such protests had not been made. At the expiration of the time within which protests may be filed, if none are filed, or if protests are filed, and after hearing are denied, as above provided, then upon such denial, the city council shall be deemed to have acquired jurisdiction to order the improvement described in the ordinance of intention. [Amendment of April 26, 1917. In effect July 27, 1917. Stats. 1917, p. 205.]

Condemnation proceedings.

§ 5. Having acquired jurisdiction, the city council shall, by ordinance, order said improvement to be made, and direct an action to be brought by the city attorney in the proper superior court, in the name of the municipality, for the condemnation of the property necessary or convenient to be taken therefor. Such ordinance need not describe the property to be taken, nor the assessment district, but must refer to the ordinance of intention for all particulars.

When action must be brought.

§ 6. Said action must be brought within sixty days after the passage of the ordinance ordering the improvement, but the council may, by ordinance, extend the time for bringing such action for an additional period not exceeding ninety days. Said action shall in all respects be subject to and governed by such provisions of the Code of Civil Procedure now existing, or that may be hereafter adopted as may be applicable thereto, except in the particulars otherwise provided for in this act.

Complaint. Ordinance as evidence of necessity.

§ 7. The complaint shall set forth, or state the effect of, the ordinance of intention, and the ordinance ordering the improvement, but need not set up any other proceedings had before the bringing of the action. Said ordinances shall be conclusive evidence, in such action, of the public necessity of the proposed improvement.

Setting action for trial. Referees. View of lands. Report of findings. Measure of compensation. Subsequent improvements.

§ 8. When all parties defendant to the action have answered, or have been served with summons, and their default entered, the plaintiff or any party defendant to the action whose default has not been so entered, may, upon five days' notice to the parties, except defendants in default, move the court to set the action for trial. If, upon the hearing of such motion, a trial by jury or by the court without a jury is not demanded by the defendants, or any of them, or by the plaintiff, such trial shall be deemed to be waived, and the court must appoint three disinterested persons referees, to ascertain the compensation to be paid to such defendants so waiving a trial by a jury, or by the court without a jury. Such referees must be residents, of the municipality where such improvement is to be made and over the age of twenty-one years, and must take and file with the court an oath to discharge their duties faithfully and impartially. If any of such referees fails to qualify, or resigns, or is removed by order of court, or is or becomes unable to act, the vacancy so created shall be filled by the court. The referees

shall at once proceed to view the lands sought to be condemned, and ascertain the compensation proper to be paid to such of the parties interested in each parcel thereof as have waived a trial by a jury, or by the court. They shall have power to examine witnesses under oath, to be administered by any of them, and may have subpoenas issued by the clerk of the court, requiring the attendance of witnesses, or the production of evidence before them. They shall make and file with the court a written report of their findings, and of their necessary expenses, within thirty days after the date of their appointment; provided, however, that the time so allowed may be extended, upon good cause shown, by the court or judge thereof, but such extension shall not exceed ninety days; and provided further, that if any vacancy in the referees is created and filled as provided in this section, or if new referees are appointed, or if a new report from the same referee is ordered, as provided in section nine of this act, the time herein specified for the filing of such report shall be deemed to be thirty days from the date of the order filling such vacancy, or appointing new referees, or ordering a new report from the same referees, and the same may be extended accordingly, as above provided. Any two of such referees who agree thereto, may make such report. For the purpose of assessing the compensation and damages the right thereto shall be deemed to have accrued at the date of the order appointing referees or of the order setting the cause for trial, as the case may be, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed by the provisions of this act. No improvements placed upon the property proposed to be taken, subsequent to the date of the publishing of the notice of the passage of the ordinance of intention, shall be included in the assessment of compensation or damages. The referees, or court, or jury, as the case may be, shall find separately:

Value of property.

First—The value of each parcel of property sought to be condemned, and all improvements thereon pertaining to the realty, and of each separate estate or interest therein:

Damages to remainder.

Second—If any parcel of property sought to be condemned is only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, and to each separate estate or interest therein, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff. Such damages must be fixed irrespective of any benefit from such improvement. [Amendment approved June 6, 1913, Stats. 1913, p. 417. In effect August 10, 1913.]

Hearing on report. Exceptions. Notice of filing. Who may intervene. Court may confirm, etc., report. Trial by jury. Interlocutory judgment. Referees' compensation.

§ 9. Upon the filing of such report the court must, upon motion of any party, appoint a day for hearing the same, not less than twenty days thereafter. Notice of the time and place of said hearing must, at least ten days before the time so appointed, be served on all the other parties, except defendants whose default has been entered. The plaintiff, or any defendant who has answered, may file exceptions in writing to said report, specifying the grounds upon which such exceptions are based, at any time within not less than one day prior to the hearing; and any such party so filing exceptions to said report, may appear at the hearing of said report and contest the same. In addition to the notice hereinbefore provided, the clerk of the court must give notice of the filing of said report, and of the time and place appointed for the hearing of the same, to all

persons owning or having an interest in any property, included within the assessment district for said improvement described in the ordinance of intention, by causing said notice last mentioned to be published for five days in a daily newspaper published and circulated in the city; or, if there be no such daily newspaper, then by two insertions in a weekly newspaper so published and circulated. Any publication of such notice shall commence at least ten days before the time appointed for the hearing of the report. Said notice shall require all persons owning or having an interest in any property included within said assessment district for said improvement to intervene in said action, and file, in the office of the clerk of said court, his exceptions in writing to said report, if any he has, specifying the grounds upon which such exceptions are based. Said notice shall also contain a description of the said assessment district as set forth in the ordinance of intention. At any time within not less than one day prior to the hearing, any person not a party to the action, owning or having an interest in any property included within said assessment district, may intervene in the action, and file his exceptions in writing to said report, specifying the grounds upon which such exceptions are based; and any such person so intervening may appear and contest the said report, and introduce evidence in support of such exceptions. After hearing the report, and any exceptions thereto, the court may confirm the report, or may modify it and confirm it as modified, or may set aside and order a new report from the same referees, or from any referees to be appointed. If new referees are appointed, the same proceedings shall be had as upon the first reference. If there be a trial of the action by a jury, or by the court without a jury, the clerk of the court must give notice of the time and place of such trial to all persons owning or having an interest in any property within said assessment district for said improvement. Said notice shall be published in the same manner and for the same time as the notice hereinbefore in this section required to be given by said clerk, and shall require all persons owning or having an interest in any property included within said assessment district for said improvement, to intervene in said action, and to appear at the trial thereof and introduce evidence relative to the compensation and damages to be awarded to the defendants therein. At any time within not less than one day prior to the trial, any person not a party to the action, having an interest in any property included within said assessment district, may intervene in the action, and, upon the trial thereof, may appear and introduce evidence relative to the compensation and damages to be awarded to the defendants therein. The cost of the publication of the notices required by this section shall be paid by the plaintiff, and allowed as costs in the action. When a time has been appointed for hearing the report of the referees, or for the trial of the action, and notice thereof has been given by the clerk by publication as in this section provided, if the hearing or trial be postponed or continued by the court to any subsequent date, no such notice need be given by the clerk of the hearing or trial upon any such postponement or continuance. Upon the confirmation of the report of the referees, or receipt of the verdict of the jury, or the filing of the findings of the court, the court shall make and enter an interlocutory judgment in accordance with such report, verdict or findings, adjudging that upon payment to the respective parties, or into court for their benefit, of the several amounts found due them as compensation, and of the costs allowed to them, the property involved in the action shall be condemned to the use of the plaintiff, and dedicated to the use specified in the complaint. The court shall allow to the referees, as costs to be paid by the plaintiff, a reasonable compensation for their services, the amount of which compensation shall be fixed by the court upon the hearing of the report, and their necessary expenses. [Amendment approved June 6, 1913, Stats. 1913, p. 418. In effect August 10, 1913.]

Appeal.

§ 10. An appeal may be taken from such interlocutory judgment within thirty days from the entry thereof, or from any order granting or denying a new trial within ten days after the entry thereof.

Council may dismiss action.

§ 11. The city council may, at any time prior to the confirmation of the assessment levied to pay the expenses of said improvement as hereinafter provided, abandon the proceedings by ordinance, and cause said action to be dismissed without prejudice.

Diagram of improvement.

§ 12. Upon the entry of the interlocutory judgment the city council shall order the city engineer, or if there be no city engineer any civil engineer whom it may employ for that purpose, to make and deliver to the street superintendent a diagram of the improvement and of the property within the assessment district described in the ordinance of intention. Said diagram shall show the land to be taken for the proposed improvement and also each separate lot, piece or parcel of land within the assessment district, and the dimensions of each such lot, piece or parcel of land, and the relative location of the same to the proposed improvement.

Delivery of diagram. Completion of assessment. Total expense.

§ 13. The city engineer shall deliver said diagram to the street superintendent, and shall endorse thereon the date of such delivery. The street superintendent upon receiving the said diagram, shall proceed to assess the total expenses of the proposed improvement upon and against the lands, including the property of any railroad or street railroad within said assessment district, except the land to be taken for such improvement, in proportion to the benefits to be received from said improvement. The street superintendent shall complete said assessment within ninety days after the receipt by him of said diagram; provided, however, that the city council may, by resolution, extend the time for completing said assessment for a period not exceeding sixty days additional. The total expense of the improvement so to be assessed shall include the amounts awarded to the defendants by the interlocutory judgment in the action for condemnation, and all other costs of the plaintiff in such action, the expenses of making the assessments and all expenses necessarily incurred by said municipality, in connection with the proposed improvement, for maps, diagrams, plans, surveys, searches and certificates of title to the property to be taken, and all other matters incident thereto. [Amendment approved June 6, 1913, Stats. 1913, p. 419. In effect August 10, 1913.]

What assessment must show.

§ 14. The street superintendent shall make said assessment in writing. Such assessment shall describe each lot, piece or parcel of land assessed for said improvement, and shall designate each such lot, piece or parcel of land with an appropriate number. The street superintendent shall also designate each such lot, piece or parcel of land on said diagram, with the number corresponding with the number thereof in said assessment, and said diagram shall thereupon be attached to and become and be deemed to be a part of said assessment. Such assessment shall show the total sum to be raised thereby, as hereinbefore provided, and also the items of such total sum, and opposite each lot, piece or parcel of land assessed, the amount assessed thereon, and the name of the owner thereof, if known to the street superintendent; or if the owner's name is unknown, the word "Unknown" shall be written instead of such name. Any error or mistake in the designation of the owner of any lot, piece or parcel of land, or in the particulars of his interest therein, shall not affect the validity of the assessment.

Notice to file objections.

§ 15. As soon as said assessment is completed, the street superintendent shall file the same, with the diagram attached thereto and made a part thereof as aforesaid, with the clerk of the council, who shall give notice of such filing by publication for, at least, ten days in a daily newspaper published and circulated in the municipality, or if there be no such daily newspaper, by three successive insertions in a weekly newspaper so published and circulated. Said notice shall require all persons interested to file with said clerk their objections, if any they have, to the confirmation of said assessment, within thirty days after the date of the first publication of such notice, which date shall be stated in said notice.

Objections.

§ 16. All objections shall be in writing and shall be filed with said clerk within the time prescribed in the notice required by section fifteen hereof. The clerk shall, at the next regular meeting of the city council after the expiration of the time for filing objections, lay said assessment and all objections so filed with him, before the council; and said council shall hear all such objections at said meeting, or at any other time to which the hearing thereof may be adjourned, and pass upon such assessment, and may confirm, modify, or correct said assessment, or may order a new assessment, upon which like proceedings shall be had, as in the case of an original assessment; or if there be no objections, the council shall, at any regular meeting after the expiration of the time for filing objections, confirm such assessment, and the action of the council upon such objection and assessment shall be final and conclusive in the premises.

Record of assessment. Lien of.

§ 17. The clerk of the council shall thereupon deliver to the street superintendent the assessment as confirmed by the city council, with his certificate of such confirmation, and of the date thereof. The street superintendent shall thereupon record such assessment and diagram in his office, in a suitable book to be kept for that purpose, and append thereto his certificate of the date of such recording, and such record shall be the assessment roll. From the date of such recording all persons shall be deemed to have notice of the contents of such assessment roll. Immediately upon such recording, the several assessments contained in such assessment roll shall become due and payable, and each of such assessments shall be a lien upon the property against which it is made.

Publication of notice to pay assessment.

§ 18. The street superintendent shall, upon the recording of said assessment, give notice, by publication for ten days in a daily newspaper, published and circulated in such municipality, or by three successive insertions in a weekly newspaper, so published and circulated, that said assessment has been recorded in his office, and that all sums assessed therein are due and payable immediately, and that the payment of the said sums is to be made to him within thirty days after the date of the first publication, which date shall be stated in the notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will become delinquent, and that thereupon five per cent of the amount of each such assessment will be added thereto. When payment of any assessment is made, the street superintendent shall mark opposite such assessment, the word, "Paid," the date of payment, and the name of the person by or for whom the same is paid, and shall, if so requested, give receipt therefor. On the expiration of said period of thirty days, all assessments then unpaid shall become delinquent, and the street superintendent shall certify such fact at the foot of said assessment roll, and mark each such assessment "Delinquent," and add five per cent to the amount of each delinquent assessment.

Delinquent assessment list. Publication.

§ 19. The street superintendent shall, within thirty days from the date of such delinquency, begin the publication of a list of the delinquent assessments, which list must contain a description of each parcel of property delinquent, and opposite or against each description, the name of the owner as stated in the assessment roll, and the amount of the assessment, penalty, and costs due, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece or parcel of land, separately assessed. The street superintendent shall append to and publish with said delinquent list a notice that unless each delinquent assessment, together with the penalty and costs thereon, is paid, the property upon which such assessment is a lien, will be sold at public auction at a time and place to be specified in the notice. The publication must be made for a period of ten days, in some daily newspaper published and circulated in the municipality, or for three weeks in a weekly newspaper so published and circulated. The time of sale must not be less than five days, nor more than ten days, after the expiration of the period of publication of said list, and the place of sale must be in, or in front of, the office of the street superintendent. [Amendment approved June 6, 1913, Stats. 1913, p. 420. In effect August 10, 1913.]

Delinquent payments.

§ 20. At any time after such delinquency, and prior to the sale of any piece of property assessed and delinquent, any person may pay the assessment on such piece of property, together with the penalty, and costs then due, including the cost of advertising. The street superintendent shall thereupon mark such assessment "Paid," as hereinbefore provided.

Sale of property advertised.

§ 21. On the day fixed for the sale, the street superintendent must, at the hour of ten o'clock a. m. commence the sale of the property advertised, commencing at the head of the list, and continuing in the numerical order of lots or parcels of land until all are sold; provided, that he may postpone or continue the sale from day to day until all of the property is sold. Each lot, piece or parcel of land separately assessed must be offered for sale separately, and the person who will take the least quantity of land, and pay the amount of the assessment, penalty, and costs due, including fifty cents to the street superintendent for a certificate of sale, shall become the purchaser. In case there is no purchaser, for any lot, piece or parcel of land so offered for sale, the same shall be struck off to the municipality, as purchaser, and the city council shall appropriate out of the general fund of the treasury, the amount required for such purchase, and shall order the city treasurer to place the same in the special fund for such improvement. No charge shall be made for the certificate of sale when the municipality is the purchaser.

Certificate of sale.

§ 22. After making the sale, the street superintendent must execute, in duplicate, a certificate of sale setting forth a description of the property sold, the name of the owner thereof, as given on the assessment roll, that said property was sold for delinquent assessment (specifying the improvement for which the same was made), the amount for which such property was sold, the date of sale, the name of the purchaser, and the time when the purchaser will be entitled to a deed. The street superintendent must file one copy of such certificate in his office, and deliver the other to the purchaser, or if the municipality is the purchaser, to the clerk of the council, who shall file the same in his office. On the filing of the copy of such certificate in the office of the street superintendent, the lien of the assessment shall vest in the purchaser, and is only divested by a redemption of the property, as in this act provided. The street superin-

tendent shall also enter on the assessment roll, opposite the description of each piece of property offered for sale, a description of the part thereof sold, the amount for which the same was sold, the date of the sale, and the name of the purchaser.

Redemption from sale.

§ 23. A redemption of any parcel of property sold for delinquent assessment may be made by any party in interest, at any time prior to the execution and delivery of a deed therefor, by paying to the street superintendent the amount for which the property was sold, and in addition thereto, ten per cent thereon if paid within three months from the date of sale; twenty per cent if paid within six months; thirty per cent if paid within nine months; forty per cent if paid within twelve months, or fifty per cent if paid at any time after twelve months. When redemption is made, the street superintendent shall note that fact on the duplicate certificate of sale on file in his office, and deposit the amount paid with the city treasurer, who shall credit the purchaser named in the certificate of sale with the said amount, and pay the same to such purchaser, or his assignee, upon the surrender of the certificate of sale, and upon satisfactory proof of assignment thereof, if any. When the municipality is the purchaser, the treasurer shall notify the clerk of the council of the redemption, and such clerk shall thereupon cancel the certificate of sale on file in his office.

Deed to purchaser. Service of notice by street superintendent.

§ 24. At any time after the expiration of twelve months from the date of sale, the street superintendent must execute to the purchaser, or his assignee on his application, if such purchaser or assignee has complied with the provisions of this section, a deed of the property sold, in which shall be recited substantially the matters contained in the certificate, also any assignment thereof, and the fact that no person has redeemed the property. The street superintendent shall receive from the applicant for a deed, one dollar for making such deed, unless the municipality is the purchaser, in which case no charge shall be made therefor, and at least thirty days before the deed is executed the street superintendent must serve upon the owner of the property, and upon the occupant of such property if the same is occupied, a written notice, setting forth a description of the property that said property has been sold for a delinquent assessment (specifying the improvement for which the same was made), the amount for which it was sold, the amount necessary to redeem at the time of giving notice and the time when the deed will be executed to the purchaser or assignee. If the said owner cannot be found, after due diligence, said notice must be posted by the street superintendent in a conspicuous place upon said property, at least thirty days before the time stated therein, at which the deed will be executed. The street superintendent must file with the city clerk an affidavit or affidavits showing that notice of such application has been given, as herein required, and if the notice was not served on the owner of the property personally, that due diligence was used to find said owner. If redemption of the property is made after such affidavits are filed, and more than eleven months from the date of sale, the person making such redemption must pay, in addition to the other amounts required, three dollars for the service of notice and the making of such affidavits, which amount shall be paid over to the street superintendent and by him paid into the city treasury. No deed for any property sold for delinquent assessment shall be made until all the provisions of this section have been complied with. [Amendment of April 26, 1917. In effect July 27, 1917. Stats. 1917, p. 207.]

Title, evidence of.

§ 25. The deed of the street superintendent shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the execution thereof, and of title in the grantee.

Disposition of funds.

§ 26. The street superintendent shall, from time to time, pay over to the city treasurer all moneys collected by him on account of any assessments made under the provisions of this act. The city treasurer shall, on receipt thereof, place the same in a special fund, designating such fund by the name of the improvement for which the assessment was made.

Payment of awards.

§ 27. As soon as there is sufficient money in the hands of the city treasurer, in the special fund devoted to the proposed improvement, to pay the amounts awarded to the defendants by the interlocutory judgment in the action of condemnation, the said amounts shall be paid to the parties entitled thereto, or into court for their benefit. On satisfactory proof being made to the court of payment of the amounts awarded by the interlocutory judgment to the respective parties entitled thereto, or into court for their benefit, it shall direct the interlocutory judgment to be satisfied, and shall make and enter a final judgment, condemning the lands described in the complaint to the use of the plaintiff for the use specified in such complaint.

Supplementary assessment.

§ 28. In case of a deficiency in the fund for such improvement, the city council, in its discretion, may provide for such deficiency by an appropriation out of the general fund of the treasury, or by ordering a supplementary assessment to be made by the street superintendent upon the property in said assessment district in the same manner and form, and subject to the same procedure as the original assessment, and in the last named case, in order to avoid delay, the city council may advance such deficiency out of the city treasury and reimburse the treasury from the collections under such supplementary assessment. In case of a surplus in the fund for such improvement, the city council may order such surplus refunded pro rata to the parties who paid the assessments.

Meaning of certain terms.

§ 29. The following words and phrases shall, where used in this act, have the following meanings:

1. The term "improvement," includes all the improvements mentioned in section one of this act.
2. The terms, "municipality" and "city," include all incorporated cities, cities and counties, and other corporations organized for municipal purposes.
3. The terms "city council" and "council," include any body or board in which by law is vested the legislative power of any municipality.
4. The terms, "clerks" and "city clerk," include any person or officer who acts as clerk of said city council.
5. The terms, "treasurer" and "city treasurer," include any person or officer who has charge and makes payment of the city funds.
6. The term "street superintendent," includes any person or officer whose duty it is by law to have the care or charge of streets or the improvement thereof in any city. In any municipality where there is no street superintendent, the council is hereby authorized to appoint a suitable person to discharge the duties of street superintendent, as provided in this act, and all the provisions hereof applicable to the street superintendent shall apply to the person so appointed, or in any municipality having a board of public works created by its charter, or by law, all the provisions hereof applicable to the street superintendent shall apply to such board.

Publication where no paper in city.

§ 30. In case there is no daily or weekly newspaper published and circulated in the city, then such notices and delinquent lists as are herein required to be published in a

newspaper shall be posted in three of the most public places in such city, for the length of time required herein for the publication of the same in a weekly newspaper. No publication or notice other than that provided in this act shall be necessary to give validity to any proceedings had hereunder.

Proof of publication.

§ 31. Proof of publication of any notice required by this act shall be made by affidavit, as provided in the Code of Civil Procedure, and proof of the posting of any such notice shall be made by the affidavit of the person posting the same, setting forth the facts regarding such posting. It shall be the duty of any officer who is required by this act to have any notice published or posted, to obtain and file in his office the affidavit or affidavits in proof thereof; provided that his failure so to do shall not affect the validity of any proceedings under this act. Any such affidavit so filed shall be prima facie evidence of the facts therein stated regarding such publication or posting.

How designated.

§ 32. The provisions of this act shall be liberally construed to promote the objects thereof. This act may be designated and referred to as the "park and playground act of 1909." [Amendment approved June 6, 1913, Stats. 1913, p. 420.]

§ 33. This act shall take effect immediately.

1. Condemnation proceeding—Ordinance of public necessity not conclusive on the court.—While the act and subdivision 2 of section 1241, Code Civil Procedure, make the ordinance conclusive evidence of public necessity, under section 1240, subdivision 4, the court in a condemnation proceeding under the act, is not compelled to accept as final the decision of the city, but may declare the terms under which the property may be taken.—*Los Angeles v. Los Angeles-Pacific Co.*, 31 Cal. App. 100, 159 Pac. 992.

2. Proceedings in invitum—Strict compliance with provisions required.—The proceedings under the act as to sale for delinquent assessments under the taxing power, are in invitum, and all the requirements of the statute must be strictly com-

plied with.—*Pretty v. Warden*, 38 Cal. App. 706, 177 Pac. 491.

3. Same—Same—Service on agent insufficient.—A service upon the agent of the owner is not personal service under section 24, and insufficient in the absence of a showing of diligence to find and serve the owner.—*Pretty v. Warden*, 38 Cal. App. 706, 177 Pac. 489.

4. Notice of redemption—Inclusion of invalid charge.—A notice to redeem from sale under the act for delinquency in payment of an assessment given by the purchaser held valid though stating that an invalid charge for serving notice would be added.—*O'Neill v. Brode*, 40 Cal. App. 371, 181 Pac. 91.

But see *Colkins v. Doolittle* (Cal. App.), 188 Pac. 601.

ABANDONMENT OF PARKS.

ACT 3769—An act to authorize municipal corporations with the consent of original dedicators to abandon parks and sell and convey the land embraced therein, and reinvest the proceeds from the sale thereof in the purchase of other public grounds.

History: Approved May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 1250. Amended May 3, 1919. In effect July 22, 1919. Stats. 1919, p. 237.

Parks may be sold.

§ 1. Whenever a plat or map of a townsite has been recorded in the office of the county recorder of any county, purporting to dedicate to the use of the public any tract of land lying within said townsite, as a park, and thereafter the territory embraced within said townsite has been incorporated into a municipal corporation, and the board of trustees of said municipal corporation find that said tract of land is not appropriate, convenient, or necessary for park purposes, said board of trustees may, with the consent of the original dedicator, abandon and discontinue such park, and may sell and convey the land, and devote the proceeds from the sale thereof to the purchase of other public grounds.

Purchase of other lands.

§ 2. Before abandoning or discontinuing any such park, the board of trustees must have first acquired an option to purchase other lands of at least equal area. They then shall adopt a resolution of intention, describing the park to be abandoned or discontinued, and the property to be acquired from the proceeds of the sale thereof, and fixing the time when the board of trustees will meet to take final action thereon, which time must be at least thirty days after the adoption of said resolution.

Resolution published.

§ 3. Said resolution shall be published once a week for at least three successive weeks prior to the day fixed therein for the meeting of the board of trustees, in a newspaper of general circulation published in said municipal corporation; and if no newspaper is published in said municipal corporation, then in any newspaper published in the county to be designated by said board of trustees. Said resolution shall also be conspicuously posted along the boundaries of the park proposed to be abandoned, at not more than one hundred feet in distance apart, but not less than four in all.

Hearing.

§ 4. At the time stated in said resolution, the board of trustees shall meet, hear and pass on any objections that may be made to the abandonment of said park; and any person claiming an interest in said park or the land embraced therein, either as reversioner, remainderman, abutting property owner, or otherwise, may then and there object, and a failure of any such person to object shall be conclusive evidence that he consents to the proposed action of the board of trustees. Should the reversioner, remainderman, or the owners of a majority of the lots abutting on said park object in writing to the abandonment or discontinuance thereof, or should the board of trustees sustain the objections made then, the proceedings therefor shall stop, but may be commenced again any time after six months, by the adoption of a new resolution of intention.

Jurisdiction acquired.

§ 5. In the event that neither the reversioner, remainderman, nor the owners of a majority of the lots abutting on said park object in writing to the abandonment thereof, and the other objections urged be overruled, the board of trustees shall be deemed to have acquired jurisdiction to order that the park be abandoned and discontinued.

Appraisers.

§ 6. Having acquired jurisdiction as provided in the preceding sections the board of trustees may order said park abandoned and discontinued, and unless no damage will result therefrom and no assessment is necessary, shall appoint three appraisers to assess the damages to the abutting property owners. For their services they shall receive such compensation as the board of trustees may determine.

Determination of damages.

§ 7. Said appraisers shall proceed with all diligence to ascertain and determine the extent of damages which will result to each lot or tract of land abutting upon the said park from the abandonment and discontinuance thereof, and file a written report of their findings with the board of trustees.

Hearing on appraisers' report.

§ 8. Upon filing the said report, the city clerk shall give notice of such filing and fix the time and place at which said report will be considered by the board of trustees. Said notice shall be published for at least two weeks prior to said meeting of the board of trustees in a newspaper published in said city. If there is no newspaper published in said city, then by posting said notice in three public places within said city for two

weeks prior to said meeting. Said notice shall require all persons interested to show cause, if any, why such report should not be confirmed. At the time fixed for the hearing of said report, or at such other time as the hearing may be adjourned to, the board of trustees shall pass upon said report, together with any objections that shall be made thereto, and may confirm, correct or modify the same.

Warrants for damages.

§ 9. Upon the adoption of said report, either as filed by the appraisers or as corrected and modified by the board of trustees, warrants shall be drawn in favor of the various lot owners to whom damages have been allowed in the amount specified in said report, which said warrants shall be payable out of the fund to be derived from the sale of said park lands.

Assistance in sale.

§ 10. The board of trustees shall have power to employ such assistance, legal or otherwise, as they may deem necessary, to sell said land for the best advantage to the city, and pay such compensation therefor as they may fix.

Details of sale.

§ 11. The board of trustees may order said land sold en masse or in lots or parcels, for cash or on credit, not exceeding four years, payable in gross or in installments, as the board of trustees may deem to be most advantageous to the city; provided, however, that deferred payments shall bear a rate of interest of seven per cent per annum; they shall determine when and at what price and on what terms said land, or any part thereof shall be sold; and when authorized by a majority vote of the board of said trustees, the president and clerk shall sign, acknowledge and deliver a deed to said land, or any part thereof, in the name and under the seal of said municipal corporation and such deed when so signed, acknowledged and delivered shall convey to the purchaser thereof the title in fee to the land described in said deed. [Amendment of May 3, 1919. In effect July 22, 1919, Stats. 1919, p. 237.]

Proceeds.

§ 12. The proceeds from the sale of said land shall be deposited in the city treasury in a special fund and shall be used by said city exclusively in the purchase and improvement of other public grounds.

Definitions.

§ 13. (a) The words "municipal corporation," and "city," shall be understood and so construed as to include all corporations heretofore organized and now existing, or hereafter organized, for municipal purposes.

(b) The term "board of trustees" is hereby declared to include any body or board which, under the law, is a legislative department of the government of any city.

(c) The terms "clerk" and "city clerk," as used in this act are hereby declared to include any person or officer who shall be clerk of said board of trustees.

(d) The term "president," as used in this act, is hereby declared to include mayor, president of the board of trustees, and the chief executive officer of the city by whatever designation he may be known.

(e) The term "original dedicator," as used in this act, is hereby declared to include any person or persons, their executors, administrators, heirs and assigns, and any company or corporation, its successors and assigns, who have dedicated for the use of the public, as a park, any tract of land within a municipal corporation.

(f) The term "abutting property owner," as used in this act, is hereby declared to include all property adjoining, facing and fronting on the said park.

CHAPTER 297.

PUBLIC UTILITIES.

References: See tits. "Industrial Accident Commission"; "Municipal Corporations"; "Railroads"; "Street Railroads."

Auto-bus transportation act, see Act 3014.

Enforcement of act of 1911, relating to pole, etc., construction, location, etc., see Act 1350, §§ 7 and 8.

Enforcement of act of 1911, relating to subways, manholes, etc., see Act 1351.

Enforcement of act of 1915, relating to municipal sewers, water mains, and conduits through streets, see tit. "Electricity," Act 1352.

Hospital service by common carrier, see tit. "Master and Servant," Act 2783.

Power of railroad commission over motor transportation, see tit. "Motor Vehicles," Act 3014.

CONTENTS OF CHAPTER.

ACT 3775. "PUBLIC UTILITIES ACT" OF 1915.

3776. PUBLIC UTILITY DISTRICTS ACT OF 1913.

3776a. PUBLIC UTILITY DISTRICTS ACT OF 1915.

3778. RETENTION OF MUNICIPAL POWER OF REGULATION.

3779. PIPE LINES DECLARED COMMON CARRIERS.

3779a. PIPE LINES—LICENSE ACT.

3780. PIPE LINE COMBINATIONS.

3780a. "FOOD WAREHOUSEMEN ACT."

"PUBLIC UTILITIES ACT" OF 1915.

ACT 3775—An act to provide for the organization of the railroad commission, to define its powers and duties and the rights, remedies, powers and duties of public utilities and their officers, and the rights and remedies of patrons of public utilities, and to provide penalties for offenses by public utilities, their officers, agents and employees and by other persons and corporations, creating the "railroad commission fund" and appropriating the moneys therein to carry out the provisions of this act, and repealing title XV of part IV of division first of the Civil Code and all acts and parts of acts inconsistent with the provisions of this act.

History: Approved April 23, 1915, in effect August 8, 1915. Stats. 1915, p. 115. Amended (1) April 24, 1917, in effect July 27, 1917, Stats. 1917, p. 168; (2) April 25, 1917, in effect July 27, 1917, Stats. 1917, p. 199; (3) May 5, 1917, in effect July 27, 1917, Stats. 1917, p. 261; (4) May 10, 1917, in effect July 27, 1917, Stats. 1917, p. 320; (5) May 29, 1917, in effect July 28, 1917, Stats. 1917, p. 1329; (6) May 11, 1919, in effect July 22, 1919, Stats. 1919, p. 488. Prior acts: "Commissioners of Transportation" act approved April 3, 1876, Stats. 1875-76, p. 783; repealed by the "Commissioner of Transportation" act of April 1, 1878, Stats. 1877-78, p. 969, which act was expressly repealed by the act of March 19, 1909, Stats. 1909, p. 499. Of this act the code commissioners say: "The greater part of this statute has been repealed by the constitution of 1879. Certain of its penal provisions may yet be in force. See *Dyer v. Placer County*, 90 Cal. 276, and *Giesecke v. San Joaquin County*, 109 Cal. 489. Section 2 of chap. 3 of the act superseded by Pen. C. § 369b, as adopted in 1905, §§ 4, 5, and 6 of chap. 3 of the act are superseded by Pen. C. §§ 369d, 369e, and 369f, respectively, as adopted in 1905, §§ 7 and 8 of chap. 3 of the act are superseded by 1901:666." The board of railroad commissioners provided for by § 22, art. XII of the constitution, was organized and its powers defined by the act of April 15, 1880, Stats. 1880, p. 45. The code commissioners say of this act that § 11 was probably superseded by § 489 of the Civil Code, as amended in 1905. It was also repealed by the act of March 19, 1909, Stats. 1909, p. 499, known as the "Wright Act," which was in turn repealed by the "Stetson-Eshleman Act" of February 9, 1911, Stats. 1911, p. 13, amended April 6, 1911, Stats. 1911, p. 701; repealed by the act of December 23, 1911, Stats. 1911 (ex. sess.), p. 18; amended (1) June 11, 1913, in effect August 10, 1913, Stats. 1913, p. 683; (2) June 14, 1913, in effect August 10, 1913, Stats.

1913, p. 934; repealed by the present act. The act of December 24, 1911, Stats. 1911 (ex. sess.), p. 107, turned back into the general fund of the treasury the unexpended appropriations for the railroad commission, and reappropriated that sum, and an additional sum, aggregating \$210,000 for the purpose of carrying out the newly enacted "public utilities act."

ANALYSIS OF ACT.

RAILROAD COMMISSION—GENERAL PROVISIONS.

- § 1. SHORT TITLE.
- § 2. DEFINITIONS.
- § 3. RAILROAD COMMISSION; APPOINTMENT; TERM; VACANCIES; REMOVAL.
- § 4. ATTORNEY.
- § 5. SECRETARY; ASSISTANT SECRETARY.
- § 6. ADDITIONAL OFFICERS AND EMPLOYEES.
- § 7. OATH OF OFFICE; ELIGIBILITY OF COMMISSIONERS AND EMPLOYEES.
- § 8. OFFICE OF COMMISSION; MEETINGS; OFFICIAL SEAL; SUPPLIES AND EQUIPMENT.
- § 9. QUORUM.
- § 10. SALARIES AND EXPENSES.
- § 11. TRANSPORTATION FOR COMMISSIONERS, OFFICERS AND EMPLOYEES.
- § 12. ANNUAL REPORT.

DUTIES OF PUBLIC UTILITIES.

- § 13. CHARGES; SERVICE AND FACILITIES; RULES AND REGULATIONS.
- § 14. TARIFF SCHEDULES; PUBLICATION.
- § 15. CHANGES IN SCHEDULES; NOTICE REQUIRED.
- § 16. CONCURRENCE IN JOINT TARIFFS.
- § 17. RATES AND FARES AS PUBLISHED TO BE CHARGED; EXCEPTIONS.
- § 18. FILING OF INTERSTATE TARIFFS.
- § 19. PREFERENCES.
- § 20. ECONOMIES; PROFIT FROM TO INURE TO PUBLIC UTILITY.
- § 21. SLIDING SCALE OF CHARGES; PROFIT SHARING.
- § 22. DISCRIMINATION BETWEEN UTILITIES INTER SE PROHIBITED; CONNECTING LINES.
- § 23. FALSE BILLING, ETC., BY CARRIER OR SHIPPER; FALSE CLAIMS FOR DAMAGES.
- § 24. LONG AND SHORT HAUL AND SERVICE.
- § 25. SWITCH AND SPUR CONNECTIONS.
- § 26. FOREIGN PUBLIC UTILITIES EXCLUDED.
- § 27. FARES AND TRANSFERS ON STREET RAILROADS.
- § 28. REQUESTS FOR INFORMATION; BLANKS; COPIES OF RECORD.
- § 29. REPORTS.
- § 30. COMPLIANCE WITH COMMISSION'S ORDERS.

POWERS AND DUTIES OF RAILROAD COMMISSION.

- § 31. POWERS OF COMMISSION.
- § 32. CHARGES TO BE FIXED BY COMMISSION.
- § 33. JOINT RATES AND THROUGH ROUTES ON COMMON CARRIERS.
- § 34. INTERSTATE RATES.
- § 35. SERVICE, EQUIPMENT, FACILITIES—TO BE FIXED BY THE COMMISSION.
- § 36. POWER OF COMMISSION TO ORDER ADDITIONS, IMPROVEMENTS, CHANGES.
- § 37. POWER OF COMMISSION TO ORDER CHANGES IN TIME SCHEDULES AND RUNNING OF ADDITIONAL CARS AND TRAINS.
- § 38. TRACK CONNECTIONS.
- § 39. SWITCH AND SPUR CONNECTIONS; INTERCHANGE SWITCHING TO INDUSTRIAL TRACKS.
- § 40. PHYSICAL CONNECTIONS AND JOINT RATES—TELEPHONE AND TELEGRAPH CORPORATIONS.
- § 41. USE OF JOINT FACILITIES.
- § 42. HEALTH AND SAFETY; SAFETY DEVICES.
- § 43. GRADE CROSSINGS.
- § 44. INVESTIGATION OF ACCIDENTS; REPORTS TO COMMISSION.
- § 45. POWER OF COMMISSION TO PROVIDE RULES FOR EXPEDITING TRAFFIC; EXPRESS AND TELEGRAPH RULES AND REGULATIONS.
- § 46. POWER OF COMMISSION AS TO SERVICE, ETC., OF PUBLIC UTILITIES.
- § 47. VALUATION OF PROPERTY.

- § 48. UNIFORM SYSTEM OF ACCOUNTS; ACCESS TO ACCOUNTS, ETC.
- § 49. DEPRECIATION ACCOUNTS.
- § 50. NEW CONSTRUCTION; FRANCHISES AND PRIVILEGES.
- § 51. TRANSFER OF PROPERTY, FRANCHISES, ETC.; TRANSFER OF STOCK.
- § 52. APPROVAL OF STOCKS AND STOCK CERTIFICATES, AND BONDS, NOTES AND OTHER EVIDENCE OF INDEBTEDNESS.

PROCEDURE BEFORE RAILROAD COMMISSION AND COURTS.

- § 53. RULES FOR HEARING; INFORMALITIES.
- § 54. POWERS OF COMMISSION AS TO PROCESS; SERVICE.
- § 55. WITNESSES; ATTENDANCE AND FEES; DEPOSITIONS; INCRIMINATION.
- § 56. CERTIFIED COPIES OF PAPERS FILED TO BE EVIDENCE.
- § 57. FEES.
- § 58. INSPECTION OF BOOKS, PAPERS, AND DOCUMENTS.
- § 59. PRODUCTION OF BOOKS AND RECORDS KEPT OUTSIDE OF STATE.
- § 60. COMPLAINTS.
- § 61. HEARINGS, ORDERS, AND RECORD; RECOVERY ON DECISION.
- § 62. PUBLIC UTILITY MAY COMPLAIN.
- § 63. INCREASE IN RATES.
- § 64. COMMISSION MAY CHANGE ORDERS AND DECISIONS.
- § 65. ORDERS AND DECISIONS CONCLUSIVE IN COLLATERAL PROCEEDINGS.
- § 66. REHEARINGS.
- § 67. REVIEW.
- § 68. SUSPENSION OF COMMISSION'S ORDERS.
- § 69. COURT PROCEEDINGS; PREFERENCE.
- § 70. PHYSICAL VALUATION; PROCEDURE.
- § 71. EXCESSIVE OR DISCRIMINATORY CHARGES; REPARATION.
- § 72. COMMISSION SHALL ENFORCE LAWS.
- § 73. PUBLIC UTILITIES LIABLE FOR DAMAGES.
- § 74. EFFECT OF ACT ON RELEASE OF DAMAGES; PENALTIES CUMULATIVE.
- § 75. SUMMARY PROCEEDINGS.
- § 76. PENALTIES, VIOLATIONS BY PUBLIC UTILITIES.
- § 77. PENALTIES, VIOLATIONS BY OFFICERS, AGENTS OR EMPLOYEES OF PUBLIC UTILITIES.
- § 78. PENALTIES, VIOLATIONS BY CORPORATIONS OTHER THAN PUBLIC UTILITIES.
- § 79. PENALTIES, VIOLATIONS BY PERSONS OTHER THAN OFFICERS, ETC., OF PUBLIC UTILITIES.
- § 80. SUITS FOR PENALTIES.
- § 81. CONTEMPT PROCEEDINGS.

CONSTRUCTION; SAVING CLAUSE; APPROPRIATION; REPEAL.

- § 82. EFFECT OF ACT ON PENDING ACTIONS AND PROCEEDINGS.
- § 83. CONSTITUTIONALITY.
- § 84. INTERSTATE COMMERCE.
- § 85. APPROPRIATION.
- § 86. REPEAL.

Public utilities act.

§ 1. This act shall be known as the "public utilities act" and shall apply to the public utilities and public services herein described and to the commission herein referred to.

Definitions — "Commission."

§ 2. (a) The term "commission," when used in this act, means the railroad commission of the state of California.

"Commissioner."

(b) The term "commissioner," when used in this act means one of the members of the commission.

"Corporation."

(c) The term "corporation," when used in this act includes a corporation, a company, an association and a joint stock association.

“Person.”

(d) The term “person,” when used in this act, includes an individual, a firm and a copartnership.

“Transportation of persons.”

(e) The term “transportation of persons,” when used in this act, includes every service in connection with or incidental to the safety, comfort or convenience of the person transported and the receipt, carriage and delivery of such person and his baggage.

“Transportation of property.”

(f) The term “transportation of property,” when used in this act, includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage and handling, and the transmission of credit by express corporations.

“Street railroad.”

(g) The term “street railroad,” when used in this act, includes every railway, and each and every branch or extension thereof, by whatsoever power operated, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place within any city and county or city or town, together with all real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property; but the term “street railroad,” when used in this act, shall not include a railway constituting or used as a part of a commercial or interurban railway.

“Street railroad corporation.”

(h) The term “street railroad corporation,” when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any street railroad for compensation within this state.

“Railroad.”

(i) The term “railroad,” when used in this act, includes every commercial, interurban and other railway other than a street railroad, and each and every branch or extension thereof, by whatsoever power operated, together with all tracks, bridges, trestles, rights of way, subways, tunnels, stations, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures and equipment, and all other real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property.

“Railroad corporation.”

(j) The term “railroad corporation,” when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any railroad for compensation within this state.

“Express corporation.”

(k) The term “express corporation,” when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in or transacting the business of transporting any freight, merchandise or other property for compensation on the line of any common carrier or stage or auto stage line within this state.

“Common carriers.” “Inland waters.”

(l) The term “common carrier,” when used in this act, includes every railroad corporation; street railroad corporation; express corporation; dispatch, sleeping car, dining car, drawing-room car, freight, freight line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading and every other car corporation or person, their lessess, trustees, receivers or trustees appointed by any court whatsoever, operating for compensation within this state; and every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any vessel engaged in the transportation of persons or property for compensation between points upon the inland waters of this state or regularly engaged in the transportation of persons or property for compensation upon the high seas, on regular routes between points within this state. The term “inland waters” as used in this subsection includes all navigable waters within the state of California other than the high seas.

“Pipe line.”

(m) The term “pipe line,” when used in this act, includes all real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the transmission, storage, distribution or delivery of crude oil or other fluid substances except water through pipe lines.

“Pipe line corporation.”

(n) The term “pipe line corporation,” when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any pipe line for compensation within this state.

“Gas plant.”

(o) The term “gas plant,” when used in this act, includes all real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of gas (natural or manufactured) for light, heat or power.

“Gas corporation.”

(p) The term “gas corporation,” when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any gas plant for compensation within this state, except where gas is made or produced on and distributed by the maker or producer through private property alone solely for his own use or the use of his tenants and not for sale to others.

“Electric plant.”

(q) The term “electric plant,” when used in this act, includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of electricity for light, heat or power, and all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

“Electrical corporation.”

(r) The term “electrical corporation,” when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the pro-

ducer through private property alone solely for his own use or the use of his tenants and not for sale to others.

“Telephone line.”

(s) The term “telephone line,” when used in this act includes all conduits, ducts, poles, wires, cables, instruments and appliances, and all other real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.

“Telephone corporation.”

(t) The term “telephone corporation,” when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any telephone line for compensation within this state.

“Telegraph line.”

(u) The term “telegraph line,” when used in this act, includes all conduits, ducts, poles, wires, cables, instruments and appliances, and all other real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate communication by telegraph, whether such communication is had with or without the use of transmission wires.

“Telegraph corporation.”

(v) The term “telegraph corporation,” when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any telegraph line for compensation within this state.

“Water system.”

(w) The term “water system,” when used in this act, includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment or measurement of water for power, irrigation, reclamation or manufacturing, or for municipal, domestic or other beneficial use.

“Water corporation.”

(x) The term “water corporation,” when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any water system for compensation within this state.

“Vessel.”

(y) The term “vessel,” when used in this act, includes every species of water craft, by whatsoever power operated, which is owned, controlled, operated or managed for public use in the transportation of persons or property, except rowboats, sailing boats and barges under twenty tons dead weight carrying capacity, and vessels propelled by steam, gas, fluid naphtha, electricity, or other motive power under the burden of five tons net register.

“Wharfinger.”

(z) The term “wharfinger,” when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees, appointed by any court whatsoever,

owning, controlling, operating or managing any dock, wharf or structure used by vessels in connection with or to facilitate the receipt or discharge of freight or passengers for compensation within this state.

“Warehouseman.”

(aa) The term “warehouseman,” when used in this act includes every corporation or persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any building or structure in which property is regularly stored for compensation within this state, in connection with or to facilitate the transportation of property by a common carrier or vessel, or the loading or unloading of the same, other than a dock, wharf or structure, owned, operated, controlled or managed by a wharfinger.

“Heating plant.”

(bb) The term “heating plant,” when used in this act, includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of heat for domestic, business, industrial or public use.

“Heat corporation.”

(cc) The term “heat corporation,” when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any heating plant for compensation within this state, except where heat is generated on or distributed by the producer through private property alone solely for his own use or the use of his tenants and not for sale to others.

“Public utility.”

(dd) The term “public utility,” when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof. The term “public or any portion thereof” as herein used means the public generally, or any limited portion of the public including a person, private corporation, municipality or other political subdivision of the state, for which the service is performed or to which the commodity is delivered, and whenever any common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger, warehouseman or heat corporation performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger, warehouseman or heat corporation is hereby declared to be a public utility subject to the jurisdiction, control and regulation of the commission and the provisions of this act. Furthermore, when any person or corporation performs any service or delivers any commodity to any person or persons, private corporation or corporations, municipality or other political subdivision of the state, which in turn either directly or indirectly, mediately or immediately, perform such service or deliver such commodity to or for the public or some portion thereof, such person or persons, private corporation or corporations and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this act. [Amendment of May 11, 1919. In effect July 22, 1919, Stats. 1919, p. 489.]

This section was also amended May 29, 1917, Stats. 1917, p. 1330.

Railroad commission.

§ 3. (a) The railroad commission shall consist of five members, who shall be appointed by the governor from the state at large. Upon the expiration of the terms, respectively, for which the commissioners now in office were appointed, the term of each commissioner thereafter shall be six years. The commissioners shall elect one of their number president of the commission.

Vacancy.

(b) Whenever a vacancy in the office of commissioner shall occur, the governor shall forthwith appoint a qualified person to fill the same for the unexpired term. The legislature, by a two-thirds vote of all members elected to each house, may remove any one or more of said commissioners from office for dereliction of duty or corruption or incompetency.

Attorney to commission.

§ 4. The commission shall have power to appoint as attorney to the commission an attorney at law of his state, who shall hold office during the pleasure of the commission. It shall be the right and the duty of the attorney to represent and appear for the people of the state of California and the commission in all actions and proceedings involving any question under this act or under any order or act of the commission, and, if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence, prosecute and expedite the final determination of all actions and proceedings directed or authorized by the commission; to advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and the members thereof; and generally to perform all duties and services as attorney to the commission which the commission may require of him.

Secretary. Assistant secretary.

§ 5. The commission shall appoint a secretary, who shall hold office during its pleasure. It shall be the duty of the secretary to keep a full and true record of all proceedings of the commission, to issue all necessary process, writs, warrants and notices, and to perform such other duties as the commission may prescribe. The commission may appoint an assistant secretary, who shall have all the powers conferred by law upon peace officers to carry weapons, make arrests and serve warrants and other process in any county or city and county of this state. The secretary and the assistant secretary shall have power to administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.

Other employees.

§ 6. The commission shall have power to employ, during its pleasure, such officers, experts, engineers, statisticians, accountants, inspectors, clerks and employees as it may deem necessary to carry out the provisions of this act or to perform the duties and exercise the powers conferred by law upon the commission. The commission shall have power to employ, during its pleasure, examiners who shall have power to administer oaths, examine witnesses, issue subpoenas and receive evidence, under such rules and regulations as the commission may adopt.

Oath of office. Qualifications.

§ 7. Each commissioner shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office. Each commissioner shall be a qualified elector of this state, and no person in the employ of or holding any official relation to

any corporation or person, which said corporation or person is subject in whole or in part to regulation by the commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed to or hold the office of commissioner or be appointed or employed by the commission; provided, that if any such person shall become the owner of such stocks or bonds or become pecuniarily interested in such corporation otherwise than voluntarily, he shall within a reasonable time divest himself of such ownership or interest; failing to do so, his office or employment shall become vacant.

Office of commission. Seal. Office furniture.

§ 8. (a) The office of the commission shall be in the city and county of San Francisco. The office shall always be open, legal holidays and non-judicial days excepted. The commission shall hold its sessions at least once in each calendar month in said city and county of San Francisco, and may also meet at such other times and in such other places as may be expedient and necessary for the proper performance of its duties. For the purpose of holding sessions in places other than the city and county of San Francisco, the commission shall have power to rent quarters or offices, and the expense thereof and in connection therewith shall be paid in the same manner as other expenses authorized by this act. The sessions of the commission shall be public.

(b) The commission shall have a seal, bearing the following inscription: "Railroad Commission State of California." The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

(c) The commission is authorized to procure all necessary books, maps, charts, stationery, instruments, office furniture, apparatus and appliances, and the same shall be paid for in the same manner as other expenses authorized by this act.

Quorum. Taking evidence.

§ 9. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power of the commission. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of a majority of the commissioners when in session as a board shall be deemed to be the act of the commission; but any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner or commissioners designated for the purpose by the commission. The evidence in any investigation, inquiry or hearing may be taken by the commissioner or commissioners to whom such investigation, inquiry or hearing has been assigned or, in his or their behalf, by an examiner designated for that purpose. Every finding, opinion and order made by the commissioner or commissioners so designated, pursuant to such investigation, inquiry or hearing, when approved or confirmed by the commission and ordered filed in its office, shall be deemed to be the finding, opinion and order of the commission.

Salaries.

§ 10. (a) The annual salary of each commissioner shall be eight thousand (8,000) dollars. All officers, experts, engineers, statisticians, accountants, examiners, inspectors, clerks and employees of the commission shall receive such compensation as may be fixed by the commission. The commissioners shall be civil executive officers and their salaries as fixed by law shall be paid in the same manner as are the salaries of other state officers. The salary or compensation of every person employed by the commission shall be paid monthly from the funds appropriated for the use of the commission, after being approved by the commission, upon claims therefor to be audited by the board of control.

Expenses. Premium on bonds.

(b) All expenses incurred by the commission pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the commissioners, and their employees, incurred while on business of the commission, and including the premium or charge for bonds given by surety companies for employees of the commission when required by the commission; provided, however, that no such premium or charge shall exceed one-half of one per cent per annum of the amount of such bond, shall be paid from the funds appropriated for the use of the commission, after being approved by the commission, upon claims therefor to be audited by the board of control.

Pass on railroads, etc.

§ 11. The commissioners and the officers and employees of the commission, shall, when in the performance of their official duties, have the right to pass, free of charge, on all railroads, cars, vessels and other vehicles of every common carrier, as said term is defined in this act, subject in whole or in part to control or regulation by the commission, between points within this state, and such persons shall not be denied the right to travel upon any railroad, car, vessel or other vehicle of such common carrier, whether such railroad, car, vessel or other vehicle be used for the transportation of passengers or freight, and regardless of its class.

Annual report.

§ 12. The commission shall make and submit to the governor on or before the first day of December of each year, a report containing a full and complete account of its transactions and proceedings for the preceding fiscal year, together with such other facts, suggestions, and recommendations as it may deem of value to the people of the state.

Public utility charges to be just.

§ 13. (a) All charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.

Equipment, etc., to be safe and convenient.

(b) Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.

Rules to be reasonable.

(c) All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

Common carrier rates to be filed. Terminal charges. Copy for public inspection. Form of schedule.

§ 14. (a) Every common carrier shall file with the commission and shall print and keep open to the public inspection schedules showing the rates, fares, charges and classifications for the transportation between termini within this state of persons and property from each point upon its route to all other points thereon; and from each point upon its route to all points upon every other route leased, operated or controlled by it; and from each point on its route or upon any route leased, operated or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate shall have been established or ordered between any two such points.

If no joint rate over a through route has been established, the schedules of the several carriers in such through route shall show the separately established rates, fares, charges and classifications applicable to the through transportation. The schedules printed as aforesaid shall plainly state the places between which property and persons will be carried, and shall also contain the classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and all rules or regulations which may in any wise change, affect or determine any part, or the aggregate of, such rates, fares, charges and classifications, or the value of the service rendered to the passenger, shipper or consignee. Subject to such rules and regulations as the commission may prescribe, such schedules shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation, when such station or office is in charge of an agent, and in every station or office of such carrier where passenger tickets or tickets for sleeping, parlor car or other train accommodations are sold or bills of lading or waybills or receipts for property are issued. Any or all of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person. A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person, and that the agent will assist any person to determine from such schedules any rates, fares, rules or regulations in force, shall be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of every such schedule shall be prescribed by the commission and shall conform in the case of common carriers subject to the act of congress entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the acts amendatory thereof and supplementary thereto, as nearly as may be to the form of schedules prescribed by the interstate commerce commission under said act.

Rates of other public utilities to be filed.

(b) Under such rules and regulations as the commission may prescribe, every public utility other than a common carrier shall file with the commission within such time and in such form as the commission may designate, and shall print and keep open to public inspection schedules showing all rates, tolls, rentals, charges and classifications collected or enforced, or to be collected or enforced, together with all rules, regulations, contracts, privileges and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service. The rates, tolls, rentals and charges, as to which the commission, by the amendment of November third, nineteen hundred and fourteen to section twenty-three of article twelve of the constitution of California and this act, for the first time acquires jurisdiction, shall not in any case exceed the rates, tolls, rentals or charges in effect on November third, nineteen hundred and fourteen. Nothing in this section contained shall prevent the commission from approving or fixing rates, tolls, rentals or charges, from time to time, in excess of or less than those shown by said schedules.

Changes in form of schedule.

(c) The commission shall have power, from time to time, in its discretion, to determine and prescribe by order such changes in the form of the schedules referred to in this section as it may find expedient, and to modify the requirements of any of its orders, rules or regulations in respect to any matter in this section referred to.

Change in public utility rates after thirty days' notice.

§ 15. Unless the commission otherwise orders, no change shall be made by any public utility in any rate, fare, toll, rental, charge or classification, or in any rule, regulation

or contract relating to or affecting any rate, fare, toll, rental, charge, classification or service, or in any privilege or facility, except after thirty days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect. The commission, for good cause shown, may allow changes without requiring the thirty days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. When any change is proposed in any rate, fare, toll, rental, charge or classification, or in any form of contract or agreement or in any rule, regulation or contract relating to or affecting any rate, fare, toll, rental, charge, classification or service, or in any privilege or facility, attention shall be directed to such change on the schedule filed with the commission, by some character to be designated by the commission, immediately preceding or following the item.

Filing of joint rates.

§ 16. The names of the several public utilities which are parties to any joint tariff, rate, fare, toll, contract, classification or charge shall be specified in the schedule or schedules showing the same. Unless otherwise ordered by the commission, a schedule showing such joint tariff, rate, fare, toll, contract, classification or charge need be filed with the commission by only one of the parties to it; provided, that there is also filed with the commission in such form as the commission may require a concurrence in such joint tariff, rate, fare, toll, contract, classification or charge by each of the other parties thereto.

No transportation until rates are filed.

§ 17. (a) 1. No common carrier subject to the provisions of this act shall engage or participate in the transportation of persons or property, between points within this state, until its schedules of rates, fares, charges and classifications shall have been filed and published in accordance with the provisions of this act.

Different rate not to be charged.

2. No common carrier shall charge, demand, collect or receive a greater or less or different compensation for the transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion or the rates, fares or charges so specified, except upon order of the commission as hereinafter provided, nor extend to any corporation or person any privilege or facility in the transportation of passengers or property except such as are regularly and uniformly extended to all corporations and persons.

Passes not to be given except to own officers, etc. "Employees defined." No pass to shipper. Railroad commission. Newspapers.

3. No common carrier subject to the provisions of this act shall, directly or indirectly, issue, give or tender any free ticket, free pass or free or reduced-rate transportation for passengers between points within this state, except to its officers, agents, employees, attorneys, physicians and surgeons, and members of their families; to ministers of religions, traveling secretaries of railroad men's religious associations, or executive officers, organizers or agents of railroad employees' mutual benefit associations giving the greater portion of their time to the work of any such association; inmates of hospitals or charitable or eleemosynary institutions, and persons exclusively engaged in charitable or eleemosynary work, and persons and property engaged or employed in educational work or scientific research or in patriotic work when permitted by the commission; to

the executive officers of mercantile or promotion boards or bodies within this state when traveling in the performance of duties affecting the advancement of the business of such boards or bodies, or the development of trade or industry within or without this state, when authorized by the commission; to hotel employees of season resort hotels when authorized by the commission to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers, going and returning, of live stock, poultry, milk, fruit and other freight, under uniform and non-discriminatory regulations; to employees of sleeping-car corporations, express corporations and telegraph and telephone corporations; to railway mail service employees, United States internal revenue officers, post-office inspectors, customs officers and inspectors and immigration inspectors when traveling in the course of their official duty; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the carrier is interested, persons injured in accidents or wrecks and physicians and nurses attending such persons; provided, that the term "employees," as used in this section, shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such carrier, ex-employees traveling for the purpose of entering the service of any such carrier, and the remains of persons dying while in the employment of any such carrier; and the term "families," as used in this section, shall include the families of those persons heretofore named in this proviso, and the families of persons killed, and the widows during widowhood and minor children during minority of persons who died while in the service of any such carrier; and provided, further, that no free ticket, free pass or free or reduced-rate transportation shall be issued, given or tendered to any officer, agent or employee of a common carrier, who is at the same time a shipper or receiver of freight, or an officer, agent or employee of a shipper or receiver of freight, unless such officer, agent or employee devotes substantially his entire time to the service of such carrier; and provided, further, that the members of the railroad commission, their officers and employees, shall be entitled, when in the performance of their official duties, to free transportation over the lines of all common carriers within this state; and provided, further, that passenger transportation may issue to the proprietors and employees of newspapers and magazines and the members of their immediate families, in exchange for advertising space in such newspapers or magazines at full rates, subject however to such reasonable restrictions as the commission may impose.

Express matter to company's officers. Exceptions.

Nothing in this act contained shall be construed to prohibit the issue by express corporations of free or reduced-rate transportation for express matters to their officers, agents, employees, attorneys, physicians and surgeons, and members of the families, or the interchange of free or reduced-rate transportation for passengers or express matter between common carriers, their officers, agents, employees, attorneys, physicians and surgeons, and members of their families, where such common carriers are subject in whole or in part to the jurisdiction of the commission or of the interstate commerce commission, or where such common carriers, though not in whole or in part subject to the jurisdiction of this commission or of the interstate commerce commission, but which are engaged in the business of transporting passengers and freight by water between the United States and foreign countries, and are permitted by the interstate commerce act to interchange such free transportation with common carriers which are subject to the jurisdiction of the interstate commerce commission or to the jurisdiction of this commission; provided, that such express matter be for the personal use of the person to or for whom such free or reduced-fare transportation is granted, or

of his family; nor to prohibit the issue of reduced-rate transportation by a common carrier to children attending an institution of learning; nor to prohibit the issue of passes or franks by telegraph or telephone corporations to their officers, agents, employees, attorneys, physicians and surgeons, and members of their families, or the exchange of passes or franks between such telegraph and telephone corporations or between such corporations and such common carriers, for their officers, agents, employees, attorneys, physicians and surgeons, and members of their families; nor to prevent the carrying out of contracts for free or reduced-rate passenger transportation heretofore made, founded upon adequate consideration and lawful when made; nor to prevent a common carrier from transporting, storing or handling, free or at reduced rates, the household goods and personal effects of its employees, of persons entering or leaving its service, and of persons killed or dying while in its service.

United States, state etc., property may be carried free in certain cases.

4. Every common carrier subject to the provisions of this act may transport, free or at reduced rates, persons or property for the United States, state, county or municipal governments, or for charitable purposes, or for patriotic purposes, or to provide relief in cases of general epidemic, pestilence or other calamitous visitation, and property to or from fairs or expositions for exhibit thereat; also contractors and their employees, material or supplies for use or engaged in carrying out their contracts with said carriers, for construction, operation or maintenance work or work incidental thereto on the line of the issuing carrier, to the extent only that such free or reduced-rate transportation is provided for in the specifications upon which the contract is based and in the contract itself. Common carriers may also enter into contracts with telegraph and telephone corporations for an exchange of service.

Rebates prohibited.

(b) Except as in this section otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, nor shall any public utility engaged in furnishing or rendering more than one product, commodity or service, charge, demand, collect or receive a greater or less, or different compensation for the collective, combined or contemporaneous furnishing or rendition of two or more of such products, commodities or services, than the aggregate of the rates, tolls, rentals or charges specified in its schedules on file and in effect at the time, applicable to each such product, commodity or service when separately furnished or rendered, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; provided, that the commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility. [Amendment of May 11, 1919. In effect July 22, 1919. Stats. 1919, p. 493.]

This section was also amended April 25, 1917, Stats. 1917, p. 199.

Schedule of fares, etc., to be filed.

§ 18. Every common carrier and every telegraph and telephone corporation shall print and file or cause to be filed with the commission schedules showing all the rates, fares, tolls, rentals, charges and classifications for the transportation of persons or property or the transmission of messages or conversations between all points within this state and all points without the state upon its route, and between all points within this state and all points without the state upon every route leased, operated or controlled

by it, and between all points on its route or upon any route, leased, operated or controlled by it within this state and all points without the state upon the route of any other common carrier or telegraph or telephone corporation, whenever a through route and joint rate shall have been established between any two such points.

Different rates prohibited.

§ 19. No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any reasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section.

Economies encouraged.

§ 20. Nothing in this act shall be taken to prohibit any public utility from itself profiting, to the extent permitted by the commission, from any economies, efficiencies or improvements which it may make, and from distributing by way of dividends, or otherwise disposing of, the profits to which it may be so entitled, and the commission is authorized to make or permit such arrangement or arrangements with any public utility as it may deem wise for the purpose of encouraging economies, efficiencies or improvements and securing to the public utility making the same such portion, if any, of the profits thereof as the commission may determine.

Sliding scale of charges.

§ 21. Nothing in this act shall be taken to prohibit a corporation or person engaged in the production, generation, transmission or furnishing of heat, light, water or power, or telegraph or telephone service, from establishing a sliding scale of charges; provided, that a schedule showing such scale of charges shall first have been filed with the commission and such schedule and each rate set out therein approved by it. Nothing in this act shall be taken to prohibit any such corporation or person from entering into an agreement for a fixed period for the automatic adjustment of charges for heat, light, water or power, or telegraph or telephone service, in relation to the dividends to be paid to stockholders of such corporation, or the profit to be realized by such person; provided, that a schedule showing the scale of charges under such arrangement shall first have been filed with the commission and such schedule and each rate set out therein approved by it. Nothing in this section shall prevent the commission from revoking its approval at any time and fixing other rates and charges for the product or commodity or service, as authorized by this act.

Transfer of passengers, cars, etc., to be facilitated.

§ 22. (a) Every common carrier shall afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers, tonnage and cars, loaded or empty, between the lines owned, operated, controlled or leased by it and lines of every other common carrier, and shall make such interchange and transfer promptly without discrimination between shippers, passengers or carriers either as to compensation charged, service rendered or facilities afforded. Every railroad corporation shall receive from every other railroad corporation, at any point of connection, freight cars of proper standard and in proper condition, and shall haul the same either to destination, if the destination be upon a line owned, operated or controlled by such railroad corporation, or to point of transfer according to route billed, if the destination be upon the line of some other railroad corporation.

Duty to establish joint rates not modified.

Nothing in this section contained shall be construed as in anywise limiting or modifying the duty of a common carrier to establish joint rates, fares and charges for the transportation of passengers and property over the lines owned, operated, controlled or leased by it and the lines of other common carriers, nor as in any manner limiting or modifying the power of the commission to require the establishment of such joint rates, fares and charges.

Telephone, etc., connections.

(b) Every telephone corporation and telegraph corporation operating in this state shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telephone or telegraph corporation with whose line a physical connection may have been made.

False billing, weights, etc., prohibited.

§ 23. (a) No common carrier, or any officer or agent thereof, or any person acting for or employed by it, shall, by means of known false billing, classification, weight, weighing, or report of weight, or by any other device or means assist, suffer or permit any corporation or person to obtain transportation for any person or property between points within this state at less than the rates and fares then established and in force as shown by the schedules filed and in effect at the time. No person, corporation, or any officer, agent or employee of a corporation shall, by means of false billing, false or incorrect classification, false weight or weighing, false representation as to contents or substance of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of a common carrier or any of its officers, agents or employees, seek to obtain or obtain such transportation for such property at less than the rates then established and in force therefor.

Obtaining allowance by false billing, etc., prohibited.

(b) No person or corporation, or any officer, agent or employee of a corporation, shall knowingly, directly or indirectly, by any false statement or representation as to cost or value, or the nature or extent of an injury, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit or deposition, or upon any false, fictitious or fraudulent statement or entry, obtain or attempt to obtain any allowance, rebate or payment for damage, in connection with or growing out of the transportation of persons or property, or an agreement to transport such persons or property, whether with or without the consent or connivance of a common carrier or any of its officers, agents or employees; nor shall any common carrier, or any officer, agent or employee thereof, knowingly pay or offer to pay any such allowance, rebate or claim for damage.

Short and long haul.

§ 24. (a) No common carrier subject to the provisions of this act shall charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation as a through rate than the aggregate of the intermediate rates; but this shall not be construed as authorizing any such common carrier to charge or receive as great a compensation for a shorter as for a longer distance or haul. Upon application to the commission, such common carrier may, in special cases, after investigation, be authorized by the commission to charge less for a longer than for a shorter distance for the transportation of persons or property, and the commission may from time to time prescribe the extent to which such carrier may be relieved from the operation and requirements of this section.

Short and long distance telephone messages.

(b) No telephone or telegraph corporation subject to the provisions of this act shall charge or receive any greater compensation in the aggregate for the transmission of any long distance message or conversation for a shorter than for a longer distance over the same line or route in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates or tolls subject to the provisions of this act; but this shall not be construed as authorizing any such telephone or telegraph corporation to charge and receive as great a compensation for a shorter as for a longer distance. Upon application to the commission, a telephone or telegraph corporation may, in special cases, after investigation, be authorized by the commission to charge less for a longer than for a shorter distance service for the transmission of messages or conversations, and the commission may from time to time prescribe the extent to which such telephone or telegraph corporation may be relieved from the operation and requirements of this section.

Connection between railroads and private tracks.

§ 25. (a) Every railroad corporation, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, for a connection between the railroad of such railroad corporation and any existing or contemplated private track, tracks or railroad of such corporation or person, shall make such connection and provide such switches and tracks as may be necessary for that purpose and deliver and receive cars thereover; provided, that such connection is reasonably practicable and can be installed and used without materially increasing the hazard of the operation of the railroad with which such connection is sought, and that the business which may reasonably be expected to be received by such railroad corporation over such connection is sufficient to justify the expense of such connection to such railroad corporation.

To construct spur and handle freight.

(b) Under the conditions specified in the proviso in subsection (a) hereof, every railroad corporation, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, shall construct upon its right of way a spur or spurs for the purpose of receiving and delivering freight thereby, and shall receive and deliver freight thereby.

Foreign corporations to comply with law.

§ 26. No foreign corporation, other than those which by a compliance with the laws of this state are entitled to transact a public utility business within this state, shall henceforth transact within this state any public utility business, nor shall any foreign corporation which is at present lawfully transacting business within this state henceforth transact within this state any public utility business of a character different from that which it is at present authorized by its charter or articles of incorporation to transact, nor shall any license, permit or franchise to own, control, operate or manage any public utility business or any part or incident thereof be henceforth granted or transferred, directly or indirectly, to any foreign corporation which is not at present lawfully transacting within this state a public utility business of like character; provided, that foreign corporations engaging in commerce with foreign nations or commerce among the several states of this union may transact within this state such commerce and intrastate commerce of a like character.

Street car fare in city. Transfers.

§ 27. No street or interurban railroad corporation shall charge, demand, collect or receive more than five cents for one continuous ride in the same general direction

within the corporate limits of any city and county, or city or town, except upon a showing before the commission that such greater charge is justified; provided, that until the decision of the commission upon such showing, a street or interurban railroad corporation may continue to demand, collect and receive the fare lawfully in effect on November 3, 1914. Every street or interurban railroad corporation shall upon such terms as the commission shall find to be just and reasonable furnish to its passengers transfers entitling them to one continuous trip in the same general direction over and upon the portions of its lines within the same city and county, or city or town, not reached by the originating car.

Companies to furnish information.

§ 28. (a) Every public utility shall furnish to the commission in such form and such detail as the commission shall prescribe all tabulations, computations and all other information required by it to carry into effect any of the provisions of this act, and shall make specific answers to all questions submitted by the commission.

Filling blanks.

(b) Every public utility receiving from the commission any blanks with directions to fill the same shall cause the same to be properly filled out so as to answer fully and correctly each question propounded therein; in case it is unable to answer any question, it shall give a good and sufficient reason for such failure.

Books and inventory of property.

(c) Whenever required by the commission, every public utility shall deliver to the commission copies of any or all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers and records in its possession or in any way relating to its property or affecting its business, and also a complete inventory of all its property in such form as the commission may direct.

Information not open to public.

(d) No information furnished to the commission by a public utility, except such matters as are specifically required to be open to public inspection by the provisions of this act, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any officer or employee of the commission who, in violation of the provisions of this subsection, divulges any such information shall be guilty of a misdemeanor.

Annual report.

§ 29. Every public utility shall annually furnish to the commission at such time and in such form as the commission may require a report in which the utility shall specifically answer all questions propounded by the commission upon or concerning which the commission may desire information. The commission shall have authority to require any public utility to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special reports concerning any matter about which the commission is authorized by this or any other act to inquire or to keep itself informed, or which it is required to enforce. All reports shall be under oath when required by the commission.

Compliance with orders.

§ 30. Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in the matters herein specified, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees.

Supervision of public utilities vested in commission.

§ 31. The railroad commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

Power to change unjust rates.

§ 32. (a) Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices or contracts, or any of them, affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any wise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges or classifications are insufficient, the commission shall determine the just, reasonable or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.

Power to fix new rates.

(b) The commission shall have power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate, fare, toll, rental, charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts and practices, or any thereof, of any public utility, and to establish new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices, or schedule or schedules, in lieu thereof.

Power to fix joint rates. Division of rates between carriers.

§ 33. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares or charges in force over two or more common carriers, between any two points in this state, are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate, fare or charge exists between such points, and that the public convenience and necessity demand the establishment of a through route and joint rate, fare or charge between such points, the commission may order such common carriers to establish such through route and may establish and fix a joint rate, fare or charge which will be fair, just, reasonable and sufficient, to be followed, charged, enforced, demanded and collected in the future, and the terms and conditions under which such through route shall be operated. The commission may order that freight moving between such points shall be carried by the different common carriers, parties to such through route and joint rate, without being transferred from the originating cars. In case the common carriers do not agree upon the division between them of the joint rates, fares or charges established by the commission over such through routes, the commission shall, after hearing, by supplemental order, establish such division; provided, that where any railroad which is made a party to a through route has itself over its own line an equally satisfactory through route between the termini of the joint rate, fare or charge its local rate, fare or charge over the portion of its line comprised in such through route, and the commission may, in its discretion, allow to such railroad more than its local rate, fare, or charge whenever it will be equitable so to do. The commission shall have the power to establish and fix through routes and joint rates, fares or charges over common carriers and stage or auto stage lines and to fix the division of such joint rates, fares or charges.

Power to investigate interstate rates.

§ 34. The commission shall have the power to investigate all existing or proposed interstate rates, fares, tolls, charges and classifications, and all rules and practices in relation thereto, for or in relation to the transportation of persons or property or the transmission of messages or conversations, where any act in relation thereto shall take place within this state; and when the same are, in the opinion of the commission, excessive or discriminatory or in violation of the act of congress entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the acts amendatory thereof and supplementary thereto, or of any other act of congress, or in conflict with the rulings, orders or regulations of the interstate commerce commission, the commission may apply by petition or otherwise to the interstate commerce commission or to any court of competent jurisdiction for relief.

Unjust rules, etc., may be changed.

§ 35. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rules, regulations, practices, equipment, appliances, facilities or service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed and shall fix the same by its order, rule or regulation. The commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and, on proper demand and tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

Improvements may be ordered.

§ 36. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expenses of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

May order railroads to run additional cars, etc.

§ 37. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that any railroad corporation or street railroad corporation does not run a sufficient number of trains or cars, or possess or operate sufficient motive power, reasonably to accommodate the traffic, passenger or freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop the same at proper places, or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the commission shall have power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car, or to change the stopping place or places thereof, or to make any other order that the commission may determine to be reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation.

Connection between tracks may be ordered.

§ 38. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the public convenience and necessity would be subserved by having connections made between the tracks of any two or more railroad or street railroad corporations, so that cars may readily be transferred from one to the other, at any of the points hereinafter in this section specified, the commission may order any two or more such corporations owning, controlling, operating or managing tracks of the same gauge to make physical connections at any and all crossings, and at all points where a railroad or street railroad shall begin or terminate or run near to any other railroad or street railroad. After the necessary franchise or permit has been secured from the city and county, or city or town, the commission may likewise order such physical connection, within such city and county, or city or town, between two or more railroads which enter the limits of the same. The commission shall by order direct whether the expense of the connections referred to in this section shall be borne jointly or otherwise.

May order in spur track refused by company.

§ 39. (a) Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that application has been made by any corporation or person to a railroad corporation for a connection or spur as provided in section 25 of this act, and that the railroad corporation has refused to provide such connection or spur and that the applicant is entitled to have the same provided for him under said section 25, the commission shall make an order requiring the providing of such connection or spur and the maintenance and use of the same upon reasonable terms which the commission shall have the power to prescribe. Whenever any such connection or spur has been so provided, any corporation or person shall be entitled to connect with the private track, tracks or railroad thereby connected with the railroad of the railroad corporation and to use the same or to use the spur so provided upon payment to the party or parties incurring the primary expense of such private track, tracks or railroad, or the connection therewith or of such spur, of a reasonable proportion of the cost thereof to be determined by the commission after notice to the interested parties and a hearing thereon; provided, that such connection and use can be made without unreasonable interference with the rights of the party or parties incurring such primary expense.

Switching charges.

(b) The commission shall likewise have the power to require one railroad corporation to switch to private spurs and industrial tracks upon its own railroad the cars of a

connecting railroad corporation and to prescribe the terms and compensation for such service.

Physical connections between telephone lines may be ordered.

§ 40. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that a physical connection can reasonably be made between the lines of two or more telephone corporations or two or more telegraph corporations whose lines can be made to form a continuous line of communication, by the construction and maintenance of suitable connections for the transfer of messages or conversations, and that public convenience and necessity will be subserved thereby, or shall find that two or more telegraph or telephone corporations have failed to establish joint rates, tolls or charges for service by or over their said lines, and that joint rates, tolls or charges ought to be established, the commission may, by its order, require that such connection be made on the payment of such compensation, if any, as the commission may find to be just and reasonable, except where the purpose of such connection is primarily to secure the transmission of local messages or conversations between points within the same city and county, or city or town, and that conversations be transmitted and messages transferred over such connection under such rules and regulations as the commission may establish, and prescribe through lines and joint rates, tolls and charges to be made, and to be used, observed and in force in the future. If such telephone or telegraph corporations do not agree upon the division between them of the cost of such physical connection or connections or the division of the joint rates, tolls or charges established by the commission over such through lines, the commission shall have authority, after further hearing, to establish such division by supplemental order.

Use of conduits, etc., of one company by another may be ordered.

§ 41. Whenever the commission, after a hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over, or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use be directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result therefrom to the property of such owner or other users thereof, and the commission shall have power to ascertain and direct the payment, prior to such use, of fair and just compensation for damage suffered, if any.

Safety devices.

§ 42. The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every public utility to construct, maintain and operate its line, plant, system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signalling, to establish uniform or other standards of construction and equipment,

and to require the performance of any other act which the health or safety of its employees, passengers, customers or the public may demand.

No grade crossings without permission.

§ 43. (a) No public road, highway or street shall hereafter be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without having first secured the permission of the commission; provided, that this subsection shall not apply to the replacement of lawfully existing tracks. The commission shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

Power to determine crossing point, etc. Payment of amount apportioned.

(b) The commission shall have the exclusive power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public road or highway by a railroad or street railroad and of a street by a railroad or vice versa, subject to the provisions of section two thousand six hundred ninety-four of the Political Code so far as applicable, and to alter, relocate or abolish any such crossing, and to require, where in its judgment it would be practicable, a separation of grades at any such crossings heretofore or hereafter established and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the construction, alteration, relocation or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected or between such corporations and the state, county, municipality or other political subdivision affected. It shall be the duty of each corporation and political subdivision to which any of the expense is apportioned to pay from the funds available therefor in its treasury the amount apportioned to it at the time and to the parties specified by the order of the commission and if the same is not paid in accordance with the commission's order the corporation or political subdivision entitled thereto under the commission's order shall have the right to sue therefor in any court of competent jurisdiction. If no such funds are available as aforesaid, it shall be the duty of the appropriate boards, officers and employees intrusted with the levy and collection of the taxes or assessments of such political subdivision to do all acts necessary to include in the next succeeding tax or assessment levy the amount due and to collect the same, whereupon the amount due shall be paid over to the corporation or corporations, the state, political subdivision, or political subdivisions entitled thereto under the commission's order. The commission shall have the power by order to designate the state, certain of said corporations, and political subdivisions, affected, to do all or specified portions of the acts required by any order of the commission made under the provisions of this subsection, and to prescribe the manner and the time within which the parties so designated shall be paid or reimbursed by the other corporations, the state and political subdivisions among which the expense of the work has been apportioned by the commission.

Power to fix just compensation.

(c) 1. The commission shall have power in accordance with the procedure provided in this subsection to fix the just compensation to be paid for property or any interest in or to property to be taken or damaged in the separation of grades at any crossing specified in subsection (b) hereof, or for property or any interest in or to property to

be taken or damaged in the construction, alteration or relocation, under the order or with the approval of the commission, of elevated tracks or subways for any railroad or street railroad over or under any public road, street, highway or private right of way, or of any public road, street or highway over or under the tracks of any railroad corporation or street railroad corporation; and upon the payment of the just compensation so fixed to make a final order of condemnation as hereinafter provided.

Manner of commencing proceedings.

2. Proceedings under subsection (c) hereof may be commenced by order on the commission's own motion or by a petition filed by the state, county, city and county, incorporated city or town, other political subdivision, railroad corporation, or street railroad corporation affected. Any proceeding commenced under this subsection may be made a part of any proceeding commenced under subsection (b) hereof. Said petition shall set forth the name and interest of the petitioner, and said order on the commission's own motion and said petition shall set forth a statement of the purpose of the proceedings and the use for which property or interest in or to property is sought to be taken, a description of each piece of land or other property or interest in or to property sought to be taken, and whether the same includes the whole or only a part of an entire parcel or tract or piece of property or interest in or to property and the names and addresses of all owners and claimants thereof, if known, or a statement that they are unknown, and a statement of each railroad corporation, the state and political subdivision which in the opinion of the commission or the petitioner has an interest in the proceeding. Said petition shall pray that the commission fix the just compensation to be paid for the acquisition of or damage to the property and interest in or to property specified in the petition, that the commission designate the party or parties to the proceeding who shall pay such compensation and the owners and claimants of the property and interest in or to property condemned to whom such compensation shall be paid and that the commission make its final order of condemnation; provided, that when the proceeding is commenced by order on the commission's own motion said matters shall be included in the statement of the purpose of the proceeding. Said petition shall be duly verified and at the time the same is filed with the commission the petitioner shall also file the additional copies thereof equal in number to three or more than the number of owners and claimants named in the petition.

Order to appear. Service. Publication. Notice of hearing. Amendment of petition.

3. Upon the filing of said petition with the commission or the making of said order on the commission's own motion, the commission shall make its order specifying the nature of the proceeding, containing a general description of the property and interest in or to property to be condemned, and directing the owners and claimants and the railroad corporations, street railroad corporations, and governmental authorities in interest named in said petition or order on the commission's own motion, who shall also be named in said order to show cause, to appear before the commission at a time and place specified in said order, to show cause, if any they have, why the commission should not proceed after hearing to fix the just compensation to be paid for the acquisition of or damage to the property and interest in or to property specified in said petition or order on the commission's own motion, to designate the party or parties to the proceeding who shall pay such compensation and the owners and claimants to whom such compensation shall be paid and to make its final order of condemnation. Said order to show cause shall direct the secretary of the commission to serve or cause to be served upon each said owner and claimant, railroad corporation, street railroad corporation and governmental authority in interest a copy of said order certified under the seal of the commission to which shall be attached a true and correct copy of the petition or order on the commission's own motion; provided, that when the proceeding is com-

menced by order on the commission's own motion said order to show cause may be incorporated in said order on the commission's own motion. Personal service shall be made in accordance with the provisions of the Code of Civil Procedure of the state of California: provided, that service may also be made by depositing a copy of said order to show cause certified under seal of the commission with a true copy of the petition or order on the commission's own motion attached thereto or made a part thereof in the United States mail, enclosed in a sealed envelope, registered, with postage prepaid, addressed to each owner or claimant, railroad corporation, street railroad corporation and governmental authority in interest named in said petition or order on the commission's own motion. If any owner or claimant named in the petition or order on the commission's own motion resides out of the state or has departed from the state or cannot after due diligence be found within the state, or conceals himself to avoid service, or is a corporation having no managing or business agent, cashier or secretary or other officer upon whom summons may be served, who, after due diligence, cannot be found within the state, and the fact appears by affidavit to the satisfaction of the commission, and it also appears by such affidavit or by the petition or order on the commission's own motion that a cause of action exists against such owner or claimant on whom service is to be made and that he is a necessary or proper party to the proceeding, the commission may make an order that the service be made on such owner or claimant by publication of the commission's said order to show cause. Said order of the commission shall direct that the publication be made in a newspaper to be designated by the commission as likely to give notice to the owner or claimant to be served, and for such time as the commission may find to be reasonable, at least once a week, but publication against an owner or claimant residing out of the state or absent therefrom shall not be less than two months. If the address of any owner or claimant as stated in the petition or order on the commission's own motion is out of the state, the secretary of the commission shall within fifteen days after the making and filing of said order to show cause, deposit or cause to be deposited a copy of said order to show cause certified under the seal of the commission, with a true and correct copy of the petition or order on the commissions' own motion attached thereto or made a part thereof, in the United States mail, enclosed in a sealed envelope registered, with postage prepaid, addressed to such owner or claimant at the address specified in the petition or order on the commission's own motion. Personal service of a copy of the order to show cause and of the petition or order on the commission's own motion out of the state is equivalent to publication and deposit in the United States mail. Within ten days prior to the time set for the first hearing on the petition or order on the commission's own motion, which time shall be not less than thirty days after the filing of said petition or the making of said order on the commission's own motion, the secretary shall serve or cause to be served upon the petitioner a written notice of such hearing, specifying the time and place at which such hearing shall be had. In all respects not in this paragraph otherwise provided, service and the proof of service shall be made as provided by the Code of Civil Procedure of the state of California. Upon the completion of service upon the petitioner or upon any owner or claimant, railroad corporation, street railroad corporation or governmental authority in interest named in the petition or order on the commission's own motion, the commission shall have full and complete jurisdiction in so far as such petitioner, owner or claimant, railroad corporation, street railroad corporation, or governmental authority in interest is concerned, to make each finding hereafter referred to, to fix the just compensation to be paid for the acquisition of or damage to any property or interest in or to property specified in the petition or order on the commission's own motion, to designate the party or parties to the proceeding who shall pay such compensation and the owner or claimant to whom such compensation shall be paid and to make its final order of condemnation. The failure

to make such service upon any person alleging that he is an owner or claimant or party in interest but not named in the petition or order on the commission's own motion or to acquire jurisdiction over such person shall in no way affect the jurisdiction of the commission over owners and claimants and parties in interest on whom service has been made as in this paragraph provided. The commission shall have power at any time subsequent to the filing of the petition, and prior to making and filing its finding of just compensation, to authorize the amendment of the petition, or in case the proceeding is by order on the commission's own motion to amend said order, by altering or modifying the description of said property, or interest in or to property, or by adding to or deducting from said property or interest in or to property, or by bringing in any additional party or parties and in each other respect including each jurisdictional allegation.

Hearing. Finding.

4. At the time and place specified in said order to show cause, or at such other time and place as, for good cause, may be otherwise ordered by the commission, the commission shall proceed to a hearing upon the petition or order on the commission's own motion. When the proceeding has been submitted the commission shall make and file its finding upon the question whether the use to which the property or interest in or to property is to be applied is a use authorized by law and whether the taking is necessary to such use, and shall make and file its written finding and fixing the just compensation to be paid for said property or interest in or to property; provided, that if the commission finds that severance damages should be paid, the just compensation for such damages shall be found and stated separately. Said just compensation shall be fixed by the commission as of the day on which the petition was filed or the order on the commission's own motion was made. The commission shall also make its order designating the party or parties to the proceeding who shall pay the just compensation so fixed, or any portion thereof, the amounts in which it shall be paid, the times at which it shall be paid, the property or interest in or to property for which it shall be paid, and the owners and claimants of such property or interest in or to property to whom it shall be paid. The commission may prescribe any other terms or conditions with reference to the payment of such compensation as to the commission may seem proper, including a provision that the money due be paid to the commission to be distributed to the parties entitled thereto. The party or parties whom the commission may designate to pay such compensation or any part thereof shall thereupon become liable therefor, and may be sued in any court of competent jurisdiction by the party or parties entitled to such compensation as provided in the commission's order; provided, that in cases in which the order of the commission authorizing any work to be done under the provisions of this section is permissive in character and not mandatory, the commission may prescribe the time within which the party receiving such permission must elect to proceed and notify the commission thereof, and only in the event such party elects to proceed and so notifies the commission shall any liability arise in such cases to pay the just compensation or any part thereof under the provisions of this subsection. When any political subdivision of the state is designated by the commission to pay such compensation or any portion thereof the same shall be collectible in the manner provided in subsection (b) hereof for the collection of expenses apportioned by the commission to political subdivisions of the state.

Final order of condemnation.

5. When the just compensation has been paid in accordance with the commission's order made under the provisions of this subsection for property or interest in or to property, the commission shall make its final order of condemnation which must describe the property or interest in or to property condemned and the purpose of such

condemnation. A copy of said order certified under the seal of the commission shall thereupon be filed in the office of the recorder of the county in which the property or interest in or to property therein described is situated, and thereupon the property or interest in or to property described therein shall vest in the parties and for the purposes specified in said order.

Finding final. Petition for rehearing.

6. The finding of the commission on the question of the necessity for the taking and the finding, fixing the just compensation to be paid for any property or interest in or to property under the provisions of this subsection shall be final and shall not be subject to modification, alteration, reversal or review by any court of this state. The provisions of this act with reference to rehearing and review shall be applicable to the findings of the commission made and filed under the provisions of this section. Petitions for rehearing must be filed within twenty days from the date of making and filing the finding as to which a rehearing is desired. If a finding of the commission made and filed under the provisions of this section is set aside by the supreme court of the state of California, the matter shall be referred back to the commission for further action in a proceeding before the commission, and the commission shall have the right, on taking further action, to consider the entire testimony theretofore taken in the proceeding before the commission as well as such further testimony, if any, as may be presented in connection with such further action.

Procedure not exclusive.

7. The procedure provided in this section shall be alternative and cumulative and not exclusive to the right to pursue any other procedure now or hereafter established providing for the acquisition under eminent domain proceedings of property or interest in or to property.

Germane to jurisdiction.

8. The legislature hereby declares that subsection (c) hereof is enacted as a germane and cognate part of and as an aid to the jurisdiction of the railroad commission in the supervision and regulation of railroad and street railroad corporations.

Right to receive damages.

9. Nothing in this section shall be construed to entitle any owner or claimant of property and interest in or to property to receive damages when the right to receive such damages does not exist under the laws of this state apart from the provisions of this section. [Amendment of May 10, 1917. In effect July 27, 1917, Stats. 1917, p. 321.]

Investigation of accidents.

§ 44. The commission shall investigate the cause of all accidents occurring within this state upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and shall have the power to make such order or recommendation with respect thereto as in its judgment may seem just and reasonable; provided, that neither the order or recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damages based on or arising out of the loss of life, or injury to person or property, in this section referred to. Every public utility is hereby required to file with the commission, under such rules and regulations as the commission may prescribe, a report of each accident so occurring of such kinds or classes as the commission may from time to time designate.

Time for furnishing cars after demand, etc.

§ 45. (a) The commission shall have power to provide by proper rules and regulations the time within which all railroad corporations shall furnish, after demand therefor, all cars, equipment and facilities necessary for the handling of freight in carload and less than carload lots, the time within which consignors or persons ordering cars shall load the same, and the time within which consignees or persons to whom freight may be consigned shall unload and discharge the same and receive freight from freight rooms, and to provide penalties to be paid for failure on the part of the railroad corporations, consignors and consignees to conform to such rules. Charges for demurrage shall be uniform so that the same penalty shall be paid by both shipper or consignee and railroad corporation for an equal number of cars for each day for which demurrage is charged.

Time for receiving express packages, etc.

(b) The commission shall also have power to provide the time within which express packages shall be received, gathered, transported and delivered at destination, and the limits within which express packages shall be gathered and distributed and telegraph and telephone messages delivered without extra charge.

Power to prescribe standards, etc.

§ 46. (a) The commission shall have power, after hearing had upon its own motion or upon complaint, to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed and followed by all electrical, gas, water and heat corporations; to ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished or rendered by any such public utility; to prescribe reasonable regulations for the examination and testing of such product, commodity or service and for the measurement thereof; to establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements; and to provide for the examination and testing of any and all appliances used for the measurement of any product, commodity or service of any such public utility.

Entering premises, for tests, etc.

(b) The commissioners and their officers and employees shall have power to enter upon any premises occupied by any public utility, for the purpose of making the examinations and tests and exercising any of the other powers provided for in this act, and to set up and use on such premises any apparatus and appliances necessary therefor. The agents and employees of such public utility shall have the right to be present at the making of such examinations and tests.

Testing measuring appliances.

(c) Any consumer or user of any product, commodity or service of a public utility may have any appliance used in the measurement thereof tested upon paying the fees fixed by the commission. The commission shall establish and fix reasonable fees to be paid for testing such appliances on the request of the consumer or user, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance is found defective or incorrect to the disadvantage of the consumer or user, under such rules and regulations as may be prescribed by the commission. [Amendment of May 11, 1919. In effect July 22, 1919, Stats. 1919, p. 497.]

Valuation of public utility property.

§ 47. (a) The commission shall have power to ascertain for each purpose specified in this act, the value of the property of every public utility in this state and every fact

and element of value which in its judgment may or does have any bearing on such value. The commission shall have power to make revaluations from time to time and to ascertain the value of all additions, betterments, extensions and new construction to the property of every public utility.

Petition setting forth intention to acquire public utility.

(b) 1. Any county, city and county, incorporated city or town, municipal water district, county water district, irrigation district, public utility district or any other public corporation, each of which is hereinafter in this section at times referred to as the political subdivision, may, at any time, file with the commission either a petition, hereinafter in this section at times referred to as a petition for the first class, setting forth the intention of the political subdivision to acquire under eminent domain proceedings, or otherwise, the lands, property and rights of any character whatsoever of any public utility, or any part or portion thereof, or a petition, hereinafter in this section at times referred to as a petition of the second class, setting forth the intention of the political subdivision to initiate such proceedings as may be required under the law governing the political subdivision for the purpose of submitting to the voters of the political subdivision a proposition to acquire under eminent domain proceedings, or otherwise, the lands, property and rights of any character whatsoever of any public utility, or any part or portion thereof.

Contents of petition. Commission asked to fix just compensation.

2. Each such petition shall contain the name of the political subdivision appearing as petitioner therein, a description of the lands, property and rights, or of the part or portion thereof, which the political subdivision intends to acquire, and the names and addresses of all owners and claimants thereof, including each trustee and mortgagee under each deed of trust and mortgage, if known, or a statement that they are unknown. The petition shall pray that the commission fix the just compensation which shall be paid by the political subdivision, under the law, for said lands, property and rights, or said part or portion thereof. The petition shall be signed in the name of the political subdivision and verified by the chairman or other presiding officer or by the secretary or clerk of the legislative or other governing body of the political subdivision. At the time the petition is filed, the petitioner shall also file with the commission additional copies thereof equivalent in number to three more than the number of owners and claimants named in the petition.

Order to owners to appear before commission. Service. Publication. Notice of hearing to petitioner. Jurisdiction of commission.

3. Upon the filing of the petition, the commission shall make its order, specifying the nature of the proceeding, containing a general description of the lands, property and rights, or the part or portion thereof which petitioner desires to acquire by condemnation, or otherwise, and directing the owners and claimants named in the petition, who shall also be named in said order, to appear before the commission at a time and place specified in the order, to show cause, if any they have, why the commission should not proceed to hear the petition and to fix the just compensation to be paid for said lands, property and rights, or said part or portion thereof. The order shall direct the secretary of the commission to serve or cause to be served upon each said owner and claimant a copy of said order, certified under the seal of the commission, to which shall be attached a true and correct copy of the petition. Service shall be made in accordance with the provisions of the Code of Civil Procedure of the state of California; provided, that service may also be made by depositing a copy of said order to show cause, certified under the seal of the commission, with a true and correct copy of the petition attached thereto, in the United States mail, enclosed in a sealed envelope, registered,

with postage prepaid, addressed to any owner or claimant at the address specified in the petition. If any owner or claimant named in the petition resides out of the state, or has departed from the state, or can not, after due diligence, be found within the state, or conceals himself to avoid service, or is a corporation having no managing or business agent, cashier or secretary or other officer upon whom summons may be served, who, after due diligence, can not be found within the state, and the fact appears by affidavit to the satisfaction of the commission, and it also appears by such affidavit or by the petition that a cause of action exists against the owner or claimant on whom the service is to be made or that he is a necessary or proper party to the proceeding, the commission shall make its order that the service be made on such owner or claimant by publication of the commission's said order to show cause. Said order of the commission shall direct that the publication be made in a newspaper to be designated by the commission as likely to give notice to the person to be served, and for such time as the commission may find to be reasonable, at least once a week; but publication against an owner or claimant residing out of the state, or absent therefrom shall not be less than two months. If the address of any owner or claimant, as stated in the petition, is out of the state, the secretary of the commission shall, within fifteen days after the making and filing of said order to show cause, deposit or cause to be deposited a copy of said order to show cause, certified under the seal of the commission, with a true and correct copy of the petition attached thereto, in the United States mail, enclosed in a sealed envelope, registered, with postage prepaid, addressed to such owner or claimant at the address specified in the petition. When publication is ordered, personal service of a copy of the order to show cause and of the petition out of the state is equivalent to publication and deposit in the United States mail. Within ten days prior to the time set for the first hearing on the petition, which time shall be not less than thirty days after the filing of the petition, the secretary of the commission shall serve or cause to be served upon the petitioner a written notice of such hearing, specifying the time and place at which such hearing will be held. In all respects not in this paragraph otherwise specified, service and the proof of service shall be made as provided by the Code of Civil Procedure of the state of California. Upon the completion of service upon the petitioner or upon any owner or claimant named in the petition, the commission shall have full and complete jurisdiction over such petitioner, owner or claimant, with full and complete jurisdiction, in so far as such petitioner, owner or claimant, is concerned, to make each finding hereinafter referred to. The failure to make service upon any person alleging that he is an owner or claimant but not named in the petition shall in no way affect the jurisdiction of the commission over owners and claimants on whom service has been made as in this paragraph provided.

Hearing on petition. Amendment of petition. Finding fixing compensation. Severance damages.

4. At the time and place specified in said order to show cause, or at such other time and place as, for good cause, may be otherwise ordered by the commission, the commission shall proceed to a hearing on the petition. At such times and in such amounts as may be directed by the commission, the political subdivision must pay to the commission all extra costs as determined by the commission, which extra costs the commission may incur to comply with the requirements of section forty-seven (b) of this act, and if such amounts are not paid by the political subdivision as directed by the commission, the commission may suspend further proceedings on the petition. Evidence may be presented by the political subdivision, by each owner or claimant named in the petition, and by the commission. The commission shall have power, at any time subsequent to the filing of the petition, and prior to making and filing its finding as to just compensation, to authorize the amendment of the petition by altering or modifying the description of said lands, property and rights, or said part or portion thereof, or by

adding to or deducting from said lands, property and rights, or said part or portion thereof, and in each other respect including each jurisdictional allegation. When the proceeding has been submitted, the commission shall make and file its written finding fixing, in a single sum, the just compensation to be paid by the political subdivision for said lands, property and rights, or said part or portion thereof; provided, that if the commission finds that severance damages should be paid, the just compensation for such damages shall be found and stated separately. Said just compensation shall be fixed by the commission as of the day on which the petition was filed with the commission.

Acceptance by owner. Execution of deed by owner. Action on failure to execute deed.

5. Within twenty days after the commission has made and filed its finding, the owner of said lands, property and rights, or of said part or portion thereof, may file with the legislative or other governing body of the political subdivision a written stipulation consenting and agreeing to accept the just compensation fixed by the commission. Upon the filing of such written stipulation, the political subdivision must proceed with all due diligence to provide the necessary funds under the law governing the providing of such funds, for paying the just compensation fixed by the commission. Whenever the just compensation has been tendered by the political subdivision, a deed of grant, bargain and sale conveying the owner's right, title and interest in and to said lands, property and rights, or said part or portion thereof, to the political subdivision, shall be executed and delivered by the owner, and the other claimants who have any right, title or interest in the property shall execute appropriate instruments of conveyance or release, conveying or releasing to the political subdivision their respective rights, titles and interests therein. If said deed or said instruments of conveyance or release are not executed and delivered within sixty days after said tender has been made, the political subdivision may commence an action in a court of competent jurisdiction or proceed otherwise in the manner and for the purpose or purposes specified in the next paragraph of this section.

Action to take lands, etc., under eminent domain proceedings. Proceedings to submit proposition to voters. Action commenced if voters approve.

6. In the case of a petition of the first class, if the owner does not file said stipulation within said twenty days, the political subdivision, within sixty days after the commission has made and filed its said finding, must commence an action in a court of competent jurisdiction in a manner in accordance with the provisions of law, to take under eminent domain proceedings said lands, property and rights, or said part or portion thereof. In the case of a petition of the second class, if the owner does not file said stipulation within said twenty days, the political subdivision, within sixty days after the commission has made and filed its said finding, must initiate proceedings for the purpose of submitting to its voters a proposition to acquire under eminent domain proceedings said lands, property and rights, or said part or portion thereof. The political subdivision shall not be required, in either case, to delay for more than twenty days after the commission has made and filed its finding, before commencing said further proceedings. In the case of a petition of the second class, if the voters of the political subdivision shall thereafter, as provided by the law governing said political subdivision, vote in favor of any proposition to acquire under eminent domain proceedings, or otherwise, said lands, property and rights, or said part or portion thereof, the political subdivision shall, within sixty days after its voters have so voted in favor of such acquisition, commence an action in a court of competent jurisdiction in a manner in accordance with the provisions of law, to take under eminent domain proceedings said lands, property and rights, or said part or portion thereof, unless the owner shall have filed with the political subdivision a written stipulation consenting and agreeing to accept the just compensation fixed by the commission.

Petition by owner on failure of political subdivision to take action. Notice to political subdivision to appear. Expenditures of owner assessed against political subdivision.

7. If the political subdivision, in a petition of the first class, fails to file said action in a court of competent jurisdiction within said period of sixty days after the commission has made and filed its said finding, or if the political subdivision, in a petition of the second class, fails to proceed diligently to submit said proposition to its voters or fails, if its voters have voted in favor of the acquisition of said lands, property and rights, or of said part or portion thereof, to file said action in a court of competent jurisdiction within sixty days after the voters have voted in favor of said acquisition, the owner of such lands, property and rights, or of said part or portion thereof, may file with the commission a verified petition in writing setting forth said fact, which petition may also set forth in detail the expenditures which the owner has necessarily incurred in the proceeding before the commission. The commission shall thereupon cause written notice of not less than ten days, with a true and correct copy of the owner's said petition attached thereto, to be served upon the political subdivision, to appear before the commission at a time and place specified in the notice, to show cause why an order should not be made by the commission (1) finding that the political subdivision has failed to pursue diligently its rights herein conferred, (2) determining that said finding as to just compensation shall no longer be of any force or effect, and (3) determining the reasonable expenditures necessarily incurred by the owner which, in the opinion of the commission, should be assessed against the political subdivision. If the commission shall determine that the political subdivision, in case of a petition of the first class, has failed to commence said action in a court of competent jurisdiction within said period of sixty days after the commission has made and filed its said finding of just compensation, or that the political subdivision, in case of a petition of the second class, has failed to proceed diligently to submit said proposition to its voters or has failed, after its voters have voted in favor of the acquisition of said lands, property or rights, or said part or portion thereof, to file said action in a court of competent jurisdiction within said sixty days after the voters have voted in favor of said acquisition, the commission shall make and file its order declaring that said finding shall no longer be of any force or effect, and make its finding as to the reasonable expenditures necessarily incurred by the owner in the proceeding before the commission, which the commission may find should be assessed against the political subdivision. The political subdivision shall thereupon be liable to the owner in the amount thus found by the commission and the owner may thereupon maintain an action against the political subdivision for said amount in any court of competent jurisdiction.

Finding of commission final. Judgment of court final.

8. The finding of the commission fixing the just compensation to be paid by the political subdivision for said lands, property and rights, or said part or portion thereof, shall be final and shall not be subject to modification, alteration, reversal or review by any court of this state. The court in which the political subdivision shall have commenced its action, subsequent to the making and filing by the commission of its finding as to just compensation, as hereinbefore specified, if said court shall first decide that the political subdivision has the right and power under the law to take said lands, property and rights, or said part or portion thereof, shall enter a judgment in favor of the complainant in said action, as provided by law, fixing as the just compensation which shall be paid for the taking of said lands, property and rights, or said part or portion thereof, the just compensation fixed by the commission. The judgment may include therein the allowance of such costs between the parties as is provided for in the law of eminent domain of this state. The judgment of said court in so far as it refers to the just compensation to be paid for said lands, property and rights, or said part or portion thereof, shall be final and shall not be subject to modification, altera-

tion, reversal or review by any court except as hereinafter in section forty-seven (b) of this act specified. The judgment of said court shall include a provision, in substance, that said judgment is subject to modification by reason of such increase or decrease in the just compensation to be paid as may thereafter be certified to said court by the commission, as hereinafter in section forty-seven (b) of this act provided.

Petition by owner asking increase in compensation. Petition by political subdivision asking decrease in compensation. Hearing. Order increasing or decreasing compensation. Judgment of court modified.

9. At any time within thirty days subsequent to the entry of said judgment of said court, the owner of said lands, property and rights, or said part or portion thereof, may file with the commission a verified petition in writing, alleging that by reason of expenditures made by the owner subsequent to the date of the filing of the original petition with the commission, for the purpose of preserving or improving said lands, property and rights, or said part or portion thereof, or by reason of other acts and occurrences subsequent to said date, the just compensation theretofore fixed by the commission should be increased and praying that the commission make its finding increasing said just compensation. At any time within thirty days subsequent to the entry of said judgment of said court, the political subdivision may file with the commission a verified petition in writing, alleging that by reason of loss or destruction of said lands, property and rights, or said part or portion thereof, or a part thereof, or by reason of depreciation or deterioration thereof or by reason of other acts and occurrences, subsequent to the date of the filing of the original petition with the commission, the just compensation theretofore fixed by the commission should be decreased and praying that the commission make its finding decreasing said just compensation. The commission shall, in each instance, cause a copy of said petition or petitions to be served upon each party, other than the petitioner, who was named as the political subdivision, owner or claimant in the original proceeding before the commission, together with a written notice specifying the time and place of hearing on said petition or petitions, which time shall be within forty-five days after the entry of said judgment by said court, and shall cause written notice of the time and place of said hearing to be served upon each petitioner in said petition or petitions. If both such petitions are filed, the commission shall have the power to consolidate said petitions for hearing and decision. After a hearing, the commission shall make and file its finding fixing, as of the date on which such finding is made and filed, the extent to which the just compensation theretofore fixed should be increased or decreased by reason of the matters alleged in said petition or petitions. If the claim is made that the just compensation theretofore fixed by the commission should be increased by reason of expenditures made by the owner subsequent to the date of the filing of the original petition with the commission for the purpose of preserving or improving said lands, property and rights, or said part or portion thereof, the commission may increase said just compensation, by reason of such expenditures, only to the extent to which the commission shall determine that such expenditures were beneficial to said lands, property and rights, or said part or portion thereof, and reasonably and prudently made. The finding of the commission fixing the extent to which the just compensation theretofore fixed should be thus increased or decreased shall be final and shall not be subject to modification, alteration, reversal or review by any court of this state. The commission shall thereupon transmit to said court its finding, certified under the seal of the commission, fixing the extent to which the just compensation theretofore fixed by the commission shall be increased or decreased. Said court shall thereupon modify its judgment so as to conform with said finding of the commission. The judgment of said court, as thus modified, in so far as it refers to the just compensation to be paid for said lands, property and rights, or said part or portion thereof, shall be final and shall not be subject to

modification, alteration, reversal or review by any court. The filing of either or both the petitions in this paragraph specified shall not act as a stay of the judgment in condemnation, but upon the payment of the just compensation fixed in the original judgment of condemnation the plaintiff in the action in said court shall be entitled to immediate possession of said lands, property and rights, or of said part or portion thereof.

Finding set aside by supreme court. Writ of review. Extension of time.

10. The provisions of this act with reference to rehearing and review shall be applicable to the findings of the commission made and filed under the provisions of section forty-seven (b) of this act. Petitions for rehearing must be filed within twenty days from the date of making and filing the finding as to which a rehearing is desired. If a finding of the commission made and filed under the provisions of section forty-seven (b) of this act is set aside by the supreme court of the state of California, the matter shall be referred back to the commission for further action in the proceeding before the commission, and the commission shall have the right, in taking further action, to consider the entire testimony theretofore taken in the proceeding before the commission as well as such further testimony, if any, as may be presented in connection with such further action. Should a writ of review be obtained from the supreme court of the state of California, the time within which the political subdivision must file an action in a court of competent jurisdiction or submit said proposition to its voters shall be extended to not more than sixty days beyond the final decision of the supreme court upon said writ of review.

Procedure not exclusive.

11. The procedure provided in section forty-seven (b) of this act shall be considered as alternative and cumulative and not exclusive and the political subdivision shall continue to have the right to pursue any other procedure now or hereafter established providing for the acquisition under eminent domain proceedings of the lands, property and rights, or any part or portion thereof, of any public utility, and section forty-seven (b) of this act shall not be construed as repealing any law of this state providing for such eminent domain proceedings. Section forty-seven (b) of this act shall not affect pending actions or proceedings, but the same may be prosecuted and defended with the same effect as though section forty-seven (b) had not been amended. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 261.]

System of accounts, records, etc.

§ 48. The commission shall have power to establish a system of accounts to be kept by the public utilities subject to its jurisdiction, or to classify said public utilities and to establish a system of accounts for each class, and to prescribe the manner in which such accounts shall be kept. It may also in its discretion prescribe the forms of accounts, records and memoranda to be kept by such public utilities, including the accounts, records and memoranda of the movement of traffic as well as the receipts and expenditures of moneys, and any other forms, records and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this act. The system of accounts established by the commission and the forms of accounts, records and memoranda prescribed by it shall not be inconsistent, in the case of corporations subject to the provisions of the act of congress entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the acts amendatory thereof and supplementary thereto, with the systems and forms from time to time established for such corporations by the interstate commerce commission, but nothing herein contained shall affect the power of the commission to prescribe forms of accounts, records and memoranda covering information in addition to that required

by the interstate commerce commission. The commission may, after hearing had upon its own motion or upon complaint, prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. Where the commission has prescribed the forms of accounts, records or memoranda to be kept by any public utility for any of its business, it shall thereafter be unlawful for such public utility to keep any accounts, records or memoranda for such business other than those so prescribed, or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records or memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed by the commission.

Depreciation account.

§ 49. The commission shall have power, after hearing, to require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the commission may prescribe. The commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of each public utility. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the moneys so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement as the commission may prescribe. The income from investments of moneys in such fund shall likewise be carried in such fund.

New construction only after commission's certificate.

§ 50. (a) No railroad corporation whose railroad is operated primarily by electric energy, street railroad corporation, gas corporation, electrical corporation, telegraph corporation, telephone corporation or water corporation shall henceforth begin the construction of a street railroad, or of a line, plant, or system, or of any extension of such street railroad, or line, plant, or system, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction; provided, that this section shall not be construed to require any such corporation to secure such certificate for an extension within any city and county, or city or town within which it shall have theretofore lawfully commenced operations, or for an extension into territory either within or without a city and county, or city or town, contiguous to its street railroad, or line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business; and provided, further, that if any public utility, in constructing or extending its line, plant, or system, shall interfere or be about to interfere with the operation of the line, plant, or system of any other public utility, already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable.

Exercise of rights under franchise only when necessity requires.

(b) No public utility of a class specified in subsection (a) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege; provided, that when the commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable

diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not hertofore actually exercised, such public utility may proceed, under such rules and regulations as the commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege; and provided, further, that this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state.

Articles of incorporation must be filed. Certificate authorizing construction.

(c) Before any certificate may issue, under this section, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be filed in the office of the commission. Every applicant for a certificate shall file in the office of the commission such evidence as shall be required by the commission to show that such applicant has received the required consent, franchise or permit of the proper county, city and county, municipal or other public authority. When a complaint has been filed with the commission alleging that a public utility of the class specified in subsection (a) of this section is engaged or is about to engage in construction work without having secured from the commission a certificate of public convenience and necessity as required by the provisions of this section, the commission shall have power, with or without notice, to make its order requiring the public utility complained of to cease and desist from such construction until the commission makes and files its decision on said complaint or until the further order of the commission. The commission shall have power, after hearing, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue it for the construction of a portion only of the contemplated street railroad, line, plant or system, or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions, including provisions for the acquisition by the public of such franchise or permit and all rights acquired thereunder and all works constructed or maintained by authority thereof, as in its judgment the public convenience and necessity may require. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issue of the certificate. The commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe, issue the desired certificate, upon such terms and conditions as it may designate, after the public utility has obtained the contemplated franchise or permit. Upon the presentation to the commission of evidence satisfactory to it that such franchise or permit has been secured by such public utility, the commission shall thereupon issue such certificate.

State's reserved power over utilities.

(d) The legislature hereby declares that the provisions of this section are being enacted under the state's reserved power over public utilities or corporations, or both, as the case may be, for the purpose of acting on the right of the grantee of a public utility franchise granted by a county, city and county or incorporated city or town, to exercise rights thereunder, and not for the purpose of acting on the right of any city and county or incorporated city or town to grant any such franchise. The legislature hereby declares that the provisions of this section shall be and remain in full force and effect concurrently with the right of any city and county or incorporated city or town to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. [Amendment of April 24, 1917. In effect July 27, 1917, Stats. 1917, p. 168.]

Selling, leasing, etc., of public utilities.

§ 51. (a) No railroad corporation, street railroad corporation, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation or water corporation shall henceforth sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant or system, necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, direct or indirect, merge or consolidate its railroad, street railroad, line, plant or system, or franchises or permits or any part thereof, with any other public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing the same shall be void. The permission and approval of the commission to the exercise of a franchise or permit under section fifty of this act, or the sale, lease, assignment, mortgage or other disposition or encumbrance of a franchise or permit under this section shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture. Nothing in this subsection contained shall be construed to prevent the sale, lease or other disposition by any public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

Acquirement of stock of one public utility by another.

(b) No public utility shall hereafter purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under or by virtue of the laws of this state, without having been first authorized to do so by the commission. Every assignment, transfer, contract or agreement for assignment or transfer of any stock by or through any person or corporation to any corporation or otherwise in violation of any of the provisions of this section shall be void and of no effect, and no such transfer shall be made on the books of any public utility. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired.

Power of public utilities to issue stocks.

§ 52. (a) The power of public utilities to issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe.

Purposes for which stocks may be issued. Order authorizing issue. Hearing. Purpose of issue. Notes. No power to capitalize right to be a corporation.

(b) A public utility may issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for the following purposes and no others, namely, for the acquisition of property, or for the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates, or bonds, notes or other evidences of indebtedness of such public utility, for any of the aforesaid purposes

except maintenance of service and replacements, in cases where the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which such expenditure was made; provided, that such public utility, in addition to the other requirements of law, shall first have secured from the commission an order authorizing such issue and stating the amount thereof and the purpose or purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property or labor to be procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order, and that, except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, such purpose or purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. To enable it to determine whether it will issue such order, the commission shall hold a hearing and may make such additional inquiry or investigation, and examine such witnesses, books, papers, documents and contracts and require the filing of such data as it may deem of assistance. The commission may by its order grant permission for the issue of such stocks or stock certificates, or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of its permission such condition or conditions as it may deem reasonable and necessary. The commission may authorize issues of bonds, notes or other evidences of indebtedness, less than, equivalent to or greater than the authorized or subscribed capital stock of a public utility corporation, and the provisions of sections 309 and 456 of the Civil Code of this state, in so far as they contain inhibitions against the creation by corporations of indebtedness, evidenced by bonds, notes or otherwise, in excess of their total authorized or subscribed capital stock shall have no application to public utility corporations. No public utility shall, without the consent of the commission, apply the issue of any stock or stock certificate, or bond, note or other evidence of indebtedness, or any part thereof, or any proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order, or a modification thereof. A public utility may issue notes, for proper purposes and not in violation of any provision of this act or any other act, payable at periods of not more than twelve months after the date of issuance of the same, without the consent of the commission, but no such note shall, in whole or in part, be refunded by any issue of stocks or stock certificates, or of bonds, notes of any term or character or any other evidence of indebtedness, without the consent of the commission. The commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right; nor shall any contract for consolidation or lease be capitalized, nor shall any public utility hereafter issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger.

Account of disposition of proceeds.

(c) The commission shall have the power to require public utilities to account for the disposition of the proceeds of all sales of stocks and stock certificates, and bonds, notes and other evidences of indebtedness, in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order.

Stocks issued without order void.

(d) All stock and every stock certificate, and every bond, note or other evidence of indebtedness, of a public utility, issued without an order of the commission authorizing the same then in effect shall be void, and likewise all stock and every stock certificate, and every bond, note or other evidence of indebtedness, of a public utility, issued with the authorization of the commission, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the commission to contain, shall be void; but no failure in any other respect to comply with the terms or conditions of the order of authorization of the commission shall render void any stock or stock certificate, or any bond, note or other evidence of indebtedness, except as to a corporation or person taking the same otherwise than in good faith and for value and without actual notice.

Penalty for unauthorized issue of stocks, etc.

(e) Every public utility which, directly or indirectly, issues or causes to be issued, any stock or stock certificate, or bond, note or other evidence of indebtedness, in non-conformity with the order of the commission authorizing the same, or contrary to the provisions of this act, or of the constitution of this state, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes specified in the commission's order, as herein provided, or to any purpose specified in the commission's order in excess of the amount in said order authorized for such purpose, is subject to a penalty of not less than five hundred dollars nor more than twenty thousand dollars for each offense.

Penalty for unauthorized act of officer, agent, etc.

(f) Every officer, agent or employee of a public utility, and every other person who knowingly authorizes, directs, aids in, issues or executes, or causes to be issued or executed, any stock or stock certificate, or bond, note or other evidence of indebtedness, in non-conformity with the order of the commission authorizing the same, or contrary to the provisions of this act, or of the constitution of this state, or who, in any proceeding before the commission, knowingly makes any false statement or representation or with knowledge of its falsity files or causes to be filed with the commission any false statement or representation which said statement or representation so made, filed or caused to be filed may tend in any way to influence the commission to make an order authorizing the issue of any stock or stock certificate, or any bond, note or other evidence of indebtedness, or which results in procuring from the commission the making of any such order, or who, with knowledge that any false statement or representation was made to the commission, in any proceeding, tending in any way to influence the commission to make such order, issues or executes or negotiates, or causes to be issued, executed or negotiated any such stock or stock certificate, or bond, note or other evidence of indebtedness, or who, directly or indirectly, knowingly applies, or causes or assists to be applied the proceeds or any part thereof, from the sale of any stock or stock certificate, or bond, note or other evidence of indebtedness, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or who, with knowledge that any stock or stock certificate, or bond, note or other evidence of indebtedness, has been issued or executed in violation of any of the provisions of this act, negotiates, or causes the same to be negotiated, shall be guilty of a felony.

State not obligated.

(g) No provision of this act, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the state of California to pay

or guarantee, in any manner whatsoever, any stock or stock certificate or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of this act.

Unauthorized stocks void.

(h) All stocks and stock certificates, and bonds, notes and other evidences of indebtedness issued by any public utility after this act takes effect, upon the authority of any articles of incorporation or amendments thereto or vote of the stockholders or directors filed, taken or had, or other proceedings taken or had, previous to the taking effect of this act, shall be void, unless an order of the commission authorizing the issue of such stocks or stock certificates, or bonds, notes or other evidences of indebtedness shall have been obtained from the commission prior to such issue. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.

Rules of procedure.

§ 53. All hearings, investigations and proceedings shall be governed by this act and by rules of practice and procedure to be adopted by the commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

Power to issue writs of summons, etc.

§ 54. The commission and each commissioner shall have power to issue writs of summons, subpoenas, warrants of attachment, warrants of commitment and all necessary process in proceedings for contempt, in the like manner and to the same extent as courts of record. The process issued by the commission, or any commissioner, shall extend to all parts of the state and may be served by any person authorized to serve process of courts of record, or by any person designated for that purpose by the commission or a commissioner. The person executing any such process shall receive such compensation as may be allowed by the commission, not to exceed the fees now prescribed by law for similar services, and such fees shall be paid in the same manner as provided herein for payment of the fees of witnesses.

Power to administer oaths, etc. Fees and mileage of witnesses.

§ 55. (a) The commission and each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state. Each witness who shall appear, by order of the commission or a commissioner, shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party shall be subpoenaed by the commission, his fees and mileage shall be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission or commissioner, as directed in the subpoena. All fees or mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable. No witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation.

Power to compel attendance of witnesses.

(b) The superior court in and for the county, or city and county, in which any inquiry, investigation, hearing or proceeding may be held by the commission or any commissioner shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, including waybills, books, accounts and documents, as required by any subpoena issued by the commission or any commissioner. The commission or the commissioner before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the superior court in and for the county, or city and county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the commission or commissioner, in the cause or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify or produce said papers before the commission. The court, upon the petition of the commission or such commissioner, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he has not attended and testified or produced said papers before the commission. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission or a commissioner, the court shall thereupon enter an order that said witness appear before the commission or said commissioner at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this subsection is cumulative, and shall not be construed to impair or interfere with the power of the commission or a commissioner to enforce the attendance of witnesses and the production of papers, and to punish for contempt in the same manner and to the same extent as courts of record.

Deposition of witnesses.

(c) The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers and accounts.

Persons not excused from testifying.

(d) No person shall be excused from testifying or from producing any book, waybill, document, paper or account in any investigation or inquiry by or hearing before the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, waybill, document, paper or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath have testified or produced documentary evidence; provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind.

Copies of documents as evidence.

§ 56. (a) Copies of all official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary or the assistant secretary under the official seal of the commission to be true copies of the originals, shall be evidence in like manner as the originals.

Orders of commission to be in writing.

(b) Every order, authorization or certificate issued or approved by the commission under any provision of sections 38, 39, 40, 41, 43, 50, 51 or 52 of this act shall be in writing and entered on the records of the commission. Any such order, authorization or certificate, or a copy thereof, or a copy of the record of any such order, authorization or certificate, certified by a commissioner or by the secretary or the assistant secretary under the official seal of the commission to be a true copy of the original order, authorization, certificate or entry, may be recorded in the office of the recorder of any county, or city and county, in which is located the principal place of business of any public utility affected thereby, or in which is situated any property of any such public utility, and such record shall impart notice of its provisions to all persons. A certificate under the seal of the commission that any such order, authorization or certificate has not been modified, stayed, suspended or revoked may also be recorded in the same offices in the same manner and with like effect.

Fees charged by commission.

§ 57. The commission shall charge and collect the following fees: for copies of papers and records not required to be certified or otherwise authenticated by the commission, ten cents for each folio; for certified copies of official documents and orders filed in its office, fifteen cents for each folio and one dollar for every certificate under seal affixed thereto; for certifying a copy of any report made by a public utility, two dollars; for each certified copy of the annual report of the commission, one dollar and fifty cents; for certified copies of evidence and proceedings before the commission, fifteen cents for each folio; for certificate authorizing an issue of bonds, notes or other evidences of indebtedness, one dollar for each thousand dollars of the face value of the authorized issue or fraction thereof up to one million dollars, and fifty cents for each one thousand dollars over one million dollars and up to ten million dollars, and twenty-five cents for each one thousand dollars over ten million dollars, with a minimum fee in any case of twenty-five dollars; provided, that no fee need be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge or retire any bond, note or other evidence of indebtedness on which a fee has theretofore been paid to the commission; and provided, further, that if the commission modifies the amount of the issue requested in any case and the applicant thereupon elects not to avail itself of the commission's authorization, no fee need be paid. No fees shall be charged or collected for copies of papers, records or official documents, furnished to public officers for use in their official capacity, or for the annual reports of the commission in the ordinary course of distribution, but the commission may fix reasonable charges for publications issued under its authority. All fees charged and collected under this section shall be paid, at least one each week, accompanied by a detailed statement thereof, into the treasury of the state to the credit of a fund to be known as the "railroad commission fund," which fund is hereby created.

Right to inspect books, etc.

§ 58. The commission, each commissioner and each officer and person employed by the commission shall have the right, at any and all times, to inspect the accounts, books, papers and documents of any public utility, and the commission, each commissioner and any officer of the commission or any employee authorized to administer oaths shall

have power to examine under oath any officer, agent or employee of such public utility in relation to the business and affairs of said public utility; provided, that any person other than a commissioner or an officer of the commission demanding such inspection shall produce under the hand and seal of the commission his authority to make such inspection; and provided, further, that written record of the testimony or statement so given under oath shall be made and filed with the commission.

Office of public utility.

§ 59. (a) Each public utility shall have an office in a county of this state in which its property or some portion thereof is located and shall keep in said office all such books, accounts, papers and records as shall be required by the commission to be kept within this state. No books, accounts, papers or records required by the commission to be kept within this state shall be at any time removed from the state except upon such conditions as may be presented by the commission.

Production of records kept out of state.

(b) The commission may require, by order served on any public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said public utility in any office or place without this state, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the commission or under its direction.

By whom complaint may be made.

§ 60. Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public utility including any rule, regulation or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission; provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless the same be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city and county, or city or town, if any, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers or prospective consumers or purchasers, of such gas, electricity, water or telephone service. All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties; and in any review by the courts of orders or decisions of the commission the same rule shall apply with regard to the joinder of causes and parties as herein provided. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant. Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the corporation or person complained of. Service in all hearings, investigations and proceedings pending before the commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure of this state, and may be made personally or by mailing in a sealed envelope, registered, with postage prepaid. The commission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than ten days before the time set for such hearing, unless the commission shall find that public necessity requires that such hearing be held at an earlier date.

Hearing of evidence. Decision. Record of proceedings. Transcript of testimony.

§ 61. (a) At the time fixed for any hearing before the commission or a commissioner, or the time to which the same may have been continued, the complainant and the corporation or person complained of, and such corporations or persons as the commission may allow to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses. After the conclusion of the hearing, the commission shall make and file its order, containing its decision. A copy of such order, certified under the seal of the commission, shall be served upon the corporation or person complained of, or his or its attorney. Said order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission. If an order cannot, in the judgment of the commission, be complied with within twenty days, the commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record of all proceedings had before the commission or any commissioner on any formal hearing had, and all testimony shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order or decision of the commission, a transcript of such testimony, together with all exhibits or copies thereof introduced, and of the pleadings, record and proceedings in the cause, shall constitute the record of the commission; provided, that on review of an order or decision of the commission, the petitioner and the commission may stipulate that a certain question or questions alone and a specified portion only of the evidence shall be certified to the supreme court for its judgment, whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record on review.

Right of public utility to complain.

§ 62. Any public utility shall have a right to complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard ex parte by the commission or may be served upon any parties designated by the commission.

Increase in rate only after showing.

§ 63. (a) No public utility shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified.

When rates go into effect.

(b) Whenever there shall be filed with the commission any schedule stating an individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation, not increasing or resulting in an increase in any rate, fare, toll, rental or charge, the commission shall have power, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation, and pending the hearing and the decision thereon such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not go into effect; provided, that

the period of suspension of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not extend beyond one hundred and twenty days beyond the time when such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation would otherwise go into effect unless the commission, in its discretion, extends the period of suspension for a further period not exceeding six months. On such hearing the commission shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. All such rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations not so suspended shall, on the expiration of thirty days from the time of filing the same with the commission, or of such lesser time as the commission may grant, go into effect and be the established and effective rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules and regulations, subject to the power of the commission, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same.

Power to rescind, etc., orders.

§ 64. The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

Orders conclusive.

§ 65. In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.

Rehearing. When cause of action accrues. Application for rehearing does not excuse. Commission may change order.

§ 66. After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in said action or proceeding and specified in the application for rehearing, and the commission may grant and hold such rehearing on said matters, if in its judgment sufficient reason therefor be made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless such corporation or person shall have made, before the effective date of said order or decision, application to the commission for a rehearing. Such application shall set forth specifically the ground or grounds on which the applicant considers said decision or order to be unlawful. No corporation or person shall in any court urge or rely on any ground not so set forth in said application. Any application for a rehearing made ten days or more before the effective date of the order as to which a rehearing is sought, shall be either granted or denied before such effective date, or the order shall stand suspended until such application is granted or denied. Any application for a rehearing made within less than ten days before the effective date of the order as to which a rehearing is sought, and not granted within twenty days, may be taken by the party making the application to be denied, unless the effective date of the order is extended for the period of the pendency of the application. If any application for a rehearing be granted without a suspension of the order involved, the commission shall forthwith proceed to hear the matter with all dispatch and shall determine the same within twenty days after final submission, and if such determination is not made within said time, it may be taken by any party to the rehearing that the order involved is affirmed. An application for rehearing shall not excuse any corporation or person

from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission may by order direct. If, after such rehearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission shall be of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same. An order or decision made after such rehearing abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission.

Application to supreme court for review. Findings on questions of fact.

§ 67. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the supreme court of this state for a writ of certiorari or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day, the cause shall be heard by the supreme court, unless for a good reason shown the same be continued. No new or additional evidence may be introduced in the supreme court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the constitution of the United States or of the state of California. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination. The commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceeding. Upon the hearing the supreme court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the Code of Civil Procedure of this state relating to writs of review shall, so far as applicable and not in conflict with the provisions of this act, apply to proceedings instituted in the supreme court under the provisions of this section. No court of this state (except the supreme court to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; provided, that the writ of mandamus shall lie from the supreme court to the commission in all proper cases.

Order not stayed.

§ 68. (a) The pendency of a writ of review shall not of itself stay or suspend the operation of the order or decision of the commission, but during the pendency of such writ, the supreme court in its discretion may stay or suspend, in whole or in part, the operation of the commission's order or decision.

(b) No order so staying or suspending an order or decision of the commission shall be made by the supreme court otherwise than upon three days' notice and after hearing, and if the order or decision of the commission is suspended, the order suspending the same shall contain a specific finding based upon evidence submitted to the court and

identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage.

Suspending bond.

(c) In case the order or decision of the commission is stayed or suspended, the order of the court shall not become effective until a suspending bond shall first have been executed and filed with, and approved by the commission (or approved, on review, by the supreme court), payable to the people of the state of California, and sufficient in amount and security to insure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or decision of the commission, and of all moneys which any person or corporation may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity or service in excess of the charges fixed by the order or decision of the commission, in case said order or decision is sustained. The supreme court, in case it stays or suspends the order or decision of the commission in any matters affecting rates, fares, tolls, rentals, charges or classifications, shall also by order direct the public utility affected to pay into court, from time to time, there to be impounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation or person in excess of the sum such corporation or person would have been compelled to pay if the order or decision of the commission had not been stayed or suspended.

Accounts showing excess of charges allowed by order. Additional security. Final decision. Money not claimed.

(d) In case the supreme court stays or suspends any order or decision lowering any rate, fare, toll, rental, charge or classification, the commission, upon the execution and approval of said suspending bond, shall forthwith require the public utility affected, under penalty of the immediate enforcement of the order or decision of the commission (pending the review and notwithstanding the suspending order), to keep such accounts, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by such public utility, pending the review, in excess of the charges allowed by the order or decision of the commission, together with the names and addresses of the corporations or persons to whom overcharges will be refundable in case the charges made by the public utility, pending the review, be not sustained by the supreme court. The court may, from time to time, require said party petitioning for a review to give additional security on, or to increase the said suspending bond, whenever in the opinion of the court the same may be necessary to insure the prompt payment of said damages and said overcharges. Upon the final decision by the supreme court, all moneys which the public utility may have collected, pending the appeal in excess of those authorized by such final decision, together with interest, in case the court ordered the deposit of such moneys in a bank or trust company, shall be promptly paid to the corporations or persons entitled thereto, in such manner and through such methods of distribution as may be prescribed by the commission. If any such moneys shall not have been claimed by the corporations or persons entitled thereto within one year from the final decision of the supreme court, the commission shall cause notice to such corporations or persons to be given by publication, once a week for two successive weeks, in a newspaper of general circulation, printed and published in the city and county of San Francisco, and such other newspaper or newspapers as may be designated by the commission, said notice to state the names of the corporations or persons entitled to such moneys and the amount due each corporation or person. All moneys not claimed within three months after the publication of said notice shall be

paid by the public utility, under the direction of the commission, into the state treasury for the benefit of the general fund.

Actions under act preferred to other civil actions.

§ 69. All actions and proceedings under this act, and all actions or proceedings to which the commission or the people of the state of California may be parties, and in which any question arises under this act, or under or concerning any order or decision of the commission, shall be preferred over all other civil causes except election causes and shall be heard and determined in preference to all other civil business except election causes, irrespective of positions on the calendar. The same preference shall be granted upon application of the attorney of the commission in any action or proceeding in which he may be allowed to intervene.

Hearing on value of property. Notice. Filings of findings of fact. Hearings for making revaluation.

§ 70. For the purpose of ascertaining the matters and things specified in section forty-seven (a) of this act concerning the value of the property of public utilities, the commission may cause a hearing or hearings to be held at such time or times and place or places as the commission may designate. Before any hearing is had, the commission shall give the public utility affected thereby at least thirty days' written notice, specifying the time and place of such hearing, and such notice shall be sufficient to authorize the commission to inquire into the matters designated in this section and in said section forty-seven (a) of this act, but this provision shall not prevent the commission from making any preliminary examination or investigation into the matters herein referred to. All public utilities affected shall be entitled to be heard and to introduce evidence at such hearing or hearings. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission. The commission may make and file its findings of fact in writing upon such matters concerning which evidence shall have been introduced before it as, in its judgment, have bearing on the value of the property of the public utility affected. Such findings shall be subject to review by the supreme court of this state in the same manner and within the same time as other orders and decisions of the commission. The findings of the commission so made and filed, when properly certified under the seal of the commission, shall be admissible in evidence in any action, proceeding or hearing before the commission or any court, in which the commission, the state or any officer, department or institution thereof, or any county, city and county, municipality or other body politic and the public utility affected may be interested whether arising under the provisions of this act or otherwise, and such findings, when so introduced, shall be conclusive evidence of the facts therein stated as of the date therein stated under conditions then existing, and such facts can only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined. The commission may, from time to time, cause further hearings and investigations to be had for the purpose of making revaluations or ascertaining the value of any additions, betterments, extensions and new construction made by any public utility subsequent to any prior hearing or investigation, and may examine into all matters which may change, modify or affect any finding of fact previously made, and may at such time make findings of fact supplementary to those theretofore made. Such hearings shall be had upon the same notice and be conducted in the same manner and the findings so made shall have the same force and effect as is provided herein for such original notice, hearing and findings; provided, that such findings made at such supplemental hearings or investigations shall be considered in connection with and as a part of the original findings, except in so far as such supplemental findings shall change or modify the findings made at the original hearing or investigation. [Amendment of May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 269.]

Reparation for overcharges.

§ 71. (a) When complaint has been made to the commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; provided, no discrimination will result from such reparation.

Suit to recover overcharges.

(b) If the public utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission. The remedy in this section provided shall be cumulative and in addition to any other remedy or remedies in this act provided in case of failure of a public utility to obey an order or decision of the commission.

Duty of commission. Duty of attorney general or district attorney.

§ 72. It is hereby made the duty of the commission to see that the provisions of the constitution and statutes of this state affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected, and to this end it may sue in the name of the people of the state of California. Upon the request of the commission, it shall be the duty of the attorney general or the district attorney of the proper county or city and county to aid in any investigation, hearing or trial had under the provisions of this act, and to institute and prosecute actions or proceedings for the enforcement of the provisions of the constitution and statutes of this state affecting public utilities and for the punishment of all violations thereof.

Public utilities liable for loss or damages.

§ 73. (a) In case any public utility shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by the constitution, any law of this state or any order or decision of the commission, such public utility shall be liable to the persons or corporations affected thereby for all loss, damages or injury caused thereby or resulting therefrom, and if the court shall find that the act or omission was wilful, the court may in addition to the actual damages award damages for the sake of example and by way of punishment. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any corporation or person.

Recovery by state not affected.

(b) No recovery as in this section provided shall in any manner affect a recovery by the state of the penalties in this act provided or the exercise by the commission of its power to punish for contempt.

Act not to release forfeiture under other laws.

§ 74. (a) This act shall not have the effect to release or waive any right of action by the state, the commission, or any person or corporation for any right, penalty or forfeiture which may have arisen or accrued or may hereafter arise or accrue under any law of this state.

Penalties cumulative.

(b) All penalties accruing under this act shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public utility, or any officer, director, agent or employee thereof, or any other corporation or person, or be a bar to the exercise by the commission of its power to punish for contempt.

Commission may bring suit to prevent violations of rulings, etc. Attorney may begin action. Duty of court. Final judgment. Appeal.

§ 75. Whenever the commission shall be of the opinion that any public utility is failing or omitting or about to fail or omit, to do anything required of it by law, or by any order, decision, rule, direction or requirement of the commission, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order, decision, rule, direction or requirement of the commission, it shall direct the attorney of the commission to commence an action or proceeding in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides, in the name of the people of the state of California, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney of the commission shall thereupon begin such action or proceeding by petition to such superior court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public utility complained of must answer the petition, and in the meantime said public utility may be restrained. In case of default in answer, or after answer, the court shall immediately inquire into the facts and circumstances of the case. Such corporations or persons as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the petition, or in such modified or other form as will afford appropriate relief. An appeal may be taken to the supreme court from such final judgment in the same manner and with the same effect, subject to the provisions of this act, as appeals are taken from judgments of the superior court in other actions for mandamus or injunction.

Penalty for offense not otherwise provided.

§ 76. (a) Any public utility which violates or fails to comply with any provision of the constitution of this state or of this act, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part or provision thereof, of the commission, in a case in which a penalty has not hereinbefore been provided for such public utility, is subject to a penalty of not less than five hundred dollars nor more than two thousand dollars for each and every offense.

Every violation a separate offense.

(b) Every violation of the provisions of this act or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

Act of employee deemed act of public utility.

(c) In construing and enforcing the provisions of this act relating to penalties, the act, omission or failure of any officer, agent or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be and be deemed to be the act, omission or failure of such public utility.

Punishment for employees.

§ 77. Every officer, agent or employee of any public utility, who violates or fails to comply with, or who procures, aids or abets any violation by any public utility of any provision of the constitution of this state or of this act, or who fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement or any part or provision thereof, of the commission, or who procures, aids or abets any public utility in its failure to obey, observe and comply with any such order, decision, rule, direction, demand or requirement, or any part or provision thereof in a case in which a penalty has not hereinbefore been provided for such officer, agent or employee, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

Penalty for corporations not otherwise provided for.

§ 78. Every corporation, other than a public utility, which violates any provision of this act, or which fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement, or any part or provision thereof, of the commission, in a case in which a penalty has not hereinbefore been provided for such corporation, is subject to a penalty of not less than five hundred dollars nor more than two thousand dollars for each and every offense.

Punishment for employees of corporations.

§ 79. Every person who, either individually, or acting as an officer, agent or employee of a corporation other than a public utility, violates any provision of this act, or fails to observe, obey or comply with any order, decision, rule, direction, demand or requirement, or any part or portion thereof, of the commission, or who procures, aids or abets any such public utility in its violation of this act, or in its failure to obey, observe or comply with any such order, decision, rule, direction, demand or requirement, or any part or portion thereof, in a case in which a penalty has not hereinbefore been provided for such person, is guilty of a misdemeanor, and is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

Actions to recover penalties.

§ 80. Actions to recover penalties under this act shall be brought in the name of the people of the state of California, in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. Such action shall be commenced and prosecuted to final judgment by the attorney of the commission. In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

Public utilities, etc., subject to punishment for contempt.

§ 81. Every public utility, corporation or person which shall fail to observe, obey or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or portion thereof, of the commission or any commissioner shall be in contempt of the commission, and shall be punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section shall not be a bar to or affect any other remedy prescribed in this act, but shall be cumulative and in addition to such other remedy or remedies.

Pending actions not affected.

§ 82. (a) This act shall not affect pending actions or proceedings brought by or against the people of the state of California or the commission, or by any other person or corporation, but the same may be prosecuted and defended with the same effect as though this act had not been passed. Any investigation, hearing, or examination undertaken, commenced, instituted or prosecuted prior to the taking effect of this act may be conducted and continued to a final determination in the same manner and with the same effect as if it had been undertaken, commenced, instituted or prosecuted in accordance with the provisions of this act. All proceedings hitherto taken by the commission in any such investigation, hearing or examination are hereby ratified, approved, validated and confirmed and all such proceedings shall have the same force and effect as if they had been undertaken, commenced, instituted, and prosecuted under the provisions of this act and in the manner herein prescribed.

Cause of action not abated.

(b) No cause of action arising under any law of this state shall abate by reason of the passage of this act, whether a suit or action has been instituted thereon at the time of the taking effect of this act or not, but actions may be brought upon such causes in the same manner, under the same terms and conditions, and with the same effect as though this act had not been passed.

Previous orders, etc., continue in force.

(c) All orders, decisions, rules or regulations heretofore made, issued or promulgated by the commission shall continue in force and have the same effect as though they had been lawfully made, issued or promulgated under the provisions of this act.

Continuation of act of 1911.

(d) This act, in so far as it does not add to, take from or alter chapter fourteen of the laws of the extraordinary session of December, 1911, as heretofore amended, shall be construed as a continuation thereof.

Constitutionality of act.

§ 83. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Not applicable to foreign commerce or between states.

§ 84. Neither this act nor any provision thereof, except when specifically so stated, shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union, except in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

Fund. Revolving fund.

§ 85. All moneys which are paid into the state treasury by the commission under the provisions of section 57 of this act, and credited to the railroad commission fund, are hereby appropriated, to be used by the commission in carrying out the provisions of this act, and the controller is hereby directed to draw his warrant on said fund from time to time in favor of the commission for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same. The commission may, with the consent of the board of control, withdraw from the railroad commission fund a sum not to exceed two thousand dollars, the sum so drawn to be used as a revolving fund where cash advances are necessary. The commission must account for the sum withdrawn for said revolving fund at any time, upon demand of the board of control.

Inconsistent acts repealed.

§ 86. All acts or parts of acts inconsistent with the provisions of this act, including title XV of part IV of division first of the Civil Code, are hereby repealed, but this act shall not be construed to repeal or modify chapters 499 and 500 of the laws of 1911 or chapters 80, 168, 284, 285, 286, 327 and 557 of the laws of 1913.

RULES OF PROCEDURE GOVERNING FORMAL PROCEEDINGS BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

TABLE OF CONTENTS.

<p>RULE I—GENERAL MATTERS PERTAINING TO ALL FORMAL PROCEEDINGS.</p> <ol style="list-style-type: none"> 1. Correspondence. 2. Form and Size of Papers Filed. 3. Numbers Assigned to Proceedings. 4. Amendments to Pleadings. 5. Subpoenas. 6. Service of Papers. 7. Intervention. <p>RULE II—FORMAL COMPLAINTS.</p> <ol style="list-style-type: none"> 1. Who May Complain. 2. Contents of Complaint. 3. Signature to Complaint. 4. Verification. 5. Number of Copies. 6. Procedure Upon Filing of Complaint. 7. Satisfaction of Complaint. 8. Answer to Complaint. <p>RULE III—FORMAL APPLICATIONS.</p> <ol style="list-style-type: none"> 1. Definition. 2. Contents of Application. 3. Verification. 4. Number of Copies. 5. Articles of Incorporation. 6. Financial Statement. <p>RULE IV—APPLICATIONS FOR AUTHORITY TO ISSUE STOCKS, BONDS, NOTES OR OTHER EVIDENCES OF INDEBTEDNESS.</p> <p>RULE V—APPLICATION TO SELL, LEASE, MORTGAGE OR OTHERWISE ENCUMBER PUBLIC UTILITY PROPERTY.</p>	<p>RULE VI—APPLICATION FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.</p> <ol style="list-style-type: none"> 1. For New Construction or Extensions. 2. For Exercise of Franchise Rights. 3. For Approval of Wharf Franchise. 4. For Exercise of Rights of Franchise Not Yet Secured. <p>RULE VII—APPLICATION FOR AUTHORITY TO INCREASE RATES.</p> <p>RULE VIII—APPLICATIONS TO CONSTRUCT, ALTER OR ABOLISH RAILROAD CROSSINGS.</p> <p>RULE IX—OTHER APPLICATIONS.</p> <p>RULE X—HEARINGS AND REHEARINGS.</p> <ol style="list-style-type: none"> 1. When Hearings Will Be Given. 2. Notice of Place of Hearing. 3. Publication of Notice. 4. Stipulation as to Facts. 5. Procedure at Hearings. 6. Investigations on Commission's Own Motion. 7. Rehearings. <p>RULE XI—ADDITIONAL INFORMATION.</p> <p>RULE XII—DEVIATIONS FROM RULES.</p> <p>RULE XIII—AMENDMENT OF RULES.</p> <p>RULE XIV—FORMS.</p> <ol style="list-style-type: none"> 1. Formal Complaint. 2. Order to Satisfy or Answer a Complaint. 3. Answer. 4. Notice of Hearing on Complaint. 5. Formal Application. 6. Published Notice of Hearing on Application.
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RULES OF PROCEDURE.

The following rules of procedure are adopted by the Railroad Commission of the State of California, in accordance with the provisions of section 53 of the Public Utilities Act.

RULE I—GENERAL MATTERS PERTAINING TO ALL FORMAL PROCEEDINGS.

1. *Correspondence.* All correspondence with the commission shall be addressed "Railroad Commission, Ninth Floor Flood Building, San Francisco, California," which is the main office of the commission, or "Railroad Commission, 205 Union League Building, Los Angeles, California," which is a branch office of the commission.

2. *Form and Size of Papers Filed.* All pleadings filed with the commission in formal proceedings shall be printed or typewritten on one side of the paper only, and, as far as practicable, shall be upon paper 8½ by 13 inches in size.

3. *Numbers Assigned to Proceedings.* The secretary shall assign to each formal proceeding a number which the parties shall, before filing, place on all subsequent papers in such proceeding.

4. *Amendments to Pleadings.* The commission may, in its discretion, allow any pleading to be amended or corrected or any omission therein to be supplied.

"No original subpoena shall be issued by the commission or any of its officers authorized to issue subpoenas unless the applicant therefor first establish that he has a proper relation to the matter and unless said applicant for subpoena gives the names and addresses of all witnesses for whose attendance the power of the commission is invoked, which names and addresses shall be inserted in the original subpoena. A copy of said original subpoena shall be filed in the proper action. Request by mail or wire from proper applicants conforming to this rule is sufficient. In no case shall blank—signed and sealed—original subpoenas be issued to anyone. When a witness is present he may be called by either party or by the commission."

Subpoenas for the production of books, accounts, papers, waybills and other documents will only be issued upon application in writing, stating as nearly as possible the books, accounts, papers, waybills or other desired to be produced.

6. *Service of Papers.* Personal service of papers in all hearings, investigations and formal proceedings pending before the commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure of this state. Service may also be made by mailing in a sealed envelope, registered, with postage prepaid, addressed to any party to such hearing, investigation or formal proceeding or to any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure. If service is made by mailing, and an act is to be performed within a specified time after service, the time for the performance of the act shall begin to run at the time the registered letter is received. When any party has appeared by attorney, service upon the attorney will be deemed proper service upon such party.

7. *Intervention.* In any formal proceeding, the commission may permit any corporation, association, body politic or person to intervene and be heard.

RULE II—FORMAL COMPLAINTS.

1. *Who May Complain.* Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization or any body politic or municipal corporation, by complaint in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission. Any public utility shall have the right to complain on any of the grounds upon which complaint may be made by other parties.

If the complaint is against the reasonableness of any rate or charge of any gas, electrical, water or telephone utility, the commission can not entertain the same unless it be signed by the mayor or the president or the chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city and county, or city or town, if any, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers or prospective consumers or purchasers of such gas, electricity, water or telephone service.

2. *Contents of Complaint.* Each complaint shall show the venue, "Before the Railroad Commission of the State of California." shall bear a heading showing the name of the complainant and the name of the defendant and shall state—

(a) The full name and post-office address of each complainant.

(b) The full name and post-office address of each defendant.

(c) Fully and clearly the specific act complained of, together with such other facts as will give the commission and the defendant a full understanding of the situation.

The complaint shall set forth definitely the exact relief which is desired.

For form of formal complaint, see page 18 [p. 2560 of this work].

3. *Signature to Complaint.* The complaint shall be signed by each complainant and by the attorney if any. Where an attorney signs the complaint, his address shall be given. Where the complainant is a corporation or an association, the complaint may be signed by an officer or director thereof.

4. *Verification.* Every complaint must be verified by at least one complainant. If the complainant is a corporation or association, any officer or director thereof may verify the complaint.

For form of verification, see page 18 [p. 2560 of this work].

5. *Number of Copies.* At the time complainant files his original complaint, he must also file copies thereof equal in number to three more than twice the number of defendants named in the complaint.

6. *Procedure Upon Filing of Complaint.* Upon the filing of a formal complaint, the commission shall immediately mail a copy thereof to each defendant. This copy shall be sent by way of information only, and each defendant shall be allowed five days within which to point out to the commission in writing such defects in the complaint as, in the opinion of the defendant, require amendment. The commission will then give consideration to the defects, if any, so enumerated. Trivial defects shall be disregarded. Should the commission, however, be of the opinion that the defects brought to its attention are so vital that the complaint should be amended, the commission will require the complainants to amend the complaint.

Wherever the commission is of the opinion that the complaint is sufficient, it shall formally serve a copy thereof upon each defendant, together with an order directly to each defendant, requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten days from the date of service of such order, provided that the commission may, in particular cases, require the answer to be filed within a shorter time.

7. *Satisfaction of Complaint.* If the defendant desires to satisfy the complaint, he may file with the commission, within the time allowed for the satisfaction or answer, a statement of the relief which he is willing to give. The commission shall immediately forward a copy thereof to the complainant. If, in his opinion, the satisfaction meets the complaint, the complainant shall make written request to the commission that the complaint be dismissed. If the complainant is of the opinion that the satisfaction does not meet his complaint, he shall so notify the commission, whereupon the commission shall notify the defendant that the latter must answer the complaint.

8. *Answer to Complaint.* If satisfaction be not made, as aforesaid, the corporation or person complained of must, within the time specified in the order or such extension thereof as the commission for good cause shown, may grant, file an answer to the complaint.

Before the answer may be filed, it must be served by the defendant upon each complainant or his attorney and an acknowledgment or affidavit of such service must be attached to the answer.

The answer must contain a specific denial of such material allegations of the complaint as are controverted by the defendant and also a statement of any new matter constituting a defense. If the answering party has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer and place his denial upon that ground. The filing of an answer will not be deemed an admission of the sufficiency of the complaint, but a motion to dismiss may be made at the hearing.

The answer must be signed and verified by the defendant filing the same. The attorney, if any, shall also sign the answer and must state his address. If the defendant is a corporation or an association the answer may be signed and verified by any officer or director thereof.

The original answer must be filed together with two copies thereof.

For form of answer and verification, see page 20 [p. 3775 of this work].

RULE III—FORMAL APPLICATIONS.

1. *Definition.* A formal application is a formal proceeding in which the authority of the commission to perform an act is requested.

2. *Contents of Application.* All formal applications must be by petition in writing. The petition must set forth the full name and post-office address of the applicant, and must contain fully the facts on which the application is based, with a request for the order, authori-

zation, permission or certificate desired and a reference to the particular provision of law requiring or providing for the same.

The application shall be signed by the applicant and the attorney, if any. Where an attorney signs the application, his address shall be given.

For form of application, see page 22 [p. 2562 of this work].

3. *Verification.* Every application must be verified by each applicant. If the applicant is a corporation or association, any officer or director thereof may verify the application.

For form of verification, see page 22 [p. 2562 of this work].

4. *Number of Copies.* At the time the original application is filed, three additional copies must also be filed.

5. *Articles of Incorporation.* If the applicant is a corporation, a certified copy of its articles of incorporation shall be annexed to the application. If applicant's articles of incorporation have already been filed with the commission in some prior proceeding, it shall be sufficient if this fact is stated in the application and reference is made to the subject matter and number of the prior proceeding.

6. *Financial Statement.* Wherever in these rules it is provided that a financial statement shall be annexed to the application, this statement shall be prepared as of the first day of the month in which the application is filed and shall show the following information in order:

(a) Amount and kinds of stock authorized.

(b) Amount and kinds of stock issued and outstanding.

(c) Terms of preference of preferred stock, whether cumulative or participating, or on dividends or assets, or otherwise.

(d) Brief description of each mortgage upon property of applicant, giving date of execution, name of mortgagor, name of mortgagee or trustee, amount of indebtedness authorized to be secured thereby, and amount of indebtedness actually secured, together with any sinking fund provisions.

(e) Number and amount of bonds authorized, and number and amount issued, giving the name of the public utility which issued the same, describing each class separately, and giving date of issue, par value, rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.

(f) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.

(g) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by any person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

(h) Rate and amount of dividends paid during the five previous fiscal years, and the amount of capital stock on which dividends were paid each year.

(i) A balance sheet of the latest available date, together with an income and profit and loss (corporate surplus account) statement covering period from close of last fiscal year for which an annual report has been filed with the commission, to the date of the balance sheet attached to the application.

RULE IV—APPLICATIONS FOR AUTHORITY TO ISSUE STOCKS, BONDS, NOTES OR OTHER EVIDENCES OF INDEBTEDNESS.

When application is made by any public utility for an order authorizing the issue of stock or stock certificates, or bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, under the provisions of section 52 of the Public Utilities Act—

1. The petition in addition to the requirements of Rule III, shall state:

(a) A general description of applicant's property and the field of its operation, including an inventory or appraisal in detail of its property and equipment, together with a statement of the original cost of the same and cost to applicant. If it is impossible to state the original cost, the facts creating such impossibility shall be stated.

(b) The amount and kind of stock, if any, which the public utility desires to issue, and, if preferred, the nature and extent of the preference: the amount of bonds, notes or

other evidences of indebtedness, if any, which the public utility desires to issue, with terms, rate of interest, and whether and how to be secured.

(c) The use to which the capital to be secured by the issue of such stock or stock certificates, or bonds, notes or other evidences of indebtedness is to be put, with a definite statement of how much is to be used severally for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service, the discharge or refunding of obligations, and the reimbursement of moneys actually expended from income or from any other moneys in the treasury, as provided by section 52 of the Public Utilities Act.

(d) The property in detail which is to be acquired, with its value, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the reimbursement of expenditures, or for the disposition of any of the stock or stock certificates, or bonds, notes or other evidences of indebtedness which it proposed to issue or the proceeds thereof, and if any contracts have been made, copies thereof shall be annexed to the petition.

(e) If it is proposed to discharge or refund obligations or to reimburse moneys actually expended, a statement of the nature and description of such obligations and expenditures, including the par value of the obligations and the amount for which they were actually sold and the application of the proceeds and of the moneys expended, showing when, to whom and for what paid or applied. If notes are to be refunded, the petition must show the date, amount, term, rate of interest and payee of each and the purpose for which their proceeds were expended.

(f) Such other facts as may be pertinent to the application.

2. With the petition must be filed:

(a) Copy of articles of incorporation (Rule III—5).

(b) Financial statement (Rule III—6).

(c) Copy of trust deeds or mortgages, if any, unless same have already been filed with the commission, in which case reference should be made to the proceeding in which the trust deeds or mortgages have been filed.

(d) Maps and plans of the proposed property and construction, together with *detailed estimates* in such form that they can be checked over by the commission's engineering department. Estimates for proposed steam or electric railroads shall be submitted upon blanks, which will be furnished by the commission.

RULE V—APPLICATION TO SELL, LEASE, MORTGAGE OR OTHERWISE ENCUMBER PUBLIC UTILITY PROPERTY.

When application is made by a railroad corporation, street railroad corporation, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation or water corporation, for an order authorizing the sale, lease, assignment, mortgage or other disposition of the whole or any part of its property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, or by any means whatsoever, direct or indirect, the merger or consolidation of its property, franchises or permits, or any part thereof, with any other public utility, in the cases specified in section 51 (a) of the Public Utilities Act,

1. The petition must be made by all the parties to the proposed transaction, and, in addition to the requirements of Rule III, must show:

(a) In detail the reasons upon the part of each applicant for entering into the proposed sale, lease, assignment, mortgage or other disposition of such property, franchise or permit and all the facts warranting the same and showing that it is for the benefit of the public service.

(b) Detailed description of the property to be sold, leased, mortgaged or otherwise encumbered, together with the original cost to applicant and present value thereof.

2. With the petition shall be filed:

- (a) Copy of articles of incorporation of each applicant (Rule III—5).
- (b) Financial statement of each applicant (Rule III—6).
- (c) Copy of proposed deed of sale, lease, mortgage or other encumbrance, or contract or agreement for the same, if any.

RULE VI—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.

1. *New Construction or Extension.* When application is made, under section 50 (a) of the Public Utilities Act, by any new public utility for a certificate that the present or future public convenience or necessity require or will require said utility to begin the construction of its plant or system, or by an existing public utility for a certificate that present or future public convenience or necessity require, or will require, the construction of a proposed extension into territory now served by a public utility of like character, the applicant in addition to complying with the provisions of Rule III shall submit the following data, either in the application or as exhibits attached thereto:

- (a) Copy of articles of incorporation (Rule III—5).
- (b) The facts showing that the proposed new construction is or will be required by public convenience and necessity.
- (c) Copies of franchises or permits from the proper public authority necessary for the proposed new construction or extension.
- (d) A full description of the proposed location, route or routes of the new construction or extension, including a description of the manner in which the same will be constructed, and also the names of all public utilities, corporations, or persons with whom the proposed new construction or extension is likely to compete.
- (e) A map to suitable scale shall be furnished showing the location or route of the proposed new construction or extension with its relation to other public utilities with which the same is likely to compete.
- (f) Applicant shall furnish all such other data as is necessary to a complete understanding of the situation.
- (g) The manner in detail in which it is proposed to finance the new construction or extension.

2. *Exercise of Franchise Rights.* When application is made under section 50 (b) of the Public Utilities Act by any public utility for a certificate that public convenience and necessity require the exercise of a right or privilege granted to applicant under a franchise or permit, the applicant, in addition to complying with the provisions of Rule III, shall submit the following data, either in the application or attached thereto as exhibits:

- (a) Copy of articles of incorporation (Rule III—5).
- (b) The facts showing that the exercise of the right or privilege secured by the franchise or permit is required by public convenience or necessity.
- (c) Copy of the franchise or permit containing the right or privilege which applicant desires to exercise.
- (d) A map to suitable scale showing the streets, avenues and all other places and property in or upon or along which it is proposed to exercise such franchise or permit, together with the relation of applicant to other utilities with which it is likely to compete.

3. *Approval of Wharf Franchises.* Applications for approval of wharf franchises under the provisions of chapter 557 of the statutes of 1913, amending section 2906 of the Political Code, shall be under the provisions of section 2 of this rule and shall be accompanied by copies of the application to the board of supervisors and of the ordinance granting the franchise.

4. *Exercise of Rights of Franchise Not Yet Secured.* If a public utility desires a certificate declaring that public convenience and necessity require or will require the exercise of a right or privilege under a franchise or permit, which applicant contemplates securing, but which has not yet been granted to it, such public utility may file an application, under section 50 (c) of the Public Utilities Act, for an order preliminary to the issue of the certificate. This application shall set forth the information required by section 2 of this rule, except that a copy of the application for the franchise or permit shall be filed instead of the franchise

or permit. The commission may, in its discretion, make an order declaring that it will thereafter upon application issue the desired certificate upon such terms and conditions as it may designate after the public utility has obtained the contemplated franchise or permit. When the franchise or permit has been granted, the public utility shall make application for the certificate, attaching to such application a copy of the franchise or permit, and the commission will thereupon issue such certificate.

RULE VII—APPLICATIONS FOR AUTHORITY TO INCREASE RATES.

When application is made by any public utility to raise any rate, fare, toll, rental or charge, or so to alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, applicant, in addition to complying with the provisions of Rule III, shall submit the following data either in the application or attached thereto as exhibits:

1. Copy of articles of incorporation (Rule III—5).
2. Financial statement (Rule III—6).
3. A schedule of the present rates, fares, tolls, rentals or charges in effect, and the increases which it is desired to make.
4. A description of applicant's property, together with an inventory or appraisal in detail of the same, including a statement of the original cost of the property, and the cost thereof to applicant.
5. A statement in full of the reason why the increase is desired so that the commission may clearly see the justification therefor.

RULE VIII—APPLICATIONS TO CONSTRUCT, ALTER OR ABOLISH RAILROAD CROSSINGS.

When application is made for the construction, alteration or abolition of crossings (1) of public roads, highways or streets by railroads, or (2) of railroads by public roads, highways or streets, or (3) of railroads by railroads, or (4) of railroads by street railroads, or (5) of street railroads by railroads, or (6) of public roads or highways by street railroads, or (7) of street railroads by public roads or highways, under the provisions of section 43 of the Public Utilities Act, applicant, in addition to complying with the provisions of Rule III, shall submit the following data either in the application or as exhibits attached thereto:

1. Copy of articles of incorporation (Rule III—5).
2. If the crossing is to be constructed by a railroad within the limits of an incorporated city or town, there shall be attached to the application a certified copy of the franchise or portion thereof, which gives to the railroad the right to cross the highway in question.
3. Map on scale of not less than 200 feet per inch, showing accurately the location of all tracks, buildings, structures, property lines, streets and roads in the vicinity of the proposed crossing; also profiles showing ground lines and proposed grade lines of approaches on such public roads, highways or streets, railroads or street railroads as may be affected by the proposed crossing. In case of a contemplated crossing of a railroad by a railroad, the profile of each railroad shall show the customary information for not less than one (1) mile on each side of the proposed crossing.
4. Such safety device or other protection, if any, as the applicant may believe should be installed, with detailed information concerning the same.
5. If the crossing is a grade, a statement should be made showing why a separation of grades is not practicable under the circumstances.
6. If the crossing is constructed over the tracks of another railroad, the contract between the two companies covering the crossing shall be filed.
7. If the proposed crossing is over a state highway, that fact should be stated in the petition and shown on the map.

When application is made for permission to construct a public highway over a railroad crossing, the application must be made by the proper municipal or county authorities. If, in addition to the information above specified, there is attached to the application a copy of an easement granted by the railroad to the proper public authority covering the crossing in question, or some other evidence which shows that the railroad company is willing that the crossing shall be constructed, the commission may possibly be in a position to grant the application *ex parte* without the necessity of a hearing.

RULE IX—OTHER APPLICATIONS.

Applications relating to matters over which the commission has jurisdiction and which are not covered by any of the preceding rules, shall be drafted in accordance with the form prescribed in Rule III and shall set forth all the information necessary to a full understanding of the case.

RULE X—HEARINGS AND REHEARINGS.

1. *When Hearings Will Be Given.* Except as otherwise determined in specific cases, the commission will grant a hearing in the following classes of cases:

(a) When an order to satisfy a complaint or to make answer thereto has been made and the corporation or person complained of has not satisfied the cause of complaint (Rule II—7, 8).

(b) When application has been made in a formal proceeding.

2. *Notice of Place of Hearing.* Notice of the place, day and hour of the hearing in a formal case shall be served at least ten days before the time set therefor, unless the commission shall find that public necessity requires the hearing to be heard at an earlier date. Hearings upon formal applications shall be set as deemed necessary by the commission.

3. *Publication of Notice.* In formal applications the commission may, in its discretion, give all other corporations or persons who may be affected thereby, an opportunity to be heard either by service upon them of a copy of the petition or by publication of the substance thereof, at the expense of applicant, for such length of time and in such newspaper or newspapers as the commission may designate. In such cases the form of notice shall be prepared by the secretary of the commission and a proof of the publication thereof must be filed at or before the hearing.

4. *Stipulation as to Facts.* The parties to any proceeding or investigation before the commission may, by stipulation in writing, filed with the commission or entered in the record, agree upon the facts, or any portion thereof, involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing. It is desirable that the facts be thus agreed upon whenever practicable. The commission may, in such cases, require such additional evidence as it may deem necessary.

5. *Procedure at Hearings.* Witnesses will be examined orally and under oath before the commission or a commissioner or examiner unless the facts are stipulated or the commission or commissioner or examiner otherwise orders.

The complainant must establish the facts upon which he bases his complaint, unless the defendant admits the same or fails to answer the complaint. The defendant must likewise give evidence of the facts alleged in the answer, unless admitted by the complainant, and must fully disclose its defense at the hearing. In case of failure to answer, the commission will take such proof of the facts as may be deemed proper and reasonable and make such order thereon as the circumstances of the case may require.

If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed may, in its discretion, accept certified, or otherwise authenticated, copies of such documents or such portions of the same as may be relevant, or may require such evidence to be transcribed as part of the record.

6. *Investigations on Commission's Own Motion.* The commission may at any time, of its own motion, make investigations and order hearings into any act or thing done or omitted to be done by any public utility, which the commission may believe is in violation of any provision of law or of any order or rule of the commission. It may also, through its own experts or employees, or otherwise, secure such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

7. *Rehearings.* Any party to a formal proceeding or any stockholder or bondholder or other party pecuniarily interested in the public utility affected may apply for a rehearing as to any matters determined by the commission and specified in the application for the rehearing, and the commission may grant and hold such rehearing on said matters, if in its judgment sufficient reason therefor be made to appear. Such application shall set forth specifically the ground or grounds on which the applicant considers the commission's decision or order to be unlawful or erroneous. Rehearings must be asked for before the effective date of the decision

or order complained of. In further respects, rehearings will be governed by the provisions of section 66 of the Public Utilities Act.

RULE XI—ADDITIONAL INFORMATION.

Additional information with reference to formal proceedings may be secured by applying to the commission's secretary (Rule I).

RULE XII—DEVIATIONS FROM RULES.

In special cases, for good cause shown, the commission may permit deviations from these rules in so far as it may find compliance therewith to be impossible or impracticable.

RULE XIII—AMENDMENT OF RULES.

The rules may be amended at any time by the commission.

RULE XIV—FORMS.

The following forms should be followed, in so far as possible:

1. Formal Complaint.
2. Order to Satisfy or Answer a Complaint.
3. Answer.
4. Notice of Hearing on Complaint.
5. Formal Application.
6. Published Notice of Hearing on Application.

No. 1.

FORM OF FORMAL COMPLAINT

Before the Railroad Commission of the State of California.

(Insert name of each complainant),	Complainant, } vs. (Insert name of each defendant),	No. (To be inserted by the secretary of the commission.)

COMPLAINT.

The complaint of (here insert full name of each complainant) respectfully shows:

- (1) That (here state occupation and post-office address of each complainant).
- (2) That (here insert full name, occupation and post-office address of each defendant).
- (3) That (here insert *fully and clearly* the specific act or thing complained of, together with such facts as are necessary to give a full understanding of the situation).

Wherefore, complainant asks (here state specifically the relief desired).

Dated at, California, this day of,
19....

.....
(Name of each complainant.)
.....
(Name and address of attorney, if any.)

STATE OF CALIFORNIA,
..... County of } ss.

(Insert name of one complainant), being first duly sworn, deposes and says: that he is the complainant in the action entitled as above; that he has read the foregoing complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me, this day of,
19....

Notary Public in and for the County of, State of
California.

No. 2.

FORM OF ORDER TO SATISFY OR ANSWER A COMPLAINT

Before the Railroad Commission of the State of California.

.....,
Complainant,
vs.
.....,
Defendant.

}

No.....

(To be inserted by the secretary
of the commission.)

ORDER TO SATISFY OR ANSWER.

To (here insert name and address of defendant):

You are hereby notified that a complaint has been filed in the action entitled as above against you as defendant, and you are hereby ordered to satisfy the matters therein complained of or to answer said complaint in writing within ten (10) days from the service upon you of this order and the copy of said complaint which is hereunto attached.

By order of the Railroad Commission.

Dated at San Francisco, California, this, day of, 19....

.....

Secretary Railroad Commission
of the State of California.

(Railroad Commission Seal.)

No. 3.

FORM OF ANSWER TO FORMAL COMPLAINT

Before the Railroad Commission of the State of California.

(Insert name of each complainant),
Complainant,
vs.
(Insert name of each defendant),
Defendant.

}

No.....

(To be inserted by the secretary
of the commission.)

ANSWER.

The above named defendant, for answer to the complaint in this proceeding, respectfully states:

(1) That (here follow specific denials of such material allegations of the complaint as are controverted by the defendant and also a statement of any new matter constituting a defense. Continue numbering each succeeding paragraph).

Wherefore, the defendant prays that the complainant be dismissed (or other appropriate prayer).

.....

(Name of defendant.)

.....

(Name and address of attorney, if any.)

STATE OF CALIFORNIA,
..... County of

}

ss.

(Insert name of defendant), being first duly sworn, deposes and says: that he is the defendant in the action entitled as above; that he has read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes it to be true.

.....

Subscribed and sworn to before me, this day of, 19....

.....

Notary Public in and for the County of, State of California.

II Gen. Laws—55

No. 4.

FORM OF NOTICE OF HEARING ON COMPLAINT

Before the Railroad Commission of the State of California.

.....,
Complainant,
vs.
.....,
Defendant,

}

No.....
(To be inserted by the secretary
of the commission.)

NOTICE OF HEARING.

To (here insert name of party to be notified):

You and each of you are hereby notified that the Railroad Commission of the State of California has set the above entitled case for hearing before Commissioner on (day of week) the (day of month) day of (name of month), 19...., at..... o'clock...m., at (here insert place of hearing), at which time and place you will be given an opportunity to be heard.

By order of the Railroad Commission.

Dated at, California, this day of....., 19....

.....
Secretary Railroad Commission
of the State of California.

(Railroad Commission Seal.)

No. 5.

FORM OF FORMAL APPLICATION

Before the Railroad Commission of the State of California.

In the Matter of the Application of (here insert
name of each applicant) for (here insert desired
order, authorization, permission or certificate,
thus: "order authorizing issue of stocks and
bonds").

}

No.....
(To be inserted by the secretary
of the commission.)

APPLICATION.

The petition of (here insert name of each applicant) respectfully shows:

1. That applicant is engaged in the business of (here insert nature of business and territorial extent thereof).

2. That the post-office address of each applicant is.....

3. That (here insert *fully and clearly* the facts required by these rules, and any additional facts which the applicant desires to state).

Wherefore, applicant asks that the Railroad Commission of the State of California make its order authorizing applicant to (here state specifically the action which the applicant desires the Railroad Commission to take).

Dated at, California, this day of....., 19....

.....
(Name of each applicant.)

.....
(Name and address of attorney, if any.)

STATE OF CALIFORNIA,
..... County of

}

ss.

(Insert name of applicant), being first duly sworn, deposes and says: that he is the applicant in the proceeding entitled as above; that he has read the foregoing application and knows

the contents thereof; and that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes it to be true.

.....
Subscribed and sworn to before me, this day of
19.....

.....
Notary Public in and for the County of, State of
California.

No. 6.

FORM OF PUBLISHED NOTICE OF HEARING ON APPLICATION

Before the Railroad Commission of the State of California.

In the Matter of the Application of (here insert }
name of applicant) *for* (here insert desired } No.....
order, authorization, permission or certificate). }
(To be inserted by the secretary
of the commission.)

NOTICE OF HEARING.

Notice is hereby given that the application of (name of applicant in full) for the (approval, determination, consent, permission, certificate or authorization) of the Railroad Commission of the State of California to (here state nature of consent asked) will be heard before Commissioner on (day of week), the (day of month) day of (name of month), 19...., at o'clockm., at (here insert place of hearing), at which time all persons interested may appear and be heard.

By order of the Railroad Commission.

Dated at San Francisco, California, this day of, 19.....
.....

Secretary Railroad Commission
of the State of California.

SUBPENA FORMS

Subpœna forms have been amended by the addition of the following clause:

“* * * then and there to testify in the above entitled matter, *on behalf of*”

In issuing subpœnas the original and all copies should show in the blank space at which instance the subpœna is issued, as “Applicant,” “Complainant,” “Defendant” (if only one), “Defendant John Doe,” etc., if more than one, etc.

- I. CONSTITUTIONAL LAW.
- II. DEFINITIONS.
- III. PUBLIC UTILITIES.
- IV. POWERS AND JURISDICTION OF RAILROAD COMMISSION.
 - a. In general.
 - b. Sale, rental, and distribution of water.
 - c. Rates and rate making.
 - d. Grade crossings.
 - e. Industrial tracks.
 - f. Joint use of facilities.
 - g. Physical connections in cities.
 - h. Union depots.
 - i. Safety devices and appliances.
 - j. Schedules and train movements.
 - k. Certificate of public convenience and necessity.
 - l. Issue of securities.
 - m. Sale and lease of properties of utilities.
 - n. Contracts of utilities.
 - o. Valuation for rate making.
 - p. Valuation for condemnation.
 - q. Reparation for violation of long and short haul clause.
 - r. Consolidation of utilities.
- V. RIGHTS, DUTIES, AND LIABILITIES OF UTILITIES.
 - a. In general.
 - b. Deposit to establish credit.
 - c. Service contracts and connections.
 - d. Extensions, additions, and improvements.
- VI. REVIEW.
- VII. ACTIONS.
- VIII. MISCELLANEOUS.
 - I. CONSTITUTIONAL LAW.
 1. Due process and equal protection—Certificate of public convenience and necessity.
 2. Same—Only oppressive and confiscatory rate presents judicial question.
 3. Same—No provision for appeal.
 - 3a. Same—Same—Right of review.
 - 3b. Same—Same—Same—Right must be exhausted before federal court will take jurisdiction on constitutional ground.
 4. Same—Excessive penalties—Remission of penalties.
 - 4a. Same—Imposition of severe penalties by state statute—Ground for injunction by federal court.
 5. Same—Act not violative of.
 6. Same—Not essential that compensation be fixed by a jury.
 7. Same—Different rules of procedure for different classes of cases.
 8. Same—Same—Classification proper.
 9. Same—Same—§ 23a, article XII, constitution, § 47 declared valid.
 - 9a. Same—Same—Effect of validating clause of § 23a, article XII, constitution.
 - 9b. Same—Same—§ 47 constitutional.
 10. Same—Same—§ 47 and code provisions.
 11. Same—Same—§ 1249 C. C. P. not applicable.
 - 12-14. Same—Property not dedicated to public use—Taking without compensation.
 - 14a. Same—Utility can not be compelled to operate at a loss.
 - 14b. Same—Same—Owner's abandonment of property.
 15. Same—Discharge of employee for labor union membership.
 16. Impairment of obligation of contract—Contracts inconsistent with duty to public not protected.
 - 17-21. Same—Local franchises.
 - 22-24. Same—Same—Municipal control of streets.
 - 25, 26. Same—Private contracts.
 - 27-29. Same—Same—Pre existing contracts affecting rates.
 30. Effect of constitution on question of constitutionality of act—All except §§ 22, 23, art. XII, excluded.
 31. Same—Same—Legislative power to modify, curtail or abridge constitutional powers of commission.
 32. § 67 is a valid limitation on power of courts.
 33. Same—Deprivation of superior court jurisdiction.
 34. Long and short haul clause—Not repugnant to due process of law.
 35. Same—Not repugnant to commerce clause.
 36. Same—Same—Invalidity can not apply to intrastate commerce.
 - 36a. Water transportation on the high seas between ports in same state—Absence of federal regulation.
 37. Police regulation—Extent of power.
 38. Same—Same—Improper police regulation is condemnation.
 39. Same—Same—Subjection of property to use of rivals—Compensation required.
 40. Same—Same—Same—Not police power but eminent domain.
 - 40a. Same—Same—Same—Compelling telephone connections.
 41. Eminent domain—Fixing compensation by commission—Not violation of equal protection.
 - 41a. Case followed and approved.
 42. Same—Building pipe line across privately owned land without compensation—Invalid order.
 43. Same—Same—Same.
 44. Same—Effect of § 23a, art. XII, constitution.
 45. § 43—Grade crossings.
 - 45a. Fixing charges for water service not a tax.
 - I. CONSTITUTIONAL LAW.
 1. Due process and equal protection—Certificate of public convenience and necessity.—Provision in Indiana act not violative of due process of law nor an impairment

of the obligation of a contract.—Farmers, etc., Co. v. Boswell, etc., Co., (Ind.) 119 N. E. 513, P. U. R. 1918E, 172.

2. **Same—Only oppressive and confiscatory rate presents judicial question.**—Unless a rate is clearly oppressive or confiscatory no judicial question is presented, and due process is not invaded.—Salt Lake City v. Utah, etc., Co., (Utah), 173 Pac. 556, P. U. R. 1918F, 377.

3. **Same—No provision for appeal.**—The fact that the public utility act does not provide for an appeal from judgments and orders of the commission does not render it unconstitutional, where provision is made for a review of such judgments and orders.—Brooklyn Heights, etc., Co. v. Straus, 245F, 132.

3a. **Same—Same—Right of review.**—Where a state commission statute gives a public utility the right of review of the commission's acts by the highest court of the state, the federal court in equity will not enjoin such action on the ground of the violation of the constitutional rights of such utility.—Kern, etc., Co. v. Associated, etc., Co., 217 Fed. 273.

3b. **Same—Same—Same—Right must be exhausted before federal court will take jurisdiction on constitutional grounds.**—The federal court in equity will not entertain a suit to enjoin the enforcement of a rate making order of the California railroad commission, on the ground of violation of constitutional rights, until the complainant has exhausted the remedies provided by the statute, including an application for a rehearing.—Palermo, etc., Co. v. Railroad Commission, 227 Fed. 708.

4. **Same—Excessive penalties—Remission of penalties.**—The act is not void on the ground that it prescribes excessive penalties for violations of orders of the commission where it also provides for remission of penalties if the utility prosecutes a suit in good faith and proceeds seasonably, to test its validity.—Brooklyn Heights, etc., Co. v. Straus, 245 Fed. 132.

4a. **Same—Imposition of severe penalties by state statute—Ground for injunction by federal court.**—Where a state statute imposes such severe penalties as to constrain a public utility from testing the validity of acts affecting it the federal court will enjoin the enforcement or attempt to enforce such penalties against such utility.—Kern, etc., Co. v. Associated, etc., Co., 217 Fed. 273.

5. **Same—Act not violative of.**—Section 47 of the public utilities act is not violative of either the due process of law or the equal protection of the laws clause of the federal constitution. —Marin Municipal Water District v. Marin Water and Power Company, 178 Cal. 308, 314, 173 Pac. 469; Marin Municipal Water District v. North Coast Water Co., 178 Cal. 324, 326, 173 Pac. 473.

6. **Same—Not essential that compensation be fixed by a jury.**—It is not essential to the due process of law required by the fourteenth amendment that the compensa-

tion for property taken or damaged under the power of eminent domain be fixed by a jury.—Marin Municipal Water District v. Marin Water and Power Company, 178 Cal. 308, 315, 173 Pac. 469; Marin Municipal Water District v. North Coast Water Co., 178 Cal. 324, 326, 173 Pac. 473.

7. **Same—Different rules of procedure for different classes of cases.**—The equal protection of the law clause of the federal constitution does not prohibit a state from establishing different rules of procedure for different classes of cases or of litigants, provided the variations relate merely to matters of procedure, and do not operate to deprive any class of substantial equality in the adjudication of its rights and liabilities.—Marin Municipal Water District v. Marin Water and Power Company, 178 Cal. 308, 316, 173 Pac. 469; Marin Municipal Water District v. North Coast Water Co., 178 Cal. 324, 326, 173 Pac. 473.

8. **Same—Same—Classification proper.**—The corporations empowered to own and operate public utilities referred to in section 47 of the public utilities act clearly constitute a class sufficiently distinct from all other persons or corporations engaged in public service and desiring to acquire property for public use, to justify peculiar legislation relating to them.—Marin Municipal Water Dist. v. Marin Water and Power Company, 178 Cal. 308, 317, 173 Pac. 469; Marin Municipal Water District v. North Coast Water Co., 178 Cal. 324, 326, 173 Pac. 473.

9. **Same—Same—Section 23a, article XII, constitution—Section 47 declared valid.**—Section 23a of article XII of the constitution removes all doubt as to the present validity of the 1913 amendment of section 47 of the public utilities act, empowering the railroad commission to fix the compensation to be paid for the property of a public utility.—Marin, etc., Co. v. Railroad Commission, 171 Cal. 706, 709, 154 Pac. 864, Ann. Cas. 1917C, 114.

9a. **Same—Same—Effect of validating clause of section 23a, article XII, of the constitution.**—In view of the validating clause of section 23a of article XII of the constitution, the fact that the original section 47 of the public utilities act was enacted prior to the adoption of that section, even if so enacted with existing constitutional authority, does not impair its constitutional validity.—Marin Municipal Water District v. North Coast Water Co., 178 Cal. 324, 326, 173 Pac. 473.

9b. **Same—Same—Section 47 constitutional.**—Section 47 of the public utilities act, providing for the taking of property at the time of judgment of condemnation, upon payment of the compensation previously fixed by the railroad commission, is not in conflict with any of the provisions of the constitution.—Marin Municipal Water District v. Marin Water and Power Company, 178 Cal. 308, 314, 173 Pac. 469; Marin Municipal Water District v. North Coast Water Co., 178 Cal. 324, 326, 173 Pac. 473.

10. Same—Same—Section 47 and code provisions.—The differences between the method of condemning property for a public use provided by the Code of Civil Procedure and section 47 of the public utilities act are merely differences of procedure, and do not go to any matter of essential or fundamental right.—*Marin Municipal Water District v. Marin Water and Power Company*, 178 Cal. 308, 317, 173 Pac. 469; *Marin Municipal Water District v. North Coast Water Co.*, 178 Cal. 324, 326, 173 Pac. 473.

11. Same—Same—Section 1249, Code of Civil Procedure, not applicable.—Section 1249, Code of Civil Procedure, has no application in actions authorized by section 47 of the public utilities act, with respect to the date at which the value shall be estimated.—*Marin Municipal Water District v. Marin Water and Power Company*, 178 Cal. 308, 317, 173 Pac. 469; *Marin Municipal Water District v. North Coast Water Co.*, 178 Cal. 324, 326, 173 Pac. 473.

12. Same—Property not dedicated to public use.—When a corporation voluntarily devotes a part of its property to public use, it is to be presumed that it makes the dedication because it is satisfied with the return which it expects to receive, and in that way it is deemed to have been compensated for such dedication; but when it is forced to devote to public use additional property which it has not dedicated to public use, or is compelled to extend its service to supply uses or territory not embraced in the original dedication, it must, under our constitutional provisions, as a condition precedent, be compensated for the value of the new property taken or the new use exacted.—*Del Mar, etc., Co. v. Eshleman*, 167 Cal. 666, 680, 140 Pac. 591, 948.

13. Same—Same.—Even a constitutional declaration can not transform a private enterprise, or a part thereof, into a public utility, and thus take property for public use without condemnation or payment, and the public utilities act could not authorize the commission to compel a corporation, engaged in a public service to dedicate additional property to public use without additional compensation.—*Del Mar, etc., Co. v. Eshleman*, 167 Cal. 666, 680, 140 Pac. 591, 948.

14. Same—Same.—Neither chapter 327, statutes of 1913 (1913-657), nor section 23, article XII, of the constitution, declaring pipe lines, operated by private corporations, either directly or indirectly to or for the public, to be public utilities, subject to control and regulation by the railroad commission, authorizes the taking of private property for public use.—*Producers Transp. Co. v. Railroad Commission*, 176 Cal. 499, 501, 169 Pac. 59.

14a. Same—Utility compelled to operate at a loss.—A utility can not be compelled to continue to operate at a loss, where the owner abandons the entire property, without violating the fourteenth amendment.—*Lyon & Hoag v. Railroad Commission*, (Cal.) 190 Pac. 795, P. U. R. 1920F, 227. Citing authorities: *Brooks-Scanlon Co. v.*

Railroad Commission, 251 U. S. 36, 40 S. Ct. 183, 64 L. ed. 323; *North Pacific, etc., Co. v. North Dakota*, 236 U. S. 585, 35 Sup. Ct. 429, 59 L. ed. 735, L. R. A. 1915F 1144; *Ann. Cas.* 1916A, 1; *Norfolk, etc., Co. v. West Virginia*, 236 U. S. 605, 35 Sup. Ct. 487, 59 L. ed. 713.

14b. Same—Same—Owner's abandonment of property.—The theory on which the state exercise control over a public utility is that the property so used is dedicated to public use; but this dedication is qualified, however, in that the owner retains the right to receive a reasonable compensation for use of such property and for the service performed in the operation and maintenance thereof; and where the owner is willing to and does in fact abandon all the dedicated property to the public there is no further basis upon which the regulatory power can be predicated.—*Lyon & Hoag v. Railroad Commission*, (Cal.) 190 Pac. 795, P. U. R. 1920F, 227.

15. Same—Discharge of employee for labor union membership.—The Nebraska commission has no jurisdiction to require a utility not to discharge its employees on account of membership in a labor union, upon the theory that such an order is an exercise of its jurisdiction over service, since such order would be in violation of the due process of law clause of the federal constitution.—(*Neb. St. Ry. Com.*) P. U. R. 1918D, 271.

16. Impairment of obligation of contract—Contracts inconsistent with duty to public not protected.—In so far as contracts of public utilities stand in the way of the duty such utilities owe the public they are not within the constitutional guaranty.—*Baltimore, etc., Co. v. Public Service Commission*, (W. Va.) 94 S. E. 545, L. R. A. 1918D, 268, P. U. R. 1918B, 608.

17. Same—Local franchises.—The power to regulate rates is not limited by local franchise contracts.—*Re Chicago, etc., Co.*, (Ill. Pub. Util. Com.) P. U. R. 1918A, 388; *Re Kewanee, etc., Co.*, (Ill. Pub. Util. Com.) P. U. R. 1918B, 172; *Re Central, etc., Co.*, (Ill. Pub. Util. Com.) P. U. R. 1918F, 820; *Re Rockford, etc., Co.*, (Ill. Pub. Util. Com.) P. U. R. 1918F, 840; *Louisiana v. Louisiana, etc., Co.*, (Mo. Pub. Serv. Com.) P. U. R. 1918B, 774; *Kansas City, etc., Co. v. Kansas City*, (Mo. Pub. Serv. Com.) P. U. R. 1918E, 190; *Re Public Service, etc., Co.*, (N. J. Bd. P. U. Comrs.) 1918E, 910; *Harbor Creek Township v. Buffalo, etc., Co.*, (Pa. Pub. Serv. Com.) P. U. R., 1918F, 164; *Re West Virginia, etc., Co.*, (W. Va. Pub. Serv. Com.) P. U. R. 1918C, 453.

18. Same—Same.—The power of the legislature, by a general law, such as the public utilities act, to create a commission empowered to fix rates of fare different from those fixed in local franchises, was elaborately considered and many authorities cited in *Re Huntington, etc., Co.*, (N. Y. Pub. Serv. Com., 2d Dist.) 1918A, 249.

19. Same—Same.—The legislature retains such complete power over the fares to be charged by public service corporations

(short of actual confiscation) than an act reducing the fares to be charged by a railroad is valid, even though the original rate was fixed by law before road was built.—*People ex rel. Delaware, etc., Co. v. Public Service Commission*, 140 App. Div. 839, 125 N. Y. Supp. 1000. Quoted with approval: *Re Huntington, etc., Co.*, (N. Y. Pub. Serv. Com., 2d Dist.) 1918A, 249.

20. Same—Same.—The commission has authority to set aside any provision of a contract between a municipality and a local gas company as to rates to be charged by the latter, where, in the judgment of the commission such provision is in conflict with the public interest.—*Re Consumers Gas Co.*, (Okla. Corp. Com.) P. U. R. 1918D, 201.

21. Same—Same.—The act of 1913 creating the public utilities commission with power to regulate rates did not have the effect of impairing the obligation of a franchise contract between a municipality and a public utility created under the authority of paragraphs 63, 73, section 3259, Revised Codes, for both parties to such an agreement must have entered into it with full knowledge that in the state itself reposed the sovereign power of rate regulation.—*State ex rel. Billings v. Billings Gas Co.*, (Mont.) 173 Pac. 799. Citing to same effect: *Manitowac v. Manitowac, etc., Co.*, 145 Wis. 13, 129 N. W. 925, 140 Am. St. Rep. 1056; *Benwood v. Public Service Commission*, 75 W. Va. 127, 83 S. E. 295.

22. Same—Same—Municipal control of streets.—A franchise rate contract between a municipality having by law exclusive control over its streets, and a public utility company using such streets does not deprive the legislature of the power to regulate the rates to be charged by such utility.—*Winfield v. Public Service Commission*, (Ind.) 118 N. E. 531, P. U. R. 1918B; 747.

23. Same—Same—Same.—The provisions of L. O. L., section 2207, authorizing cities to grant franchises for the use of public streets by public utilities was repealed by implication by the public utility act, and franchises thereunder, having been granted and accepted subject to the sovereign power of the state to regulate rates, can not be said to have been impaired by such repeal.—*Re Portland, etc., Co.*, ("Six-Cent Fare Case"), (Ore. Pub. Serv. Com.) P. U. R. 1918A, 751.

24. Same—Same—Same.—Local franchise rates should be flexible and under the control of a central regulative body; and the provision of the charter of a municipality as to the necessity of the city's consent to the occupation of its streets can not have the effect of impairing the continuing and paramount power of the legislature to fix rates.—*Re Chesapeake, etc., Co.* (Va. Corp. Com.) P. U. R. 1920F, 49.

25. Same—Private contracts.—It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal or

are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected.—*Manigault v. Springs*, 199 U. S. 473, 50 L. ed. 274, 26 Sup. Ct. Rep. 127.

26. Same—Same.—The power known, in its various ramifications as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals.—*Manigault v. Springs*, 199 U. S. 473, 50 L. ed. 274, 26 Sup. Ct. Rep. 127.

27. Same—Same—Pre-existing contracts affecting rates.—The obligation of a contract made subsequent to the adoption of the state constitution affecting the rate to be paid a public utility for water for irrigation purposes is not impaired, within the meaning of the federal constitution by the act of the railroad commission in fixing a new rate under the power given by the public utilities act and thereby practically annulling such contract.—*Limoneira Co. v. Railroad Commission*, 174 Cal. 232, 238, 162 Pac. 1033.

28. Same—Same—Same.—Contracts between utilities and consumers as to rates, made after the enactment of the public utilities act are subject to regulation by the board of public utility commissioners.—*Re Public Service, etc., Co.*, (N. J. Bd. Pub. Util. Comrs.) P. U. R. 1918E, 898.

29. Same—Same—Same.—The fixing of a rate by the authority of the state, conflicting with the rate agreed upon between a water company and a customer, is not the impairment of a contract and void under the federal constitution; inasmuch as the contract is held to have been made subject to the power of the state to regulate the subject.—(*Stanislaus Co. v. San Joaquin, etc., Co.*, 192 U. S. 202, 48 L. ed. 406, 24 Sup. Ct. Rep. 241; *Home, etc., Co. v. Los Angeles*, 211 U. S. 265, 53 L. ed. 176, 29 Sup. Ct. Rep. 50; *Legal Tender Cases*, 12 Wall. 550, 20 L. ed. 305; *Louisville, etc., Co. v. Motley*, 219 U. S. 467, 34 L. R. A. (N. S.) 671, 55 L. ed. 297, 31 Sup. Ct. Rep. 265) *In re Murray*, 2 R. C. D. 464.

30. Effect of constitution on question of constitutionality of act—All except sections 22, 23, article XII, excluded.—Sections 22 and 23 of article XII of the constitution, by their plenary provisions, exclude all consideration of other parts of the constitution, if any there be, conflicting with or contradictory to the public utilities act, if only the matters of which that statute treats are cognate and germane to the subject of regulation of public utilities.—*San Jose v. Railroad Commission*, 175 Cal. 284, 288, 165 Pac. 967.

31. Same—Same—Legislative power to modify, curtail or abridge constitutional powers of commission.—The legislature has no power either by silence or by direct enactment to modify, curtail or abridge the constitutional grant of power to the railroad commission over transportation companies.—*Western Association, etc., R. R. v.*

Railroad Commission, 173 Cal. 802, 803, 162 Pac. 391, 19 L. R. 1455; United Railroads, etc., v. Railroad Commission, 173 Cal. 802, 803, 162 Pac. 391, 19 L. R. 1455.

32. Section 67 is valid limitation on power of courts.—The provision of section 67 of the public utilities act to the effect that no court except the supreme court, to the extent specified "shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission," is a valid limitation upon the powers of the courts of the state.—*Marin Municipal Water District v. North Coast Water Co.*, 178 Cal. 324, 328, 173 Pac. 473.

33. Same—Deprivation of superior court jurisdiction.—Section 67 of the public utilities act is not unconstitutional, in view of the provisions of sections 22 and 23, article XII, of the constitution, because it deprives the superior court of the jurisdiction conferred by section 5, article IV, of the constitution, so far as relates to controversies in law and equity arising under that act, or under the relations of the railroad commission to public utilities is concerned.—*Pacific, etc., Co. v. Eshleman*, 166 Cal. 640, 655, 137 Pac. 1119, Ann. Cas. 1915C, 822, 50 L. R. A. (N. S.) 652.

34. Long and short haul clause—Not repugnant to due process of law.—The long and short haul clause of the California constitution (§ 21, art. XII) is not repugnant to the due process of law clause of the federal constitution.—*California, etc., Co. v. Southern Pacific Co.*, 226 Fed. 349.

35. Same—Not repugnant to commerce clause.—The long and short haul clause of the California constitution (§ 21, art. XII) is not obnoxious to the commerce clause of the federal constitution.—*California Adjustment Co. v. Atchison, etc., Co.*, 179 Cal. 140, 175 Pac. 682.

36. Same—Same—Invalidity can not apply to intrastate commerce.—Even if it be conceded that the first clause of the 1911 amendment to section 21, article XII, of the California constitution is invalid as applying to interstate commerce, such invalidity could not affect the second clause, which must be construed to apply to intrastate commerce alone.—*Southern Pacific Co. v. California Adjustment Co.*, 237 Fed. 954, 150 C. C. A. 604.

36a. Water transportation on the high seas between ports in same state—Absence of federal regulation.—A state is free to prescribe reasonable rates for the transportation of passengers and goods wholly by water, unconnected with transportation by land, between two ports in the same state, over a course which traverses the high seas, in the absence of federal regulation.—*Wilmington Transportation Co. v. Railroad Commission*, 236 U. S. 151, 59 L. ed. 508, 35 Sup. Ct. Rep. 276.

37. Police regulation—Extent of power.—Proper regulation of a public utility consists, 1. Regulation of tolls and charges, to the end that fair compensation may be returned and excessive charges forbidden; 2. To prevent discrimination; and 3. To make

orders and rules governing the conduct of the public utility to the end that its efficiency may be built up and maintained and the public and its employees be accorded desirable safeguards and conveniences; and beyond this regulation as such, each railroad.—*Pacific, etc., Co. v. Eshleman*, 166 Cal. 640, 663, 137 Pac. 1119, Ann. Cas. 1915C, 822, 50 L. R. A. (N. S.) 652.

38. Same—Same—Improper police regulation is condemnation.—The police power goes to the regulation of a public utility, and when an order of the railroad commission goes beyond proper regulation it is referable to the power of eminent domain.—*Pacific, etc., Co. v. Eshleman*, 166 Cal. 640, 663, 137 Pac. 1119, Ann. Cas. 1915C, 822, 50 L. R. A. (N. S.) 652.

39. Same—Same—Subjecting of property to use of rivals—Compensation required.—The legislature may subject property devoted to a public use, to the same public use by its rivals, but the doing of such an act is referable to the power of eminent domain, not the police power, and compensation must be made.—*Pacific, etc., Co. v. Eshleman*, 166 Cal. 640, 665, 137 Pac. 1119, Ann. Cas. 1915C, 822, 50 L. R. A. (N. S.) 652.

40. Same—Same—Same—Not police power but eminent domain.—The devotion of property to a public use does not destroy the ownership or justify its taking without compensation, as an exercise of the police power, on the ground of public convenience, or that the owners are derelict in the performance of their public duty.—*Pacific, etc., Co. v. Eshleman*, 166 Cal. 640, 665, 137 Pac. 1119, Ann. Cas. 1915C, 822, 50 L. R. A. (N. S.) 652.

40a. Same—Same—Same—Compelling telephone connections.—An order of the railroad commission compelling a telephone company to permit rival companies to make connections with its long distance telephone lines, and to give such rivals the same use of its switchboards, lines, operators, property, etc., and their subscribers the same long distance facilities that it gave to its own subscribers, is an exercise of the power of eminent domain, and not of the police power.—*Pacific, etc., Co. v. Eshleman*, 166 Cal. 640, 137 Pac. 1119, Ann. Cas. 1915C, 822, 50 L. R. A. (N. S.) 652.

41. Eminent domain—Fixing compensation by commission—Not violation of equal protection.—The taking of property under the power of eminent domain, and the fixing of compensation therefor by the railroad commission, and not by a jury, is not unconstitutional as in violation of the constitution of the state or of the equal protection clause of the constitution of the United States.—*Pacific, etc., Co. v. Eshleman*, 166 Cal. 640, 667, 137 Pac. 1119, Ann. Cas. 1915C, 822, 50 L. R. A. (N. S.) 652.

41a. Case followed and approved.—*Pacific Telephone & Telegraph Co. v. Railroad Commission*, 166 Cal. 640, construing the constitutional amendments, and the powers conferred by the public utilities act of 1911, approved and followed.—*Oro Electric Corp.*

v. Railroad Commission, 169 Cal. 466, 470, 147 Pac. 118.

42. **Same—Building pipe line across privately owned land without compensation—Invalid order.**—The railroad commission had no power to order the building of a pipe line across privately owned land without compensation paid in advance.—*Del Mar, etc., Co. v. Eshleman*, 167 Cal. 666, 675, 140 Pac. 591, 948.

43. **Same—Same—Same.**—The railroad commission has no power to compel a corporation which owns property in private right, and has not dedicated it to public use to apply it to a public use of any kind.—*Del Mar, etc., Co. v. Eshleman*, 167 Cal. 666, 677, 140 Pac. 591, 948.

44. **Same—Effect of section 23a, article XII, constitution.**—As to effect of section 23a, article XII, of the constitution, upon order of railroad commission made subsequent to its adoption, upon proceedings inaugurated prior thereto.—*Marin, etc., Co. v. Railroad Commission*, 171 Cal. 706, 154 Pac. 864, Ann. Cas. 1917C, 114.

45. **Grade crossings—Section 43.**—There is little doubt as to the power of the legislature under section 22, of article XII, of the constitution, to confer upon the commission all the powers it purports to confer in section 43 with reference to railroad crossings.—*In re Trustees of Alhambra*, 2 R. C. D. 361.

45a. **Fixing charges of water service to municipality not a tax.**—The fixing of the charges of water company for service to a municipality is within the rate-fixing power of the commission, and is not an interference with municipal money or property or the imposition of a tax within the meaning of section 13, article XI, of the constitution.—*San Leandro v. Railroad Commission*, (Cal.) 191 Pac. 1.

II. DEFINITIONS.

46. "Distribution."

47. "Issued."

48. "Official duties"—§ 67.

49. "Public utility."

II. DEFINITIONS.

46. **"Distribution."**—The term "distribution" "contemplates merely the division or apportionment of electric energy by a producer or distributor irrespective of the method" or whether the energy be divided between two or apportioned among many consumers.—*In re Sierra and San Francisco Power Co.*, 12 R. C. D. 560.

47. **"Issued."**—The word "issued" as used in the "public utilities act" applies to instruments actually executed and delivered, and not merely executed and placed with the treasury for sale, and not having become legal obligations.—*In re Death Valley Railroad Co.*, 11 R. C. D. 608.

48. **"Official duties"**—Section 67.—The words "official duties" as used in section 67 of the public utilities act, mean any duties defined by the act.—*Sexton v. Atchison, etc., Co.*, 173 Cal. 760, 763, 161 Pac. 748.

49. **"Public utility."**—In its broadest

sense everything upon which man bestows labor for purposes other than the benefit of his immediate family is impressed with a public use; but, in its restricted sense, it means that use which serves the public and which the public, or that portion so served, has accepted, and has the right to demand its continuance, with reasonable efficiency, and at reasonable charges, as a legal right.—*Allen v. Railroad Commission*, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466.

See par. III.

III. PUBLIC UTILITIES.

50. Public utility, what constitutes.

51. **Same**—Even constitutional declaration can not create.

52. **Same**—**Same**—Construction of constitution and statutes.

53. Commission can not declare what is.

53a. No proceeding authorized to determine character as public utility—§ 60.

54. Land company distributing water.

55. Individuals.

55a. **Same**—Water system a public utility.

56. Joint telephone lines.

56a. Water company—When a public utility.

56aa. **Same**—**Same**—Character not lost by transfer of property for wholesale distribution.

56b. Corporation serving gas.

56c. Electric corporation.

56d. Service of one consumer.

57, 58. Mere chartered authority does not make utility.

58a. Mere ownership of water supply and waterworks does not make a public utility.

58b. **Same**—Corporate power to operate.

58c. **Same**—**Same**—Finding of public use.

58d. **Same**—**Same**—Service of particular person.

59. Auto busses and stages not included in act.

60. Construction of §§ 5 and 36—Public service.

61. Public use—Dedication of water service.

62. **Same**—Property taken in eminent domain necessarily dedicated to.

63. **Same**—No presumption from diversion and sale of water.

64. **Same**—Fresno Canal and Irrigation Co.—Contracts of 1875 subject to regulation.

65. **Same**—Sale of only three per cent of water supply does not constitute dedication.

66. **Same**—**Same**—Submission to jurisdiction of commission.

67. **Same**—**Same**—Purchase of water rights instead of condemnation.

68. **Same**—Dedication "not a trivial thing"—Never presumed "without showing of unequivocal intention."

69. **Same**—Abolition of private rights in sale and rental of water.

70. **Same**—Dedication of water.

71. **Same**—No preference between irrigation and hydroelectric use.

72. Same—Submission to jurisdiction of commission—Change from private to public use.
- 72a. Municipality operating electric light plant—Not a "private corporation"—Not subject to regulation by the commission.
- 72b. Same—Same—Same—Intention of legislature and people.
- 72c. Same—Same—Same—Municipality does not lose its character as such.
- 72d. Same—Same—Same—Municipal control continues unless surrendered.
- 72e. Same—Same—Same—Municipal control not divested by charter amendment.

III. PUBLIC UTILITIES.

50. Public utility, what constitutes.—It is not the use which makes the owner or purveyor thereof a public service corporation; but it is the duty which the purveyor or producer has undertaken to perform on behalf of, and so owes to the public generally, or to any defined portion of it, as the purveyor of a commodity, or as an agency in the performance of a service, which stamps the purveyor, or the agency, as being a public service utility.—*Allen v. Railroad Commission*, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466.

51. Same—Even a constitutional declaration can not transform a private enterprise, or a part thereof, into a public utility, and thus take property for public use without condemnation and payment.—*Allen v. Railroad Commission*, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466 (on the authority of *Thayer v. California Development Co.*, 164 Cal. 117, 128 Pac. 21; *Del Mar Water Co. v. Eshleman*, 167 Cal. 666, 680, 140 Pac. 591, 596).

52. Same—Same—Construction of constitution and statutes.—Our constitution and statutory definitions must be construed as applying only to such properties as have in fact been devoted to a public use, and not as an effort to impress with a public use properties which have not been devoted thereto; for otherwise they would, in their operation, wherever unjustly interfering with private property, or private contractual rights, be void, by force of section 10, article I of the fourteenth amendment to the constitution of the United States.—*Allen v. Railroad Commission*, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466.

53. The railroad commission has no power to declare what shall constitute a public utility.—*Associated, etc., Co. v. Railroad Commission*, 176 Cal. 518, 529, 169 Pac. 62, L. R. A. 1918C, 8.

53a. No proceeding authorized to determine character as public utility—Section 60.—No proceeding is authorized by section 60 of the public utilities act or elsewhere for the sole purpose of determining whether any business enterprise is a public utility within the meaning of the act, and the commission has no jurisdiction to make adjudications thereon in such independent pro-

ceeding.—*Holabird v. Railroad Commission*, 171 Cal. 691, 154 Pac. 831.

54. Land company distributing water.—A land company which constructs and operates a water distribution system, selling water to all who apply for the same, upon a specified tract to which its water is dedicated, is a public utility under the provisions of section 2 of the public utilities act and of the act of 1913 (*Stats* 1913, p. 84, Act 5500), irrespective of the fact that it was the original intention of the land company to have such water system ultimately operated as a mutual company, serving its stockholders only.—*Compton v. Richfield, etc., Co.*, 15 R. C. D. 20.

55. Individuals.—Individuals operating a pumping plant and delivering water regularly to others at a fixed rate are public utilities irrespective of the limited number of consumers served, and they can not through personal feelings discontinue service to a consumer entitled thereto.—*Hansel v. Reiney*, 14 R. C. D. 806.

55a. Same—Water system a public utility.—A water system operated for compensation is a public utility, irrespective of whether it is operated by a company or individuals.—*Hoff v. Montgomery*, 9 R. C. D. 538.

56. Joint telephone lines.—Telephone lines extending from two public resorts to a connection with a public telephone system owned jointly by the proprietors of such resorts, used by them for their own accommodation and by the patrons of their resorts, who pay a toll for such service, is a public utility, within the meaning under section 23, article XII, of the constitution.—*Camp Rincon Resort Co. v. Eshleman*, 172 Cal. 561, 563, 158 Pac. 186.

56a. Water company—When a public utility.—A water company delivering water to consumers, not stockholders, at established rates on file with the commission, having always held itself out as willing to serve any and all users of water within the area served by it, in accordance with existing rules and regulations, is a public utility within the meaning of the act.—*In re Lake Hemet Water Co.*, 11 R. C. D. 617.

56aa. Same—Same—Public utility—Character not lost by transfer for wholesale distribution.—A water company does not lose its character as a public utility by transferring its distributing system to another company under an agreement to furnish water to such company for distribution in wholesale quantities.—*In re River Bend, etc., Co.*, 12 R. C. D. 443.

56b. Corporation serving gas.—A corporation serving gas, either directly or indirectly, to the public or a portion of the public is a public utility subject to the jurisdiction of the commission.—*In re Traders Oil Co.*, 12 R. C. D. 647.

56c. Electric corporation.—A mutual water company generating and selling electric energy in wholesale quantities under an agreement with a public utility is an electric corporation and a public utility as

defined in section 2 of the act.—In re Wohlford, 12 R. C. D. 505.

56d. Service of one consumer.—A utility constructing a transmission line for the purpose of serving one large consumer is engaged in the distribution of electric energy.—In re Sierra and San Francisco Power Co., 12 R. C. D. 560.

57. Mere chartered authority does not make ability.—Mere chartered authority to engage in the business of a public utility does not mark the nature of the business actually carried on by the operating corporation.—Del Mar, etc., Co. v. Eshleman, 167 Cal. 666, 673, 140 Pac. 591, 948.

58. Same.—The Del Mar Water, Light and Power Company is not a public utility company and the railroad commission was without jurisdiction to require it to supply water to any part of the public.—Del Mar, etc., Co. v. Eshleman, 167 Cal. 666, 675, 140 Pac. 591, 948.

58a. Mere ownership of water supply and waterworks does not make a public utility.—One may acquire and hold a water supply and waterworks, and thereby distribute and sell water for domestic use and irrigation or other purposes, without engaging in public service, where it makes such sales to particular persons and in such manner that the public would not be entitled to it.—Del Mar, etc., Co. v. Eshleman, 167 Cal. 666, 678, 140 Pac. 591, 948.

58b. Same—Corporate power to operate.—The mere fact that a company has the corporate power to operate a public utility for the supply of water, and has acquired a water supply and a distributing system which it is operating for compensation does not necessarily justify the conclusion that it is engaged in a public service, or that its water is dedicated to public use.—Del Mar, etc., Co. v. Eshleman, 167 Cal. 666, 678, 140 Pac. 591, 948.

58c. Same—Same—Finding of public use.—A finding that a corporation owns and is operating a water system for compensation, and that it has a water supply sufficient to supply an applicant for its service is not equivalent to a finding that it is engaged in operating its plant for public use, or that the applicant is one of the persons entitled to be a beneficiary of such use.—Del Mar, etc., Co. v. Eshleman, 167 Cal. 666, 679, 140 Pac. 591, 948.

58d. Same—Same—Service of particular person.—The fact that a water company is the owner of and is operating a water system for compensation, and that it has the corporate power to engage in public service, are not sufficient to authorize the conclusion that any particular person is a beneficiary of the use which such company is administering, or that any of the outlying territory is entitled to the service, and it still remains necessary to ascertain the fact that such person is a beneficiary, and that he is within the district of the class for which the dedication is made.—Del Mar, etc., Co. v. Eshleman, 167 Cal. 666, 680, 140 Pac. 591, 948.

59. Auto busses and stages not included

in act.—The legislature did not intend to include in the act as public utilities auto busses, stage lines, etc., although companies operating the same were engaged as common carriers; and the commission, under the decisions of the supreme court, is without jurisdiction over them.—Western Association, etc., v. Hackett, 8 R. C. D. 220.

60. Construction of sections 5 and 36.—Public service.—Sections 5 and 36 of the public utilities act apply to public service corporations which have devoted their entire property to the use of the entire public or to those which have undertaken to supply a certain district, such as a city, and have dedicated their property to that service, and have failed or refused to give that district an adequate service, or failed or refused to extend their system and supply to parts of the district, when it was within their means to do so, and such extension would not be unreasonable.—Del Mar, etc., Co. v. Eshleman, 167 Cal. 666, 680, 140 Pac. 591, 948.

61. Public use—Dedication of water service.—Water service dedicated impartially to all consumers within the class that requires such services is held to be a public use.—San Leandro v. Railroad Commission, (Cal.) 191 Pac. 1.

62. Same—Property taken in eminent domain, necessarily dedicated to.—Property taken by right of eminent domain is necessarily dedicated to public use, and a corporation exercising such power is necessarily a public service corporation within the meaning of the constitution of 1849.—Traber v. Railroad Commission, (Cal.) 191 Pac. 366.

63. Same—No presumption from diversion and sale of water.—Prior to the adoption of the constitution of 1879, there was no presumption of a public use from the mere fact of the diversion and sale of water.—Traber v. Railroad Commission, (Cal.) 191 Pac. 366.

64. Same—Fresno Canal and Irrigation Co.—Contracts of 1875 subject to regulation.—The Fresno Canal and Irrigation Company by its acts of incorporation was given the power to act as a public service corporation, and, having acted as such, its contracts for furnishing water entered into in 1875 were subject to regulation by the railroad commission.—Traber v. Railroad Commission, (Cal.) 191 Pac. 366.

65. Same—Sale of only three per cent of water supply does not constitute dedication.—Where a water company sold water right certificates to purchasers of land from an associate company, entitling the holders to 97 per cent of its total supply, it was to that extent not a public utility, and the fact that the remainder of its water supply was sold to a municipality did not make it a public utility except as to such municipality, and such certificates were not subject to modification by the railroad commission.—Allen v. Railroad Commission, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466.

66. Same—Same—Submission to jurisdiction of commission.—Such a company can

not merely by submitting itself to the jurisdiction of the commission for the purpose of rate fixing declare itself to be a public utility and thereby destroy the contract rights of the certificate holders.—*Allen v. Railroad Commission*, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466.

67. Same — Same — Purchase of water rights instead of condemnation.—It is not without significance that the articles of incorporation of the company declared its purpose to be to acquire water and water rights by purchase and appropriation, and omitted therefrom the declaration of the right to acquire by condemnation, a right that runs only with public service; and that when, in the course of its activities, when it needed to acquire, and did acquire, certain rights of way, it did not undertake to do so by condemnation, but effectuated its purpose by purchase.—*Allen v. Railroad Commission*, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466.

68. Same — Dedication — "Not a trivial thing—Never presumed "without showing of unequivocal intention."—To hold that property has been devoted to a public use is "not a trivial thing" (*San Francisco v. Grote*, 120 Cal. 60, 52 Pac. 127, 41 L. R. A. 335, 65 Am. St. Rep. 155), and such dedication is never presumed, "without evidence of unequivocal intention" (*Niles v. Los Angeles*, 125 Cal. 512, 58 Pac. 190).—*Allen v. Railroad Commission*, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466.

69. Same—Abolition of private rights in sale and rental of water.—The constitution and statutes of California have undertaken to put out of existence any and all private rights in the matter of the rental and sale of water, and have done this thing, and there stands between them and its enforcement, so far as this court is concerned, only the constitution of the United States, which is, whenever it speaks, the supreme law of this state.—*Allen v. Railroad Commission*, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466.

70. Same—Dedication of water.—The defendant in the present case was held to have devoted to public use all of the waters controlled by it, and that such public use consisted of service for domestic, mining, irrigation and hydroelectric uses.—*El Dorado, etc., Association v. Western States, etc., Co.*, 15 R. C. D. 681.

71. Same—No preference between irrigation and hydroelectric use.—There is no preference on the question of public use as between irrigation and hydroelectric use.—*El Dorado, etc., Association v. Western States, etc., Co.*, 15 R. C. D. 681.

72. Same—Submission to jurisdiction of commission—Change from public to private use.—The fixing of the rates of a private water company by the railroad commission in compliance with an application for that purpose by the company operates as against the company, as a submission to the jurisdiction of the regulating body, and, in effect, changed the use from one that was private and particular to one that was public so as to render it, in the matter of service and

delivery, subject to regulation and control by public authority.—*Palermo, etc., Co. v. Railroad Commission*, 173 Cal. 380, 383, 169 Pac. 228.

72a. Municipality operating electric light plant—Not a "private corporation"—Not subject to regulation by the commission.—The term "private corporation," as used in section 23, article XII, of the constitution, does not include a municipal corporation engaged in operating an electric light plant to supply its inhabitants, and such corporation is not subject to regulation by the commission.—*Pasadena v. Railroad Commission*, (Cal.) 192 Pac. 25.

72b. Same — Same — Same — Intention of legislature and people.—That the people did not intend municipal corporations to lose their public character, even when operating public utilities, is clearly shown by the various provisions of section 23, article XII, of the constitution, relating to municipalities, and by the address to the voters in connection with the submission of that section for approval.—*Pasadena v. Railroad Commission*, (Cal.) 192 Pac. 25.

72c. Same—Same — Same — Municipality does not lose its character as such.—A municipality does not lose its character as a municipality and become a private corporation by engaging in the business of furnishing its inhabitants with electric light.—*Pasadena v. Railroad Commission*, (Cal.) 192 Pac. 25.

72d. Same—Same—Same—Municipal control continues unless surrendered.—In the absence of action by a municipality surrendering to the railroad commission its control over utilities, the general law continued to govern the subject of rates therein.—*Suydam v. Los Angeles*, 27 Cal. App. 157, 149 Pac. 55.

72e. Same — Same — Same — Same — Municipal control not divested by charter amendment.—The power vested in municipalities can not be divested by charter amendment, but the same must be divested in the manner prescribed by the legislature.—*Long Beach v. Pacific Electric Co.*, 2 R. C. D. 455.

IV. POWERS AND JURISDICTION OF RAILROAD COMMISSION.

a. In general.

73. The railroad commission is a judicial tribunal.

73a. Same—Power to summon and hear parties.

73aa. Denial of jurisdictional facts does not affect jurisdiction to determine existence of facts.

73b. Same—Fixing compensation under § 47.

73c. Function of commission.

73d. §§ 17, 22 and 23, art. XII, constitution considered.

74. Vessels on high seas and inland waters.

75. Same—Transportation on the high seas.

76. Utilities operated by municipalities.

- 77, 78. Utilities within municipalities—Surrender of municipal control.
- 78a. jitney bus transportation companies.
- 78b. Same—Operating in municipalities.
- 78c. Same—Carriers operating over regular routes must secure permits.
- 78d. Same—Permits from local authorities.
79. Motor trucks—Use of on highways outside municipalities.
80. Eminent domain.
- 80a. Investigation at instance of uninterested party.
- 80b. Rules of procedure—§ 53.
81. Private use of property of utility for private purposes.
- b. Sale, rental and distribution of water.*
- 81a. Water companies.
82. Conflicting claims to water.
83. Extension of service of water company.
84. Same—Excessive storage.
85. Same—An alternative supply.
86. Same—Same—Fraud.
87. Same—Same—Prospective transfer of properties.
- 87a. Commission succeeded to powers of boards of supervisors.
88. Same—Power of commission not limited by contracts entered into before March 23, 1912.
- 89, 90. Power to fix rates—General principles and authority.
91. Same—Same—Power of water companies to contract.
92. Same—Same—Same—State empowered to substitute rates for contract rates.
93. Same—Same—Same—Surrender of state's power.
94. Municipal power of regulation—City not in existence March 23, 1912.
95. Selection of source of water supply.
- c. Rates and rate making.*
- 95a. Rate making is legislative in character.
- 95aa. Same—Exercise subject to review only on constitutional grounds.
- 95b. Jurisdiction of commission depends on dedication of property to public use.
- 95c. Stetson-Eshleman act.
- 95d. Commission without jurisdiction in cities that have not surrendered control.
- 95e, 95f. Basis—Reasonable return on value of property.
- 95g. Rate based on use not lawful.
- 95h. Right of utility to reasonable minimum rate.
- 95hh. Return—Municipally operated property.
- 95i. Same—6½ per cent not confiscatory.
- 95ii. Wholesale water rate.
- 95j. Mutual water companies.
- 95k. Conflicting rates—Shipper entitled to lowest.
- 95l. Half fare for school children.
- 95m. Same—Commission can not compel.
- 95n. Free and reduced rate—Consent of commission in certain cases.
- 95o. Voluntary rates for certain shipments—Estoppel.
- 95p, 95q. Common spread of class rates impracticable.
- 95r. Telephone rates in municipalities—Controversy between rival companies.
- 95s. Same—Same—§ 60, public utilities act.
- 95t-95v. Increase of intrastate rates to correspond with increase in interstate rates.
- 95w, 95x. Mutual companies—Contract rights.
- 95y. Deviation from published rates.
- 95z. Ability to pay rate fixed matter of expediency for commission, no question for court.
96. Fixing other than franchise rates.
- 96a. Excess charges for passengers without tickets.
- 96b. Allowance of 10 per cent for fire protection not confiscatory.
- 97, 98. Same—Five cent fare with corporate limits.
99. Same—Same—When unwarranted.
100. Same—Same—Five cent fare for annexed districts.
- 100a, 100aa. Determination of facts.
- 100b. Burden is on utility to show value.
- 100c. Discriminatory rates—Unlawful discrimination.
- 100d. Same—Refrigeration charges held discriminatory.
- 100e. Same—Reparation for storage charges on beans unloaded from boats.
- 100f. Waiver of charges when rules and regulations are on file with commission, held preferential and discriminatory.
- 100g. Same—Surplus water at free and reduced rates during war.
- 100h, 100i. Same—Claims for discriminatory charges—Statute of limitations—"Wright act."
- 100j. Same—Same—Question of fact.
- 100k. Same—Same—Same—Burden of proof—Lower rate discriminatory and unjust.
- 100l. Same—Continued application of rates—Presumption.
- 100m. Same—Reparation under § 71.
- 100n. Same—Same—No room for doctrine of reparation.
- 100o. Same—Same—Effect of constitutional amendment' (§ 21, art. XII, constitution).
- 100p. Rates on application for certificate of public convenience and necessity.
- 100q. Rates—Authorities.
- 100r. Commission's power subordinate to long and short haul clause.
- d. Grade crossings.*
- 100s. § 43 gives railroad commission jurisdiction.
- 100t. Los Angeles charter gives city no jurisdiction.
- 101, 101a. § 43 does not apply to streets of Los Angeles.

102. Commission to consider from standpoint of public safety only.
103. § 43 applied—No construction without commission's consent.
104. Separation of grades.
105. Same—Legislative intent.
106. Same—Same—Crossings above or below grade.
107. Railroad crossing—Payment by municipality of part of expense.
108. Same—Same—Power of commission to apportion cost.
109. Street crossing—Viaducts and subways matter of state concern.
110. Same—Same—§ 43.
111. Same—Case followed on petition for writ of mandate.
112. Same—Power of commission restricted—Necessity of local franchise.
e. Industrial tracks.
113. Power to require not conferred by the act.
114. Same—Where commission may require.
115. Damages for spur track—Commission has no jurisdiction.
f. Joint use of facilities.
116. Joint use of poles by competing electric companies—Jurisdictional fact.
117. Use of facilities of other companies—§ 41.
g. Physical connections in cities.
118. § 38 confers jurisdiction.
h. Union depots.
119. Union depots—Power of commission—§ 36.
i. Safety devices and appliances.
120. § 42 confers jurisdiction on commission to require installation.
j. Schedules and train movements.
121. § 37 confers jurisdiction on commission over.
k. Certificate of public convenience and necessity.
122. Certificate necessary—Violation of § 50.
123. Same—Same—Requirement can not be evaded by consumer's extension.
124. Railroad telephone system.
125. Utilities judged at time of application.
126. Impairment of powers of municipality under section 19, article XI, constitution.
- 126a. Same—Stockton charter contains no power to grant franchises for electric lights.
- 126b. Same—Same—Effect of § 50 of the act.
- 126c. Construction of § 50.
- 126d. Construction of § 50a.
127. Financial condition of applicant.
128. Same—Ability to pay interest on bonds sold for inadequate or no consideration.
129. Work commenced prior to March 23, 1912.
- 130, 131. Same—'Actually exercised' is "completely exercised"—§ 50(b).
132. "System."
133. Exchange service—No certificate.
134. Territory already served—Policy of commission—Requirement of good faith.
135. Same—Same—Showing of reasonable rate and fair return.
136. Same—Same—Question of superior advantages and cheaper service.
137. Wholesaler entitled to regulation.
138. Same—Certificate contrary to public interest.
139. Local control of streets.
- 139a. Franchise from county not franchise from municipality.
140. Territory not served with consent of commission.
141. Invasion of territory—Service of industry in excess of occupant's ability.
142. Same—Purpose of law as to competition—Territory served by pioneer in field.
143. Same—Same—Utility entitled to protection.
144. Same—Same—Failure of utility to accord voluntarily proper service.
145. Same—Same—Territory covered by natural monopoly.
146. Same—Same—Indiscriminate competition.
147. Same—Same—Auto busses.
148. Same—Same—Burden of proof.
149. Same—Same—Temporary inability to give efficient service.
150. Same—Same—Utility too weak to supply service.
151. Same—Same—Same—Showing required.
152. Same—Same—Same—Duty of existing utility to exercise highest efficiency.
153. Same—Objectionable competition—Duplication of facilities.
154. Same—Erection of poles and wires not service.
155. Telephone and telegraph system in municipality.
l. Issue of securities.
- 155a. Permission to issue stocks, bonds, etc., required.
156. Securities authorized not guaranteed to be profitable by commission.
157. Issue of securities out of proportion to revenue.
158. Stock subscribed but not issued prior to effective date of act.
159. Deposit with trustees as security not "issue."
160. Combination of private business with public utility.
161. Issuance of promissory note for period of less than year.

- 162. Pledge is not sale.
- 163. Issue of refunding securities of consolidated corporation.
- 164. Sale of securities from one utility to another.
- 165. Renewal of short time promissory notes.
- 165a. Personal liability of directors—§§ 309 and 456, Civil Code, repealed.
- m. Sale and lease of properties of utilities.*
- 166. Consent of commission required—Application of § 51a.
- 166a. Same—Transfer of water system without consent of commission—Null and void.
- 167. Same—Policy of commission.
- 168. Reservation of part by grantor.
- 169. Obligation of grantee to continue service.
- 170. Purchase by municipality—Taxing and bond limit.
- 171. Property not used or useful.
- 172. Protest of another utility serving grantor.
- 173. Lease of utility without consent of commission, void.
- n. Contracts of utilities.*
- 174. Right of municipality to contract away state's right to regulate service and rates.
- 175. Same—Not given to Sausalito.
- 176. Municipal corporation as a consumer.
- 177. Contracts between municipalities and utilities.
- 178. Contracts appurtenant to land.
- 179. Contracts of public service corporations subject to modification by the commission.
- 180. Contracts should be approved, when.
- 181. Same—Rights of way.
- 182. Soliciting baggage on train—Exclusive contract.
- 183. Contract to sell properties—Void unless approved by commission.
- 184. Lawful contracts as to rates and tolls not affected.
- 185. Relief from contract—Application under § 74.
- 186. Contracts between utilities.
- 187. Agreements as to division of territory and alterations in prices to be paid for electric energy.
- 188. Advertising for transportation—Commission without power to authorize.
- 189. Same—Same—Public utilities act contains only authority.
- 190. Same—Same—Status of applicant.
- o. Valuation for rate making.*
- 190a. Basis.
- 190aa. Use of commodity should not be basis of rate.
- 190b. Right of diversion of water for power purposes is property and entitled to consideration in rate making.
- 190bb. Same—Where rates would be unduly high, water rights will not be considered.
- 190bbb. Value of water rights.
- 190c. Capitalizing franchises.
- 190d. Franchise cost—§ 52.
- 190e. Capitalization of franchises for rate making purposes.
- 190f. Same—Evil effects of—Local franchises.
- 190g. Reproduction cost—Inflated war prices.
- 190h. Same—Investments for war purposes.
- 190i-190k. Same—New.
- 190l. Same—Depreciated.
- 190m. Same—Money wisely and honestly invested.
- 190n. Same—"Original cost."
- 190o. Same—"Reproduction value."
- 190p, 190q. Same—"Present value."
- 190r. Same—"Depreciated reproduction value."
- 190rr. Value of system used—Reproduction value.
- 190s. Cash working capital.
- 190t. Operating expenses—Bad debts.
- 190u. Same—Federal income tax.
- 190v. Unused property—Alternative plant.
- 190vv. Additional plant—Usefulness during rate period.
- 190w. Same—Property purchased for future needs.
- 190x. "Going value"—"Development cost."
- 190y. Same—Defined.
- 190z. Same—Development cost excluded as element of.
- 190za. Capitalization—Earning basis—Value of property.
- 190zb. Intangibles—Advertising, etc., to secure business.
- 190zc. Securities.
- 190zd. Value of extensions.
- 190ze. "Depreciation fund."
- 190zf. Same—Interest.
- 190zg. Cost of electric energy.
- p. Valuation for condemnation.*
- 191. Basis.
- 191a. Same—Findings of fact required.
- 191b. Taxing testimony.
- 191c. Same—Competency of witness who has viewed property.
- 191d. Same—Same—Faculty of land as source of water supply.
- 191e. Same—Same—Same—Separate finding.
- 191f. Same—Evidence on commission's own motion.
- 192. Detached pieces of property.
- 193. Gas company—Paving.
- 194. Franchise cost.
- 195. "Going concern."
- 196. Same—Net earnings.
- 197. Power to build competing plant.
- 198-201. Severance damages.
- 202. Unamortized bond account.
- 203. Expenditures subsequent to findings and prior to issue thereof.
- 204. Additional compensation—Additions and betterments in the ordinary course of business.
- 205. Agreements after valuation.

- 206. Taxes paid after valuation.
- 207. Revaluation after condemnation final.
- 208. Hearings as to improvements and betterments.
- 209. Report of commission final by adjudication on appeal.
- 210. Findings final and conclusive.
- 211. Determination of commission conclusive.

g. Reparation for violation of long and short haul clause.

- 211a. Effect of constitutional amendment of October 10, 1911.
- 211b. Right arising under "Wright act."
- 211c. Same—Statute of limitations.
- 211cc. Same—Same—Two-year bar.
- 211d. No reparations prior to adoption.
- 211e. § 31d "Wright act," same as § 4, interstate commerce act.
- 211f. Same—Construction determined by construction of interstate commerce act.
- 211g. Long and short haul clause—Water competition justifies higher rates to intermediate points.
- 211h. Same—Same—Common points between Los Angeles and San Francisco.
- 211i. Same—Long and circuitous route—Competition with larger and stronger carrier.

r. Consolidation of utilities.

- 211j. Competing telephone systems.
- 211k. Consolidated utilities entitled to reasonable rates.

IV. POWERS AND JURISDICTION OF RAILROAD COMMISSION.

a. In general.

73. The railroad commission is a judicial tribunal.—Sections 22 and 23, of article XII, of the constitution, and sections 53 to 81 of the public utilities act establish beyond a doubt that the railroad commission is empowered to sit, and in the performance of its most important duties must sit, as a tribunal exercising judicial functions of great moment.—Pacific, etc., Co. v. Eshleman, 166 Cal. 640, 650, 137 Pac. 1119, Ann. Cas. 1915C, 822, 50 L. R. A. (N. S.) 652.

73a. Same—Power to summon and hear parties.—Inasmuch as the railroad commission is both a court and an administrative tribunal, and as a judicial body, all the powers necessary for the exercise of its duty, it is vested with the power to summon and hear parties in interest, including municipalities, notwithstanding the failure of the legislature to provide it with definite process to bring such municipality before it.—San Jose v. Railroad Commission, 175 Cal. 284, 290, 165 Pac. 967.

73aa. Denial of jurisdictional facts does not effect jurisdiction to determine existence of such facts.—Wherever a court or board is authorized to act upon the existence of a certain state of facts, it has jurisdiction to determine the existence or non-existence of the requisite facts, and its jurisdiction can not be affected by the circumstance

that these facts are denied.—Palermo, etc., Co. v. Railroad Commission, 173 Cal. 380, 385, 160 Pac. 228.

73b. Same—Fixing compensation under section 47.—The railroad commission exercises a judicial power in fixing compensation under section 47 of the public utilities act, as amended in 1913.—Marin, etc., Co. v. Railroad Commission, 171 Cal. 706, 711, 154 Pac. 864, Ann. Cas. 1917C, 114.

73c. Function of commission.—The function of the railroad commission is to regulate public utilities to compel them to perform the duties to the public which they have contracted to perform.—Atchison, etc., Co. v. Railroad Commission, 173 Cal. 575, 584, 160 Pac. 828, 2 A. L. R. 975.

73d. Sections 17, 22 and 23 of article XII of the constitution, considered elaborately with reference to the jurisdiction of the railroad commission over the questions involved.—South Pasadena v. Pacific Electric Co., 11 R. C. D. 642.

74. Vessels on high seas and inland waters.—The railroad commission has jurisdiction over all vessels operating on a regular schedule between California points, whether on the high seas or inland waters, also over all vessels operated in the public service, over twenty tons dead weight capacity, in irregular service upon the inland waters of the state, but not upon the high seas.—Producers Hay Co. v. Anderson, 14 R. C. D. 641.

75. Same—Transportation on the high seas.—The railroad commission has jurisdiction to fix rates charged by a public utility for the transportation of passengers and freight between San Pedro and Avalon, Catalina island, both in Los Angeles county, notwithstanding a part of the route is on the high seas.—Wilmington Transportation Co. v. Railroad Commissioner, 166 Cal. 741, 743, 137 Pac. 1153.

76. Utilities operated by municipalities.—The public utilities act has no application to any public service carried on by a municipal corporation under the authority of the constitution and laws of the state.—Pasadena v. Railroad Commission, 60 Cal. Dec. 202.

77. Utilities within municipalities—Surrender of municipal control.—Under section 23, of article XII, of the constitution, and section 82 of the public utilities act, the powers of control vested in any city over public utilities, at the adoption of the amendment of said section and the going into effect of the act, were still retained by the city, and such powers do not pass to the railroad commission, until the people relinquish them by an election held pursuant to the act of January 2, 1912 (Stats. 1911, ex. sess., p. 168).—Title, etc., Co. v. Railroad Commission, 168 Cal. 295, 301, 142 Pac. 878, Ann. Cas. 1916A, 738.

78. Same—Same.—The railroad commission is without the power to fix water rates and to forbid a charge for water meters in a city having that power under section 19, article XI, of the constitution, and the act of March 1, 1881 (54), and not having di-

vested itself thereof in accordance with section 23, article XII, of the constitution, and section 82 of the public utilities act, in the manner prescribed by the act of January 2, 1912, (1911, ex. sess., p. 168).—Title, etc., *Co. v. Railroad Commission*, 168 Cal. 295, 303, 142 Pac. 878, Ann. Cas. 1916A, 738.

78a. Jitney bus companies.—The railroad commission has jurisdiction to fix rates, classification, and rules to regulate the accounts, service, and safety of jitney bus transportation companies, which jurisdiction shall supersede any conflicting jurisdiction exercised by any municipal or county authorities.—In re Rates, fares, charges, classification, rules, and regulations of certain transportation companies, In re rates, etc., 14 R. C. D. 378.

78b. Same—Operating in municipalities.—When such vehicles operate wholly within the incorporated limits of municipalities, the municipality shall have exclusive jurisdiction, otherwise regulation is vested in the commission.—In re rates, fares, charges, classification, rules, and regulations of certain transportation companies, 14 R. C. D. 378.

78c. Same — Carriers operating over regular route must secure permit.—Carriers operating over a regular route between fixed termini must secure a permit from all public authorities through whose territory they operate, provided they were not operating prior to May 1, 1917; and also such carriers operating other than wholly within the incorporated limits of a municipality, must secure a certificate of public convenience and necessity from the railroad commission.—In re rates, fares, charges, classification, rules, and regulations of certain transportation companies, 14 R. C. D. 378.

78d. Same—Permits from local authorities.—A new corporation which takes over the properties of an automobile transportation company which is not at the time operating under transferable permits in accordance with the act of 1917 (Stats. 1917, p. 330—Act 3014), must obtain all such necessary permits from the local authorities, together with a certificate from the commission.—In re United Stages, 15 R. C. D. 175.

79. Motor trucks—Use of on highways outside municipalities.—The railroad commission has regulatory power over motor trucks and automobile stages engaged in the transportation of freight and passengers for hire along the public highways not exclusively within the limits of municipalities, conferred upon it by section 22 of article XII of the constitution as amended in 1911.—*Western Association, etc. v. Railroad Commission*, 173 Cal. 802, 804, 162 Pac. 391, 1 A. L. R. 1455; *United Railroads, etc. v. Railroad Commission*, 173 Cal. 802, 804, 162 Pac. 391, 1 A. L. R. 1455.

80. Eminent domain.—Under the public utilities act the legislature has vested in the railroad commission the power of eminent domain.—*Pacific, etc., Co. v. Eshleman*, 166 Cal. 640, 137 Pac. 1119, Ann. Cas. 1915C, 822, 50 L. R. A. (N. S.) 652.

II Gen. Laws—56

80a. Investigation at instance of uninterested parties.—The commission is not bound to investigate alleged abuses and make and enforce regulations for the conduct of a public utility at the instance of persons who have no interest in the service.—*Palmer v. Railroad Commission*, 167 Cal. 163, 166, 138 Pac. 997.

80b. Rules of procedure — Section 53.—Section 53 of the act confers power upon the commission to prescribe rules of practice and procedure, and when it has taken action under this authorization, and brought the proper officials of a municipality before it in accordance with the rules of practice and procedure thus prescribed, it has jurisdiction to require the city to pay its proper proportion of the cost of a railroad crossing of a city street, without regard to any other authority it may have to do this, by reason of its power as a judicial body necessary to exercise its duties.—*City of San Jose v. Railroad Commission*, 175 Cal. 284, 290, 165 Pac. 967, 970.

81. Private use of property of utility for private purposes.—The commission has no authority to compel a public utility to permit the use of its property by a private person for his own private uses.—*Bancroft v. Murray*, 2 R. C. D. 6.

b. Sale, rental and distribution of water.

81a. Water companies.—The powers of the railroad commission over public service water companies are derived from the public utilities act of 1911, enacted in pursuance of the authority given to the legislature by section 23, article XII, of the constitution, as amended October 10, 1911.—Title, etc., *Co. v. Railroad Commission*, 168 Cal. 295, 298, 142 Pac. 878, Ann. Cas. 1916A, 738.

82. Conflicting claims to water.—The commission is without jurisdiction in matters relating to conflicting claims for water, which is a matter for the courts, but where an applicant would still have sufficient water, if all claims should be allowed, to provide earnings in excess of requirements for bond issue, favorable consideration of its application can not be withheld solely on that ground.—In re Fontana Power Co., 11 R. C. D. 564.

83. Extension of service of water company.—The commission has ample authority under sections 31 to 35, inclusive, and particularly the latter, to require a water company furnishing water for irrigation, to take on new consumers, or to prevent such action, on the ground of public convenience and necessity.—*Palmer v. Southern, etc., Co.*, 2 R. C. D. 43.

84. Same — Excessive storage.—Even though the practice of a water company to maintain a seven-year storage may be unreasonable, that fact can not control the determination of an application for new service where the actual amount of storage is not in excess of present requirements, and a new consumer can not be admitted at the time without jeopardy and injury to

present consumers.—*Palmer v. Southern, etc., Co.*, 2 R. C. D. 43.

85. Same — An alternative supply.—The fact that the prospective consumer has another supply is material and should be considered in determining the reasonableness of the application to be served.—*Palmer v. Southern, etc., Co.*, 2 R. C. D. 43.

86. Same—Same—Fraud.—The question of fraud made by an applicant for service is a matter for the determination of a court.—*Palmer v. Southern, etc., Co.*, 2 R. C. D. 43.

87. Same—Same—Prospective transfer of properties.—In an application for service a prospective transfer of the properties of the company to a municipality does not affect the status of the parties where it is coupled with a condition precedent that the city shall be liable for any legal claim for service which may be enforced against the company.—*Palmer v. Southern, etc., Co.*, 2 R. C. D. 43.

87a. Commission succeeded to powers of boards of supervisors.—Prior to March 23, 1912, when the public utilities act went into effect, the rental and distribution of water, outside municipalities, was subject to regulation by boards of supervisors, and after that date this power passed into the jurisdiction of the railroad commission.—In re *Murray*, 2 R. C. D. 464.

88. Same — Power of commission to fix rates not limited by contracts entered into before March 23, 1912.—The power of the railroad commission to fix rates, and prevent deviations, is ample, contracts to the contrary notwithstanding; although contracts entered into with patrons that are not coerced in any way, based upon adequate consideration, should be adopted as far as possible to adequate regulation; but when conditions change such power of regulation will be exercised, however proper the contract may have been originally; and this applies to all utilities as well as to water companies.—In re *Murray*, 2 R. C. D. 464.

89. Power to fix rates—General principles and authorities.—The power to fix rates of a public utility is in the nature of the police power; at least it is the power of government to control property devoted to the public use. (*Mum v. Illinois*, 94 U. S. 113, 24 L. ed. 77.)—In re *Murray*, 2 R. C. D. 464.

90. Same — Same.—Article XIV of the constitution of California provides that the use of water is a public use, and the numerous decisions of the supreme court of this state and of the United States are unanimous in support of the *Mum* case, and the doctrine of that case is applicable to a water corporation which has appropriated water for sale, rental and distribution. (*Fallbrook, etc., District v. Bradley*, 164 U. S. 112, 41 L. ed. 369, 17 Sup. Ct. Rep. 56; *San Diego, etc., Co. v. National City*, 174 U. S. 739, 43 L. ed. 1154, 19 Sup. Ct. Rep. 804; *Smyth v. Ames*, 169 U. S. 466, 42 L. ed. 819, 18 Sup. Ct. Rep. 418.)—In re *Murray*, 2 R. C. D. 464.

91. Same—Same—Power of water com-

panies to contract.—Under article XIV of the constitution, and the statutes of 1885, boards of supervisors were empowered to fix maximum rates, and until they had fixed such maximum rates, water companies were free to contract, and after, to contract within the maximum. (*Fresno, etc. Co. v. Park*, 129 Cal. 437, 62 Pac. 87.)—In re *Murray*, 2 R. C. D. 464.

92. Same — Same — Same — State empowered to substitute rates for contract rates.—The right of a water company to fix its own rates by contract is subject to the state's power to fix rates, and the sole function of the contract is to fix the relationship of the parties prior to action by the state authorities, and, as to the land involved, to establish its status as land permanently entitled to share in the public use. (*San Diego, etc., Co. v. National City*, 74 Fed. 79; *Lanier v. Osborn*, 76 Fed. 319; *Mandel v. San Diego, etc., Co.*, 89 Fed. 295; *Boise City, etc., Co. v. Clark*, 131 Fed. 415, 65 C. C. A. 399; *Leavitt v. Lassen, etc. Co.*, 157 Cal. 82, 29 L. R. A. (N. S.) 213, 106 Pac. 404; *Lassen, etc. Co. v. Long*, 154 Cal. 94, 106 Pac. 409; *Imperial, etc., Co. v. Holabird*, 197 Fed. 4, 116 C. C. A. 526.)—In re *Murray*, 2 R. C. D. 464.

93. Same — Same — Surrender of state's power.—The state will not be construed to have surrendered its power to regulate utilities unless it is plainly made to appear affirmatively, that either the state has done so or has empowered a legal subdivision to do so, and the latter has acted; and no statute passed pursuant to article XIV of the constitution up to 1909 can be construed to amount to a contract on the state's part waiving its admitted right to regulate those agencies. (*Crow v. San Joaquin, etc., Co.*, 130 Cal. 309, 62 Pac. 562, 1058; *Leavitt v. Lassen, etc., Co.*, 157 Cal. 82, 29 L. R. A. (N. S.) 213, 106 Pac. 404; *Hildreth v. Montecito, etc., Co.*, 139 Cal. 22, 72 Pac. 395; *Stanislaus Co. v. San Joaquin, etc., Co.*, 192 U. S. 202, 43 L. ed. 406, 24 Sup. Ct. Rep. 241.)—In re *Murray*, 2 R. C. D. 464.

94. Municipal power of regulation—City not in existence March 23, 1912.—The constitution (§ 23, art. XII) and section 82 of the public utilities act limited the powers of municipalities over utilities to those possessed by them on March 23, 1912, and the powers of a city not in existence on that date are nil.—In re *Murray*, 2 R. C. D. 464.

95. Selection of source of water supply.—The determination as to which of several sources of water supply shall be developed by a water company rests with the company and not with the commission, but such utility will not be relieved from responsibility for the results obtained.—In re *East Bay Water Company*, 15 R. C. D. 99.

c. Rates and rate making.

95a. Rate making is legislative in character, and rates may be published and approved without a previous formal hearing.—Re *Northern Pacific Ry. Co.* (Mont. Bd. Railroad Comrs.), P. U. R., 1920F, 11.

95aa. Same—Exercise subject to review only on constitutional grounds.—The func-

tion of rate making is purely legislative whether exercised directly by the legislature itself or indirectly through some subordinate or administrative body to whom the power has been delegated, and the only ground upon which the courts may interfere with the exercise of this function is that the action in question impairs constitutional rights, and rates will not be set aside except upon a clear showing that such rights have been invaded.—San Joaquin L. & P. Co. v. Railroad Commission, 175 Cal. 74, 76, 165 Pac. 16.

95b. Jurisdiction of commission depends on dedication of property to public use.—The jurisdiction of the commission to fix charges for the services of a water company depends upon whether the company has actually devoted its property to the public use.—San Leandro v. Railroad Commission (Cal.), 191 Pac. 1.

95c. Stetson-Eshleman act.—Section 17 of the Stetson-Eshleman act contemplated that the commission should overhaul all the rates of all the railroads and establish new rates, and until this was done the rates already fixed by the commission continued to be the legal rates.—Scott, Magner & Miller v. Southern Pacific Co., 3 R. C. D. 339.

95d. Commission without jurisdiction in cities that have not surrendered control.—The commission has no jurisdiction over discriminations in electric lighting rates charged within different municipalities which have not surrendered to the commission their power over public utilities.—Pasadena v. Edison Co., 1 R. C. D. 801.

95e. Basis — Reasonable return on fair value of property.—In order for rates of a public utility to be just, they should be sufficient, after caring for cost of operation, maintenance, and depreciation, to yield a reasonable return upon the present fair value of the property devoted to the public use.—In re Murray, 2 R. C. D. 464.

95f. Same—Same.—The nearest and fairest approximation which may be made to a correct "value" upon which a public utility shall be allowed to earn is the amount of the investment wisely made.—In re Murray, 2 R. C. D. 464.

95g. Rate based on use not lawful.—Carriers may not lawfully make a rate for a commodity based upon the use to which that particular commodity will be put.—Stockton, etc., Co. v. Southern Pacific Co., 11 R. C. D. 578.

95h. Right of utility to reasonable minimum rate.—A utility is entitled to a reasonable minimum rate sufficient to cover interest on cost of service connection and depreciation.—Monahan v. Pacific, etc., Co., 5 R. C. D. 298.

95hh. Return — Municipally operated property.—A utility operated by a municipality for the benefit of its own inhabitants is not entitled to earn a profit; but should be allowed a return sufficient for operating expenses, depreciation, and a proper sinking fund.—Bonser v. Electric Light Commission (Me. P. U. Com.), 1920F, 183.

95i. Same—6½ per cent not confiscatory.—It can not be claimed that a return of six and a half per cent net upon the value of property devoted to a public use, such as a light and power plant, is, as matter of law, confiscatory, even though the railroad commission fixed eight per cent as a reasonable rate of return.—San Joaquin L. & P. Co. v. Railroad Commission, 175 Cal. 74, 76, 165 Pac. 16.

95ii. Wholesale water rate.—The commission has ample authority to fix any charge which any utility may make for its commodity, and no authority is found in the constitution or statutes of this state for exempting a wholesale rate of a public utility from its jurisdiction.—In re Murray, 2 R. C. D. 464.

95j. Mutual water companies.—Under the authority of McFadden v. Los Angeles, 74 Cal. 571, the commission has no authority to fix the rates of mutual water companies, yet the power of the commission to regulate the relationship of such a company and as a consumer and the public utility which furnishes it water, is not affected.—In re Murray, 2 R. C. D. 464.

95k. Conflicting rates — Shipper entitled to lowest.—When conflicting rates are shown in a tariff the shipper is entitled to the lowest rate and should not be put to the annoyance occasioned by interpretations being put upon the value of a commodity or the use to which it is to be put.—Stockton, etc., Co. v. Southern Pacific Co., 11 R. C. D. 578.

95l. Half fare for school children.—A class of persons can not be given a special rate when the only distinguishing characteristic of the class is the purpose for which the people in the class are traveling.—Beals v. San Francisco, etc., Co., 11 R. C. D. 963.

Citing and quoting: In re Matter of Regulations governing sale of commutation tickets to school children, 17 I. C. C. 144.

95m. Same—Commission can not compel.—Though the public utilities act provides that utilities may voluntarily grant a reduced fare to school children, this commission has no power under which it could compel them to do so.—Beals v. San Francisco, etc., Co., 11 R. C. D. 963.

95n. Free and reduced rates—Consent of commission on certain cases.—Public utilities other than common carriers may, if they so desire, in addition to the class of cases specified as applicable to them in section 17 of the act, extend grants of free or reduced rates to (1) federal and state governments, and the political subdivisions thereof, including the departments thereof and public institutions; (2) fairs and other public expositions and celebrations; (3) charity as defined in this opinion; (4) employees.—In re Free and Reduced Rates, 2 R. C. D. 73.

95o. Voluntary establishing rate for certain shipments—Estoppel.—When a railway establishes a rate applicable to certain shipments, it estops itself from complaining of

an order making that rate applicable to all shipments, no matter whence they arose.—*Central, etc., Co. v. Atchison, etc., Co.*, 1 R. C. D. 629.

Citing: *Alabama, etc., Co. v. Railroad Commission*, 203 U. S. 496, 51 L. ed. 289, 27 Sup. Ct. Rep. 163.

95p. Common spread of class rates impracticable.—Owing to dissimilarity of conditions existing in different parts of the state, the commission can not adhere to a common spread of class rates; inasmuch as adjustments satisfactory in one district are, as a rule, found entirely unsatisfactory in other districts.—*In re Rates of Southern Pacific Co.*, 11 R. C. D. 867.

95q. Same.—The commission has no jurisdiction, nor can it attempt to equalize commercial conditions, and where the establishment of a just and reasonable rate has a tendency to disturb an established community it can not do otherwise than approve the reasonable schedule.—*In re Rates of Southern Pacific Co.*, 11 R. C. D. 867.

95r. Telephone rates.—Commission without jurisdiction.—The commission has no jurisdiction of a controversy over rates between two rival telephone companies serving the inhabitants of a municipality that has not surrendered its control of its utilities.—*Home, etc., Co. v. Pacific, etc., Co.*, 6 R. C. D. 124.

95s. Same.—Same.—Section sixty of the public utilities act.—Section sixty of the public utilities act does not provide that one utility may bring in question the rates of a like utility, where it is not in the position of a patron of the utility complained of.—*Home, etc., Co. v. Pacific, etc., Co.*, 6 R. C. D. 124.

95t. Increase in intrastate rates to correspond with increase in interstate rates.—By the New York commission.—*Re Steam Railroads* (N. Y. P. S. C. 2d Dist.), P. U. R. 1920F, 7.

95u. Same.—By the Montana commission.—*Re Northern Pacific Ry. Co.* (Mont. Bd. of Railroad Comrs.), P. U. R. 1920F, 11.

95v. Same.—By the Nebraska commission, with reservations.—*Re Railroads* (Neb. St. Ry. Com.), P. U. R. 1920F, 17.

95w. Mutual companies.—Contract rights.—The railroad commission is vested with power to regulate the water rates of a public utility furnishing water to a mutual company under a pre-existing contract made subsequent to the adoption of the constitution, notwithstanding such contract, and in doing so may modify and practically annul the same in so far as it fixes a contract rate for the service covered by it.—*Limoneira Co. v. Railroad Commission*, 174 Cal. 232, 162 Pac. 1033.

95x. Same Same.—Where a mutual water company takes water from a public utility, the fact that it is a mutual water company, supplying the water to its stockholders to be used on their lands, does not make it any the less a consumer, with the same rights and obligations of other consumers, and when the railroad commission

fixes the water rates to be paid, such company is as much bound thereby as other consumers, notwithstanding a pre-existing contract with the utility for a term of years at a fixed discriminatory rate.—*Limoneira Co. v. Railroad Commission*, 174 Cal. 232, 237, 162 Pac. 1033.

95y. Deviations from published rates.—Public utilities, other than common carriers, may extend grants of reduced rates service to (1) federal and state governments, and the political subdivisions thereof, including the departments thereof and public institutions; (2) fairs and other public expositions and celebrations; (3) charity as defined in the opinion; and (4) employees in addition to the classes of cases specified in section 17 of the act.—*In re Reduced Rates*, 2 R. C. D. 73.

95z. Ability to pay rate fixed matter of expediency for commission, not question for court.—The question as to the ability of a municipality to pay water rates imposed by the railroad commission was a matter of expediency to be weighed by the commission, and will not be considered by the supreme court in a proceeding attacking the legality of such charges.—*San Leandro v. Railroad Commission* (Cal.), 191 Pac. 1.

96. Fixing other than franchise rates.—The commission has jurisdiction to fix rates for street railroad transportation other than those provided in franchises.—*In re San Jose Railroads*, 15 R. C. D. 1017; *In re Union Traction Co.*, 15 R. C. D. 1038.

96a. Excess charges for passengers without tickets.—Carriers have a legal right to collect excess charges from passengers who board trains without tickets, when opportunity to purchase same before boarding has been given, and are not bound to give refund checks for such excess.—*In re Excess Train Fares*, 6 R. C. D. 1068.

But see *Clare v. Northwestern Pacific Co.*, 21 Cal. App. 214, 131 Pac. 323.

96b. Allowance of 10 per cent for fire protection not confiscentory.—It can not be said that an allowance for fire protection of ten per cent of the amount allowed for all service to a city by a water company exceeds the jurisdiction of the commission or amounts to confiscation.—*San Leandro v. Railroad Commission* (Cal.), 191 Pac. 1.

97. Same.—Five cent fare within corporate limits.—The railroad commission has the power, upon an adequate showing, to permit a common carrier to charge more than five cents within the corporate limits of a municipality.—*Los Angeles v. Pacific Electric Co.*, 13 R. C. D. 680.

98. Same.—Same.—The mere fact that two points are within the limits of an incorporated municipality is not a sufficient reason why a fare of five cents should be established.—*Los Angeles v. Pacific Electric Co.*, 12 R. C. D. 397.

99. Same.—Same.—When unwarranted.—Where the establishment of a five cent fare within the corporate limits of a municipality, if put into effect, would, through a combination of local fares, seriously affect through

fares, such fare will not be deemed warranted.—*Los Angeles v. Pacific Electric Co.*, 12 R. C. D. 397.

100. *Same—Same—Five cent fare for annexed districts.*—The fact that sparsely settled outlying territory is annexed to a city does not automatically operate to reduce fares to a five cent basis, especially when higher rates are justifiable and no sufficient reason appears for a reduction.—*Los Angeles v. Pacific Electric Co.*, 12 R. C. D. 397.

100a. *Jurisdiction to determine facts.*—Where the railroad commission is vested with jurisdiction to regulate rates, it is also vested with jurisdiction to determine the facts upon the existence of which such regulation of rates is based.—*Producers Transp. Co. v. Railroad Commission*, 176 Cal. 499, 505, 169 Pac. 59.

100aa. *In the exercise of its jurisdiction to regulate rates of public utilities the railroad commission is vested with jurisdiction to determine all questions of fact necessary to exercise its jurisdiction, and this jurisdiction is not affected by the denial of such facts.*—*Limonera Co. v. Railroad Commission*, 174 Cal. 232, 242, 162 Pac. 1033.

100b. *Burden is on utility to show value.*—In a rate fixing proceeding before the railroad commission the burden is upon the public utility to show the existence of the value claimed for it, and it is held in the instant case that the finding of the commission based upon cost of acquisition of water rights in question was properly supported by the evidence.—*San Joaquin L. & P. Co. v. Railroad Commission*, 175 Cal. 74, 77, 165 Pac. 16.

100c. *Discriminatory rates — Unlawful discrimination.*—The rates fixed in the present case held not to be unlawfully discriminatory.—*Traber v. Railroad Commission (Cal.)*, 191 Pac. 356.

100d. *Same—Refrigeration charges held discriminatory.*—The collection of a refrigeration charge on meat shipments from Sacramento to San Francisco while no such charge is made on shipments from South San Francisco to Sacramento is clearly discriminatory and in violation of section 17 of the act.—*Swanston v. Southern Pacific Co.*, 12 R. C. D. 590.

100e. *Same — Reparation for storage charges on beans unloaded from boats.*—The subject of reparation for storage charges on beans at Sacramento and Stockton, does not come under the provisions of section 19 of the public utilities act.—*Ennis-Brown Co. v. Southern Pacific Co.*, 2 R. C. D. 966.

100f. *Waiver of charges, when rules and regulations are in file with commission, held preferential and discriminatory.*—A waiver by a telephone company of rates or charges under the rates, rules and regulations of the company on file with the commission, in favor of new customers held preferential and discriminatory.—*Sumner v. San Diego*, etc., Co., 13 R. C. D. 364.

100g. *Same—Surplus water at free or reduced rates during war.*—Water utilities are

authorized to deliver surplus water at free and reduced rates, for additional irrigation during an emergency created by war, such authorization being subject to the provision that the utilities may require consumers to stipulate in writing that they will not hereafter claim that the delivery of the water under such authorization amounts in any way to a dedication thereof or in any way prejudices the legal rights of the water company.—*In re Matter of Delivery of Water at Free or Reduced Rates During War*, 13 R. C. D. 103.

100h. *Same — Claims for discriminatory charges — Statute of limitations — Wright act.*—Claims for reparation for excessive, extortionate and unreasonable rates on lumber, in violation of section 21, article XII of the constitution, accruing prior to October 10, 1911, under the Wright act.—*Pioneer Box Co. v. Southern Pacific Co.*, 1 R. C. D. 568.

100i. *Same — Same — Same — Same.*—Claims accruing after October 10, 1911, are not barred under the Wright act.—*Pioneer Box Co. v. Southern Pacific Co.*, 1 R. C. D. 568.

100j. *Same — Same — Question of fact.*—Whether rates are unreasonable and unjust so as to give a right to reparation under section 21, article XII, of the constitution, is a question of fact to be determined by evidence.—*Scott, Magner & Miller v. Western Pacific Co.*, 2 R. C. D. 626.

100k. *Same — Same — Same — Burden of proof—Lower rate discriminatory and unjust.*—Where discrimination is proven to exist and the defendant desires to eliminate the same by raising the lower rate, the burden of proving that the lower rate is unjust shall rest with the defendant.—*Fesler v. Pacific, etc., Co.*, 4 R. C. D. 711.

100l. *Same — Continued application of rates—Presumption.*—The continued application of a rate on an article not specifically provided for, establishes the presumption that the carrier regards the rate and classification just, and one that must be maintained and charged only by the commission's consent.—*Pump, etc., Co. v. Southern Pacific Co.*, 2 R. C. D. 642.

100m. *Reparation under section 71.*—The commission has jurisdiction to award reparation under section 71, public utilities act, where the rate complained of is a contract rate and not one established by the commission, and even though the rate complained of had not yet actually been paid.—*Palo Alto Gas Co. v. Pacific Gas and Electric Co.*, 15 R. C. D. 618.

100n. *Same — Same — No room for doctrine of reparation.*—In a scheme providing that the state itself establishes rates which shall be conclusively just and reasonable, there is no room for the doctrine of reparation except upon the allegation that the defendant charged rates in excess of those established.—*Scott, Magner & Miller, v. Western Pacific Co.*, 2 R. C. D. 626.

100o. *Same — Same — Effect of constitutional amendment (section 21, art. XII, constitution).*—Inasmuch as the carriers, since

the long and short haul amendment to the constitution (section 21, article XII) was adopted October 10, 1911, make their own rates, and the remedy for the enforcement, for a violation of that amendment, the right to reparations, given by section 71a of the public utilities act, has existed since that date.—*Scott, Magner & Miller v. Western Pacific Co.*, 2 R. C. D. 626.

100p. Rates on application for certificate of public convenience and necessity.—The commission does not determine finally the question of reasonableness of rates per se in an application for a certificate of public convenience and necessity.—*Mount Whitney, etc., Co. v. Tulare, etc., Co.*, 1 R. C. D. 285.

100q. Rates — Authorities.—Upon the question of rates, consideration should be given to the following: *Covington, etc., Turnpike Co. v. Sanford*, 164 U. S. 578, 41 L. ed. 560, 17 Sup. Ct. Rep. 198; *Osborne v. San Diego, etc., Co.*, 178 U. S. 22, 44 L. ed. 961, 20 Sup. Ct. Rep. 860; *San Diego, etc., Co. v. Jasper*, 189 U. S. 439, 47 L. ed. 892, 23 Sup. Ct. Rep. 571; *Stanislaus Co. v. San Joaquin, etc., Co.*, 192 U. S. 202, 48 L. ed. 406, 24 Sup. Ct. Rep. 241; *Knoxville v. Knoxville Water Co.*, 212 U. S. 1, 53 L. ed. 371, 29 Sup. Ct. Rep. 148; *Willcox v. Consolidated, etc., Co.*, 212 U. S. 19, 15 Ann. Cas. 1034, 53 L. ed. 382, 29 Sup. Ct. Rep. 192.

100r. Commissions power of rate making subordinate to long and short haul clause.—The power of rate fixing given the California railroad commission under the public utilities act, is subordinate to long and short haul clause of the constitution, and only rates that are not violative of that clause that are deemed conclusively just and reasonable.—*California, etc., Co. v. Southern Pacific Co.*, 226 Fed. 349.

d. Grade crossings.

100s. Section 43 gives railroad commission jurisdiction.—Section 43 gives the railroad commission jurisdiction over the construction, change, operation and elimination of grade crossings.—*South Pasadena v. Pacific Electric Co.*, 11 R. C. D. 642.

100t. Los Angeles charter gives city no jurisdiction.—The city of Los Angeles has no jurisdiction over the subject of the rearrangement of the railroad tracks, grade crossings, etc., and the consolidation of freight and passenger stations into one.—*South Pasadena v. Pacific Electric Co.*, 11 R. C. D. 642.

101. Section 43 does not apply to streets of Los Angeles.—Section 43 of the public utilities act of 1911, making the permission of the railroad commission a prerequisite to the establishment of grade crossings of any railroad by a street, has no application to street openings and railroad crossings within the city of Los Angeles. — *Los Angeles v. Zeller*, 176 Cal. 194, 199, 167 Pac. 849.

101a. Same.—Section 43 of the public utilities act of 1911 as to requirement of permission of the railroad commission in making railroad crossings, does not apply

to such crossings in the city of Los Angeles.—*Los Angeles v. Central Trust Co.*, 173 Cal. 323, 325, 159 Pac. 1169.

102. Commission to consider from standpoint of public safety only.—The railroad commission is required to consider applications made under section 43 of the public utilities act, covering grade crossings, from a standpoint of public safety only, and not upon the question of public convenience and necessity.—*San Jose v. Southern Pacific Co.*, 15 R. C. D. 148.

103. Section 43 applied—No construction without commission's consent.—Crossings can not be lawfully constructed at grade without the consent of the commission, whether a condemnation is necessary or an amicable agreement is reached between the utilities or between the municipality and the utility.—*In re Trustees of Alhambra*, 2 R. C. D. 361.

104. Separation of grades.—Section 43(b) of the public utilities act invests the commission with the power to prescribe the terms and conditions under which a separation of grades shall be made with references to both the carriers and the state, county or municipality interested.—*In re Southern Pacific Co.*, 10 R. C. D. 318.

105. Same — Legislative intent.—The legislature intended to give the commission power to fix the point horizontally as well as vertically at which the crossing should be made.—*In re Trustees of Alhambra*, 2 R. C. D. 361.

106. Same—Same—Crossings above and below grade.—The legislature clearly intended to give the commission power to prevent a dangerous crossing at grade by requiring the crossing to be made below or above grade.—*In re Trustees of Alhambra*, 2 R. C. D. 361.

107. Railroad crossing—Payment by municipality of part of expense.—Where a municipality has, under the provisions of section 23, article XII, of the constitution, by the procedure provided by the act of 1911 (Stats. 1911 (ex sess.), p. 168), transferred and passed to the railroad commission the city's control over public utilities, the commission has ample warrant for its authority in section 43, of the public utilities act, to require the municipality to pay a proportion of the expense of making a railroad crossing over one of its streets.—*San Jose v. Railroad Commission*, 175 Cal. 284, 286, 165 Pac. 967.

108. Same—Same—Power of commission to apportion cost.—The manner of constructing railroad crossings is a vital and material part of the regulation of railroads and is germane to the subject of regulation of a public utility—a railroad, and the right of apportionment of the cost by the commission benefited by the crossing is a proper element of the cognate power of railroad regulation.—*San Jose v. Railroad Commission*, 175 Cal. 284, 289, 165 Pac. 967.

109. Street crossings—Viaducts and subways matter of state concern.—The regulation of state railroads in the matter of requiring them to establish viaducts and

subways at street crossings in the city of Los Angeles is a matter of state concern and not properly a municipal affair.—Civic Center Ass'n v. Railroad Commission, 175 Cal. 441, 450, 166 Pac. 351.

110. Same—Same—Section 43.—The railroad commission has the right and power under section 43 of the public utilities act, to require state railroads to establish viaducts or subways at street crossings in the city of Los Angeles.—Civic Center Ass'n v. Railroad Commission, 175 Cal. 441, 450, 166 Pac. 351.

111. Same—Case followed on petition for writ of mandate.—Facts similar to those stated in Civic Center Ass'n v. Railroad Commission, 175 Cal. 441, and decision same on writ of mandate.—Pasadena v. Railroad Commission, 175 Cal. 812, 166 Pac. 356.

112. Street crossings—Power of commission restricted—Necessity of local franchises.—In authorizing a railroad company to cross certain streets of a municipality, the railroad commission does not assume to enumerate all of the conditions with which the company must comply before being permitted to make the crossings, or as to the necessity of obtaining a franchise from the city, but it is merely deciding how the safety of the public should be best preserved when the crossings are made, if the contemplated extensions should be consummated.—San Jose v. Railroad Commission, 175 Cal. 284, 291, 165 Pac. 967, 970.

e. Industrial tracks.

113. Power to require not conferred by act.—The public utilities act does not confer upon the commission the power to require a railroad corporation to construct tracks for private industries off of or beyond the limits of its right of way, or participate in the expense of constructing any such tracks, except at its own pleasure; and the question whether or not railroad corporations of this state have heretofore, in certain instances, participated in such expense, can have no bearing on the case.—E. B. & A. L. Stone Co. v. Southern Pacific Co., 2 R. C. D. 825.

114. Same—Where commission may require.—Where it is practically impossible for shippers to move commodities for shipment to existing stations owing to inaccessibility of mountainous territory through which roads must be constructed, it is not unduly burdensome to require a common carrier to construct a spur track.—French v. Northwestern Pacific Co., 12 R. C. D. 696.

115. Damages for spur track—Commission has no jurisdiction.—The commission has no jurisdiction to award damages for injury to property by reason of the construction of a spur track, a right of action for which is purely for the courts.—In re San Francisco, etc., Co., 8 R. C. D. 48.

f. Joint use of facilities.

116. Joint use of poles by competing electric companies—Jurisdictional fact.—Before the commission acquires jurisdiction to order a joint use of poles by competing

electric companies, it must appear that such joint use "will not result in irreparable injury to the owner" of the facility.—Great Western Power Co. v. Pacific, etc., Co., 2 R. C. D. 579.

117. Use of facilities of other utilities—Section 41.—Section 41 of the public utility act invests the railroad commission with authority to compel any utility to permit the use by another utility, on equitable terms, of its conduits, subways, tracks, etc., on any street or highway, and to fix and direct payment of compensation for damages suffered, if any.—Southern Pasadena v. Pacific Electric Co., 11 R. C. D. 642.

g. Physical connections in cities.

118. Section 38, confers jurisdiction.—Section 38 of the public utilities act invests the railroad commission with jurisdiction over connections between tracks of any two or more railroads, including authority to compel physical connections within any city or town between any two or more railroads entering the limits of such municipalities.—South Pasadena v. Pacific Electric Co., 11 R. C. D. 642.

h. Union depots.

119. Union depots—Power of commission—Section 36.—Section 36 of the public utilities act invests the railroad commission with the power to direct that public utilities make any necessary changes in their existing plants or facilities, including the erection of new structures, to require joint action by two or more public utilities and to fix the site of new structures; and this also covers the erection of union passenger and freight depots.—South Pasadena v. Pacific Electric Co., 11 R. C. D. 642.

i. Safety devices and appliances.

120. Section 42—Confers jurisdiction on commission to require installation.—Section 42 of the public utilities act empowers the railroad commission to require the construction and operation of utility property so as to best promote the health and safety of its employees and the public, and to prescribe and direct the installation of appropriate safety and other appliances, including protection devices at grade crossings, block and other signal devices.—South Pasadena v. Pacific Electric Co., 11 R. C. D. 642.

j. Schedules and train movements.

121. Section 37 confers jurisdiction on commission over.—Section 37 of the public utilities act invests the railroad commission with jurisdiction over the frequency of train movements, time schedules and the places at which stops shall be made.—South Pasadena v. Pacific Electric Co., 11 R. C. D. 642.

k. Certificate of public convenience and necessity.

122. Certificate necessary—Violation of section 50.—A utility which commences operations before securing a final order from the commission granting a certificate violates the provisions of section 50 of the

act.—In re River Bend, etc., Co., 12 R. C. D. 443.

123. Same — Same — Requirement not evaded by consumer's extension.—A utility can not evade the necessity for a certificate of public convenience by rendering service through an extension constructed by a consumer.—Valley, etc., Co. v. Midway, etc., Co., 13 R. C. D. 313.

124. Railroad telephone system.—A railroad company which has constructed a telephone line for the purpose of handling such messages as are necessary in the conduct of its business as a railroad company can not engage in a general telephone business in connection with a telegraph company without a certificate.—Colorado, etc., Co. v. California, etc., Co., 13 R. C. D. 822.

125. Utilities judged at the time of application.—Utilities must be judged at the time of filing the application.—Pacific, etc., Co. v. Great Western Power Co., 1 R. C. D. 203; In re California, etc., Co., 2 R. C. D. 31; In re Oro Electric Corporation, 2 R. C. D. 748.

126. Impairment of powers of municipality under section 19, article XI, constitution.—Section 19, article XI of the constitution, did not vest in the city of Stockton any power which would be impaired by section 50 of the public utilities act.—Oro Electric Corp. v. Railroad Commission, 169 Cal. 466, 482, 147 Pac. 118.

126a. Same — Stockton charter contains no power to grant franchises for electric lights.—The Stockton charter contains no language giving that city power to grant franchises to furnish electric light and power to its inhabitants, and the provisions of said charter go no further than to assert the city's control over the streets, its power to regulate the laying of wires and the erection of lights in or upon such streets to provide for the lighting of such streets, and to fix the rates to be charged for such lighting.—Oro Electric Co. v. Railroad Commission, 169 Cal. 466, 477, 147 Pac. 118.

126b. Same—Same—Effect of section 50 of the act.—If the power of a city, at the time the public utilities act went into effect, extended merely to control of the use of its streets in connection with a public service, the right to engage in such service being derived from some other source than a grant from the city, section 50 of the act did not impair the power of the city within the meaning of section 23, article XII, of the constitution, or section 82 of the act.—Oro Electric Corp. v. Railroad Commission, 169 Cal. 466, 475, 147 Pac. 118.

126c. Construction—Section 50.—Section 50 provides that if a utility is proceeding with due diligence under a franchise heretofore granted, it may continue such work, subject only to the supervision of the commission.—Mt. Konocti, etc., Co. v. Gunn, 6 R. C. D. 787.

126d. Construction of section 50a.—The final proviso in section 50a of the public utilities act, obviously has to do solely with an interference with the physical operation of the line, plant or system of

the public utility already constructed.—Mt. Konocti, etc., Co. v. Thelan, 170 Cal. 468, 471, 151 Pac. 359.

127. Financial condition of applicant.—Where the financial situation of the applicant is such that there is a strong likelihood that it will be unable to render adequate service at reasonable rates, the application will be denied, unless the commission is given such assurance to the contrary as will satisfy it as to such financial situation.—In re Oro Electric Corporation, 1 R. C. D. 253.

128. Same—Ability to pay interest on bonds sold for inadequate or no consideration.—Where a utility sold bonds bearing large sums in interest on inadequate or no consideration prior to the going into effect of the act, the commission, in the absence of knowledge that the bondholders will demand payment, has no means of knowing whether the public convenience and necessity will be adequately served by granting its application.—In re Oro Electric Corporation, 1 R. C. D. 253.

129. Work commenced prior to March 23, 1912.—Where the actual construction work on an extension of a public utility was commenced prior to March 23, 1912, and was prosecuted thereafter in good faith, uninterruptedly and with reasonable diligence in proportion to its magnitude, no certificate of public convenience and necessity was required under section 50(a), although it had not, prior to the above date, actually exercised its franchise.—In re Southern Sierras Power Co., 2 R. C. D. 647.

130. Same—"Actually exercised" is "completely exercised" — Section 50(b).—The proper interpretation of the words "actually exercised" in section 50(b) of the act is "completely exercised."—In re Southern Sierras Power Company, 2 R. C. D. 647.

131. Same—Same — Same.—If a utility, prior to March 23, 1912, began and partially completed actual construction, in pursuance of franchise rights and privileges, it might proceed under such rules and regulations as the commission might prescribe to the completion or the complete exercise of the rights which had been granted.—In re Southern Sierras Power Co., 2 R. C. D. 647.

132. "System."—The word "system" as used in section 50 includes all facilities through which service is rendered, whether owned by the company or its consumers.—Valley, etc., Co. v. Midway, etc., Co., 13 R. C. D. 313.

133. Exchange service.—A utility has no legal right to deliver its commodity to an individual for resale, when neither has received a certificate from the commission, irrespective of the fact that the service is exchange service, to be paid for in kind at a later date.—Valley, etc., Co. v. Midway, etc., Co., 13 R. C. D. 313.

134. Territory already served—Policy of commission—Requirement of good faith.—In all applications to enter territory served by another utility of like character, the commission will look, not only to the exist-

ing utility, but also to the manner in which the applicant has fulfilled its duty to the public and complied with its representations to the commission with reference to territory already being served by it.—In re Oro Electric Corporation, 2 R. C. D. 748.

135. Same—Same—Showing of reasonable rate and fair return.—A utility desiring to enter a field already served can not make out its case by simply figuring out rates slightly lower than those of the existing utility, but it must present evidence clearly showing what rate it can reasonably give the public, and at the same time secure for itself a reasonable return on the value of the property actually used for the public purpose.—In re Oro Electric Corporation, 2 R. C. D. 748.

136. Same—Same—Question of superior advantages and cheaper service.—A wise public policy demands that utilities which are doing their full duty to the public should be treated with fairness and justice and liberality, and receive such protection for their investments as they deserve, subject always to the contingency that if another utility can, by reason of superior natural advantages or patented processes, or other means, give to the public a service as good as the existing utility, at rates materially less, the interests of the public must be deemed paramount and the new utility must be given an opportunity to serve the public.—In re Oro Electric Corporation, 2 R. C. D. 748.

137. Wholesaler entitled to regulation.—The wholesaler is just as much in need of regulation as the retailer, and the law can and should look through the shadow to the substance and take cognizance of a scheme to defeat the best interests of the public under whatsoever guise the scheme is found to exist.—In re Midway Gas Co., 2 R. C. D. 208.

138. Same—Certificate contrary to public interest.—If, as here, it is sought not to benefit the public but to benefit the promoters and utility companies entirely under such terms as will prevent regulation by competent authority, public convenience and necessity does not require the granting of the application, but the carrying out of such a scheme would be directly contrary to such interest.—In re Midway Gas Co., 2 R. C. D. 208.

139. Local control of streets.—The granting or withholding of a certificate of public necessity and convenience is an exercise of the power of the state to determine whether the rights and interests of the general public will be advanced by the prosecution of the enterprise which it is proposed to carry on for the service of the public; and this is an entirely different question from that of the local control of the streets, and power over the two subjects may well be vested at the same time in two different governmental bodies, without one in any way clashing or interfering with the other.—Oro Electric Corp. v. Railroad Commission, 169 Cal. 466, 475, 147 Pac. 118.

139a. Franchise from county not franchise from municipality.—A utility, though it has secured a blanket franchise from a county, has no valid franchise within a municipality, irrespective of the fact that the latter has been subsequently incorporated, when it has not exercised rights under the franchise in the territory of the municipality.—In re Southern Sierras Power Co., 13 R. C. D. 374.

140. Territory not served with consent of commission.—A utility has the right to furnish service in territory not being served by another public utility, without the commission's approval.—In re Mount Konocti, etc., Co., 1 R. C. D. 438; In re Gunn, 1 R. C. D. 447.

141. Invasion of territory—Service of industry in excess of occupant's ability.—A utility can not allege invasion of its territory when the new utility undertakes to serve an industry which requires an amount of energy considerably in excess of the available supply of the present utility, especially when the latter has never undertaken to serve a business of such magnitude nor has ever filed rates covering such class of service.—In re Sierra & San Francisco Power Co., 12 R. C. D. 560.

142. Same—Purpose of law as to competition—Territory served by pioneer in field.—Where territory is served by a utility which has pioneered in the field, and is rendering efficient and cheap service, and is fulfilling adequately the duty which it owes the public, and the territory is so generally served that it may be said to have reached the point of saturation as regards the particular commodity, then the design of the law is that it shall be protected within its field; but when any one of these conditions is lacking, the public convenience may often be served by allowing competition.—Pacific, etc., Co. v. Great Western Power Co., 1 R. C. D. 203; In re California, etc., Co., 2 R. C. D. 31; Midland Counties, etc., Co. v. Santa Maria, etc., Co., 9 R. C. D. 514. Case distinguished: In re Oro Electric Corporation, 2 R. C. D. 748.

143. Same—Same—Utility entitled to protection.—A public utility established in a territory and giving good and adequate service at reasonable rates, voluntarily to all who apply and not made to forestall prospective competition, is entitled to protection, that protection being as much in the interest of the public as of the utility.—In re Half Moon Bay, etc., Co., 1 R. C. D. 380.

144. Same—Same—Failure of utility to accord voluntarily proper service.—Where utilities do not voluntarily accord their patrons these things which are their due, or, at least, would impose upon the public authorities the burden of forcing them into a realization of what their proper relationship to the public is, they are not entitled to the same consideration, when threatened with competition, as utilities which have voluntarily furnished good service at reasonable rates.—Pacific, etc., Co. v. Great Western Power Co., 1 R. C. D. 203; In re

California, etc., Co., 2 R. C. D. 31. Case distinguished: *In re Oro Electric Corporation*, 2 R. C. D. 748.

145. Same—Same—Territory covered by natural monopoly.—A territory served by a utility which has pioneered in the field, covered by a natural monopoly is completely served.—*Pacific, etc., Co. v. Great Western Power Co.*, 1 R. C. D. 203; *In re California, etc., Co.*, 2 R. C. D. 31. Case distinguished: *In re Oro Electric Corporation*, 2 R. C. D. 748.

146. Same—Same — Indiscriminate competition.—The commission holds that the traveling public will receive more reliable service at more reasonable rates from established, responsible companies, who are permitted to earn a reasonable return upon their investment than by permitting indiscriminate competition which would weaken the financial situation of each of the competitors and result in poor and unreliable service.—*In re Santa Clara Valley Auto Line*, 14 R. C. D. 112.

147. Same—Same—Auto busses.—When an existing utility is giving good service at rates as low as may be reasonably expected and meeting all the requirements of the public in its territory for additional service the commission will be slow to permit a competitor to enter the field unless it is able to show that it is able to render a materially better service, or as good service, at materially lower rates.—*In re Santa Clara Valley Auto Line*, 14 R. C. D. 112.

148. Same—Same—Burden of proof.—The burden of proof in an application for a certificate rests upon the applicant to show that the service is required by the public.—*In re Santa Clara Valley Auto Line*, 14 R. C. D. 112.

149. Same—Same — Temporary inability to give efficient service.—The fact that a utility, serving a prescribed territory, is unable to render efficient service for a period of time, does not warrant another utility in entering the territory for competitive service without previous authority from the commission.—*Valley, etc., Co. v. Midway, etc., Co.*, 13 R. C. D. 313.

150. Same—Same—Utility too weak to supply service.—A utility relatively weak financially and without the facilities necessary to render service to large industries requiring an extra heavy demand can not expect to exclude from its territory a utility able and willing to render such service.—*In re Sierra and San Francisco Power Co.*, 12 R. C. D. 560.

151. Same — Same — Showing required.—An existing utility which desires protection from competition must show not only an ability to serve but also the extent to which it has available facilities to properly care for whatever business might be offered in the territory which it covers.—*In re Sierra and San Francisco Power Co.*, 12 R. C. D. 560.

152. Same—Same—Same—Duty of existing utility to exercise highest efficiency.—Existing facilities must be utilized to their

highest efficiency before additional investments will be permitted to be made in similar facilities for the purpose of serving the same territory.—*In re Sierra & San Francisco Power Co.*, 12 R. C. D. 560.

153. Same — Objectionable competition—Duplication of facilities.—Competition becomes objectionable only when it results in unnecessary duplication of investment and facilities, and when joint occupation of specified territory results in more improved and efficient service or the induction of new and better methods it is beneficial to the public.—*In re Sierra & San Francisco Power Co.*, 12 R. C. D. 560.

154. Same—Erection of poles and wires not service.—The erection of poles and wires can not be construed as serving surrounding territory where such wires were neither connected with a source of supply nor with prospective consumers.—*Mt. Konocti, etc., Co. v. Gunn*, 5 R. C. D. 958.

155. Telephone and telegraph system in a municipality.—A utility can not lawfully exercise any of the rights or privileges granted under a franchise for the construction of a telephone and telegraph system within a city without first securing a certificate of public convenience and necessity from the commission.—*In re Pacific, etc., Co.*, 11 R. C. D. 457.

1. Issue of securities.

155a. Permission to issue stocks, bonds, etc., required.—Permission must be secured from the railroad commission before a carrier may issue any stock or bonds, note or other evidence of indebtedness payable at a period of more than twelve months, when the aggregate amount of outstanding notes or indebtedness shall at any one time exceed \$2500.—*In re Rates, fares, charges, classification, rules and regulations of certain transportation companies*, 14 R. C. D. 378.

156. Securities authorized by the commission are not guaranteed to be profitable, but must take their place with other securities, the commission merely endeavoring to see that all possible efforts are made to safeguard them.—*In re Panama-Pacific Warehouse Corporation*, 9 R. C. D. 267.

157. Issue of securities out of proportion to revenue.—A utility composed of a consolidation of previously competing companies, though entitled to receive fair and reasonable rates, as are earned by like utilities under like conditions, should not be permitted to issue securities out of proportion to the net revenue which it might reasonably be expected to receive from one single system not having the duplicated facilities which exist in the property of the combined systems.—*In re Santa Barbara Telephone Co.*, 11 R. C. D. 470.

158. Stock subscribed but not issued prior to effective date of act.—Stock subscribed for but not issued prior to the effective date of the public utilities act is subject to the jurisdiction of the commission, and an authorization is required to

validate its issuance.—In re Valley Telephone Co., 9 R. C. D. 395.

See, also, as to bonds delivered but no actual value paid, In re Oakland, etc., Co., 3 R. C. D. 454.

159. Deposit with trustee as security not an "issue."—Delivery of bonds to a trustee to secure underlying is not an "issue" as that word is used in section 52 of the act.—In re Sutter-Butte Canal Co., 1 R. C. D. 803.

160. Combination of private business and public utility.—Question of rules as to issue of bonds by a company engaged in a private business and in a public utility.—In re Farmer's Warehouse Co., 2 R. C. D. 124.

161. Issuance of promissory note for period less than year.—The authorization of the commission is not necessary for the issuance by a public utility of a promissory note for a period of not to exceed one year.—In re R. B. Young, doing business as Grizzly Electric Co., 15 R. C. D. 327.

162. Pledge is not a sale.—The commission's authority to sell bonds is not a permission to pledge them.—In re Stockton, etc., Co., 1 R. C. D. 690.

163. Issue of refunding securities of consolidated corporation.—Ordinarily the commission will not consider an application for authority to issue refunding securities of a corporation not in existence, but where the proposed corporation is intended as the consolidated corporation of two existing corporations, and the purpose is to refund the obligations of such corporations, the application will be considered on its merits.—In re West Coast, etc., Co., 1 R. C. D. 876.

164. Sale of securities from one utility to another.—When the financial condition of a public utility is such that the commission could not authorize it to issue bonds to be sold to the public, it will permit their sale to another utility which is fully advised of the value of such securities, when the purchase thereof will in no wise affect the rates or service of the purchaser, and the bonds will not be sold to the public.—In re Union Home, etc., Corporation, 15 R. C. D. 558.

165. Renewal of short term promissory notes.—The commission has jurisdiction over the renewal of short term promissory notes.—In re Pacific, etc., Co., 3 R. C. D. 167.

165a. Personal liability of directors.—The public utility act of 1911 (§ 52b) repealed sections 309 and 456, Civil Code, as to the personal liability of directors of corporations for overissue of corporate securities, in so far as related to public utility corporations, but made no saving provision as to pending litigation or inchoate rights.—Moss v. Smith, 171 Cal. 777, 155 Pac. 90.

m. Sale and lease of properties of utilities.

166. Consent of commission required.—Application of section 51a.—Section 51a of the public utilities act, to the effect that sales, leases, etc., of public utilities can be made only with the consent of the railroad commission is merely permissive, and

the application should be made by the owner, because the authority must run to the owner.—Hanlon v. Eshleman, 169 Cal. 200, 202, 146 Pac. 656.

166a. Same.—Transfer of water system without consent of commission—Null and void.—A land company which constructs and operates a water distributing system in connection with its land operations can not turn its water system over to another company which it organizes for such purpose without first securing the permission of the commission, and such transfer without such permission is null and void.—Compton v. Richfield, etc., Co., 15 R. C. D. 20.

167. Same.—Policy of commission.—In passing upon a question of sale or lease of a public utility under authority of section 51a of the public utilities act, the railroad commission considers only what is necessary or useful in the performance of its duties to the public, and is concerned only with the question as to whether a proposed transfer will be injurious to the rights of the public, and it has nothing to do with the rights of an intending purchaser; nor has it power to determine whether a valid contract exists, or whether either party has a legal claim against the other under the contract.—Hanlon v. Eshleman, 169 Cal. 200, 203, 146 Pac. 656.

168. Reservation of part by grantor.—Upon the sale of the plant, property and water rights of a public utility, devoted wholly to public use, the grantor can not reserve an inseparable part thereof to his own use, so as to carve out a private right of ownership, so as to defeat the power of the railroad commission to fix the rates which he in common with all the other consumers shall pay for the service of such utility.—Limoneira Co. v. Railroad Commission, 174 Cal. 232, 241, 162 Pac. 1033.

169. Sale of public utility.—Obligation of grantee to continue service.—A transfer of property used in the public service carries with it the obligation to consumers to continue the use to which the property has been devoted.—In re Southern California, etc., Co., 1 R. C. D. 520.

170. Purchase by municipality.—Taxing and bond limit.—A municipality is legally able to take the property of a public utility, and in doing so will become the successor of the corporation and in duty bound to perform the obligations imposed by law, and the taxing and bond limit provisions of its charter to not affect funds necessary to enable it to perform such obligations.—In re Southern California, etc., Co., 1 R. C. D. 520.

171. Property not used or useful.—A public utility may dispose of property to which it has title without securing the consent of the commission, provided such property is not used or useful in the performance of its duties as a public utility.—In re East Bay, etc., Co., 13 R. C. D. 336.

172. Protest of another utility serving grantor.—In connection with an application of an electric utility for permission to transfer its property, the commission will not

consider the petition of another electric utility, selling energy to the company proposed to be transferred, that the petition be deemed on the ground that should the purchasing company refuse to continue to secure its energy through the protestant it would lose a considerable investment made to secure such business, where the prospective purchaser agrees to continue to take such energy until it can secure energy at a more reasonable rate.—*In re Callstoga Electric Co.*, 15 R. C. D. 63.

173. Lease of utility without consent of commission void.—It is in violation of section 51 of the public utilities act for a public utility water company to lease its system or any portion thereof without first securing the permission of the commission, and an individual or company purporting to take over the system or any portion thereof, without such permission, is merely the agent of the utility, which continues to be responsible for such operation.—*Stein v. Excelsior, etc., Co.*, 15 R. C. D. 167.

n. Contracts of utilities.

174. Right of municipality to contract away state's right to regulate service and rates.—The Marin Water and Power Company is held to be a public utility, and that its contracts, entered into both before and after the state's exercise of its power of regulation, are subject to the state's control, and are not within the protection of the federal constitution.—*Sausalito v. Marin Water and Power Co.*, 8 R. C. D. 252.

175. Same.—Right of municipality to contract away state's power to regulate not granted to Sausalito.—*Sausalito v. Marin Water and Power Co.*, 2 R. C. D. 252.

176. Municipal corporation as a consumer is not different from a private corporation.—*Sausalito v. Marin Water and Power Co.*, 2 R. C. D. 252.

177. Contracts between municipalities and utilities.—A public utility can not contract with its customers in such a way as to preclude the state from inquiring into the reasonableness of the rates agreed upon, directing the removal of discriminations and otherwise completely supervising and regulating the utility, and this principle applies to contracts between utilities and municipalities unless the right is given the latter in express terms to contract away the power of regulation by the state, which has not been done as to Ukiah.—*Ukiah v. Snow Mountain, etc., Co.*, 4 R. C. D. 293.

178. Contracts appurtenant to land.—The mere fact that contracts were made by a water company that the agreements to supply water should be appurtenant to land is not inconsistent with the theory of dedication to public use, and such contracts were subject to regulation and control by the public authorities under existing laws or under laws subsequently enacted.—*Traber v. Railroad Commission, (Cal.)* 191 Pac. 366.

179. Contracts of public service corporations subject to modification by the commission.—If a corporation was a public service

corporation at the time it entered into a public service contract that contract was subject to modification by the railroad commission.—*Allen v. Railroad Commission*, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466.

180. Contracts should be approved when.—Contracts between utilities and their patrons, for a valuable consideration, entered into in good faith, should be approved by the commission, in so far as such approval will not result in discrimination.—*In re California, etc., Co.*, 2 R. C. D. 584.

181. Same.—Rights of way.—A carrier should be permitted to pay the price agreed upon for its right of way.—*In re California, etc., Co.*, 2 R. C. D. 584.

182. Soliciting baggage on train.—Exclusive contracts.—A railroad has a right to make an exclusive contract for soliciting of baggage on trains.—*Red Line, etc. v. Southern Pacific Co.*, 3 R. C. D. 526.

183. Contract to sell properties.—Void unless approved by commission.—A contract for the sale of its properties by one utility to another, without the approval of the commission as required by sections 51 and 76, is void and unenforceable.—*Napa, etc., Co. v. Callstoga, etc., Co.*, 38 Cal. App. 477, 176 Pac. 699.

Neither company can have specific performance against the other.—*Napa, etc., Co. v. Callstoga, etc., Co.*, 38 Cal. App. 477, 176 Pac. 699.

184. Lawful contracts as to rates and tolls not affected.—A lawful contract entered into between an owner and a telegraph company granting a right of way for a telegraph line in return for privileges and tolls in a specified amount, is within the protection of the impairment of contracts clause of the federal constitution, and is unaffected by the public utilities act.—*Irvine v. Postal, etc., Co.*, 37 Cal. App. 60, 173 Pac. 487.

185. Relief from contract.—Application under section 74.—Under section 74 a railroad may apply to the commission for relief under a contract with a water company for water in consideration of a right of way for a pipe line, but it may also resort to the ordinary actions and proceedings in the courts.—*Southern Pacific Co. v. Spring Valley, etc., Co.*, 173 Cal. 291, L. R. A. 1917E, 680, 159 Pac. 865.

186. Contracts between utilities.—The commission's power to fix the rates of a public utility irrespective of existing contracts is not confined to ordinary consumers, but includes also cases where one electric utility furnishes service to another utility of a like nature, whether by contract or otherwise, for general distribution to the public.—*Callstoga, etc., Co. v. Napa Valley, etc., Co.*, 13 R. C. D. 280.

187. Agreements as to division of territory and alterations in prices to be paid for electric energy.—The railroad commission will not be bound by any provisions in any agreements between utilities with reference to a division of territory and alterations in prices to be paid for electric energy.—*In re Wohlford*, 12 R. C. D. 505.

188. Advertising for transportation—Commission without power to authorize.—The commission has no power to grant authority for the exchange of advertising space for transportation.—In re San Francisco Newspaper Union, 1 R. C. D. 705.

189. Same—Same—Public utility act contains only authority.—The public utility act itself gives the authority to exchange advertising for transportation, so far as it exists and whatever restrictions the commission may impose may diminish but can not increase that power.—In re San Francisco Newspaper Union, 1 R. C. D. 705.

190. Same—Same—Status of applicant.—The San Francisco Newspaper Union is not the proprietor or employee of a newspaper as these words are used in the public utilities act.—In re San Francisco Newspaper Union, 1 R. C. D. 705.

o. Valuation for rate making.

190a. Basis.—The present value of the property being used by a public utility for the convenience of the public is the basis on which rates are to be fixed; and this in the Ames case (164 U. S. 466) is held to be computed from the original cost of construction, the amount expended in permanent improvements, the amount and market value of stocks and bonds, the present, as compared with the original cost of construction, the probable earning capacity of property under particular rates and the sum required to meet operating expenses; and in addition the Jasper case (189 U. S. 439) holds that the price at which a plant has been bought at a foreclosure sale is evidence to be considered in a rate fixing inquiry.—In re Murray, 2 R. C. D. 464.

190aa. Use of commodity should not be basis of rate.—A common carrier is not justified in charging a higher rate for moving a commodity, under exactly similar conditions, to one community where it is used for manufacturing purposes, than to another community where it is put to a less valuable use.—Pacific, etc., Co. v. Southern Pacific Co., 13 R. C. D. 61.

190b. Right of diversion of water for power purposes is property and entitled to consideration in rate making.—The right to divert and use a portion of the waters of a stream for the purpose of generating electric light and power is property, and a light and power company is unquestionably entitled to have their value considered in the fixing of its rates.—San Joaquin L. & P. Co. v. Railroad Commission, 175 Cal. 74, 77, 165 Pac. 16.

190bb. Same—Where rates would be unduly high, water rights will not be considered.—In fixing water rates no allowance will be made for water rights where it is conceded by the utility that if a return is allowed thereon the rates will be unjustly and unduly high.—In re Lake Hemet Water Company, 11 R. C. D. 617.

190bbb. Value of water rights.—The commission has the authority to determine the amount to be allowed for water rights

in fixing water rates.—In re San Diego, 4 R. C. D. 902.

190c. Capitalizing franchises.—Jurisdiction to permit a public utility to capitalize or to issue securities upon the value of its franchises or permits is denied the railroad commission, under section 52, subdivision (b) of the public utilities act.—In re United Stages, 15 R. C. D. 175.

190d. Franchise cost—Section 52.—Section 52 of the public utilities act prohibits the railroad commission from authorizing the issue and sale of stock to cover the cost of a franchise in excess of the actual cost thereof to the grantee.—In re Colorado River, etc., Co., 12 R. C. D. 708; In re Red Star Stage Line, 14 R. C. D. 126.

190e. Capitalization of franchises for rate making purposes.—When the public grants privileges to a utility free of cost, it can not be expected that such utility will be allowed to capitalize the same for rate making purposes, and no such value is allowed by the commission.—In re Mt. Whitney, etc., Co., 9 R. C. D. 628.

190f. Same—Evil effect of—Local franchises.—Evil effects of attempts to fix permanent rates by local franchises.—Re Chesapeake, etc., Co. (Va. Corp. Com.) P. U. R. 1920F, 49.

190g. Reproduction cost—Inflated war prices.—The Virginia commission declined to accept a valuation based on reproduction at inflated war prices.—Re Chesapeake, etc., Co. (Va. Corp. Com.) P. U. R. 1920F, 49.

190h. Same—Investments for war purposes.—The Virginia commission declined to allow valuation of property used for war purposes, but no longer in use and required such investments to be deducted.—Re Chesapeake, etc., Co. (Va. Corp. Com.) P. U. R. 1920F, 49.

190i. Same—New.—The commission does not hold itself bound to confine itself to estimated reproduction value new; but that such a basis would have considerable weight if the utility has been kept up to a 100 per cent efficiency and a proper depreciation fund maintained, and the estimate does not differ materially from the actual cost.—Antioch v. Pacific, etc., Co., 5 R. C. D. 19.

190j. Same—Same.—If the utility has not maintained its system in first-class condition, paying out in dividends money that should have been used for this purpose, a rate based solely upon the cost to reproduce such system new would be extremely unfair to the consumers.—Antioch v. Pacific, etc., Co., 5 R. C. D. 19.

190k. Same—Same.—If the utility originally cost an amount, honestly and wisely expended, considerably in excess of what it would now cost to reproduce it, the establishment of a rate upon estimated reproduction cost would be unfair to the utility.—Antioch v. Pacific, etc., Co., 5 R. C. D. 19.

190l. Same—Same—Depreciated reproduction value.—It is unfair to base a return entirely upon a depreciated reproduc-

tion value, such depreciation being computed from the average age of the component parts of the system, which, though in use for several years, are still equal to 100 per cent efficiency.—*Antioch v. Pacific, etc., Co.*, 5 R. C. D. 19.

190m. Same—Money wisely and honestly invested.—Though the commission is not committed to any one theory in determining the value of a utility for rate making purposes, it will consider all the elements suggested by the supreme court of the United States, giving to each its fair weight, considerable weight will be given to the money honestly and wisely invested in the property and in building up the business.—*Antioch v. Pacific, etc., Co.*, 5 R. C. D. 19.

190n. Same—"Original cost."—The term "original cost" means the actual expenditures, in cash or its equivalent, by the railroad company for the physical elements entering into its operative property, as of a specified date; but this definition was expressly limited to the instant case.—*In re Valuation Stockton Terminal, etc., Co.*, 2 R. C. D. 777.

190o. Same—"Reproduction value."—The term "reproduction value" means the estimated cost in cash of acquiring the operation right of way and other real estate and of reproducing in the condition in which it was acquired the other operative physical property, as of a specified date, to which are added overhead expenditures for engineering, law, interest and commissions and similar items; but this definition was expressly limited to the instant case.—*In re Valuation Stockton Terminal, etc., Co.*, 2 R. C. D. 777.

190p. Same—"Present value."—The term "present value" means the "reproduction value," less the diminution in value of the physical properties, due wage, use, obsolescence and inadequacy, but this definition was expressly limited to the instant case.—*In re Valuation Stockton Terminal, etc., Co.*, 2 R. C. D. 777.

190q. Same — Same. — "Present value" may under certain circumstances, include appreciation as well as depreciation.—*In re Valuation Stockton, etc., Co.*, 2 R. C. D. 777.

190r. Same. — "Depreciated reproduction value" may properly be used as the alternative for the term "present value."—*In re Valuation Stockton Terminal, etc., Co.*, 2 R. C. D. 777.

190rr. Value of system used—Reproduction value.—A return should be allowed only on that portion of the system used and useful in the public service, and when a return based on reproduction value of a plant would result in a rate higher than the service is reasonably worth, values can not be given primary consideration.—*In re Lake Hemet Water Co.*, 11 R. C. D. 617.

190s. Cash working capital.—A utility should be allowed to earn a fair return on a reasonable amount of working capital necessary to meet its current obligations, without regard to the amount of cash on

hand.—*In re Centralia, etc., Co.* (Ill. P. U. Com.) P. U. R. 1920F, 124.

190t. Operating expenses—Bad debts. A reasonable allowance should be made for bad debts, even though the account shows a credit.—*In re Centralia, etc., Co.*, (Ill. P. U. Com.) 1920F, 124.

190u. Same—Federal income tax. Such tax is not a proper charge against operating expenses but should be borne by the stockholders.—*In re Centralia, etc., Co.*, (Ill. P. U. Com.) 1920F, 124.

190v. Unused property — Alternative plant.—An electric generating plant, unused for two years, out of repair, can not be considered on the theory that it is a standby plant.—*In re Spring Valley, etc., Co.*, (Ill. P. U. Com.) P. U. R. 1920F, 139.

190vv. Additional plant—Usefulness during rate period.—It was within the jurisdiction of the commission, in the exercise of its discretionary powers to determine from the facts before it whether an addition to a water plant would be available for the needs of the consumers during the year for which rates were imposed, so as to entitle it to be treated as used and useful, and the court will not disturb the finding of the commission.—*San Leandro v. Railroad Commission*, (Cal.) 191 Pac. 1.

190w. Same—Property purchased for future needs which can not be used at the present time for utility purposes can not be included in a valuation for rate making purposes.—*In re Merchants, etc., Co.* (Ind. P. S. Com.) P. U. R. 1920F, 162.

190x. "Going value" — "Development cost."—The commission will consider "going value" or "development cost," when such items are not offset by other equitable considerations, as appear in the present case, but only little weight will be given to hypothetical estimates when the actual expenditures are available.—*Antioch v. Pacific, etc., Co.*, 5 R. C. D. 19.

190y. Same—Defined.—"Going concern" value, that is the value of a business in active and successful operation over and above the value of its component parts, is recognized, and allowance made therefor in rate making proceedings.—*San Joaquin L. & P. Co. v. Railroad Commission*, 175 Cal. 74, 80, 165 Pac. 16.

190z. Same—Development cost excluded as element of.—Where the earnings of a light and power company since the close of the development period, over and above the eight per cent fixed as a standard for reasonable return, have been sufficient to balance all of the deficits of the development period, with interest thereon for the entire period, the railroad commission is fully justified in excluding the item of development cost as an element of going concern value.—*San Joaquin L. & P. Co. v. Railroad Commission*, 175 Cal. 74, 80, 165 Pac. 16.

190za. Capitalization — Earning basis — Value of property.—The earning basis is obviously not a proper one upon which to base capitalization, and the commission has

determined that the proper basis of capitalization is the value of the property.—*In re Angels' Flight Ry.*, 2 R. C. D. 693.

190zb. Intangibles—Advertising, etc., to secure business.—The Virginia commission declined to allow expenses for advertising and other expenses incurred in securing business.—*Re Chesapeake, etc., Co.*, (Va. Corp. Com.) P. U. R. 1920F, 49.

190zc. Securities.—Slight consideration given securities of a public utility, on the ground that they may not represent real value.—*Re Chesapeake, etc., Co.*, (Va. Corp. Com.) P. U. R. 1920F, 49.

190zd. Value of extensions.—The value of extensions made by a water system for the purposes of developing tracts outside the original area will not be allowed in establishing bare rates to consumers in the original district.—*In re Western, etc., Association*, 15 R. C. D. 67.

190ze. "Depreciation fund."—A utility has a right to look to its consumers for the establishment of a proper depreciation fund; and the amount of such fund should be based upon the average natural life of the different classes of material, with an allowance for salvage, obsolescence and inadequacy.—*Antioch v. Pacific, etc., Co.*, 5 R. C. D. 19.

190zf. Same—Interest.—The interest on the depreciation fund should be retained therein and not diverted to other channels.—*Antioch v. Pacific, etc., Co.*, 5 R. C. D. 19.

190zg. Cost of electric energy.—In establishing a rate for electric energy the commission divided the cost into two parts, one being the cost of electric energy delivered at the gates of Antioch, and the other the cost of local distribution.—*Antioch v. Pacific, etc., Co.*, 5 R. C. D. 19.

p. Valuation for condemnation.

191. Basis.—In finding the value of public utility property for condemnation proceedings the commission can not take into consideration estimates based on the probable value of the property for some future use to which the purchaser may intend to put it, but values must be determined upon the worth of the things to be transferred under the conditions and for the purposes for which they are being utilized at the time of the valuation.—*In re City of San Fernando*, 13 R. C. D. 88.

191a. Same—Findings of fact required.—In a valuation under section 47 for use in future proceedings, findings of fact with reference to the different elements which have from time to time been considered by the courts in cases in which the value of the property of a railroad company has been material, will be made by the commission as follows: (1) Organization, construction and operation; (2) stocks and bonds; (3) revenue and expenses; (4) original cost; (5) reproduction value; (6) present value.—*In re Valuation Stockton Terminal, etc., Co.*, 2 R. C. D. 777.

See, also, to same effect, *In re Valuation Sugar Pine Ry. Co.*, 6 R. C. D. 3; *In re Valuation Mill Valley, etc., Co.*, 6 R. C. D.

233; *In re Valuation Petaluma, etc., Co.*, 6 R. C. D. 749; *In re Valuation San Diego, etc., Co.*, 4 R. C. D. 539; *In re Valuation Diamond, etc., Co.*, 7 R. C. D. 499; *In re Valuation Quincy, etc., Co.*, 8 R. C. D. 340; *In re Valuation Glendale, etc., Co.*, 8 R. C. D. 605; *In re Valuation San Francisco, etc., Co.*, 8 R. C. D. 623; *In re Valuation Central Pacific Ry. Co.*, 8 R. C. D. 640; *In re Valuation Tidewater, etc., Co.*, 9 R. C. D. 285; *In re Valuation Monterey, etc., Co.*, 9 R. C. D. 812.

191b. Taking testimony.—In determining the question of compensation under section 47 of the public utilities act, the commission may call and examine a witness not proposed by either party to the proceedings.—*Marin, etc., Co. v. Railroad Commission*, 171 Cal. 706, 713, 154 Pac. 864, Ann. Cas. 1917C, 114.

191c. Same—Competency of witness who has viewed property.—A witness is competent to testify in a proceeding before the railroad commission under section 47, as to value, where he appears to have viewed and examined the property with care and had made exhaustive inquiries regarding sales of similar property in the vicinity and of the different uses to which the property was adapted, all with the purpose of forming an opinion on the subject.—*Marin, etc., Co. v. Railroad Commission*, 171 Cal. 706, 714, 154 Pac. 864, Ann. Cas. 1917C, 114.

191d. Same—Same—Faculty of land as source of water supply.—Where the commission, in a proceeding to fix compensation under section 47, considered the faculty the land possessed as a source of water supply, for the reservoir of a water company, its refusal to give such faculty a separate value would not deprive it of jurisdiction, or invalidate its award.—*Marin, etc., Co. v. Railroad Commission*, 171 Cal. 706, 714, 154 Pac. 864, Ann. Cas. 1917C, 114.

191e. Same—Same—Same—Separate finding.—The failure of the commission in a proceeding to fix compensation under section 47, to make separate findings as to separate parcels of property, does not under sections 47 and 70, deprive the commission of jurisdiction or invalidate its findings.—*Marin, etc., Co. v. Railroad Commission*, 171 Cal. 706, 717, 154 Pac. 864, Ann. Cas. 1917C, 114.

191f. Same—Evidence on commission's own motion.—The commission, in a proceeding under section 47, to fix compensation, is authorized to make its findings upon evidence offered by neither party, but sought on the commission's own motion, and such findings are not for that reason, necessarily outside the issues.—*Marin, etc., Co. v. Railroad Commission*, 171 Cal. 706, 716, 154 Pac. 864, Ann. Cas. 1917E, 114.

192. Detached pieces of property.—In a petition for valuation for condemnation purposes, a detailed statement of the property "together with all the properties built and building or to be built subsequent to the making of the list" is sufficiently adequate to include a few scattered items of property.

such as detached pieces of pipe, etc., and no supplemental finding as to the value of such property is necessary.—*In re Marin Municipal Water District*, 12 R. C. D. 532.

193. Gas company — Paying.—No allowance for paying, in excess of the actual expenditure incurred is permitted in valuation for either rate making or condemnation.—*In re Palo Alto*, 11 R. C. D. 209.

194. Franchise cost.—The actual amount paid for the franchise is allowed, but not interest.—*In re Palo Alto*, 11 R. C. D. 209.

195. Going concern.—The commission should fix and determine a single and definite sum for property rights as a going concern with business attached.—*Los Angeles v. Edison Co.*, 11 R. C. D. 83.

196. Same—Net earnings are not stable and are dependent on many factors which give no assurance that they will remain permanent; but where the utility is efficiently managed and earning in excess of eight per cent, proper consideration should be given present earning capacity.—*Los Angeles v. Edison Co.*, 11 R. C. D. 83.

197. Power to build competing plant.—The fact that a municipality has the power to build a competing plant can have no weight in determining values.—*Los Angeles v. Edison*, 11 R. C. D. 83.

198. Severance damages.—Where a part of a utility system is to be taken consideration should be given to loss in intrinsic value due to less profitable use of the property taken and of the property not taken.—*Los Angeles v. Edison Co.*, 11 R. C. D. 83.

199. Same.—Where it is not possible to segregate any portion of the property as solely affected by the severance and the whole property is affected, all the property must be considered.—*Los Angeles v. Edison Co.*, 11 R. C. D. 83.

200. Same.—Where property is valuable only for the particular purpose for which used its value is dependent upon its use for that purpose, and if it is rendered less useful for that purpose it is rendered less valuable and compensation must be made for the damage thus sustained.—*Los Angeles v. Edison Co.*, 11 R. C. D. 83.

201. Same.—Severance damages must be determined not from a capitalization of loss of net earnings, but must be the reduction, caused by severance, in the value of the property not taken.—*Los Angeles v. Edison Co.*, 11 R. C. D. 83.

202. Unamortized bond discount.—A claim for an allowance under the head of unamortized bond discount and expense is not considered in allowance of property and rights, and can not be allowed here.—*Los Angeles v. Edison Co.*, 11 R. C. D. 83.

203. Expenditures subsequent to findings and prior to issue thereof.—The commission has no jurisdiction to make an order, at a subsequent date, in connection with expenditures made by a utility prior to the date upon which the commission's findings were issued.—*In re Marin Municipal Water District*, 12 R. C. D. 532.

204. Additional compensation—Additions and betterments in the ordinary course of

business. To secure additional compensation a utility must show a loss incurred in its being obligated to preserve its property between the time judgment in condemnation becomes final and the time of payment of compensation, and such compensation shall include additions and betterments made in the ordinary course of business.—*In re Marin Municipal Water District*, 12 R. C. D. 532.

205. Agreements after valuation.—The commission has no jurisdiction over agreements entered into by a water district seeking to condemn the properties of a water and power company and the latter subsequent to the valuation of its properties relative to improvements made after valuation, for which the water district is inclined to give additional compensation.—*In re Marin Municipal Water District*, 12 R. C. D. 532.

206. Taxes paid after valuation.—A utility is not entitled to compensation for taxes paid subsequent to valuation, for while it is in possession its receipt from rates sufficient to cover operating expenses, includes taxes, and to allow it compensation in the condemnation proceeding would be in effect to allow it double compensation.—*In re Marin Municipal Water District*, 12 R. C. D. 532.

207. Revaluation after condemnation final.—The commission has no jurisdiction to entertain a proceeding for a general revaluation, after the condemnation judgment has become final.—*In re Marin Municipal Water Co.*, 12 R. C. D. 532.

208. Hearings as to improvements and betterments.—The provisions of section 70 of the public utilities act as to holding hearings from time to time as to the value of improvements and betterments has reference to valuations for rate-making purposes, and not for condemnation purposes.—*In re Marin Municipal Water District*, 12 R. C. D. 532.

209. Report of commission final by adjudication on appeal.—Where in a valuation proceeding preliminary to the condemnation of a utility by a municipal water district, the railroad commission, in its report fixed a value for "miscellaneous equipment," and reserved that item for subsequent valuation "subject to change at time of purchase," the utility appealed to the supreme court without objecting to the reservation, or objected to the consideration of the matter in the condemnation proceedings, or sought a review of the finding of the lower court based on the report, the order of the commission became final by the adjudication of the supreme court.—*Marin Municipal Water District v. Marin, etc., Co.*, (Cal. App.), 187 Pac. 764.

210. Findings final and conclusive.—The findings of the commission upon the valuation of a public utility property for the purpose of condemnation by a municipal water district or other public authorities shall be deemed final and conclusive; but the commission may certify to the superior court such amounts as it may be deemed

proper, to be either added or subtracted from the original findings.—*In re Marin Municipal Water District*, 12 R. C. D. 532.

211. *Determination of commission conclusive.*—The finding of the railroad commission as to the compensation to be paid by a county water district or other public corporation desiring to acquire an existing public utility, where fixed, determined and certified in accordance with section 70 of the public utilities act, is, under section 47, final and conclusive in eminent domain proceedings by such district or corporation to condemn such utility, and the superior court is not authorized to determine the value of the property or to give judgment for such value as the compensation to be paid therefor.—*Marin Municipal Water District v. Marin Water and Power Co.*, 178 Cal. 308, 311, 173 Pac. 469; *Marin Municipal Water District v. North Coast Water Co.*, 178 Cal. 324, 326, 173 Pac. 473.

g. Reparation for violation of long and short haul clause.

211a. *Effect of constitutional amendment of October 10, 1911.*—The constitutional amendment of October 10, 1911 (§ 21, art. XII) did not continue in effect illegal rates theretofore fixed by the commission, which were violative of the long and short haul clause, but such rates could be relieved from by an application made to the commission for that purpose, followed by favorable action on the commission's part.—*California Adjustment Co. v. Atchison, etc., Co.*, 179 Cal. 140, 175 Pac. 682. To the same effect: *Southern Pacific Co. v. California Adjustment Co.*, 237 Fed. 954, 150 C. C. A. 604.

211b. *Right arising under the "Wright act."*—Where a remedy for its enforcement exists, and the bar of the statute has not fallen, a right to reparation for a violation of the long and short haul of the constitution (§ 21, art. XII), arising under the Wright act, may be enforced, and that remedy is given by section 60 and section 70 of the public utilities act.—*Scott, Magner & Miller v. Western Pacific Co.*, 2 R. C. D. 626.

211c. *Same — Statute of limitations.*—Claims for reparation on shipments prior to October 10, 1911, barred by the statute of limitations, and claims on shipments after that date were barred under section 71(b) of the public utilities act, in two years.—*California Packing Corporation v. Southern Pacific Co.*, 12 R. C. D. 261.

211cc. *Same — Same — Two-year bar.*—When a statute is passed establishing a period of limitations applicable to rights theretofore created, a reasonable time must be given for the prosecution of an action before the statute works a bar, and it is held that in view of the fact that the two-year period fixed by the public utilities act can not be construed to take away the remedy given for the enforcement of reparation claims arising under the Wright act, and kept alive by the Stetson-Eshleman and public utilities acts, a reasonable time will be given for the prosecution of an

action for such reparation, which will be deemed two years after the effective date of the last named act.—*Scott, Magner & Miller v. Western Pacific Co.*, 2 R. C. D. 626.

211d. *No reparations prior to adoption.*—Reparation can not be claimed for a violation of the long and short haul clause of the constitution prior to its adoption October 10, 1911.—*Scott, Magner & Miller v. Southern Pacific Co.*, 3 R. C. D. 339.

211e. *Section 31d "Wright act," as section 4, interstate commerce act.*—The section is substantially the same as section 4 of the interstate commerce act, as to which it has been repeatedly held that the carrier was relieved from the restraints imposed thereby whenever actual or potential competition compelled the acceptance of lower rates for the longer than for the shorter haul.—*Scott, Magner & Miller v. Western Pacific Co.*, 2 R. C. D. 626. Citing *Atchison, etc., Co. v. Denver, etc., Co.*, 110 U. S. 678, 28 L. ed. 291, 4 Sup. Ct. Rep. 185; *Interstate Commerce Commission v. Alabama, etc., Co.*, 168 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. Rep. 45; *Louisville, etc., Co. v. Behlmer*, 175 U. S. 648, 44 L. ed. 309, 20 Sup. Ct. Rep. 209; *Ex parte Koehler*, 31 Fed. 315, 12 Sawy. 446; *Interstate Commerce Commission v. Atchison, etc., Co.*, 50 Fed. 295.

211f. *Same—Construction determined by construction of interstate commerce act.*—In view of the fact that the provisions of the interstate commerce act relating to the subject of rates and fares have been substantially adopted in the constitution of California and the public utility act, it is presumed that the people and the legislature intended the true meaning thereof to be as established by the courts as to the federal act.—*Southern Pacific Co. v. Superior Court*, 27 Cal. App. 240, 150 Pac. 397.

211g. *Long and short haul clause—Water competition justifies higher rates to intermediate points.*—Higher rates to intermediate points forced by water competition are warranted and their continuation permitted.—*In re Southern Pacific Co.*, 10 R. C. D. 354; *In re Atchison, etc., Co.*, 10 R. C. D. 368; *In re California, etc., Co.*, 10 R. C. D. 377; *In re California, etc., Co.*, 10 R. C. D. 382; *In re Southern Pacific Co.*, 10 R. C. D. 387; *In re Atchison, etc., Co.*, 10 R. C. D. 396; *In re Western Pacific Co.*, 10 R. C. D. 403; *In re Northwestern Pacific Co.*, 10 R. C. D. 406.

211h. *Same—Same—Common points between Los Angeles and San Francisco.*—Water-compelled rates apply from Los Angeles and common points to San Francisco and common points, including points on the Sacramento and San Joaquin rivers, except South Vallejo, which itself has water competition. — *In re Southern Pacific Co.*, 13 R. C. D. 364.

211i. *Same—Long and circuitous route—Competition with larger and stronger carrier.*—Where a utility renders an exceptionally efficient service, and in addition operates a road over a more circuitous route in competition with a far larger and stronger carrier, it is justified in the collection

of a higher rate for intermediate points in violation of the long and short haul clause.—*In re Petaluma, etc., Co.*, 10 R. C. D. 412.

r. Consolidation of utilities.

211j. Competing telephone systems.—The commission does not favor competing telephone systems, and will look with favor on any equitable agreements towards consolidation of competing systems with its resultant improvements in service.—*In re Union Home, etc., Corporation*, 15 R. C. D. 558.

211k. Consolidated utilities entitled to reasonable rates.—Consolidated utilities are entitled to reasonable rates covering the class of service which they render, irrespective of the fact that severe competition may have forced rates so low that upon consolidation it is found necessary to increase certain rates above those existing prior to such consolidation, for should the companies independently petition for an increase in rates, the commission would be obliged, in any event, to allow a fair and reasonable return.—*In re Santa Barbara Telephone Co.*, 11 R. C. D. 470.

V. RIGHTS, DUTIES AND LIABILITIES OF UTILITIES.

a. In general.

- 212. Diversion of public use.
- 213. Information to consumers.
- 214. Continuous service—Rural telephone company.
- 215. Checking baggage at hotels and residences.
- 216. Delivery of water to property line.
- 217. Connections—Deposit of cost.
- 218. Same—Same—Discrimination.
- 219. Same—Renewal after disconnection—Joint telephone lines.
- 220. Supply of water for irrigation—Designation of place of use by appropriator.
- 221. Supply of water pending contest of consumer's right.
- 222. Filing schedule—Installing wireless plant on steamship.
- 223. Same—Same—Contract valid.
- 224. Additional service for financial assistance.

b. Deposit to establish credit.

- 225. Utilities may require.
- 226. Same—Manner of establishing credit.
- 227. Same—Amount of.
- 228. Same—Other than cash deposits.
- 229. Same—Service can not be discontinued through lack of until lapse of specified time.
- 230. Same—Default where consumer has cash deposit.
- 231. Same—Notice of discontinuance.
- 232. Same—Discontinuance of service for non-payment of bills rendered.
- 233. Same—Telegraph and toll line service by telephone companies.
- 234. Same—Flat rate and unmetered service.

- 235. Same—Same—Time limits for discontinuance.
- 236. Same—Return of deposits—Measured service.
- 237. Same—Same—Same—Interest.
- 238. Same—Maximum amount.
- 239. Unreasonable practice of telephone company as to deposit for installation.

- 240. Deposits required to be returned.

c. Service contracts and connections.

- 241. Contracts for service—Customers not required to sign.
- 242. Service connections—Utilities required to make.
- 243. Same—Same—Cost of connections and reconnections may be provided for in rules.
- 244. Same—Same—Cancellation charge.
- 245. Rules—Modification by utilities.
- 246. Same—Inconsistent rules.
- 247. Street extensions—Utilities must make.
- 248. Same—Same—Unincorporated territory.
- 249. Same—Same—Cost a loan, when paid by consumer.

d. Extensions, additions and improvements.

- 250. Injury to present consumers.
- 251. Reasonableness.
- 252. New connecting line—§ 36.
- 253. Reconstruction of old abandoned line.
- 254. Water mains—Fire protection.
- 255. Gas service—Acceptance of franchise imposes obligation to extend service to other streets.
- 256. Same—Same—Commission has jurisdiction.
- 257. Same—Same—Jurisdiction of commission defined.
- 258. Additional service and facilities.
- 259. Same—Proviso.
- 260. Order to make improvements.
- 261. Same—Irrigation of lands in same district.

V. RIGHTS, DUTIES AND LIABILITIES OF UTILITIES.

a. In general.

212. Diversion of public use.—A public utility which has for a period of time devoted its supply of gas, or a portion thereof, to the public use, can not divert such supply for personal uses, nor is the inclusion of a clause in a lease or contract purporting to give such utility the right to divert such supply to its own uses sufficient to give the utility a right prior to the public's right thereto.—*In re Traders Oil Co.*, 12 R. C. D. 647.

213. Information to consumers.—A public utility is required to inform all consumers in matters in which their interests or dealings with the utility are involved.—*In re Western, etc., Association*, 15 R. C. D. 67.

214. Continuous service—Rural telephone company.—Where a rural telephone exchange serves 300 or more subscribers it should provide continuous service.—*In re*

Elk Grove Mutual Telephone Association, 11 R. C. D. 592.

215. Checking baggage at hotels and residences.—A railway company is obligated only to accept baggage at its stations; and an arrangement by which a transfer company is allowed the privilege of checking baggage at hotels and residences is one merely for the accommodation of passengers, not obligatory upon the company, and, hence, not a matter within the jurisdiction of the commission.—*Atlantic Transfer Company v. Los Angeles Transfer Co.*, 7 R. C. D. 165.

216. Delivery of water to property line.—A utility, operating under exceptional conditions which has never assumed the obligation of delivering water to the property line of any of its consumers will not be required to do so.—*Hansel v. Reiney*, 14 R. C. D. 806.

217. Connections — Deposit of cost.—Utilities delivering water for irrigation shall install connections at their own expense, and no deposit shall be required therefor unless it is shown that the cost is greater than is warranted by the probability of use based on acreage and size of service customarily provided.—*In re Western, etc., Association*, 15 R. C. D. 67.

218. Same—Same—Discrimination.—A water utility delivering water for both domestic and irrigation purposes can not require a consumer desiring water for domestic use, to construct, at his own expense, the facilities for such service, while, at the same time, the utility installs, free of charge, the same facilities to other consumers.—*In re Western, etc., Association*, 15 R. C. D. 67.

219. Same—Renewal after disconnection—Joint telephone lines.—Where the owners of joint telephone lines voluntarily permitted a connection to be made therewith by another line, also open to the use of the public, and subsequently disconnected it, the railroad commission had authority to order the connection renewed and the service continued.—*Camp Rincon Resort Co. v. Eshleman*, 172 Cal. 561, 564, 158 Pac. 186.

220. Supply of water for irrigation—Designation of place of use by appropriator.—An appropriator of water for public use is not required to designate places of use in compliance with sections 1410 to 1422, Civil Code, when there were none except public rights to the water appropriated; and even when a place of use is designated, no vested rights are conferred upon any one.—*Price v. Riverside*, 56 Cal. 430; *Hildreth v. Montecito Creek Water Co.*, 139 Cal. 22, 72 Pac. 395; *Leavitt v. Lassen Irrigation Co.*, 157 Cal. 82, 29 L. R. A. (N. S.) 213, 106 Pac. 404; *Miller v. Bay Cities Water Co.*, 157 Cal. 256, 27 L. R. A. (N. S.) 772, 107 Pac. 115; and *Thayer v. California Development Co.*, discussed and distinguished; *Palmer v. Southern, etc., Co.*, 2 R. C. D. 43.

221. Supply of water pending contest of consumer's right.—Under the public utilities act and the act of 1913 (Stats. 1913, p. 84) expressly authorizing the railroad commis-

sion to regulate water companies, and require them to serve additional customers, the commission has authority to compel a water company to supply water to an applicant, notwithstanding the company is contesting the right of such applicant in good faith, to be supplied.—*Palermo, etc., Co. v. Railroad Company*, 173 Cal. 380, 385, 160 Pac. 228.

222. Filing schedule—Installing wireless plant on steamship.—The public utilities act of 1911 (§ 18), relating to the duty of telegraph companies to file a schedule of charges, does not apply to the charges of a wireless company for the installation of a wireless plant on a steamship and furnishing an operator therefor.—*Marconi, etc., Co. v. North Pacific, etc., Co.*, 36 Cal. App. 653, 173 Pac. 103.

223. Same—Same—Contract valid.—Even if the public utilities act required the filing of a schedule of charges for installing a wireless plant on a steamship the failure to file such charges would not have the effect to render unlawful or void the contract for such service.—*Marconi, etc., Co. v. North Pacific, etc., Co.*, 36 Cal. App. 653, 173 Pac. 103.

224. Additional service for financial assistance.—A utility by rendering financial assistance to a corporation, thereby helping to put it on an operating basis, does not secure, as to service, any additional rights thereby other than such rights as may otherwise have been established.—*In re Sierra and San Francisco Power Co.*, 12 R. C. D. 560.

b. Deposit to establish credit.

225. Utilities may require.—Utilities may require prospective customers to establish credit before rendering service.—*In re Practice of Public Utilities Requiring Deposits Before Rendering Service*, 7 R. C. D. 830.

226. Same—Manner of establishing credit.—A prospective customer establishes credit if he (1) owns the premises; (2) makes a cash deposit; (3) furnishes a guarantee satisfactory to the utility; (4) has paid all bills promptly for a period of twelve months prior to the effective date of this order.—*In re Practice of Public Utilities Requiring Deposits Before Rendering Service*, 7 R. C. D. 830.

227. Same—Deposits, amount of.—Deposits shall not exceed twice the average periodic bill of that particular class of customers paying the same, or for domestic or residence monthly service not to exceed \$2.50.—*In re Practice of Public Utilities Requiring Deposit Before Rendering Service*, 7 R. C. D. 830.

228. Same—Other than cash deposits.—Consumers receiving service under other than cash deposits, who default in payments, may be required to guarantee future bills by cash deposits.—*In re Practice of Public Utilities Requiring Deposits Before Rendering Service*, 7 R. C. D. 830.

229. Same—Service can not be discontinued through lack of deposit until lapse of specified time.—Service can not be dis-

continued, on default in payments through lack of deposit, until the lapse of the specified time as required under notice of discontinuance required to be given.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

230. Same—Default where consumer has cash deposit.—Where a defaulting consumer has a cash deposit the amount of the bill may be subtracted from the deposit and demand made that such deposit be restored to the original amount, though service can not be discontinued until the deposit has been entirely absorbed and require time notice to be given.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

231. Same—Notice of discontinuance.—A written notice of discontinuance must be given consumers, when bills are normally rendered monthly, of fifteen days; weekly bills, four days; fortnightly bills, seven days; over one month, thirty days.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

232. Same—Discontinuance of service for non-payment of bills rendered.—No service can be discontinued on account of non-payment of bills for metered or measured service theretofore delivered.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

233. Same—Telegraph and toll line service by telephone companies.—Telephone utilities may extend telegraph and toll line service to all patrons, or to the extent of such deposits as patrons may desire to make.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

234. Same—Flat rates or unmetered service.—Utilities rendering service at flat rates may demand payment in advance for the period at which bills are normally rendered, but can not demand guarantees for service to be rendered in the future.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

235. Same—Same—Time limits for discontinuance.—The time limits for the discontinuance of unmeasured service by written notice are the same as for measured service.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

236. Same—Return of deposits—Measured service.—Deposits for measured service remaining unimpaired for twelve months shall be returned to the depositor; upon closing accounts, balance of deposit, after all bills due have been deducted shall be promptly returned to the depositor.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

237. Same—Same—Same—Interest.—Six per cent interest shall be paid on all deposits for measured service excepting where the service is discontinued in less than

twelve months.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

238. Same—Maximum amount.—The general rule heretofore established requiring a deposit to guarantee bills for domestic service in the sum of \$2.50 was established as the maximum amount which could be demanded for such service and not the minimum amount.—In re Los Angeles, etc., Co., 14 R. C. D. 214.

239. Unreasonable practice of telephone company as to deposit for installation.—The practice of a telephone company in requiring deposit before installing telephone is unjust, unreasonable and discriminatory.—San Jose v. Pacific, etc., Co., 3 R. C. D. 720.

240. Deposits required to be returned.—All deposits now held by public utilities from consumers who have paid all bills promptly for a period of twelve months last past shall be returned to the depositors.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

c. Service contracts and connections.

241. Contracts for service—Customers not required to sign.—Consumers shall not be required to sign contracts for service excepting extensions in unincorporated territory, which shall be open for further discussion, and in such cases in unincorporated territory as the commission may direct, provided that written applications for service may be required.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

242. Service connections—Utilities required to make.—Utilities are required to make all connections from their mains or lines along public highways to the consumers' property lines, abutting on such highway, at their own expense; provided that the connection may be refused, subject to review by the commission, when the utility believes that such extension will not be used for a reasonable time.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

243. Same—Same—Cost of connections and reconnections may be provided for in the rules.—Cost of connecting or reconnecting service extensions may be provided for in the rules of the utility by (1) charging directly to the new company; (2) prorating over periodic payments for service; (3) by merging into general operating expenses.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

244. Same—Same—Cancellation charge.—No cancellation charge whatever shall be made.—In re Practice of Public Utilities in Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

245. Rules—Modification by utilities.—Utilities may establish uniform non-discriminatory rules more favorable to consumers than the rules herein prescribed, but the rules herein established shall take

precedence of all other rules heretofore established which may conflict therewith.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

246. Same — Inconsistent rules.—Rules and regulations filed by utilities, inconsistent with the rules herein established shall be revised and refiled within sixty days.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

247. Street extensions—Utilities must make.—Utilities shall make all required street extensions in municipalities, at their own expense, except where such extensions appear to be unreasonable or unduly expensive, in which case the question may be submitted to the commission.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

248. Same—Same — Unincorporated territory.—In unincorporated territory the utilities shall make such reasonable extensions at their own expense as may be agreed upon with the applicant for service, provided the matter may be referred to the commission when the extension is deemed unduly burdensome.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

249. Same—Same—Cost a loan, when paid by consumer.—When an applicant for service pays the whole or portion of the cost of an extension, it shall be considered as a loan to be repaid under non-discriminatory rules, with six per cent interest.—In re Practice of Public Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

d. Extensions, additions and improvements.

250. Injury to present consumers.—No utility should be compelled to extend its service unless such extension can be made so as not to injure consumers already receiving a satisfactory service.—Ferrasci v. Empire Water Co., 6 R. C. D. 309.

251. Reasonableness.—The extension of a telephone utility to serve some five prospective consumers held not to be unreasonable, where it appeared that the cost thereof would be about \$475.45, and the annual revenue therefrom about \$105, with a total operating expense, including depreciation, about \$77.92.—Mackey v. California, etc., Co., 15 R. C. D. 126.

252. New connecting line—Section 36.—There is nothing in section 36 of the public utilities act to authorize the railroad commission to require a railroad company to extend its line or build a new line, for the purpose of connecting points not previously connected, and which the company has not undertaken to connect, with points on its existing line.—Atchison, etc., Co. v. Railroad Commission, 173 Cal. 577, 580, 160 Pac. 828, 2 A. L. R. 975.

253. Reconstruction of old abandoned line.—The fact that a railroad line constructed and long since abandoned by a predecessor, had once existed furnishes no

authorization to the railroad commission to require a railroad company to reconstruct such line.—Atchison, etc., Co. v. Railroad Commission, 173 Cal. 575, 577, 160 Pac. 828, 2 A. L. R. 975.

254. Water mains—Fire protection.—Statutory obligations do not compel utilities either to enlarge or extend mains solely for fire protection service.—Alameda v. People's Water Company, 9 R. C. D. 234.

255. Gas service—Acceptance of franchise imposes obligation to extend service to other streets.—When a utility accepts a franchise from a city to construct its lines over its streets, and constructs its lights over a portion of the streets, it obligates itself to extend the service to other streets where desired.—Monahan v. Pacific, etc., Co., 5 R. C. D. 298.

256. Same—Same—The commission has jurisdiction to compel extensions any reasonable distance irrespective of code provisions limiting extensions to 100 feet, which statutes have been repealed by section 87 of the public utilities act.—Monahan v. Pacific, etc., Co., 5 R. C. D. 298.

257. Jurisdiction of commission to compel extensions of water utilities defined.—Dooley v. People's Water Co., 3 R. C. D. 948.

258. Additional service and facilities.—The obligation of a utility is not limited to supplying the water delivered in the past to consumers, and it can be required to make reasonable additions to the quantity of service and the facilities for developing the same.—El Dorado, etc., Association v. Western States, etc., Co., 15 R. C. D. 681.

259. Same—Proviso.—Provided its obligations as a public utility to existing consumers is taken care of, a water utility may devote additional available water to a new public use, such as hydroelectric development.—El Dorado, etc., Association v. Western States, etc., Co., 15 R. C. D. 681.

260. Order to make improvements.—The commission has jurisdiction to issue an order directing a public service water company to make such improvements to its system as are necessary to enable it to care for additional demands for water when the lands proposed to be irrigated thereby are all within the district which the utility holds itself out as irrigating, for the purpose of enabling it to more fully serve the district.—In re Fowler, receiver for Sacramento Valley West Side Canal Co., 15 R. C. D. 253.

261. Same—Irrigation of lands in same district.—The commission has jurisdiction to order a public utility to make such improvements to its system as are necessary to enable it to care for additional demands for water when the lands proposed to be irrigated are all within the district served.—In re Fowler, receiver for Sacramento Valley West Side Canal Co., 15 R. C. D. 253.

VI. REVIEW.

262. § 67—Definition of writ broadened.

263. Same—Effect of.

264. Same—Scope of.

- 265. Same—Jurisdiction of supreme court limited by.
- 266. Same—Injunction against issuing and honoring free transportation.
- 267. Same—Findings—Uncontradicted testimony—Question of law.
- 268. Same—Same—Neither sufficiency of evidence nor soundness of reasoning reviewable.
- 269. Same—Same—Conclusiveness of.
- 270. Same—Same—Determination of jurisdictional fact reviewable.
- 271. Same—Same—Question of mixed law and fact.
- 272. Same—Same—Same—Authorities.
- 273. Order enforcing tariff with reference to demurrage.
- 274. Order overruling demurrer not a final adjudication and not reviewable.
- 275. Determination of question of right of priority in use of water.
- 276. Wrongful refusal of commission to investigate alleged abuses—Remedy of aggrieved party is mandamus.
- 277. Same—Same—Mandamus allowed by § 67.
- 278. Supreme court may restrain commission, may annul its decree, and may compel it to exercise its powers.
- 279. Validity of § 50—Refusal of commission to issue permit—City authorized to issue permit.
- 280. Same—Same—If section is unconstitutional, no permit is needed.
- 281. Final determination of question of valuation under § 47.
- 282. Failure of commission to follow its own rules.
- 283. Same—Order of public convenience and necessity.
- 284. Procedure—Rehearing—Provision as to determination within 20 days, directory.
- 285. Same—Same—Continuance for showing as to whether motion was in time.
- 286. Same—Same—Motion prior to effective date of order, a prerequisite.
- 287. Same—Same—Same—Effective date of order—§ 61a.
- 288. Same—Same—Same—Same—Power of commission discretionary.
- 289. Same—Same—Denial of rehearing—§ 66.
- 290. Same—Same—Application—Failure to set forth point for decision.

VI. REVIEW.

262. Section 67—Definition of writ broadened.—The effect of section 67 of the public utilities act is to broaden beyond all former definitions, rulings, and decisions in this state the scope of the writ of review.—*Pacific, etc., Co. v. Eshleman*, 166 Cal. 640, 651, 137 Pac. 1119, Ann. Cas. 1915C, 822, 50 L. R. A. (N. S.) 652.

263. Same—Effect of.—When the legislature in enacting the public utilities act, vested in the supreme court alone the limited power of review provided in section 67, and including therein the duty of this court to determine whether a petitioner's constitutional rights were violated it meant as far as the constitution of this state is concerned, only those constitutional rights of which the petitioner had not been deprived by legislative enactment.—*Pacific, etc., Co. v. Eshleman*, 166 Cal. 640, 655, 137 Pac. 1119, Ann. Cas. 1915C, 822, 50 L. R. A. (N. S.) 652.

264. Same—Scope of.—There is nothing in section 67 or elsewhere in the public utilities act which changes the rule that writs of review lie only when the inferior tribunal as in excess or without jurisdiction, and never to determine in point of law, the correctness of rulings or decisions of such tribunals.—*Holabird v. Railroad Commission*, 171 Cal. 691, 695, 154 Pac. 831.

265. Same—Jurisdiction of supreme court limited by.—In view of section 22, article XII, of the constitution declaring the powers conferred on the railroad commission "to be plenary and unlimited by any provision of the constitution," the jurisdiction of the supreme court over the acts of the commission is limited by the provisions of section 67 of the public utilities act.—*Clemmons v. Railroad Commission*, 173 Cal. 254, 256, 159 Pac. 713.

266. Same—Injunction against issuing and honoring free transportation.—The superior court has no jurisdiction, in view of the restrictive provisions of section 67 of the public utilities act (1915-161), at the instance of a stockholder of a railroad company, to enjoin the company from issuing and honoring free transportation over its lines, to the officers and employers of the railroad commission, under section 11 of the act.—*Sexton v. Atchison, etc., Co.*, 173 Cal. 760, 762, 161 Pac. 748.

267. Same—Findings—Uncontradicted testimony—Question of law.—If the findings of the railroad commission upon a question of fact are based upon uncontradicted testimony, it becomes a question of law, and if it goes to the jurisdiction, may be reviewed by the supreme court notwithstanding the provision of the act (§ 67) excluding questions of fact from such review.—*Marin, etc., Co. v. Railroad Commission*, 171 Cal. 706, 713, 154 Pac. 864, Ann. Cas. 1917C, 114.

268. Same—Same—Neither sufficiency of evidence nor soundness of reasoning reviewable.—Neither the sufficiency of the evidence nor the soundness of the reasoning, upon which a finding of the railroad commission, on an application for a certificate of public necessity and convenience under section 50 of the public utilities act, can be considered by the supreme court on review of an order denying such certificate.—*Oro Electric Corp. v. Railroad Commission*, 169 Cal. 466, 471, 147 Pac. 118.

269. Same—Same—Conclusiveness of.—The provisions of section 67 as to the con-

clusiveness of the commission's findings and conclusions of fact have to do with the commission's determinations upon questions of fact within its jurisdiction.—*Allen v. Railroad Commission*, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466.

270. Same — Same — Determination of jurisdictional fact reviewable.—The determination of the commission as to whether the facts bring the case within the scope of its powers is subject to review, so far as the present question of law bearing on the subject, and the provision of section 67 that the commission's determination of matters of fact does not apply to the existence of the jurisdiction of the commission to act.—*Traber v. Railroad Commission*, (Cal.) 191 Pac. 366.

271. Same—Same—Question of mixed law and fact.—When the question is one of mixed law and fact, and when the whole controversy revolves around the inquiry as to whether the corporation is a public utility or not, to say that the commission's findings are conclusive is to deny the petitioner a hearing which section 67 carefully preserves to him.—*Allen v. Railroad Commission*, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466.

272. Same—Same—Same—Authorities. —Point decided on the authority of *Pacific Telephone Co. v. Eshleman*, 166 Cal. 640, 137 Pac. 1119, 50 L. R. A. (N. S.) 652, Ann. Cas. 1915C, 822; *Del Mar Water Co. v. Eshleman*, 167 Cal. 666, 140 Pac. 591, 948; *Title, etc., Co. v. Railroad Commission*, 168 Cal. 295, 142 Pac. 878, Ann. Cas. 1916A, 738; *Marin Water, etc., Co. v. Railroad Commission*, 171 Cal. 706, 154 Pac. 864, Ann. Cas. 1917C, 114; *Atchison Ry. Co. v. Railroad Commission*, 173 Cal. 577, 2 A. L. R. 975, 160 Pac. 828; *Western Association, etc. v. Railroad Commission*, 173 Cal. 802, 162 Pac. 391.

273. Order enforcing tariff with reference to demurrage.—An order of the railroad commission is not subject to review where it merely directs a railroad company to enforce a tariff with reference to demurrage without adjudicating the question of petitioner's liability, or preventing them from interposing any defense they may have in an action pending or afterwards brought to enforce the tariff.—*E. Clemens Horst Co. v. Railroad Commission*, 175 Cal. 660, 661, 166 Pac. 804.

274. Order overruling demurrer not a final adjudication and not reviewable.—An order of the railroad commission overruling a demurrer to a petition on jurisdictional grounds, and in effect finding that a water company is a public utility and subject to its jurisdiction, is not a final adjudication on the merits of the petition, and certiorari to the supreme court to review such order will not lie.—*Holabird v. Railroad Commission*, 171 Cal. 691, 693, 154 Pac. 831.

275. Determination of question of right of priority in use of water.—A writ of review will not lie to compel the railroad commission to determine the right of priority in the use of water in a case where it

does not consider it necessary to do so.—*C. A. Hooper & Co. v. Railroad Commission*, 175 Cal. 810, 165 Pac. 689.

276. Wrongful refusal of commission to investigate alleged abuses—Remedy of aggrieved party is mandamus.—If the railroad commission wrongfully refuse to investigate alleged abuses and make and enforce regulations for the conduct of a public utility, the remedy of the aggrieved party would be mandamus, not certiorari.—*Palmer v. Railroad Commission*, 167 Cal. 163, 166, 138 Pac. 997.

277. Same—Same—Mandamus allowed by section 67.—Mandamus is allowed by section 67 of the public utilities act.—*Palmer v. Railroad Commission*, 167 Cal. 163, 167, 138 Pac. 997.

278. Supreme court may restrain the commission, may annul its decree, and may compel it to exercise its powers.—The supreme court may restrain the commission from exercising powers which it does not possess, or annul its decree when such unwarranted powers have been exercised, as it may by mandate compel it to exercise jurisdiction which it does possess.—*Allen v. Railroad Commission*, 179 Cal. 68, 8 A. L. R. 249, 175 Pac. 466.

279. Validity of section 50—Refusal of commission to issue permit—City authorized to issue permit.—On review of an order of the commission denying a telephone company the right to make an extension of its line into a city, the court can not determine the validity of section 50, where the city is authorized to permit such an extension.—*Valley Telephone Co. v. Railroad Commission*, 171 Cal. 55, 151 Pac. 740.

280. Same—Same—If section is unconstitutional, no permit is needed.—The supreme court will not pass upon the constitutionality of section 50 of the public utilities act on a review under section 67 of an order denying a certificate of public necessity and convenience, inasmuch as if the act is unconstitutional, the petitioner needs no such certificate.—*Valley, etc., Co. v. Railroad Commission*, 171 Cal. 55, 56, 151 Pac. 740.

281. Final determination of question of valuation under section 47.—The supreme court has jurisdiction under section 4, article VI, of the constitution, and section 1068, Code of Civil Procedure, to review the final decision of the railroad commission fixing compensation under section 47 of the public utilities act, even without the special grant of such jurisdiction in the act itself.—*Marin, etc., Co. v. Railroad Commission*, 171 Cal. 706, 713, 154 Pac. 864, Ann. Cas. 1917C, 114.

282. Same — Same — Same—Failure of commission to follow its own rules.—Section 53 of the act expressly provides that informalities shall not invalidate the orders or decisions of the railroad commission, and its order is not rendered in excess of its jurisdiction by its failure to observe its own rules in the proceeding.—*Ghriest v. Railroad Commission*, 170 Cal. 63, 64, 148 Pac. 195.

283. Same—Order of public convenience and necessity.—The supreme court can not review an order of public convenience and necessity made under section 50 of the act merely on the ground that the application and procedure did not conform strictly to the rules of the commission relative to the same.—*Ghriest v. Railroad Commission*, 170 Cal. 63, 64, 148 Pac. 195.

284. Procedure—Rehearing—Provision as to determination in twenty days, directory.—The provision of the public utilities act requiring the commission, under certain circumstances, to "forthwith proceed to hear the matter with all dispatch, and shall determine the same within twenty days," is directory, and does not go to the jurisdiction of the commission, or render an order setting aside an order of the commission void, because made more than twenty days after final submission.—*Mt. Konocli Light & Power Co. v. Thelan*, 170 Cal. 468, 471, 150 Pac. 359.

285. Same—Same—Continuance for showing as to whether motion was in time.—In the issuance of a writ of certiorari to review an order of the railroad commission the supreme court does not finally pass upon the merits of an objection to the jurisdiction of the court on the ground that proper application for a rehearing had not been in time to the commission and the commission is not precluded from continuing to insist upon this objection raised in its response to the order to show cause.—*Clemmons v. Railroad Commission*, 173 Cal. 254, 256, 159 Pac. 713.

286. Same—Same—Motion prior to effective date of order, a prerequisite.—Under section 66 of the public utilities act an application for a rehearing prior to the effective date of the order of the commission is made a prerequisite to a right to ask for a review by the courts, and this right is lost when application for rehearing is not made until twenty-nine days after the date fixed.—*Clemmons v. Railroad Commission*, 173 Cal. 254, 256, 159 Pac. 713.

287. Same—Same—Same—Effective date of order—Section 61a.—The provisions of section 61a as to the time of taking effect of order of commission, applies only to the proceeding initiated under section 60, by corporations or persons conducting a public utility and has no application to a proceeding initiated by the commission itself.—*Clemmons v. Railroad Commission*, 173 Cal. 254, 258, 159 Pac. 713.

288. Same—Same—Same—Same—Power of commission discretionary.—In the absence of any provision to the contrary in the statute, the commission may provide in its discretion for the time when its order shall take effect, however short.—*Clemmons v. Railroad Commission*, 173 Cal. 254, 258, 159 Pac. 713.

289. Same—Same—Denial of rehearing—Section 66.—Under section 66 of the public utilities act any party interested in an order or decision made by the railroad commission may petition for a rehearing, and if it is denied, may under section 67 apply to the

supreme court for a writ of review, for the purpose of having the lawfulness of the order or decision inquired into and determined.—*Marin Municipal Water District v. North Coast Water Co.*, 178 Cal. 324, 328, 173 Pac. 473.

290. Same—Same—Application—Failure to set forth point for decision.—Where a municipality fails to specifically set forth an alleged failure to fix a rate base in its application to the commission for a rehearing, it is precluded under section 66 of the act from urging it on certiorari.—*San Leandro v. Railroad Commission*, (Cal.) 191 Pac. 1.

VII. ACTIONS.

291. Action for violation of long and short haul clause of constitution—Jurisdiction of superior court.
292. Same—Commission has no jurisdiction.
293. Same—Jurisdiction of federal courts.
294. Same—Right of action exists regardless of common law.
295. Same—Tender of payment or payment under protest, not required.
296. Same—Contemporaneous shipment to more distant point.
297. Same—Violation unjustified and unwarranted as matter of law—Commission has nothing to do with it.
298. Action for damages for discontinuance of service—Submission of controversy to commission.
299. Same—Same—Justification for discontinuance.
300. Action to prevent nuisance—§ 74.
301. Petition for mandamus—Failure to allege compliance with rules and regulations of commission.

VII. ACTIONS.

291. Action for violation of section 21, article XII, constitution—Jurisdiction of superior court.—Where the freight charge of a railroad is discriminative or excessive and in violation of constitutional provisions, the superior court had jurisdiction of an action to recover the same previous to any award of the commission, and necessarily so, in view of the fact that the charge was illegal, the railroad commission could not make it otherwise, and no other remedy is provided.—*Southern Pacific Co. v. Superior Court*, 27 Cal. App. 240, 150 Pac. 397.

292. Same—Commission has no jurisdiction.—Under the constitution (§ 21, art. XII) prior to the amendment of October 10, 1911, the railroad commission was authorized to fix rates only that were reasonable and legal under the constitution, and could not fix rates contravening the long and short haul provision of the constitution, and the fact that the rates were fixed by the commission afforded no protection to the carrier if they in fact were violative of the long and short haul clause of the constitution.—*California Adjustment Co. v. Atchison, etc., Co.*, 179 Cal. 140, 175 Pac. 682. To

the same effect: *Southern Pacific Co. v. California Adjustment Co.*, 237 Fed. 954, 150 C. C. A. 604.

293. Same—Jurisdiction of federal courts.—The California public utilities act with reference to reparation for violations of the long and short haul clause of the constitution do not apply to such an overcharge unwarranted as a matter of law, and the federal court has jurisdiction of a suit to recover damages for loss or injury sustained by reason of the carrier's failure to comply with the provisions of the constitution and laws of the state.—*California, etc., Co. v. Southern Pacific Co.*, 226 Fed. 349.

294. Same—Right of action exists regardless of common law.—Under the provisions of the various railroad commission and public utility acts of California (Stats. 1909, p. 499; Stats. 1911, p. 13; and Stats. 1911, p. 18), a right of action exists for a violation of the long and short haul clause of the constitution (§ 21, art. XII), without any regard to whether a right of action existed at common law or not.—*California Adjustment Co. v. Atchison, etc., Co.*, 179 Cal. 140, 175 Pac. 682. To same effect: *Southern Pacific Co. v. California Adjustment Co.*, 237 Fed. 954, 150 C. C. A. 604.

295. Same—Tender of payment or payment under protest not required.—An action for reparation for a violation of the long and short haul clause of the constitution (§ 29, art. XII) may be brought without previous tender of payment, and without making payment under protest.—*California Adjustment Co. v. Atchison, etc., Co.*, 179 Cal. 140, 175 Pac. 682.

296. Same—Contemporaneous shipment to more distant point.—In an action for a violation of the long and short haul clause of the constitution (§ 21, art. XII) it is not material whether, when the shipments to intermediate points, complained of as excessively charged for, were made, no contemporaneous shipment to a more distant point was made.—*California Adjustment Co. v. Atchison, etc., Co.*, 179 Cal. 140, 175 Pac. 682.

297. Same—Violation unjustified and unwarranted as matter of law—Commission has nothing to do with it.—The long and short haul clause of the constitution (§ 21, art. XII) by prohibiting the discrimination determines conclusively that a violation of it shall be unwarranted and unjustified as matter of law, and as this is a legal question the commission can have nothing to do with it, but is a legal question for the courts, and is recognized as such by subdivision (a) of section 73 of the act.—*California Adjustment Company v. Atchison, etc., Co.*, 179 Cal. 140, 175 Pac. 682.

298. Action for damages for discontinuance of service—Submission of controversy to commission.—Where defendant demanded and plaintiff refused to submit controversy to the railroad commission, it was proper to admit in evidence rule 6 of the commission to the effect that after making such

demand the utility may discontinue service after fifteen days.—*Lane v. Pacific Gas and Electric Co.*, 33 Cal. App. Dec. 248, 193 Pac. 589.

299. Same—Same—Justification for discontinuance.—Where defendant demanded and plaintiff refused to submit controversy to the railroad commission, and rule 6 of the commission was introduced in evidence, it was proper to instruct the jury that if such should be the fact defendant was justified in discontinuing service.—*Lane v. Pacific Gas and Electric Co.*, 33 Cal. App. Dec. 248, 193 Pac. 589.

300. Action to prevent nuisance—Section 74.—The superior court has jurisdiction to hear and determine an action brought by the people against a public utility to prevent the latter from committing a public nuisance, notwithstanding the public utility act, particularly in view of section 74 thereof.—*Yolo, etc., Co. v. Hudson*, 182 Cal. 48, 185 Pac. 195. Reversing *S. C. 29 Cal. App. Dec. 507*.

301. Petition for mandamus—Failure to state compliance with rules and regulations of the commission.—A petition for a writ of mandate by a property owner to compel a gas company to furnish service is deficient in its failure to state that the petitioner had complied with the rules and regulations formulated by the railroad commission under the public utilities act of 1911.—*Hartigan v. Pacific, etc., Co.*, 38 Cal. App. 763, 177 Pac. 484.

VIII. MISCELLANEOUS.

- 302. Petition of railroad commission to interstate commerce commission.
- 303. Amendment of tariff filed by agent.
- 304. Classification of accounts—Charges to fixed capital.

VIII. MISCELLANEOUS.

302. Petition of railroad commission to interstate commerce commission.—Section 34 is construed to mean that the commission itself may petition the interstate commerce commission for relief from rates, charges, etc., deemed unreasonable or oppressive, in which case the commission must submit its petition.—*In re Fruit Growers of California*, 1 R. C. D. 279.

303. Amendment of tariff filed by agent.—A carrier can not by its individual tariff cancel, amend or modify a tariff filed by a duly authorized agent except when a corresponding amendment to agent's tariff is concurrently filed, nor can it increase a rate without a showing before the commission justifying such increase.—*Swanson v. Southern Pacific Co.*, 12 R. C. D. 590.

304. Classification of accounts—Charges to fixed capital.—The uniform classification of accounts prescribed by the commission for electric corporations provides that all charges made to fixed capital with respect to any property acquired on or after January 1, 1913, shall be the actual money cost of the property.—*In re Wohlford*, 12 R. C. D. 505.

PUBLIC UTILITY DISTRICTS ACT OF 1913.

ACT 3776—An act to provide for the incorporation and organization of public utility districts, authorizing such districts to incur bonded indebtedness for the purpose of the construction of works and the acquisition of property, and to levy and collect taxes to pay the principal and interest on bonds and for carrying on their operations, providing for the powers, management and government of such districts.

History: Approved June 5, 1913. In effect August 10, 1913. Stats. 1913, p. 450. (See Act 3776a.)

Organization of public utility districts.

§ 1. A public utility district may be organized, incorporated and managed as herein provided, and may exercise the powers herein expressly granted, or reasonably implied therefrom. Such a district may include municipalities only or both incorporated and unincorporated territory, whether such municipalities or such territory are in the same or in different counties, but no municipal corporation shall be divided in the formation of such a district.

Ordinance.

§ 2. When any municipality in the state of California desires to organize such a public utility district as herein provided for, the legislative body of such municipal corporation at any regular meeting of such body may pass an ordinance reciting:

1. The name of the city adopting the ordinance.
2. That the public interest requires the incorporation of a public utility district.
3. The boundaries of the proposed district, and the names of the municipalities included within the proposed district. If such proposed district includes only municipalities, it shall be sufficient to state the names thereof without further setting forth the boundaries of the district.
4. The name of the district which shall include the words "public utility district."
5. An estimate of the preliminary costs and expenses of organizing the proposed district, and a proposed apportionment of the aggregate of such costs and expenses among the municipalities to be included within the district.

Notice to other cities, included.

§ 3. Within ten days after such ordinance becomes a law, the clerk of the said legislative body adopting the same, shall transmit by registered mail a certified copy thereof to the legislative body of the other municipalities named therein, addressed to the clerk thereof, and also to the board of supervisors of any county, unincorporated territory of which is proposed to be included within such district, addressed to the clerk thereof.

Approval of ordinance by other cities.

§ 4. Within forty days after the receipt of such certified copy of such ordinance by any municipality named therein, or by any board of supervisors of any county, unincorporated territory of which is proposed to be included in such district, the legislative body of such municipality and the board of supervisors of such county shall, by ordinance, either approve or disapprove the said ordinance without alteration or amendment. A failure on the part of any municipality or of any board of supervisors of any county to act as herein provided, shall be deemed a refusal to approve such ordinance.

Notice to city initiating.

§ 5. After the passage and going into effect of said ordinance required to be passed by section 4 hereof, the clerk of the municipality or of the board of supervisors acting thereon, shall forthwith forward a certified copy of such ordinance to the municipality initiating the proceedings.

Special election.

§ 6. Within thirty days after the receipt of all of said ordinances, if it shall appear that said initiatory ordinance has been approved by all of the municipalities named therein and by all such boards of supervisors, the legislative body of the municipality initiating the proceedings shall fix a day for holding a special election in each of the municipalities that have approved of said ordinance and in the unincorporated territory proposed to be included in such district, at which shall be submitted to the electors thereof the proposition of organizing such public utility district, and shall also provide for holding a similar election within its own municipality. In case the initiatory ordinance has not been approved by all of the municipalities and by all the boards of supervisors no further proceedings shall be had but new proceedings may be taken as provided in section 2 hereof.

Date of election. Apportionment of costs. Ballot. Canvass of votes.

§ 7. The date for such special election shall be certified to all of the municipalities and boards of supervisors which have adopted the ordinance herein provided for, and the legislative body of each such municipality and each of the boards of supervisors which have approved said ordinance, shall call and provide for the holding of a special election in their respective municipalities, and in the unincorporated territory, on the day so fixed, and such an election shall be held and conducted in the manner and form required by law for the holding of special elections within such municipalities and counties, respectively. The election in the unincorporated territory proposed to be included in such district shall be confined to the limits thereof. Prior to the holding of said election the municipalities named in such ordinance shall pay to the municipality initiating such proceedings, the amount apportioned to it for preliminary costs and expenses by the ordinance provided for in section 2 hereof. The costs of holding such election shall be paid by the municipality initiating such proceedings, from moneys received as herein provided. Each municipality contributing money as herein provided, shall be entitled to credit with the district for the amount of its contribution. The ballot used at such election shall contain the words "Proposition to organize a public utility district," or words of similar purport, and the words "Yes" and "No" so placed that a voter may indicate his wish in this connection as either in favor of or against said proposition. Such ballots shall be counted and returns thereof made by the boards selected to conduct such election in the time, form and manner as required by law for the holding of special elections within the municipalities and counties respectively in which held, and shall be canvassed and the result thereof declared and determined by the board or officers charged with such duties within the municipalities and counties respectively holding the elections.

Certificate of results.

§ 8. Within ten days after the canvass of votes cast at such election, the boards or officers canvassing the same shall certify the result thereof to the legislative body of the municipality initiating the proceedings.

Certificate to secretary of state.

§ 9. Within thirty days after the receipt of the certificate showing the result of the election held in the several municipalities and in unincorporated territory, if it appears therefrom that the proposition submitted has been approved by a majority of the votes cast thereon in each municipality wherein such election is held, and in the unincorporated territory in each county wherein such an election is held, the legislative body of the municipality receiving such certificates shall certify to the secretary of state the passage of the ordinance provided for in section 2 hereof, its subsequent approval by the several municipalities and boards of supervisors approving the same in the manner aforesaid, and the result of the election held as herein provided.

Secretary of state to issue certificate of organization.

§ 10. Upon the receipt of the certificate mentioned in the foregoing section, the secretary of state shall, within ten days, issue his certificate reciting that the public utility district (naming it) has been duly incorporated according to the laws of the state of California, and that such district is composed of the municipalities of (naming all the municipalities which have approved at the election such organization), and of unincorporated territory (describing the same). A copy of such certificate shall be transmitted to each of the municipalities comprising such district and to the board or boards of supervisors of the county or counties, unincorporated territory of which is included in such district. From and after the date of such certificate, the district named therein shall be deemed incorporated as a public utility district with all the rights, privileges and powers set forth in this act and reasonably or necessarily incident thereto.

Informality not to invalidate.

§ 11. No informality in any proceedings, or informality in the conduct of any election, not substantially affecting adversely the legal rights of any citizen shall be held to invalidate the incorporation of any public utility district and any proceedings wherein the validity of such incorporation is denied or questioned shall be commenced within three months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said public utility district and all proceedings in respect thereto, shall be held to be valid and in every respect legal and incontestable.

Powers of district.

§ 12. Any public utility district incorporated as herein provided, shall have power:

1. To have perpetual succession.
2. To sue and be sued except as otherwise provided herein, or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To take by grant, purchase, gift, devise or lease, hold, enjoy and to lease or dispose of real and personal property of every kind within or without the district necessary to the full or convenient exercise of its powers.
5. To acquire, construct, own, operate, control or use within or without, or partly within and partly without the district, works for supplying the inhabitants of said district with light, water, power, heat, transportation, telephone service or other means of communication, or for the disposition of garbage, sewage, storm water or refuse matter, or parks, and do all things necessary or convenient to the full exercise of the powers herein granted.
6. To have and exercise the right of eminent domain and in the manner provided by law for the condemnation of private property for public use, to take any property necessary or convenient to the exercise of the powers herein granted, whether such property be already devoted to the same use or otherwise. In proceedings relative to the exercise of such right the district shall have the same rights, powers and privileges as a municipal corporation.
7. To construct works across or along any street or public highway, or over any of the lands which are now or may be the property of this state, and to have the same rights and privileges appertaining thereto as have been or may be granted to the municipalities within the state. To construct its works across any stream of water or water course. The district shall restore any such street or highway to its former state as near as may be and shall not use the same in a manner to unnecessarily impair its usefulness.

8. To borrow money and incur indebtedness and to issue bonds or other evidences of such indebtedness; also to refund or retire any indebtedness or lien that may exist against the district or property thereof; provided, however, the incurring of any indebtedness or liability shall be subject to the provisions of section 18, of article XI of the constitution; and provided, further, no district shall incur any indebtedness which shall in the aggregate exceed fifteen (15) per cent of the assessed value of all real and personal property included within the district.

9. To levy and collect, or cause to be levied and collected, taxes for the purpose of carrying on the operations and paying the obligations of the district.

10. To make contracts, to employ labor and to do all acts necessary or convenient for the full exercise of the powers herein in this act granted.

Board of directors. Members. Additional directors.

§ 13. The powers herein enumerated shall, except as herein otherwise provided, be exercised by a board to be known as the board of directors of the named public utility district. Such board shall be composed as follows:

1. The mayor, or if there be no mayor then the president or chairman of the board of trustees or other governing body, of each municipality comprising the district, and the chairman of the board of supervisors of the county, unincorporated territory of which is included within the district, shall be ex officio a member of said board.

2. Each municipality having at least five thousand legal and registered voters shall choose by and from the members of its legislative body, one additional director and each municipality for each and every ten thousand legal and registered voters over five thousand, shall choose by and from the members of its legislative body one additional director, all of whom shall serve during the pleasure of the body making the appointment; provided, that if any such member does not desire to serve as such director, said legislative body may choose any other person who is an elector and resident of such municipality; and provided, further, that if the number of the members of any such legislative body be less than the number of directors such municipality may be entitled to, then such legislative body may choose directors from the qualified electors of the municipality. When the unincorporated territory of any county included within the district shall have at least five thousand legal and registered voters the board of supervisors of such county shall choose by and from the members thereof one additional director, and for each and every ten thousand legal and registered voters over five thousand shall choose by and from its members one additional director, all of whom shall serve during the pleasure of the body making the appointment; provided, that if any such member does not desire to serve as such director said body may choose any other person who is an elector and resident of such unincorporated territory included within such district. The number of legal and registered voters in each municipality on the first day of November, 1912, and every two years thereafter, shall be taken as the basis for determining the representation of such municipality in the board of directors. The same shall hold true in determining the representation of unincorporated territory in such board of directors.

First meeting.

§ 14. The legislative body of the municipality initiating the proceedings for incorporating the district shall fix a time and place for the first meeting of the board of directors, which shall be within thirty days from the date of the incorporation of the district.

Commissioners of district. Powers.

§ 15. At such meeting of the directors or at such time to which the proceedings may be continued, the board of directors shall choose three commissioners who shall

constitute the commissioners of the named public utility district, but no director shall be eligible to appointment to such commission. The said commissioners shall have the power to make and enter into all contracts, appoint a secretary, who may be a member of the commission, and such other assistants and employees as may be necessary for the exercise of the powers of the district, to fix their compensation, prescribe their duties and remove any appointee at pleasure, and to generally manage its affairs, subject to such restrictions as the board of directors may impose. The commissioners shall receive such compensation as the board of directors shall determine and shall serve during its pleasure.

President, secretary and expenses of board.

§ 16. The board shall elect one of its number president, adopt rules of procedure and fix a time and place for holding regular meetings. The secretary of the commission shall act as secretary of the board of directors. The directors shall receive for each day's attendance at the meetings of the board their necessary expenses of attending the meeting and shall receive no other compensation.

President, auditor, etc., of commissioners. Depositories of funds.

§ 17. The commissioners shall elect one of their members president, who shall sign all contracts on behalf of the district and perform such other duties as may be imposed by the commissioners or the board of directors. They shall appoint an auditor, who shall not be a member of the board of directors, and who shall be charged with the duty of installing and maintaining a system of auditing and accounting that shall completely and at all times show the financial condition of the district. He shall draw warrants to pay demands made against the district when such demands have been first approved by at least two of the commissioners. The commissioners shall also designate a depository or depositories to have the custody of the funds of the district, all of which depositories shall give security sufficient to secure the district against possible loss, and who shall pay the warrants drawn by the auditor for demands against the district under such rules as the directors may prescribe.

Bonds.

§ 18. Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness it shall, by resolution, so declare and state the purpose for which the proposed debt is to be incurred and the amount thereof, and it shall direct the commissioners to take, or cause to be taken, such proceedings as may be necessary to incur such debt and in the manner herein provided.

Resolution as to bonds. Election. Notice. Publication. Expenses. Canvass.

§ 19. The commissioners shall adopt a resolution reciting the adoption of the resolution mentioned in the foregoing section, state the proposition to be submitted to the electors, the amount of debt proposed to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty years, and the maximum rate of interest to be paid, which shall not exceed six per cent per annum. They shall fix a date upon which an election shall be held for the purpose of authorizing said bonded indebtedness to be incurred, and shall transmit a certified copy of the resolution fixing such date to the officers or board having charge of the conduct of elections of each municipality comprising the district and to the board of supervisors of any county, unincorporated territory of which is included within the district. It shall be the duty of such board or officers in each municipality and in each county, to provide for holding such special election on the day so fixed and in the manner and form as special elections are held and conducted within the municipality and county respectively. Such board or officers shall give notice of the holding of such election, which notice shall contain the resolution adopted by the commissioners of

the public utility district, the location of polling places and the names of the officers selected to conduct the election, which shall consist of one judge, one inspector and two clerks. Such notice shall be published for two insertions, once a week, for two successive weeks, in a newspaper of general circulation published in each municipality, or if there is no newspaper printed in such municipality then by posting such notice in three public places therein. The board of supervisors shall also cause such notice to be published in a like manner in a paper in which the official printing is done. All the expenses of holding such election shall be borne by the district and shall be paid or credited to each city and county upon the filing of a verified claim therefor, with the secretary of the commission. The returns of such election shall be made, the votes canvassed and the results thereof ascertained and declared as in the case of other special elections within such municipalities and counties respectively. The board or officers declaring the result of such election shall certify such result to the commissioners of the district. No irregularities or informalities in conducting such election shall invalidate the same if the election shall have otherwise been fairly conducted. In all respects not otherwise provided for herein, said election shall be called, managed and directed as is by law provided for special elections in the municipality and county respectively in which such election is to be held.

Two-thirds vote necessary. Sold at par.

§ 20. If from such returns it appears that two thirds or more of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the commissioners may, by resolution, at such time or times as they may deem proper, provide for the form of such bonds and for the issuance of the whole or any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as they may deem to the public interest, but no bonds shall be sold for less than their par value. The proceeds of such bonds shall be applied exclusively to the purposes and objects mentioned in the resolution of the commissioners calling the election. It shall be competent for the commissioners in the resolution herein provided for, to provide for the payment of said bonds and interest thereon at any place or places designated in the bonds.

Bonds exempt from taxation.

§ 21. Any bonds issued by any district are hereby given the same force, value and use as bonds issued by any municipality and shall be exempt from all taxation within the state of California.

Action to determine validity. Jurisdiction. Appeal. Consolidation of actions. Rules of pleading. Costs.

§ 22. The board of directors may at any time within sixty days from the date of the resolution provided for by section 20 hereof, cause to be brought in the name of the district an action in the superior court of the county, in which said district or the greater portion thereof is located, to determine the validity of any such bonds. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of summons for at least once a week for three weeks in some paper of general circulation published in the county where the action is pending, such paper to be designated by the court having jurisdiction of the proceedings. Jurisdiction shall be complete within ten days after the full publication of such summons in the manner herein provided. Any one interested may at any time before the expiration of said ten days appear and by proper proceedings contest the validity of such bonds. Such action shall be speedily tried and judgment rendered declaring such bonds to be valid or invalid. Either party may have the right to appeal to the supreme court at any time within thirty days after the rendition of such judg-

ment, which appeal must be heard and determined within three months from the time of taking such appeal. After the expiration of ninety days from the date of the resolution provided for by section 20 hereof no action may be brought to contest or question the validity of said bonds and proceedings thereto. If there be more than one action or proceeding involving the validity of any such bonds, they shall be consolidated and tried together. The court hearing any proceeding or action inquiring into the regularity, legality or correctness of the proceedings leading up to the issuance of bonds or the validity of such bonds must disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by the Code of Civil Procedure, which are not inconsistent with the provisions of this act, are applicable to all actions or proceedings herein provided for. The motion for a new trial of any such action or proceeding must be heard and determined within ten days from the filing of the notice of intention. The costs on any proceeding or action herein provided for may be allowed and apportioned between the parties, or taxed to the losing party, in the discretion of the court.

Revenue producing utilities. Contracts with cities.

§ 23. For the purposes of this act, the works authorized to be acquired, owned or operated by the district (except parks and works for the disposition of storm waters) are declared to be revenue producing utilities. So far as possible the commissioners shall fix such charges for commodities or service furnished by any revenue producing utility as will pay the operating expenses of the utility, the interest on any bonded debt incurred for the acquisition or construction thereof and provide a sinking or other appropriate fund for the payment of the principal of such debt as it may become due; it being the intention of this section that the district pay the interest and principal of its bonded debt incurred for the acquisition of any revenue producing utility from the revenues derived by the district from such utility. The commissioners so far as the nature of the utility will permit, shall, before any bonded indebtedness is incurred for the construction or acquisition of any revenue producing utility, enter into appropriate contracts with the respective municipalities proposed to be served by such utility providing for the use thereof by the respective municipalities during the life of the bonds proposed to be issued. The district and the municipalities included therein are hereby expressly authorized to enter into such contracts.

Cities may advance funds.

§ 24. At any time after the initiation of proceedings for the organization of a public utility district, or at any time after the organization of such a district, any municipality proposed to be included within the said district, or included therein, may advance to the municipality initiating proceedings, or to the district, funds to meet the expenses of organization or the expenses of carrying on the work of the district as the case may be, and if the district is formed and its purposes carried out any such municipality so advancing funds shall be entitled to credit with the district for the amounts so advanced.

Tax, when revenues are insufficient.

§ 25. If from any cause the revenues of the district shall be inadequate to pay the principal or interest on any bonded debt as it becomes due, or if funds are needed to carry out the objects and purposes of the district, then the board of directors may cause a tax to be levied for such purposes as herein provided. The board shall state the purposes for which such taxes are necessary.

Rate fixed. Duty of county officers. Compensation for collecting.

§ 26. The board of directors shall determine the amount necessary to be raised by taxation and shall fix a rate of tax to be levied which will raise the amount of money

required by the district. The commissioners shall thereupon, and within a reasonable time previous to the time for the fixing of the tax rate of the county or counties in which said district is located, certify to the board or boards of supervisors the rate so fixed with a direction that at the time and in the manner required by law for the levying of taxes for county purposes, such board or boards of supervisors shall levy and collect a tax in addition to such other tax as may be levied by such board or boards of supervisors at the rate so fixed and determined, and it is made the duty of the officer or body having authority to levy taxes within each county to levy the tax so required. And it shall be the duty of all county officers charged with the duty of collecting taxes, to collect such tax in time, form and manner, as county taxes are collected and when collected, to pay the same to the district ordering its levy and collection. Such tax shall be a lien on all property within the territory comprising the district and of the same force and effect as other liens for taxes, and its collection may be enforced by the same means as provided for the enforcement of liens for state and county taxes. Any county collecting taxes as herein provided shall be entitled to not to exceed one-half of one per cent of the amount collected as compensation therefor.

Works exempt from taxation.

§ 27. The works and property of the district shall be exempt from taxation for state, county or municipal purposes.

Recall of commissioners. Signatures. Affidavit. Directors may remove commissioner. Election. Grounds for recall. Ballot.

§ 28. Any commissioner may be recalled by the electors of the district at any time after he has held office for six months, in the manner herein provided. A petition demanding the appointment of a successor to the commissioner sought to be recalled shall be filed with the board of directors, which petition shall be signed by qualified voters equal in number to at least fifteen per cent of the entire vote cast within the district for all candidates for the office of governor of the state at the last preceding election at which a governor was chosen, and shall contain a statement of the grounds on which the recall is sought. No insufficiency of form or substance in such statement shall effect [affect] the validity of the election or proceedings held thereunder. Signatures to the petition need not all be appended to one paper. Each signer shall add to his signature his occupation and place of residence, giving street and number, or if no street or number exists, then such a designation of his residence as will enable the locality to be readily ascertained. To each separate paper of such petition shall be attached an affidavit made by a qualified elector of the district stating that the affiant circulated that particular paper and saw written the signatures appended thereto and that, according to the information and belief of the affiant each of said signatures is genuine and the signature of a qualified elector of the district. Within twenty days from the date of the filing of such petition the board of directors shall remove the commissioner whose recall is sought, or shall direct its secretary to determine from the records of registration whether or not said petition is signed by the requisite number of qualified voters. If such direction is made the secretary shall, within fifteen days from the date of such direction, determine the sufficiency of said petition and attach thereto his certificate showing whether or not said petition is sufficient. If the petition shall be found to be sufficient the board of directors shall cause a special election to be held not less than thirty-five nor more than sixty days after the date of such certificate, to determine whether the voters shall recall such officer. Such election shall be called, held, and the result thereof determined in the manner provided by law for the holding of special elections in the county in which said district or the largest portion thereof is included. One petition is sufficient to propose the recall of one or more of the commissioners. Upon the sample ballot shall be printed in not more

than two hundred words, the grounds set forth in the recall petition for demanding the recall of the officer, and upon such ballot in not more than two hundred words the officer may justify himself. There shall be printed on the recall ballot as to every officer whose recall is to be voted on, the following question: "Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of office)?" following which shall be the words "Yes" and "No" on separate lines with a blank space at the right of each in which the voters shall, by stamping a cross (x), indicate his vote for or against such recall. If a majority of those voting on said question of the recall of any incumbent shall vote "No," said incumbent shall continue in said office. If a majority vote "Yes," said incumbent shall thereupon be deemed removed from such office upon the qualification of his successor. No commissioner who has been removed by the board of directors upon the recall petition being filed with such board, or who has been recalled, shall again be eligible to appointment as a commissioner.

Action only after claim is rejected.

§ 29. No suit shall be brought against the district on any claim for money or damages until a claim or demand therefor, setting forth with reasonable certainty the nature and various items of the claim or demand and verified by the claimant, or his authorized agent, has been presented to the commissioners and rejected in whole or in part.

Definitions.

§ 30. The term "municipality" as herein used shall be deemed, and is hereby declared to include any city and county or incorporated city or town. The word "district" as herein used, shall be deemed, and is hereby declared to mean a public utility district formed under the provisions of this act. The word "board" and the expression "board of directors," as herein used, shall be deemed, and are hereby declared to mean the board of directors of a public utility district. The word "commissioners" as herein used shall be deemed, and is hereby declared to mean the commissioners of a public utility district formed under the provisions of this act, and the commissioners shall be regarded as a board of commissioners. The expression "unincorporated territory" as herein used shall be deemed, and is hereby declared to mean territory not included within the corporate limits of any municipality.

How construed.

§ 31. This act and each and every provision thereof shall be liberally construed to carry out the purposes hereof. The rule of strict construction is hereby expressly declared to be inapplicable. The provisions of this act shall be deemed to be directory and not mandatory, except where it shall appear that this construction will work substantial injustice.

Intention of act.

§ 32. It is intended by this act to provide necessary machinery whereby municipalities and communities may act jointly in affecting [effecting] public improvements and acquiring and operating works, the effecting, acquiring or carrying on of which by such cities or communities separately would be impracticable or disadvantageous by reason of the magnitude of such improvements or works, or the cost thereof, or by reason of the fact that said improvements or works are of common benefit to a series of cities or communities. It is not intended that a district formed hereunder shall construct or operate public improvements or works of a local character.

§ 33. This act shall not be deemed to repeal any other act dealing with the same subject matter or any portion of the matters herein covered.

PUBLIC UTILITIES DISTRICT ACT OF 1915.

ACT 3776a—An act providing for the incorporation of public utility districts by municipalities and unincorporated territory, authorizing such districts to incur bonded indebtedness for the purpose of the construction of works and the acquisition of property, and to levy and collect taxes to pay the principal and interest on bonds and for carrying on their operations, and providing for the powers, management and government of such districts, and imposing certain duties and functions in connection with such districts upon certain county officers.

History: Approved May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 866. (See Act 3776.)

Public utility districts.

§ 1. A public utility district may be incorporated and managed as herein provided, and may exercise the powers herein expressly granted. Such a district may include municipalities only, or both incorporated and unincorporated territory, but no municipal corporations shall be divided in the formation of such a district.

Two or more municipalities may unite.

§ 2. Two or more municipalities may join in the formation of such a district. When any two or more municipalities desire to organize such a public utility district, as herein provided for, the legislative body of each such municipal corporation, at a regular meeting of such body, shall pass an ordinance declaring that the public interest requires the incorporation by such municipality, jointly with the other municipality or municipalities, naming the same, of a public utility district under this act, comprising its territory with that of the other or others, and stating the name of the proposed district, which shall include the words "public utility district." Such ordinance shall also provide for the submission of the proposition by the council or other legislative body of the city to the qualified electors thereof at a special municipal election.

People may petition.

§ 3. Whenever the people of two or more municipal corporations shall desire to organize such a public utility district, and shall present a petition, signed by qualified electors of each such municipality severally and respectively equal in number to fifteen per centum of all the votes cast within each such municipal corporation for all the candidates for governor at the last preceding general election, at which a governor was elected, to the city council or other legislative body of their respective municipalities, it shall be the duty of the clerk of the city council or other legislative body of each such municipality to immediately proceed to examine and verify the signatures to such petition and to certify the result of such examination to such city council or other legislative body.

Petition of people of unincorporated territory.

§ 4. Whenever the people of unincorporated territory shall join in the formation of such a district, their petition shall describe such territory, and shall be signed by electors of such territory equal in number to fifteen per centum of all votes cast for all candidates for governor within the same at the last preceding general election at which a governor was elected, and shall be presented to the board of supervisors of the county within which such territory is situated, and it shall be the duty of the clerk of such board to immediately proceed to examine and verify the signatures to such petition and to certify the result of such examination to such board of supervisors. Nothing herein contained shall be so construed as to prevent such board of supervisors from responding to such petition by proceeding to pass at any regular meeting an ordinance declaring that the public interest requires the incorporation by such unincorporated territory jointly with other like territory and with municipalities, naming and describ

ing the same, of a public utility district under this act, comprising such unincorporated territory with that of said cities and other unincorporated territory, if any, and stating the name of the proposed district, which shall include the words "public utility district." Such ordinance, if enacted, shall provide for the submission of the proposition by such board of supervisors to the electors of such unincorporated territory at a special election.

Petition may consist of several instruments.

§ 5. A petition may consist of any number of separate instruments, all of which together shall constitute one petition. A separate petition is required from each unit of the proposed district. All unincorporated territory participating in the proceedings and situated in one and the same county shall be regarded and treated for the purposes of the proceedings as an entirety and as a unit, and each municipality so participating shall be so regarded and treated as a unit. No elector within any one such unit of the proposed district shall sign any such petition of the electors of any other such unit of the proposed district. Each such petition shall, in addition to all other matters required to be stated therein, also name or describe the municipality or other territory within which the electors signing the same reside, and state that it is filed concurrently with the petition or petitions of electors of other incorporated or unincorporated territory, naming or describing the same. Any or all such petitions may declare, in addition, that the electors of the municipal or unincorporated territory signing or presenting the same favor the incorporation of a public utility district in the alternative, that is to say, either with all of the proposed territory, or with less territory to be named and described in such petition.

Petition to state boundaries of proposed district. Addresses of signers.

Every petition for the formation of a public utility district shall set forth the boundaries of the proposed district, and the names of the municipalities included therein, and the name of the proposed district, which shall include the words "public utility district." If such proposed district includes only municipalities, it shall be sufficient to state the names thereof without further setting forth the boundaries of the district. Every such petition shall also contain a prayer that a public utility district comprising all of the proposed territory, or such portions thereof as are designated in the petitions as essential to its formation as hereinabove provided, be incorporated under the provisions of this act. Every elector signing any such petition shall write his address opposite his signature thereto.

"Elector" defined.

§ 6. An "elector," or "voter," or "qualified elector," for all purposes of this act, is any voter whose name appears on the great register of the county in which the public utility district is located, or any supplement thereto, as is then allowed by general law to be used to determine the eligibility of persons to vote at municipal or county elections, and whose address appearing on such great register or supplement is in the same municipality or unincorporated territory, as the case may be, as the address given by him on the certificate or petition that may be signed by him. All words used anywhere in this act in the masculine gender include the feminine. The singular number includes the plural and the plural the singular.

Sufficient evidence.

Such great register or supplement thereto, and certificates in due form of notaries public, or verification deputies provided for by this act, acknowledging the signature of any voter to any petition or certificate under the provisions of this act, shall be sufficient evidence for all purposes of this act.

Verification deputies. Appointment. Term. Oath.

All verification deputies under this act shall be qualified electors residing within the territory of the proposed district, or of the district formed under this act, for which they are appointed. Verification deputies required to verify signatures to petitions for the formation of a district, or to certificates or petitions nominating candidates for election to the first board of directors of newly formed districts, hereunder shall be appointed by the county clerk or county clerks of the county or counties in which the territory of the district is situated, and verification deputies required for any other purpose under the provisions of this act after the formation of a district hereunder shall be appointed by the clerk of the district. Such appointments shall be made upon written application of not less than five (5) nor more than ten (10) qualified electors of any territorial unit or units of the proposed district, or of the district formed hereunder, as the case may be. The said application shall set forth that the signers desire the appointment of the person whose name and address is given therein to be a verification deputy for the purpose of taking the oaths of signers of petitions (or certificates) in the matter of Such verification deputies need not use a seal, and shall not have power to administer oaths for any purpose other than that for which they are appointed. Their appointment shall continue only for ninety (90) days from the date of said appointment. No verification deputy shall be paid, in whole or in part, directly or indirectly, out of the county treasury or the treasury of a district formed hereunder. All verification deputies must, before their appointment, make and file with the clerk or clerks appointing them, respectively, an oath as to their ages, places of residence, occupation and whether or not they are qualified electors residing within the territory of the proposed district, or of the district formed hereunder, for which they are appointed.

Supplemental petition. Sufficiency of petition not subject to review after election.

§ 7. If, by the certificate of the city or county clerk, respectively, any petition hereinabove provided for is found to be insufficient, he shall certify to the number of qualified electors required to make such petition sufficient in addition to the signatures already thereon and verified by him, and said petition may then be amended by filing a supplemental petition within ten days from the date of such certificate. The city or county clerk, respectively, shall within ten days after the filing of such supplemental petition make a like examination of the same and certify to the result of such examination, as herein provided. If this certificate shall show any such petition as amended to be insufficient, it shall be filed by him in his office and kept as a public record, without prejudice, however, to the filing of any other petition to the same effect at some future time not less than six months thereafter. But if by such certificate such petition, or such petition as amended, is shown to be sufficient, the clerk shall present the same to the city council or other legislative body of such municipality, or to the board of supervisors of such county, as the case may be, without delay with his certificate attached thereto and properly dated.

If any supplemental petition be filed, all signatures appended to the petition and to the supplemental petition shall be considered in determining the number of qualified electors signing the petition. After the election for the incorporation of such proposed public utility district, the sufficiency of the petition, in any respects, shall not be subject to judicial review or be otherwise questioned.

Special election. Publication of notice.

§ 8. Each city council or other legislative body of a municipality, which has passed the ordinance provided for in section two of this act, shall within fifteen days after its said ordinance has gone into effect publish a copy of the same, together with a statement that the proposition involved therein, which shall be briefly specified, will be sub-

mitted by it to the qualified electors of its respective municipality at a special election to be held thereafter in such municipality.

Each city council or other legislative body of a municipality, and each board of supervisors of a county, to whom a petition of electors shall have been presented, as hereinabove provided, shall within fifteen days after such presentation publish a copy of the said petition, together with a statement that the proposition involved therein, which shall be briefly specified, will be submitted by it to the qualified electors of its respective incorporated or unincorporated territory at a special election to be held thereafter in each such respective territory.

The publication hereinabove provided for shall be for at least ten consecutive times in a daily newspaper of general circulation, printed, published and circulated in the respective city or unincorporated territory, or, so far as unincorporated territory may be concerned, if no such newspaper is printed, published and circulated in such territory, then in such daily newspaper printed and published elsewhere in the county and deemed most likely to give notice to the electors of such territory; or for at least three consecutive times in a weekly newspaper of general circulation similarly printed, published and circulated, if there be no such daily newspaper.

Time of holding election. Publication of ordinance. Posting of notice of election.

§ 9. Such special election shall be held not less than twenty, nor more than forty, days after the completion of said publication, and shall be called by each such city council, or other municipal legislative body, and board of supervisors, respectively, by ordinance, which shall specify the purpose and time of such election, and shall establish the election precincts, and designate the polling places therein and the names of the election officers for each precinct. Such ordinance shall, prior to such election, be published five times in a daily newspaper, or twice in a weekly newspaper, if there be no such daily newspaper, printed, published and circulated in the respective municipality, or unincorporated territory, or, so far as unincorporated territory may be concerned, if no such newspaper is printed, published and circulated in such territory, then in such daily or weekly newspaper printed and published elsewhere in the county and deemed most likely to give notice to the electors of such territory. The notice of such election shall also be posted in at least two public places in each precinct within each municipality and unincorporated territory in which such election is held for at least ten days prior to such election. Such election shall be held and conducted, the returns thereof canvassed, and the result thereof declared by said city council, or other municipal legislative body, and board of supervisors, respectively, in the manner that is now or may hereafter be provided by general law for such elections in the particulars wherein such provision is now or may hereafter be made therefor, and in all other respects in the manner provided by law for the holding of special elections within such municipalities and counties, respectively.

Proposition on ballot.

§ 10. When any petition, presented as hereinabove provided, declares that the electors of the municipality or unincorporated territory signing and presenting the same favor the incorporation of a public utility district in the alternative, either with all the proposed territory, or with certain territory described therein less than all the proposed territory, as hereinabove provided, the proposition to be submitted at such election shall be stated upon the ballot to be used in the municipality and unincorporated territory, respectively, in which such petition is signed and presented, in the alternative, as hereinafter provided, to wit:

Form.

“1. Shall public utility district (naming it) be organized under the provisions of the public utility district act of 1915?

Yes

No”

Alternative proposition.

“2. Are you in favor of so organizing public utility district (naming it) with certain territory less than all of the territory proposed, as stated in the alternative in the petition of the electors asking for the formation of said district?

Yes

No”

Both may be voted on.

The ballot containing such alternative propositions shall, in addition, have printed upon its face in a conspicuous place appropriate words calling to the voter’s attention the fact that he may vote upon both alternatives of the proposition so submitted.

If petition contains no alternative.

When the petition presented, as hereinabove provided, contains no alternative proposition, the proposition to be submitted at such election shall be stated upon the ballot to be used in the municipality and unincorporated territory, respectively, in which such petition is signed and presented, substantially as follows, to wit:

“Shall public utility district (naming it) be organized under the provisions of the public utility district act of 1915?

Yes

No”

Declaration of result.

§ 11. In case the proposition is submitted to the electors in any municipality or unincorporated territory, in which such election is held, in the alternative, as hereinabove provided, and is carried, the said city council or other legislative municipal authority, or board of supervisors shall, upon declaring the result of the election, as hereinabove provided, by order entered on its minutes, state and declare carried the original or primary proposition, unless both alternatives are so approved, in which case said order shall so state and declare the proposition carried in both alternatives.

Certificate of result.

§ 12. Within five days after the result of the election is declared, and the order is made where required, as hereinabove provided, the mayor, or other chief executive officer, of each municipality, and the chairman of the board of supervisors of each county containing unincorporated territory, wherein such elections are held, shall make and execute a certificate, to be signed by him as such official and authenticated under the seal of such municipality or county, setting forth the proposition submitted to the electors, the fact of such submission, and the result of the said election in his respective municipality or in such unincorporated territory, as so declared.

In case the proposition is submitted to the electors in the alternative, as hereinabove provided, the said certificate shall state the proposition as submitted in the alternative,

the fact of such submission, the result of the election, as so declared, and also the order required in and by section eleven of this act.

In duplicate.

The certificate hereinabove provided shall be made and executed in duplicate, and shall be delivered in duplicate without delay to the board of supervisors of the county in which the proposed public utility district, or the greater portion thereof in point of population, is situated, or to the clerk of such board.

Examination of certificates.

§ 13. All of said certificates shall be so delivered, and the board of supervisors receiving the same shall meet and examine said certificates within three weeks after all of said elections are held; and if it appears from said certificates that a majority of the votes cast at said elections in each municipality and unincorporated territory, in which such elections are held, is in favor of the incorporation of the utility district, the said board of supervisors shall, by order entered on its minutes, so declare and shall in and by said order state the name and boundaries of the district, and that such district is formed accordingly under the provisions of this act.

If original proposition carries.

When the proposition is submitted at such election in the alternative, as hereinabove provided, in two or more municipalities, or in two or more municipalities and unincorporated territory, wherein such election is held, and the original or primary proposition appears from the prescribed certificates to be carried in each municipality and unincorporated territory in which the proposition is so submitted, and if it further appears from said certificates that a majority of the electors voting at such election voted for the formation of the district in each of the other municipalities and unincorporated territory, in which such election is held, the said board of supervisors shall, by order entered on its minutes, so declare, and shall in and by said order state the name and boundaries of the district, and that the district is formed accordingly under the provisions of this act.

If proposition carries in both alternatives.

When the proposition is submitted at such election in the alternative, as hereinabove provided, in two or more municipalities, or two or more municipalities and unincorporated territory, wherein such election is held, and the proposition appears from the prescribed certificates to be carried in both alternatives in each municipality and unincorporated territory wherein the proposition is so submitted, and it further appears from the required certificates that a majority of the electors voting at such election voted against the formation of the district in all, either, or any of the other municipalities or unincorporated territory, wherein such election is held, the said board of supervisors shall, by order entered on its minutes, so declare, and shall state or describe the municipalities, or municipalities and unincorporated territory, wherein the proposition is so submitted and approved in the alternative, and the name and boundaries of such district, and that such district is formed accordingly under the provisions of this act.

If majority votes against formation.

In case it appears from said certificates that a majority of the electors voting at such election of all, either, or any of the municipalities, or unincorporated territory, wherein such election is held, has voted against the formation of the district, the proceedings shall fail entirely; unless the proposition is submitted at such election in the alternative, as hereinabove provided, in two or more municipalities, or two or more municipalities and unincorporated territory, wherein such election is held, in which case the proceed-

ings shall fail entirely if it appears from said certificates that a majority of the electors voting at such election of all, either or any of the municipalities or unincorporated territory, wherein the proposition is submitted in the alternative, has voted against the formation of the district.

“Original and primary proposition” defined.

Wherever in this act the words “original and primary proposition” are used, the same are hereby declared to mean the proposition to incorporate the proposed district with all of the proposed territory joining in the proceedings and mentioned and described in the several petitions presented by the electors, as hereinabove provided.

Order forming district to be in duplicate. Filed with secretary of state. No charge.

§ 14. When the said board of supervisors has completed its examination of said certificates, and has made the order provided in the last preceding section of this act, it shall forthwith cause to be attached together said duplicate certificates in two rolls, each roll to contain one of each of said certificates and a copy of said order of said board of supervisors, duly certified under the hand and the official seal of the clerk of said board of supervisors, and one of said rolls shall be by said board caused to be forthwith deposited and filed in the office of the secretary of state, and the other, after being recorded in the office of the recorder of each county in which any part of said district is situated, shall be filed in the office of the county clerk of the county wherein the district, or the greater portion thereof in point of population, is situated. Upon the receipt of said duplicate roll by the secretary of state he shall issue his certificate reciting that said duplicate roll is filed in his office and that the public utility district, naming it, is incorporated as a public utility district under the provisions of this act; which said certificate shall be forwarded to the said board of supervisors and by it held and delivered to the board of directors of the district after the election and organization of said board, as hereinafter provided. No charge shall be made by either the secretary of state or any county recorder or county clerk for the services required of him under the provisions of this section. From and after the date of the filing of said duplicate roll with the secretary of state, the public utility district named therein shall be deemed incorporated as a public utility district under the provisions of this act, with all the rights, privileges and powers set forth in this act.

Validity of proceedings. Contest.

§ 15. No informality in any proceeding, or informality in the conduct of any election, not substantially affecting adversely the legal rights of any citizen, shall be held to invalidate the incorporation of any public utility district, and any proceedings wherein the validity of such incorporation is denied shall be commenced within twenty days after the date of the certificate of incorporation; otherwise said incorporation and the legal existence of said public utility district, and all proceedings in respect thereto, shall be held to be valid and in every respect legal and incontestible. If any such contest is brought, it shall be brought in the superior court of the county where the public utility district, or the greater portion thereof in point of population, is situated; provided, that if more than one contest be pending they shall be consolidated and tried together. The court having jurisdiction shall speedily try such contest and determine upon the hearing whether the election was fairly conducted and in substantial compliance with this act, and enter its judgment accordingly. The right of appeal is hereby given to either party to the record within thirty days from the entry of judgment, and the appeal must be heard and determined by the supreme court within sixty days from the filing of the notice of appeal.

Election of board of directors.

§ 16. At an election to be held within such public utility district under the provisions of this act, the public utility district thus organized shall proceed within ninety

days after its formation to the election of a board of directors, consisting of as many members as there are territorial units in the district, and as many additional members, not less than three nor more than four, as may be required to constitute a board composed of an odd number of directors. Such election shall be held in each municipality and unincorporated territory included within the district and shall be called by the board of supervisors of the county in which the district, or the greater portion thereof in point of population, is situated, and shall be called, held and conducted, the returns thereof canvassed, and the result thereof declared by such board of supervisors, in the manner and form now or hereafter provided by law for the holding of special elections within such county. Nominations for the office of director shall be had and made for the purposes of such election in all respects as is now or may hereafter be provided by law for the nomination of county officers elected within counties. A certificate of election shall be issued by said board of supervisors to each person elected and declared elected.

Territorial units. Directors from units. At large. How designated.

§ 17. Each municipality within the district shall for the purposes of this act be regarded and treated as a territorial unit of the district, and all unincorporated territories situated in one and the same county and included within the district shall be so regarded and treated as an entirety and as a territorial unit of the district. Each municipal territorial unit, and each unit of unincorporated territory having a population of at least five thousand, shall be entitled to one director, and candidates for the office of one director shall be nominated from each such respective municipality and unincorporated territory, and the remaining number of directors shall be nominated from the district at large. Each director shall have the status of a separate office for the purpose of nomination and election thereto, and, in case of a vacancy, for the purpose of filling such vacancy. Candidates for directors at large shall be designated in all declarations of candidacy, nominating certificates, and on all official election ballots as candidates for director at large No. 1, No. 2, No. 3, or No. 4 (said numbers to be stated after the designating title "director at large," there being as many numbers from 1 up as there are directors at large to be elected), in accordance with the declarations of candidacy, which said candidates shall have filed with the county clerk or the clerk of the district, as the case may be.

Candidates for directors from units.

Candidates for director for or from the several municipal units and units of unincorporated territory in the district entitled to one director each, as above provided, shall be designated in all declarations of candidacy, nominating certificates, and on all official election ballots as candidates for director from _____ unit, _____ unit, _____ unit, and so forth (giving the name of the respective municipality or the name or other designation, herein provided, of the respective unincorporated territory, constituting the unit entitled to the office of director to be filled and for which said candidates severally declare themselves and are nominated as candidates, and are to be designated as candidates upon the official election ballots; said name or other designation, or names or other designations, to be stated after the designating title "director from," in accordance with the declarations of candidacy which said candidates shall have filed with the proper clerk, as herein provided.

In case only one unit of unincorporated territory is contained in the district, it is sufficient for naming or designating the same to refer to it as "the unincorporated territorial unit," but in case two or more such units are contained in the district, they shall be numbered, named and designated by the board of supervisors in charge of the election of the first board of directors, and subsequently from time to time by the board of directors of the district as unincorporated territorial unit No. 1, No. 2, No. 3 and so forth, there being as many numbers from 1 up as there are such units in the district.

Designation of units.

Such number, name and designation shall be given to each such unit by said board of supervisors by ordinance at a regular or special meeting of said board held after the formation of the district, and in time to permit of the publication and taking effect of such ordinance before the earliest time when nominating certificates and declarations of candidacy may be filed, as herein provided, and shall thereafter remain in force until the board of directors of the district, by ordinance, shall number, name and designate such units as herein provided.

Designation of directors has no significance after election.

None of said designations by name or number of all or any of the directors shall have any significance whatever after election and qualification of the directors elected at such election, or after appointment and qualification of a director appointed to fill a vacancy, but shall fix the name or other designation and status of each such designated office as a separate office for the purpose of nomination and election thereto, or for the purpose of filling the same in the case of a vacancy therein by appointment as herein provided. The foregoing provisions of this section shall apply to the election of the first board of directors of the district organized under this act, as well as to all elections of directors held by the district at any time after its incorporation and organization.

Population of units.

Said population of each unit of unincorporated territory within the district shall, at the time of calling the election herein provided for the election of the first board of directors of the district, be determined by the board of supervisors charged with the duty of calling such election and such determination shall be stated in the ordinance calling such election and in the notice of the election. Such determination shall continue in force until set aside by the board of directors of the district. The board of directors of every district formed under the provisions of this act shall determine from time to time, as to them shall seem proper or necessary, the number of inhabitants of each unit of unincorporated territory within their district, and declare the same by ordinance, and every such determination shall continue in force until another such determination is subsequently made. All such determinations shall be based upon the last preceding census taken by the United States, or upon the last preceding census of the county in which such unit of unincorporated territory is situated in case the board of supervisors of such county shall have taken or caused to be taken a census of their county since the last preceding census of the United States.

Board of directors to call subsequent elections.

§ 18. All subsequent elections of directors shall be called and held by the board of directors of the district, and the same shall be called, held and conducted, nominations for the office of director made, the returns thereof canvassed, and the result thereof declared by the board of directors as hereinafter provided.

Term of office.

§ 19. The directors of any district created after the passage of this act, on the first Tuesday after their election, and after they shall have qualified, shall meet and classify themselves by lot, so that the largest possible minority shall hold office for two years, and a majority of them for four years. Thereafter at each biennial public utility district election a number of directors corresponding to the number whose term of office shall so expire shall be elected for the term of four years.

Vacancies.

§ 20. In case of a vacancy in the office of director from or for a municipal or unincorporated territorial unit within the district, the vacancy shall be filled by appointment

by the city council, or other legislative body, of the municipality, or by the board of supervisors of the county, respectively, from which such vacancy occurs. In case of a vacancy in the office of a director at large the vacancy shall be filled by appointment by the board of directors of the district. The officer appointed as above provided shall hold his office for the unexpired term of the director whom he is appointed to succeed, and until his successor is elected and qualified. If a person elected fails to qualify, the office shall be filled as if there was a vacancy in such office.

Qualification of director at large.

§ 21. A director at large shall be a resident and qualified elector of the public utility district, but not necessarily of the municipality or other territorial unit, from which he is nominated.

Manner of holding elections.

§ 22. The provisions of law, now or hereafter made and provided, relating to the manner of holding and conducting general elections held for the election of state and county officers, the mode and manner of nominating county officers, of voting, the duties of election officers, the canvassing of returns, and all particulars in respect to the management of such general elections, as far as they may be applicable, shall, except as in this act otherwise provided, govern all public utility district elections. The returns of all such elections shall be directed to the clerk of the district, and shall be immediately delivered by the inspector, or by some other safe and responsible carrier designated by said inspector, to said clerk, and the ballots shall be kept unopened for at least six months; but if any elector of the district be of the opinion that the votes of any precinct have not been correctly counted, he may contest the election in the manner and form and within the time provided by general law for contests of state and county elections, and all the provisions of the general law relating to election contests and the recounting of ballots cast at general state and county elections, shall be applicable, so far as practicable, to contest of district elections and the recounting of ballots cast thereat.

Canvass of returns.

§ 23. The board of directors must meet at its usual place of meeting on the first Monday after each district election to canvass the returns. If at the time of the meeting the returns from each precinct in the district in which the polls were open have been received, the board of directors must then and there proceed to canvass the returns, but if all the returns have not been received, the canvass must be postponed from day to day until the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and estimating the vote of the district for each person voted for or each proposition voted upon, and declaring the result of the election.

Clerk's statement. Certificate of election.

§ 24. The clerk must, as soon as the result is declared, enter in the record of the board a statement of such result, which statement must show:

- (1) The whole number of votes cast in the district and in each municipality or other territorial unit thereof;
- (2) The proposition or the names of the persons voted for;
- (3) The office to fill which each person was voted for;
- (4) The number of votes given in each precinct to each such person, or for and against any proposition voted upon.

The board of directors must declare elected the person having the highest number of votes given for each office. The clerk must immediately make out and deliver to such

person a certificate of such election, signed by him and authenticated with the seal of the board.

No informality in conducting public utility district elections shall invalidate the same, if they have been conducted fairly and in substantial conformity with the requirements of this act.

Time of holding election.

§ 25. The biennial public utility district election for the election of directors shall be held on the first Tuesday of May in each second year after the formation of the district. This election shall be known as the general district election.

Requirements for voting.

§ 26. No person shall be entitled to vote at any district election held under the provisions of this act unless such person possesses all the requirements of an elector under the general election laws of the state, nor unless he shall be a duly qualified elector residing within the district.

Powers of district.

§ 27. The powers of the district hereinafter enumerated shall, except as herein otherwise provided, be exercised by the board of directors of the district.

Officers. Compensation. Bond.

§ 28. The other officers of the district shall be (1) a clerk, who shall also be ex officio secretary of the board of directors; (2) an accountant; (3) a treasurer, and (4) a general manager, all of whom shall be appointed by the board of directors, and shall receive such compensation as may be provided for them by the board of directors by ordinance, and they shall hold office during the pleasure of the board. They, or any of them, shall be required to give such a bond as may be prescribed by the board of directors, and they shall perform such duties as are hereinafter provided, and such further duties as may be imposed upon them by the board of directors; provided, however, that when the district acquires, constructs owns or operates two or more public utilities, a general manager may be appointed and employed, as hereinabove provided, for each such public utility.

Duties of treasurer.

§ 29. The board of directors of the public utility district formed under the provisions of this act shall have power to elect that the duties of treasurer of the district shall be performed by the county treasurer of the county in which the district, or the greater portion thereof in point of population, is situated; and whenever the board of directors of such district shall, by ordinance, so determine, such duties shall be performed by said county treasurer. A certified copy of such ordinance shall be served on said county treasurer, and such ordinance shall also prescribe the manner in which money shall be drawn out of the various funds belonging to such district in the hands of the treasurer.

Appointment of clerk, etc.

§ 30. At the time hereinabove provided for the first meeting of the board of directors of the district, and after said board of directors shall have qualified and organized as hereinabove provided, it shall appoint such clerk, accountant, general manager and treasurer, or shall, in lieu of appointing such treasurer, pass the ordinance hereinabove provided for.

President, meetings, etc.

§ 31. The board of directors shall choose one of its members president, and shall provide for the time and place of holding its meetings and the manner in which its

special meetings may be called. All legislative sessions of the board of directors, whether regular or special, shall be open to the public. A majority of the board of directors shall constitute a quorum for the transaction of business. The board of directors shall establish rules for its proceedings.

Action only by ordinance or resolution. Enacting clause.

§ 32. The board of directors shall act only by ordinance or resolution. The ayes and noes shall be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. No ordinance or resolution shall be passed or become effective without the affirmative votes of at least a majority of the members of the board. The enacting clause of all ordinances passed by the board shall be in these words:

“Be it enacted by the board of directors of public utility district:”

All resolutions and ordinances shall be signed by the president of the board of directors and attested by the secretary.

Time of taking effect.

No ordinance passed by the board shall take effect within less than thirty days after its passage, and before the expiration of said thirty days the same shall be published with the names of the members voting for and against the same for at least one week in some daily newspaper of general circulation printed and published in the district, or at least twice in some weekly newspaper of general circulation similarly printed and published, in case there is no such daily newspaper printed and published in the district, and posted at the main entrance to the offices of the board of directors at least one week. An order entered in the minutes of the board that such ordinance has been duly published and posted shall be prima facie proof of such publication and posting.

Compensation of board.

Each member of the board of directors shall receive such compensation as the board of directors by ordinance shall provide, not to exceed, however, the sum of three thousand six hundred dollars per year.

Duties of president. General manager. Accountant. Financial statement.

§ 33. The president shall sign all contracts on behalf of the district, and perform such other duties as may be imposed by the board of directors. The clerk shall countersign all contracts on behalf of the district, and perform such other duties as may be imposed upon him by the board of directors or by the provisions of this act. He shall give his full time during office hours to the affairs of the district, and shall ex officio act as the secretary of the board of directors and shall keep a record of its proceedings. The general manager shall, subject to such restrictions as the board of directors may impose, have full charge and control of the construction of the works of the public utility district and of their maintenance and operation. The general manager shall perform such other duties as may be imposed upon him by the provisions of this act or by the board of directors. He shall report to the board of directors in accordance with such rules and regulations as they may adopt. The accountant shall be charged with the duty of installing and maintaining a system of auditing and accounting which shall completely and at all times show the financial condition of the district. He shall draw all warrants to pay demands made against the district when such demands have been first approved by a majority of the board of directors present at the meeting at which such demands are acted upon, and shall perform such other duties as may be imposed upon him by this act or by the board of directors.

The board of directors, at their first meeting in January of each year, shall render and immediately cause to be published a verified statement of the financial condition of

the district, showing particularly the receipts and disbursements of the last preceding year, together with the source of such receipts and the purpose of such disbursements. Said publication shall be made at least once a week for two weeks in some newspaper of general circulation printed and published in the district, or, if there be no such newspaper in the district, then within some newspaper of general circulation printed and published in the county where such district is situated.

Oath. Bond.

§ 34. The directors of the district, immediately after receiving their certificates of election, and before assuming the duties of their office, shall take and subscribe an official oath and file the same in the office of the board of directors and execute the bond hereinafter provided for. Each member of the board of directors shall execute an official bond in the sum of five thousand dollars, which said bond shall be approved by a judge of the superior court of the county where the organization of the district was effected, and shall be recorded in the office of the county recorder of such county and filed with the secretary of said board. All official oaths and bonds herein provided for shall be in the form provided by law for official oaths and bonds of county officers.

Powers of district.

§ 35. Any public utility district incorporated as herein provided shall have power:

First—To have perpetual succession.

Second—To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction.

Third—To adopt a seal and alter it at pleasure.

Fourth—To take by grant, purchase, gift, devise, or lease, or otherwise acquire, and to hold and enjoy, and to lease or dispose of, real and personal property of every kind within or without the district, necessary to the full or convenient exercise of its powers.

To acquire, etc., public utilities.

Fifth—To acquire, construct, own, operate, control or use, within or without, or partly within and partly without, the district, works for supplying the inhabitants of said district and municipalities therein, without preference to such municipalities, with light, water, power, heat, transportation, telephone service, or other means of communication, or means for the disposition of garbage, sewage, or refuse matter; and to do all things necessary or convenient to the full exercise of the powers herein granted. Whenever there is a surplus of water, light, heat, or power above that which may be required by such inhabitants or municipalities within the district, such district shall have power to sell or otherwise dispose of such surplus outside of the district to persons, firms, and public or private corporations.

Eminent domain.

Sixth—To have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. To take any property necessary or convenient to the exercise of the powers herein granted, whether such property be already devoted to the same use or otherwise. In the proceedings relative to the exercise of such right the district shall have the same rights, powers and privileges as a municipal corporation.

Construct works across public highways.

Seventh—To construct works across or along any street or public highway, or over any of the lands which are now or may be the property of this state, and to have the same rights and privileges appertaining thereto as have been or may be granted to the municipalities within the state, and to construct its works across any stream of water

or water course. The district shall restore any such street or highway to its former state as near as may be, and shall not use the same in a manner to unnecessarily impair its usefulness.

Incur indebtedness.

Eighth—To borrow money and incur indebtedness, and to issue bonds or other evidences of such indebtedness; also to refund or retire any indebtedness that may exist against the district; provided, however, that no district shall incur any funded indebtedness which shall in the aggregate exceed twenty per centum of the assessed valuation of all real and personal property situated within the district.

Taxes.

Ninth—To levy and collect, or cause to be levied and collected, taxes for the purpose of carrying on the operations and paying the obligations of the district.

Contracts.

Tenth— To make contracts, to employ labor, and to do all acts necessary and convenient for the full exercise of the powers herein in this act granted.

Condemnation proceedings.

Eleventh—To proceed in the name of the district in case of condemnation proceedings.

Plans and estimates.

§ 36. (1) Whenever the board of directors by ordinance, as hereinafter provided, shall determine that the public interests or necessity of the district demands the acquisition, construction, or completion of any public utility or utilities by the district, or whenever the electors of the district shall petition the board of directors, as hereinafter provided, for the acquisition, construction, or completion of any public utility or utilities, the board of directors must procure plans and estimates of the cost of original construction and completion by the district of such public utility or utilities.

Water works.

(2) In securing estimates of the cost of original construction and completion of water works by the district, the board of directors must procure and place on file plans and estimates of the cost of obtaining, from such sources as the board of directors may find and designate as available, a sufficient supply of good, pure water for the district.

Consideration of offers of existing utilities. Valuation by railroad commission.

(3) Before submitting propositions to the electors for the acquisition by original construction or condemnation of public utilities, the board of directors must solicit and consider offers for the sale to the district of existing utilities, in order that the electors may have the benefit of acquiring the same at the lowest possible cost thereof. In case no such offer or offers can be procured, the board of directors must, or, in case such offer or offers are procured the board of directors may, apply to the railroad commission of the state of California to ascertain the value of such existing utility or utilities for the purpose of submitting to the electors estimates of the cost of acquiring such public utility or utilities. Such valuation by the railroad commission shall be made in accordance with the provisions of section forty-seven of the public utilities act of the state of California, and said railroad commission shall have power upon such application, and it shall be its duty, to make such valuation without delay. When the railroad commission shall have made and filed its findings and decision, the board of directors of the public utility district may have said findings reviewed, as in sections forty-seven and seventy of said public utilities act provided; or such board of directors may immediately adopt such findings and decision as the basis of its estimate of the cost of acquiring such public utility or utilities by purchase or by condemnation.

Petition for construction of public utility.

(4) Whenever any petition or petitions, each signed by electors of the district equal in number to fifteen per centum of all the votes cast within the territory of the district at the last preceding general election held for the election of state and county officers, shall be presented to the board of directors asking for the construction, completion or acquisition of the public utility or utilities therein named, it shall be the duty of the clerk of the district to immediately proceed to examine and verify the signatures to such petition or petitions and to certify the result of such examination to the board of directors. If the required number of signatures be found to be genuine, the clerk shall transmit to the president of the board of directors an authentic copy of such petition or petitions, without the signatures thereto.

Proposition formulated.

Upon receiving the petition or petitions, with the certificate of the clerk stating that it or they contain the required number of signatures, the board of directors shall formulate for submission to the electors of the district at a general district election or at a special election called for that purpose, a separate proposition for the construction, completion, or acquisition of each public utility named in such petition or petitions.

Completion.

All propositions formulated under the provisions of this subdivision shall be completed within six months after the filing of such petition or petitions, unless more time is required by reason of the making of a valuation applied for to the railroad commission under the provisions of subdivision three of this section, in which case the said proposition or propositions shall be completed as soon as may be possible after such valuation shall have been made and become final.

Ordinance submitting proposition.

At the next regular meeting after the completion of the proposition or propositions for the acquisition, construction or completion of the public utility or utilities named in said petitions, the board of directors of the district by ordinance shall submit the proposition or propositions to the electors of the district at a general district election or at a special district election called for the purpose.

When cost can be paid from revenues. Majority vote.

When the cost of any public utility or utilities named in such petition or petitions can be paid out of the revenues of the district derived from the operation of its public utilities, in addition to the other necessary expenses of the district, each proposition therefor, submitted to the electors, shall specify the cost of the public utility therein proposed for acquisition, construction, or completion by the district, the proposed method and manner of payment thereof, and the board of directors shall submit therein to the electors the question whether the same shall be acquired upon such terms. The affirmative vote of a majority of the electors voting at such election shall be necessary to accept such proposition.

Proceedings after election.

At as early a date after the determination of the result of such election as the board of directors shall deem for the best interests of the district, it shall undertake proceedings and enter into such negotiations and contracts as may be necessary for the acquisition, construction, or completion of any public utility or utilities named in any proposition or propositions accepted by the majority of the electors voting at such election.

If cost exceeds revenues. Two-thirds vote.

If, however, the cost of any public utility or utilities named in such petition or petitions shall so far exceed the revenues of the district derived from the operation of its

public utilities, in addition to the other necessary expenses of the district, as to render it necessary to incur a district bonded indebtedness therefor, each such proposition shall specify the amount of the bonded indebtedness necessary therefor, and the rate of interest thereon, and the board of directors shall submit to the electors, at such election, the question of whether such bonded indebtedness shall be incurred. The assent of at least two-thirds of the electors voting at such election upon the proposition shall be necessary to secure the construction, completion, or acquisition of such public utility or utilities and to warrant the issuance of district bonds therefor.

Need for utility declared by ordinance.

(5) Whenever the board of directors shall determine that the public interest or necessity of the district demands the acquisition, construction or completion of any public utility or utilities, it shall specifically declare such determination by an ordinance, which shall be published for at least two weeks in some newspaper or newspapers of general circulation printed and published in the district.

When cost can be paid from revenues.

When the cost of such public utility or utilities, or any of them, can be paid out of the revenues of the district derived from the operation of its public utilities, in addition to the other necessary expenses of the district, the board of directors shall, as soon after the filing of the plans and estimates of the cost thereof as it may deem for the best interests of the district, enter into such negotiations and contracts as may be necessary for the acquisition, construction or completion of the same; provided, however, that in such case the ordinance declaring the determination of the board of directors to acquire, construct or complete such utility or utilities, and published as hereinabove provided, shall state the proposed cost of such acquisition, construction or completion, and the proposed method and manner of payment therefor; and provided, further, that no such ordinance, in case it involves the expenditure of more than one hundred thousand dollars, shall become effective before thirty days from and after its final passage.

If cost exceeds revenues.

If, however, the cost of such public utilities, or any of them, shall so far exceed the revenues of the district derived from the operation of its public utilities, in addition to the other necessary expenses of the district, as to render it necessary to incur a district bonded indebtedness therefor, the board of directors shall, at a regular meeting held within sixty days after the filing of the plans and estimates of cost thereof, by ordinance, as hereinafter in subdivision six of this section provided, submit the proposition or propositions to the electors of the district at a general district election or at a special district election called for the purpose. Such propositions shall specify the amount of bonded indebtedness necessary for the acquisition, construction or completion of the public utility or utilities therein named, and the rate of interest thereon, and the board of directors shall submit to the electors the question or questions whether such bonded indebtedness shall be incurred. The affirmative vote of at least two-thirds of the electors voting at such election upon the proposition or propositions shall be necessary to warrant the issuance of district bonds for the acquisition, construction, or completion of such public utilities, or any of them.

Ordinance calling election.

(6) Whenever under the provisions of section thirty-six of this act, of which this subdivision is a part, a special election is called for the purpose of submitting to the electors a proposition or propositions for the incurring of a bonded indebtedness, the board of directors shall pass an ordinance calling such election.

At such special election all propositions formulated under the provisions of this section may be submitted to the electors of the district, but no question other than such propositions shall be submitted at such special election.

What ordinance shall set forth.

The ordinance calling such election shall set forth the purposes for which it is called, the estimated cost of each utility proposed for acquisition, construction or completion by the district, the proposed method and manner of payment thereof, and shall fix a day on which such special election shall be held, the manner of holding such election, and the manner of voting for or against each proposition thereat submitted to the electors; and if it shall be necessary to incur a district indebtedness for any utility or utilities therein proposed, the ordinance shall specify the objects and purposes for which such indebtedness is proposed to be incurred, and that bonds of the district shall issue for the payment of the cost of such utility or utilities, as in said ordinance set forth (if the proposition or propositions therefor be accepted by the electors). Such election shall be held as provided for holding elections in the district.

Form of bonds. Interest. Redemption.

§ 37. The bonds issued by the district under the provisions of this act shall be of such form as the board of directors in the ordinance calling the election therefor shall determine; but such bonds shall be payable, principal and interest, in gold coin of the United States. The interest on such bonds shall not exceed six per cent per annum, and they shall be redeemed at such times and in such amounts as the board of directors shall determine, as set forth in the ordinance calling the election therefor; provided, that redemption of such bonds shall begin in not more than fifteen years and shall be completed in not more than seventy-five years from the date of issue.

Denomination.

The bonds so issued shall be issued in denominations of not less than one hundred dollars and not more than one thousand dollars, and may be sold by the board of directors at such times and in such manner as they shall determine, but shall not be sold at less than par and accrued interest. Any such bonds shall have the same force, value, and use as bonds issued by a municipality of this state.

Proceeds from sale.

The proceeds from the sale of bonds shall be placed in the treasury to the credit of the proper fund, and shall be applied exclusively to the purposes and objects mentioned in the ordinance authorizing their issue until such objects are fully accomplished; after which, if any surplus remains, such surplus may be transferred to the general fund; except that if such surplus exceeds the sum of five thousand dollars, then such surplus and the whole thereof shall be transferred to the appropriate fund or funds to pay interest and maintain the sinking fund, or provide for the retirement of the bonded indebtedness in connection with which such surplus remains.

Signing of bonds.

§ 38. Such bonds shall be signed by the president of the board of directors of the district, and shall be countersigned by the clerk, and shall have the seal of the district attached. The coupons shall be numbered consecutively and signed by the treasurer, by original or facsimile signature, and the bonds and coupons shall be payable at the office of the treasurer. In case any officer whose signature, or counter-signature, or attestation appears on any bonds or coupons thereof, issued under the provisions of this act, shall cease to be such officer before the sale or delivery of such bonds to the purchaser thereof, such signature, counter-signature or attestation appearing either on the bonds or coupons, or on both, shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until the sale or delivery of such bonds.

Tax levy.

§ 39. The board of directors shall annually levy and collect a tax sufficient to pay the annual interest on such bonds, and also to pay such part of the principal as will fall due within the succeeding year, and as may be necessary to provide for the sinking fund payments of the next succeeding fiscal year; provided, that when the interest and sinking fund payments for any fiscal year on the bonds issued for any public utility can be met out of the surplus earnings of such public utility, or out of moneys in the general fund of the district and theretofore appropriated and transferred to the sinking fund of such public utility, no tax shall be levied for such purpose.

Refusal of directors to act.

§ 40. A neglect or refusal of the board of directors to comply with the provisions of sections thirty-six, thirty-seven, thirty-eight and thirty-nine of this act shall constitute cause for removal from office of any member or members of the board guilty of such conduct or refusal.

Receipts and appropriations.

§ 41. The receipts from the operation of any public utility shall be paid daily into the treasury of the district in a special fund set aside for such public utility. The board of directors may from time to time make appropriations from such funds for the following purposes:

1. For the payment of operating expenses of such public utility and for general salary and expense fund;
2. For repairs and reconstruction;
3. For payment of interest and sinking fund on the bonds issued for the acquisition, construction, or completion of such public utility;
4. For extensions and improvements;
5. For a reserve fund;
6. Whenever the reserve fund shall exceed one-half of the payment for operating expenses in the preceding fiscal year, the board of directors shall have power to appropriate such excess to the general fund.

Accounts.

§ 42. The books of account of the district shall be kept in such manner as to show the true and complete financial results of the ownership and operation of each public utility, the actual cost of each public utility, all costs of maintenance, extension and improvement, and all operating expenses of every description. The accounts of the district shall be examined at least once a year by an expert accountant, who shall report to the directors the result of his examination, and who shall be employed and selected in such manner as the directors may direct, and who shall receive for his services such compensation, to be paid out of the income or revenues of the district, as the directors may prescribe.

Biennial examination by expert. Report.

Every two years the directors of the district shall employ, at an expense of not to exceed the sum of twenty-five hundred dollars at any one time, to be paid out of the income and revenues of the district, as the board of directors may prescribe, an expert who shall be qualified to, and who shall with all due diligence, examine and report upon the system of accounts kept by the district, all the contracts of whatsoever kind made and entered into by the board of directors within the two years immediately preceding; the management of the utilities of the district, the operation of the same, the service furnished, and the rates charged by the district; the properties and investments of the

district; all official acts of the board of directors relating to acquisition, construction, completion, extension, improvement and betterment of the public utility or utilities of the district; the efficiency and adequacy of each public utility, and of the property used in connection therewith or with the operation thereof, the reasonableness of the service and commodities furnished, and of the rates and charges therefor; and generally all the business and affairs of the district relating to the ownership, management and operation of each public utility of the district. Said expert shall in his report make such recommendations and suggestions as to him shall seem proper and required for the good of the district, and the efficient and economical or advantageous management and operation of the public utility or utilities of the district, and of the business and affairs of the district relating to such management and operation; and he shall in his said report make such recommendations and suggestions as to the system of accounts kept, or in his judgment to be kept, by the district, in connection with each public utility, the classification of the public utilities of the district and the establishment of a system of accounts for each class, the manner in which such accounts shall be kept, the forms of accounts, records, and memoranda kept or to be kept, including accounts, records, and memoranda of receipts and expenditures of money, and depreciation and sinking fund accounts, as in his judgment may be proper and necessary.

Selected by railroad commission. Time of doing work.

Said expert shall be selected by the railroad commission of the state of California, and his selection shall be by said commission certified to the board of directors of the district, together with the name and address of the expert so selected, and several such experts may be so selected and certified. The board of directors of the district shall at least four months before the time of each biennial district election in writing request said railroad commission to make such selection and certification, and said railroad commission shall make and transmit the same to the board of directors making such request within two weeks after the receipt of such request by said railroad commission. Within ten days after the receipt of such selection and certification the board of directors of the district shall by resolution entered on its minutes employ the expert, or one of the experts, so selected and certified, fix the amount of his compensation either absolutely or on a per diem basis, and notify said expert of such appointment. The expert so employed shall enter upon the discharge of his duties at least ninety days before the date of the biennial district election, and shall complete his examination and file his report at least thirty days before the date of the biennial district election, then next impending. Said report shall be made to the electors of the district, in duplicate, one of said duplicates to be filed with the board of directors of the district, in the office of the clerk of the district, and one of said duplicates shall be filed in the office of the county recorder of the county wherein the district, or the greater portion thereof in point of population, is situated. Such county recorder shall file, index and keep said report as a public record in his office, and shall make no charge for such filing.

Only revenue producing utilities to be acquired.

§ 43. Only revenue producing utilities shall be acquired, owned or operated by a district formed under the provisions of this act. So far as possible the board of directors shall fix such charges for commodities or service furnished by any revenue producing utility, as will pay the expenses of the government of the district, including salaries, office expenses, and other necessary disbursements; the operating expenses of the utility; the interest on any bonded indebtedness incurred for the acquisition, construction and completion thereof; and provide a sinking or other appropriate fund for the payment of the principal of such debt as it may become due, and also provide an appropriate fund for repairs, replacements and betterments; it being the intention of this section that

the district pay all of such charges and expenditures, and the interest and principal of its bonded debt, from the revenues derived by the district from the operation of its public utilities, and that each public utility owned and operated by the district shall be self-sustaining.

Districts, etc., may contract for public utility service. May advance funds.

§ 44. The district and any municipalities included therein, may at any time enter into appropriate contracts for the use by such municipality or municipalities of commodities or service furnished by any of the utilities acquired, owned, and operated, or authorized to be acquired, constructed, or completed by the district, as in this act provided. At any time after the formation of the district any municipality or municipalities included therein may advance to the district funds to meet the expenses of organization or the expenses of carrying on the work of the district, to be repaid to the municipality or municipalities so advancing said funds with stipulated interest, or to be credited by the district to the municipality as payment on account of commodities or service furnished or to be furnished to it by the district.

Tax if revenues inadequate.

§ 45. (1) If from any cause the revenues of the district shall be inadequate to pay the principal or interest on any bonded debt as it becomes due, the board of directors must, or if funds are needed to carry out the objects and purposes of the district, which can not be provided for out of the revenues of the district, then the board of directors may, levy a tax for such purposes as herein provided. The board shall state the purposes for which such taxes are necessary, and must fix, by ordinance, the amount of money necessary to be so raised by taxation. If the amount to be raised at any one time by taxation for a purpose other than interest or sinking fund payments exceeds the sum of fifty thousand dollars, such ordinance shall not go into effect before thirty days from its final passage.

Manner of assessing.

(2) The board of directors may by ordinance provide the mode and manner of assessing, and of correcting and equalizing assessments upon, the taxable property situated within the district, for the purpose of levying district taxes, and of levying and collecting such taxes, and may provide for the collection of delinquent taxes by actions or legal proceedings which are hereby authorized to be brought, prosecuted and maintained in the name of the district against the several owners of property from whom such taxes may be due and delinquent, for the purpose of recovering the amount of the delinquent tax, with penalties, interests, and costs; provided, that the provisions of such ordinance shall be conformable to general law.

Board may accept assessment by county assessor. Statement by county auditor. Tax rate fixed.

(3) The board of directors may elect to avail itself of the assessment or assessments made by the assessor or assessors of the county or counties in which the district is situated, and may take such assessment or assessments as the basis for district taxation; provided, that the board of directors shall declare its said election by ordinance and file a certified copy of the same with the auditor or auditors of the county or counties in which the district is situated, on or before the first Monday in February of each year. Thereafter all assessments shall be made and taxes collected by the county assessor and tax collector, or county assessors or tax collectors, of the county or counties in which the district is situated until the board of directors of the district by ordinance elect otherwise. The said county auditor or auditors thereupon must, on or before the second Monday in August of each year, transmit to the board of directors of the district a statement in writing showing the total value of all property within the

district, which value shall be ascertained from the assessment book of the said county or counties for that year as equalized and corrected by the board or boards of supervisors of such county or counties. In case the board of directors shall so elect, as hereinabove provided, it shall, on the first week day in September, or if such week day falls upon a holiday then on the first business day thereafter, fix the rate of taxes, designating the number of cents upon each hundred dollars, using as a basis the value of property as assessed by the county assessor or assessors and so returned to such board of directors by the county auditor or auditors, as hereinabove provided, which rate of taxation shall be sufficient to raise the amount previously fixed by the board, as hereinabove prescribed; which acts by said board of directors are declared to be a valid assessment of such property and a valid levy of such taxes so fixed. The board of directors must immediately thereafter transmit to the county auditor or auditors of the county or counties in which the district is situated a statement of such rate so fixed by the board of directors.

Entry in assessment book.

The said auditor or auditors must then compute and enter in a separate column in the assessment book or assessment books, to be headed "Utility district tax, public utility district (naming it)," the respective sums in dollars and cents or dollars or cents to be paid as a district tax on the property therein enumerated and assessed as being in the public utility district, using the rate of levy so fixed by the board of directors of the district, and the assessed value as found in such assessment book or assessment books. Such taxes so levied shall be collected at the same time and in the same manner as county taxes; and when collected the net amount, as ascertained as hereinafter provided, shall be paid to the treasurer of the district, under the general requirements and penalties provided by law for the settlement of other taxes.

County officers to make expense statements.

Each county auditor and tax collector affected by the provisions of this act shall annually file with the board of supervisors of his county itemized statements showing the additional expense to his office caused by the performance of the duties imposed upon him or his office under the provisions of this act, and upon the filing of such statements the board of supervisors shall, by an order spread upon its minutes, deduct such expenses from the tax money of the district, while in the hands of the tax collector, and transfer the amount deducted into the county salary fund; provided, that not more than one-half of one per centum on the amount collected shall be so charged or deducted by any county. The board or boards of supervisors of such county or counties may provide such extra help for their county offices or officers as in their judgment may be necessary for the proper performance of their duties hereunder.

Property sold for taxes.

Whenever any real property situate in any public utility district formed under the provisions of this act, which district has availed itself of the provisions of this subdivision of this section, has been sold for taxes and has been redeemed, the money paid for such redemption shall be apportioned and paid by the county treasurer or treasurers receiving the same to such public utility district, in the proportion which the tax due to such district bears to the total tax for which such property was sold.

Taxes a lien on property.

(4) All taxes levied under the provisions of this act shall be a lien on the property on which they are levied; and the enforcement of the collection of such taxes may be had in the same manner and by the same means as is provided by law for the enforcement of liens for state and county taxes, all the provisions of law relating to the enforcement of the latter being hereby made a part of this act, so far as applicable; provided,

that where a public utility district has not availed itself of the provisions of subdivision (3) of this section, the delinquent property sold by the tax collector of the district for delinquent taxes shall be struck off by him to the district and shall thereafter be redeemed or disposed of as is provided by law in the case of delinquent property sold to the state for delinquent state and county taxes.

Classification for civil service.

§ 46. (1) The board of directors shall classify all the places of employment in or under the district, and in or under all the offices and departments of the district, with reference to the examinations hereinafter provided for, excepting the places and offices specified in subdivision four hereof. The places so classified by the board of directors shall constitute the classified civil service of the district, and no appointment to any such place shall be made except according to the rules hereinafter mentioned.

Rules.

(2) The board of directors shall make rules to carry out the purposes of this section, and for examinations, appointments, promotions, and removals, and may from time to time make changes in existing rules. All rules and all changes therein shall be forthwith printed for distribution by the board of directors.

Character of examinations.

(3) The examinations shall be practical in their character, and shall relate to those matters only which will fairly test the relative capacity of the persons examined to discharge the duties of the positions to which they seek to be appointed, and shall include, when appropriate, tests of manual or professional skill. The selection of laborers shall be governed by priority of application as far as may be practicable. No question in any examination shall relate to political or religious opinions or affiliations. The board of directors shall control all examinations.

Exemptions.

(4) The manager, the engineer, the clerk, accountant, and the treasurer of the district shall not be included within the classified civil service of the district.

Advertising for bids for supplies.

§ 47. Except as otherwise provided in this act, the board of directors shall annually advertise, for at least five days in a newspaper of general circulation in the district, for sealed bids for furnishing the district with goods, merchandise stores, subsistence, printing, materials, and all other supplies, and advertising.

All bids shall be upon a schedule showing all articles needed by the district and the several offices thereof, prepared by the clerk of the district, and shall state separately the price of each article to be furnished, and any person may bid upon any article separately.

Except as otherwise provided by this act, the board of directors shall determine annually what goods, merchandise, stores, subsistence, materials and other supplies will be needed by the district for the ensuing year.

Consideration of bids.

In considering such bids the board of directors may accept or reject all or any of them, or may accept or reject a part of any such bid, preference being given, however, to the lowest responsible bidder. All supplies furnished the district, or any officer thereof, shall be furnished at a price no greater than is specified in the bid which may be accepted by the board. The award as to each article shall in all cases be made to the lowest bidder for such article.

Opening of bids.

All bids shall be opened by the board at an hour and place to be stated in the advertisements for proposals, in the presence of all bidders who attend, and all the bidders may inspect the bids. All contracts shall be made with the lowest responsible bidder, who shall give bonds with sufficient sureties for the faithful performance of his contract.

General notice.

Notices of proposals for furnishing the aforesaid articles shall mention said articles in general, and shall state that the conditions and schedule may be found in the office of the clerk of the district, and shall also state that such articles are to be delivered at such times, in such quantities, and in such manner as the board of directors may designate.

Certificate of deposit.

All proposals shall be accompanied with a certificate of deposit, or certified check on a solvent bank within the district, or county wherein the district is located, of ten per centum of the amount of the bid, payable at sight to the order of the clerk of the district. If the bidder to whom the contract is awarded shall for five days after such award fail or neglect to enter into the contract and file the required bond, the clerk shall draw the money due on such certificate of deposit or check and pay the same into the treasury of the district; and under no circumstances shall the certificate of deposit or check or the proceeds thereof be returned to such defaulting bidder.

Printed blanks.

The clerk shall furnish printed blanks for all such proposals, contracts and bonds.

Advertising.

Advertising shall not be classified, and shall be construed to mean the advertising and publication of all official reports, orders, ordinances, resolutions, notices inviting proposals, and all notices of every nature relating to work or business of the district. No part or kind of such advertising shall be charged or contracted for at a higher rate than any other part or kind of the same is charged or contracted for; except in the case of the delinquent tax list. The advertising of the delinquent tax list shall be let to the lowest responsible bidder on a separate bidding from all other advertising. A square of advertising shall be two hundred and thirty-four ems nonpareil.

No officer or employee of the district shall order any article or shall make any publication which is not expressly authorized by this act or by the board of directors.

Certain purchases without contracts.

Unless the amount involved in the purchase at any one time of any articles, for which no contract has been entered into as hereinabove provided, exceeds the sum of five hundred dollars, the board of directors may purchase such article or articles without the necessity of advertising or letting contracts therefor; but where the cost of any article or articles, for which no contract has been entered into as hereinabove provided, exceeds the sum of five hundred dollars, the board of directors shall advertise for at least five days in a newspaper of general circulation in the district for sealed bids for furnishing the district such article or articles, and shall in the matter of opening and accepting such bids and the letting of contracts for the furnishing of such article or articles in all respects proceed in the manner and form in this section hereinabove provided in the case of contracts for annual supplies.

Cost of construction exceeding \$1,000. Bidders. Bond.

§ 48. Where the cost of any construction, replacement, improvement, alteration, extension, or other proposed work of the district exceeds the sum of one thousand dol-

lars, the board of directors must adopt plans and specifications, strain sheets, and working details, as may be proper, and must advertise for bids for such work in accordance with the plans and specifications so adopted. All bidders shall be afforded an opportunity to examine such plans and specifications and said board shall award the contract to the lowest responsible bidder, and the plans and specifications so adopted shall be attached to and become part of the contract; and the person or corporation to whom the contract is awarded shall be required to execute a bond, to be approved by the board of directors, for the faithful performance of the contract; provided, that in cases of great emergency, by the consent of at least two thirds of the board of directors, they may proceed at once to do or cause to be done all repair or replacement work necessary to meet such emergency without notice; and provided, further, that nothing herein contained shall be deemed to prohibit the board of directors from doing or causing to be done directly by the district, and without any contract therefor, any or all work necessary or proper in or about the making of all current and ordinary repairs or in or about current and ordinary upkeep or maintenance.

Change of plans.

No plans and specifications when once adopted shall be altered or changed in any manner whereby the cost of the proposed work shall be increased, except by a vote of two-thirds of the board of directors.

Change of contract.

Whenever the board of directors shall enter into a contract for any such work, such contract shall not be altered or changed in any manner, unless they shall, by a vote of two-thirds of their number, and with the consent of the contractor, first so order. And whenever any such change or alteration is so ordered, the particular change or alteration shall be specified, in writing, and the cost thereof agreed upon between the board and the contractor. In no case shall the board pay or become liable to pay for any extra work done or extra material furnished.

Claims.

§ 49. No claim shall be paid until allowed by the board, and only upon a warrant signed by the president and countersigned by the clerk.

Construction fund.

§ 50. The cost and expense of purchasing and acquiring property and works, and of constructing the works and improvements herein provided for, shall be wholly paid out of the construction fund.

Eight hour day.

The maximum time of labor or service required of any laborer, workman, or mechanic employed upon any work of the district, whether so employed directly by the district and its officers, or by a contractor or sub-contractor, shall be eight hours during any one calendar day, except in case of emergency.

Board fixes hours and compensation.

The board of directors shall fix the hours of labor or service required of all employees of the district, and their compensation, and shall employ all necessary employees or may by ordinance provide for their employment by the several officers of the district. The board of directors may from time to time contract for or employ any professional services required by the district, or by the board, or any officer of the district.

Incurring debt.

§ 51. The board of directors or other officers of the district shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this act, and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

Expenditures authorized by ordinance. Protest. Supplemental petition. Suspension of ordinance. Reconsideration.

§ 52. All expenditures of money for the benefit of the district on any account or for any purpose, all contracts of every kind, and all tax levies for a purpose other than interest or sinking fund payments shall be first authorized by the board of directors, by ordinance, in every case when any such expenditure, or the amount involved in any such contract, exceeds the sum or amount of one hundred thousand dollars, or the amount proposed to be raised by such tax levy exceeds the sum or amount of fifty thousand dollars, and no such ordinance shall go into effect before thirty days from its final passage. During said thirty days a petition signed by qualified voters of the district equal to ten per centum of the entire vote cast within such district for all candidates for governor of the state at the last preceding general election at which a governor was voted for, and protesting against the passage of such ordinance, may be presented to the board of directors. Immediately upon the receipt of such petition the board of directors shall cause the clerk of the district to examine and verify the signatures to such petition, and to certify the result of such examination to the board of directors within ten days. If the petition is found to be insufficient, the clerk shall certify to the number of qualified electors required to make such petition sufficient in addition to the signatures already thereon and verified or found genuine by him, and said petition may then be amended by filing a supplemental petition within ten days from the date of such certificate. The clerk shall within ten days after the filing of such supplemental petition make a like examination of the same and certify to the result of such examination, as herein provided. Said ordinance shall remain suspended from going into operation until the completion of such examination and verification of said petition or supplemental petition, and the certification of the result of such examination; and in case said petition, or petition as amended, is shown to be sufficient by such certificate said ordinance shall be suspended from going into effect or operation and it shall be the duty of the board of directors to reconsider such ordinance. If said board of directors shall thereupon not entirely repeal said ordinance, it shall submit the same to a vote of the electors either at a general district election or at a special district election to be called for the purpose, and such ordinance shall not go into effect or become operative unless a majority of the voters voting upon the same shall vote in favor thereof. Such petitions, in the matter of form, signatures, and preparation thereof, and the proceedings based thereon, in the matter of holding or calling and conducting said election, the manner of voting thereat, canvassing the return and declaring the result, shall conform as nearly as may be practicable, and except as herein otherwise expressly provided, to the provisions of the general law of the state governing and relating to direct legislation or the referendum by incorporated cities and towns, which are hereby made applicable hereto as far as may be practicable.

Directors not to be interested in contracts.

§ 53. No director or any other officer of the district shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board of directors, or in the profits to be derived therefrom; and for any violation of this provision such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Validity of bonds. Publication of summons. Trial. Appeal. Consolidation of actions. Motion for new trial.

§ 54. The board of directors may at any time within sixty days from the date of the election authorizing the issuance of any bonds caused to be brought in the name of the

district an action in the superior court of the county in which said district or the greater portion thereof is located, to determine the validity of any such bonds. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of summons for at least once a week for three weeks in some paper of general circulation published in the county where the action is pending, such paper to be designated by the court having jurisdiction of the proceedings. Jurisdiction shall be complete within ten days after the full publication of such summons in the manner herein provided. Any one interested may at any time before the expiration of said ten days appear and by proper proceedings contest the validity of such bonds. Such action shall be speedily tried and judgment rendered declaring such bonds to be valid or invalid. Either party may have the right to appeal to the supreme court at any time within thirty days after the rendition of such judgment, which appeal must be heard and determined within three months from the time of taking such appeal. After the expiration of ninety days from the date of such election no action may be brought by any person to contest or question the validity of said bonds and proceedings thereto. If there be more than one action or proceeding involving the validity of any such bonds, they shall be consolidated and tried together. The court hearing any proceeding or action inquiring into the regularity, legality or correctness of the proceedings leading up to the issuance of bonds or the validity of such bonds must disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by the Code of Civil Procedure, which are not inconsistent with the provisions of this act, are applicable to all actions or proceedings herein provided for. The motion for a new trial of any such action or proceeding must be heard and determined within ten days from the filing of the notice of intention. The costs on any proceeding or action herein provided for may be allowed and apportioned between the parties, or taxed to the losing party, in the discretion of the court.

Recall.

§ 55. Every incumbent of an elective office of a public utility district formed hereunder is subject to recall by the voters of such public utility district, in accordance with the recall provisions of the general laws of the state with reference to county officers.

Title vested in district.

§ 56. The legal title to all property acquired under the provisions of this act shall immediately, and by operation of law, be vested in such public utility district, and shall be held by such district in trust, and is hereby dedicated and set apart to the uses and purposes set forth in this act.

Suit only after rejection of claim. Time of presenting claim.

§ 57. No suit shall be brought against the district on any claim for money or damages until a claim or demand therefor, setting forth with reasonable certainty the nature and various items of the claim or demand and verified by the claimant, or his authorized agent, has been presented to the directors and rejected in whole or in part. In case the board of directors shall fail or refuse to allow or reject such claim, either wholly or in part, for a period of six months after its presentation, such failure or refusal shall upon the expiration of such period be deemed a rejection of the claim. All claims against the district must be presented to the board of directors and filed with the clerk of the district within one year after the debt, or the last item thereof, for which the claim is made, shall have been incurred, or within one year after the occurrence from which the damages are claimed to have arisen. Otherwise there shall be no recovery on any such claim.

Construction of act.

§ 58. Nothing in this act shall be so construed as repealing or in anywise modifying the provisions of any other act relating to public utility districts, except in so far as any of the provisions of such act may be inconsistent with any of the provisions of this act.

Constitutionality of act.

§ 59. If any section, sub-section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. The legislature hereby declares that it would have passed this act, and each section, sub-section, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, sub-sections, sentences, clauses or phrases be declared unconstitutional.

Definitions.

§ 60. The term "municipality" as used in this act shall include a consolidated city and county, city or town, and shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing or those hereafter organized for municipal purposes within such public utility district. The word "district" shall apply, unless otherwise expressed or used, to a public utility district formed under the provisions of this act. And the word "board" and the words "board of directors" shall apply to board of directors of such district.

1. Election for directors — Calling an election by board of supervisors can not be enjoined.—The duty of calling an election for directors of a public utility district is imposed upon boards of supervisors by law (§ 16 of this act) and they can not be enjoined from performing that duty.—*Randolph v. Stanislaus County* (Cal. App.), 186 Pac. 625.

2. Boundaries—Inclusion of part of irrigation district—Does not invalidate.—An irrigation district is not a municipal corporation, and the fact that all of an irrigation district is not included in a public utility district when a portion is included does not affect the legality of the latter's

organization by dividing a municipal corporation.—*Randolph v. Stanislaus County* (Cal. App.), 186 Pac. 625.

3. Same—Sufficiently set forth.—A petition to form a public utility district, and the ordinances forming the same, describing the proposed boundaries as "composed of all the territory of" certain irrigation districts "within the county of Stanislaus," sufficiently sets forth the same.—*Randolph v. Stanislaus County* (Cal. App.), 186 Pac. 625.

4. Same—Contiguous units of land.—A public utility district need not be composed of contiguous units of land.—*Randolph v. Stanislaus County* (Cal. App.), 186 Pac. 625.

RETENTION OF MUNICIPAL POWER OF REGULATION.

ACT 3778—An act to provide for submitting to the qualified electors of every city and county, or incorporated city or town, in this state, the question whether such city and county, or incorporated city or town, shall retain powers of control vested therein respecting all or any public utilities, and to provide for elections thereafter to surrender such powers of control in case the qualified electors of any such city and county, or incorporated city or town, shall have voted to retain such powers of control.

History: Approved June 7, 1915. In effect August 8, 1915. Stats. 1915, p. 1273. Prior act of January 2, 1912, Stats. 1911 (ex. sess.), p. 168, commonly known as the "Hewitt Act," was repealed by the present act.

Cities may retain power to regulate public utilities. Health matters not surrendered.

§ 1. Any city and county, or incorporated city or town, may retain or surrender to the railroad commission of the state of California the powers of control vested therein to supervise and regulate the relationship between any one or more classes of public utilities, and their present or prospective customers, consumers or patrons, and, if it has retained such powers over any class or classes of public utilities, may thereafter surrender such powers to the railroad commission of the state of California, hereinafter

called the railroad commission, all as in this act provided, but this act shall not be construed to authorize any city and county, or incorporated city or town, to surrender to the railroad commission, its powers of control to supervise and regulate the relationship between a public utility and the general public in matters affecting the health, convenience and safety of the general public, including matters such as the use and repair of public streets by any public utility, the location of the poles, wires, mains or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers, operating within the limits of the municipality.

Definitions.

§ 2. (a) The term "municipal corporation," as used in this act, shall be construed to mean a city and county, or incorporated city or town. The term "legislative body," as used in this act, shall be construed to mean the board of supervisors, municipal council, commission or other legislative or governing body of a municipal corporation.

(b) The term "powers of control," as used in this act, and as used on any ballot prepared and used under the provisions of this act, with reference to public utilities, or to any class or classes of public utilities in any municipality or municipalities, means all powers of control vested in such municipality or municipalities to supervise and regulate the relationship between such public utilities, or such class or classes of public utilities, and their present or prospective customers, consumers or patrons, but said term shall not be construed to include the powers of control vested in any municipality or municipalities to supervise and regulate the relationship between such public utilities, or such class or classes of public utilities, and the general public in matters affecting the health, convenience and safety of the general public, including matters such as the use and repair of public streets by any public utility, the location of the poles, wires, mains or conduits of any public utility, on, under or above any public streets, and the speed of common carriers operating within the limits of the municipality.

§ 3. The terms "railroad corporation," "street railroad corporation," "common carrier," "gas corporation," "electrical corporation," "telephone corporation," "telegraph corporation," "water corporation," "wharfinger," "warehouseman," and "public utility," as used in this act, shall severally have the same meaning as is given to them, respectively, in section 2 of the act known as the "public utilities act."

Question may be submitted to electors. Examination of petition.

§ 4. The question whether any municipal corporation shall retain its powers of control respecting one or more classes of public utilities may be submitted to the qualified electors of such municipal corporation, as provided in this act, either at a general municipal election or at a special election held therein. Such a question may be so submitted, either in pursuance of an ordinance of intention adopted by a vote of three-fifths of all the members of the legislative body of such municipal corporation, declaring that the public interest requires the submission of, and that it is the intention of such legislative body to submit such question to a vote of the qualified electors of such municipal corporation, or in pursuance of a petition of qualified electors of such municipal corporation, as hereinafter provided. Such ordinance of intention or such petition, as the case may be, shall contain the propositions proposed to be so submitted, as set forth in section 6 of this act. Such petition shall be signed by qualified electors of such municipal corporation, equal in number to ten per centum of such qualified electors, computed upon the total number of votes cast in such municipal corporation for all candidates for governor at the last preceding general election prior to the filing of such petition at which a governor was elected. Such petition may consist of separate papers; provided, that if any paper consists of more than one sheet, it shall be securely fastened together at the top. The signatures need not all be appended to one sheet of paper. Each such paper shall have attached thereto, at the bottom of the last sheet

thereof, the affidavit of a qualified elector of such municipal corporation, stating that all of the signatures on each sheet thereof were made in his presence, and that to the best of his knowledge and belief each signature is a genuine signature of the person whose name purports to be thereto subscribed. Such petition shall be filed with the clerk of the legislative body of such municipal corporation. Within ten days from the date of the filing of such petition, said clerk shall examine the petition and ascertain from the record of the registration of the electors of the city and county, or of the county in which such municipal corporation is situated, whether the petition is signed by the requisite number of the qualified electors of such municipal corporation; and if requested by said clerk, the said legislative body of said municipal corporation shall authorize him to employ persons specially to assist him in the work of examining such petition and shall provide for their compensation. Upon the completion of such examination, said clerk shall forthwith attach to said petition his certificate, properly dated, showing the result of such examination. If from such examination, said clerk shall find that said petition is signed by the requisite number of qualified electors, he shall certify that the same is sufficient; but if, from such examination, he shall find that said petition is not signed by such requisite number of qualified electors, he shall certify to the number of qualified electors signing such petition and to the number of qualified electors required to make such petition sufficient. If, by the certificate of said clerk, the petition is shown to be insufficient, it may be amended by filing a supplemental petition within ten days from the date of such certificate. Said clerk shall, within ten days from the filing of such supplemental petition, make like examination of the same and certify to the result of such examination as hereinbefore provided. If the certificate of the clerk shall show any such petition, or any such petition together with a supplemental petition, to be insufficient, it shall be retained by him and kept as a public record, without prejudice, however, to the filing of a new petition to the same effect. But if, by the certificate of the clerk, such petition, or such petition together with a supplemental petition, is shown to be sufficient, the clerk shall forthwith present the same to the legislative body of such municipal corporation. The sufficiency or insufficiency of such petition shall not be subject to review by such legislative body. After the election held in pursuance of such petition, the sufficiency of such petition in any respect shall not be subject to judicial review or be otherwise questioned. In any city and county having a board of election commissioners and a registrar of voters, the clerk of the legislative body thereof shall immediately upon the filing of any petition with him, transmit the same to such board of election commissioners, who shall forthwith deliver such petition to said registrar of voters, who shall perform all the duties herein required to be performed in other municipal corporations by the clerk of the legislative body thereof, respecting the examination and certification of such petition. Such registrar of voters shall, upon making his certificate, forthwith return said petition to said clerk, who shall thereupon present such petition and the certificate thereto attached to the legislative body of such municipal corporation as hereinbefore in this section provided.

Special election. Publication of ordinance.

§ 5. Upon the adoption of such ordinance of intention, or the presentation as aforesaid of such petition, as provided in section four of this act, the legislative body of such municipal corporation shall, by ordinance, order the holding of a special election for the purpose of submitting to the qualified electors of such municipal corporation the propositions set forth in such ordinance of intention or in such petition, as the case may be, or such legislative body shall, by ordinance, order the submission of such propositions at a general municipal election, as hereinafter provided. Such special election shall be held not less than twenty days nor more than sixty days after the adoption of the ordinance of intention provided for in section four of this act, or the presenta-

tion of such petition to said legislative body; provided, that if a general municipal election shall occur in said municipal corporation not less than twenty days nor more than sixty days after the adoption of said ordinance of intention or the presentation of said petition to said legislative body, said propositions may be submitted at such general municipal election, in the same manner as other propositions are required by law to be submitted at general municipal elections in such municipal corporation. Every special election held in any municipal corporation under the provisions of this act, shall be called by the legislative body thereof, by ordinance, which shall specify the propositions to be submitted at such election and the date thereof, and, where provision is not otherwise made by law, shall establish the election precincts therefor and designate the polling places therein, and the names of the election officers for each such precinct. Such ordinance shall, prior to such election, be published five times in a daily newspaper printed and published in such municipal corporation, or twice in a weekly newspaper printed and published therein, if there be no such daily newspaper; provided, that if no such daily or weekly newspaper be printed and published in such municipal corporation, the clerk of said legislative body shall post a copy of said ordinance in three public places in such municipal corporation at least ten days prior to such election.

Ballots.

§ 6. The ballots to be used at any general municipal election or at any special election, at which is submitted the question whether a municipal corporation shall retain its powers of control respecting public utilities shall have printed thereon, in addition to the other matters required by law, such of the following propositions as are specified in the ordinance of intention or the petition:

"Proposition No. 1. Shall (name of municipal corporation) retain its powers of control over railroad corporations?"

"Proposition No. 2. Shall (name of municipal corporation) retain its powers of control over street railroad corporations?"

"Proposition No. 3. Shall (name of municipal corporation) retain its powers of control over common carriers other than railroad and street railroad corporations?"

"Proposition No. 4. Shall (name of municipal corporation) retain its powers of control over gas corporations?"

"Proposition No. 5. Shall (name of municipal corporation) retain its powers of control over electrical corporations?"

"Proposition No. 6. Shall (name of municipal corporation) retain its powers of control over telephone corporations?"

"Proposition No. 7. Shall (name of municipal corporation) retain its powers of control over telegraph corporations?"

"Proposition No. 8. Shall (name of municipal corporation) retain its powers of control over water corporations?"

"Proposition No. 9. Shall (name of municipal corporation) retain its powers of control over wharfingers?"

"Proposition No. 10. Shall (name of municipal corporation) retain its powers of control over warehousemen?"

Opposite each such proposition to be voted upon, and to the right thereof, the words "yes" and "no" shall be printed on separate lines, with voting squares. Any voter desiring to vote in favor of the retention of the powers of control of such municipal corporation respecting any particular class of public utility, shall stamp a cross (X) in the voting square after the printed word "yes" opposite the proposition as to such class, and any voter desiring to vote against the retention of such powers of such municipal corporation respecting any particular class of public utility, shall stamp a cross (X) in the voting square after the printed word "no" opposite such proposition.

Canvass of returns. When control vests in railroad commission.

§ 7. If the propositions specified in section six of this act shall have been submitted at a special election in any municipal corporation, then the legislative body or other body or board charged with the duty of canvassing the returns and declaring the result of elections in such municipal corporation, shall meet at their usual place of meeting on the first Monday after such election to canvass the returns and declare the result thereof. Immediately upon the completion of such canvass, or upon the completion of the canvass of the returns of any general municipal election at which such propositions shall have been submitted, such legislative body or other body or board charged with said duty shall make an order declaring the result of the election upon such propositions and shall cause the same to be entered upon its minutes, which order shall show the total number of votes cast upon each such proposition, and the number of votes cast respectively in favor of and against each such proposition. If it shall appear from the result of such election, as so declared, that a majority of the qualified electors of such municipal corporation voting on any proposition submitted, as provided in section five of this act, shall have voted to retain the powers of control of such municipal corporation respecting any particular class of public utility, such municipal corporation shall be deemed to have elected to retain such powers of control respecting such class of public utility, and such powers shall be exercised by such municipal corporation until the same may be surrendered as hereinafter provided; and if it shall appear from the result of such election, as so declared, that a majority of such qualified electors so voting on any such proposition shall have voted not to retain such powers respecting any class of public utility, such municipal corporation shall be deemed to have elected not to retain such powers of control respecting such class of public utility, and such power of control shall thereafter vest in and be exercised by the railroad commission as provided by law. Immediately upon the entry of the order declaring the result of the election as to such proposition, the clerk of the legislative body or the registrar of voters of any municipal corporation having a board of election commissioners and a registrar of voters, shall make copies, in duplicate, of such order, and shall attach to each such copy his certificate under the seal, if any, of such municipal corporation, or of such board of election commissioners, certifying that the same is a true and correct copy of such order. Said clerk or registrar of voters, as the case may be, shall forthwith file one of said copies in the office of the railroad commission of the state of California and the other in the office of the secretary of state. Immediately upon the filing of such certified copy of such order in the office of the railroad commission, the powers of control theretofore vested in such municipal corporation over any class or classes of public utilities which a majority of the qualified electors of such municipal corporation voting thereon shall have voted not to retain, as shown by such order, shall thereupon vest in and be exercised by the railroad commission.

City retaining powers may later surrender them.

§ 8. Any municipal corporation which shall have retained the powers of control vested therein respecting any class or classes of public utilities may thereafter surrender its powers of control as to such class or classes of public utilities at a general municipal election, or at a special election therein called for that purpose. The ballots to be used at such election shall have printed thereon, in addition to the other matters required by law, separate propositions as to each class of public utilities as to which such municipal corporation may retain its powers of control and as to which it may be desired to vote. As to each of such classes of public utilities, and in addition to the other matters required by law to be printed thereon, a proposition shall be printed on the ballot to be used at such election in substantially the following form: "Shall (name of municipal corporation) surrender its powers of control over (here insert class of public utility) to the railroad commis-

sion?" Opposite each such proposition to be voted upon, and to the right thereof, the words "Yes" and "No" shall be printed on separate lines, with voting squares. Any elector desiring to vote to surrender the powers of control of such municipal corporation over any class of public utility specified on the ballot, shall stamp a cross (X) in the voting square opposite the printed word "Yes," after the proposition as to such class; and any elector desiring to vote not to surrender the powers of control of such municipal corporation over such class of public utility, shall stamp a cross (X) in the voting square opposite the printed word "No" after the proposition as to such class. The provisions of sections four, five and seven of this act, in so far as applicable, shall govern elections called, conducted and held under the provisions of this section and to general municipal elections at which such propositions shall be submitted. If it shall appear from the result of such election declared as provided in section seven of this act, that a majority of the qualified electors of such municipal corporation voting on any proposition submitted as provided in this section, shall have voted to surrender the powers of control of such municipal corporation respecting any particular class of public utility, such municipal corporation shall be deemed to have surrendered its powers of control as to such class of public utility to the railroad commission, and such powers shall thereafter vest in and be exercised by the railroad commission, as provided by law, upon the filing, in the office of the railroad commission, of a certified copy of the order declaring the result of such election; and if it shall appear from the result of such election, as declared, that a majority of such qualified electors voting on any such proposition shall have voted not to surrender such powers of control respecting any particular class of public utility, such powers of control shall continue in such municipal corporation; provided, however, that such powers of control may thereafter be surrendered by such municipal corporation at any subsequent election at which the question of such surrender may again be submitted under the provisions of this act.

One special election in 12 months.

§ 9. The holding of a special election or elections, or the submission of propositions at any general municipal election, under any of the provisions of this act, shall not be construed to preclude the holding of a subsequent special election or elections or the subsequent submission of propositions at a general municipal election or elections, on the question of the retention or surrender by a municipal corporation of its powers of control respecting any class or classes of public utilities, as in this act provided; provided, that not more than one such special election shall be held within any period of twelve months.

Laws which govern elections.

§ 10. Except as otherwise in this act provided, the holding and conducting of elections under the provisions of this act, the form of the ballots used, the opening and closing of the polls, and the canvass of the returns and the declaring of the result shall conform, as nearly as may be, to such laws as shall now or hereafter be applicable to special municipal elections held in the municipal corporation affected.

Repealed.

§ 11. Chapter forty of the laws of the extraordinary session of December, 1911, is hereby repealed.

1. Surrender of control necessary to give railroad commission jurisdiction.—Consent of the city can not confer jurisdiction upon the railroad commission of the question whether a railroad is required to remove an obstruction of a public street in such city,

in the absence of a surrender of control by such city under this act, so as to estop the city from maintaining a suit for such removal.—*Red Bluff v. Southern Pacific Co.* (Cal. App.), 187 Pac. 152.

2. Municipal power can not be divested

by charter amendment.—The powers of municipalities over public utilities vested in them on the adoption of the public utilities act can not be divested by a charter amendment, but such divestment must be

brought about under the scheme provided by the legislature for that purpose, which is a complete scheme.—Long Beach, etc. v Pacific Electric Co., 2 R. C. D. 455.

PIPE LINES DECLARED COMMON CARRIERS.

ACT 3779—An act declaring certain corporations, individuals or association of individuals engaged, directly or indirectly, in the transportation of crude oil or petroleum or the products thereof, for hire or otherwise, to be common carriers and public utilities and subject to the provisions of the act known as the public utilities act of the state of California, approved December 23, 1911.

History: Approved June 4, 1913. In effect August 10, 1913. Stats. 1913, p. 657.

Companies owning, etc., oil pipe lines declared common carriers.

§ 1. Every private corporation and every individual or association of individuals:

(a) Owning, operating, managing or controlling any pipe line or any part of any pipe line, plant or equipment within the state of California for the transportation of crude oil or petroleum or the products thereof, either directly or indirectly, to or for the public, for hire, compensation or consideration of any kind, paid, given, extended or received, directly or indirectly, for such transportation, or engaged, directly or indirectly, in the business of so transporting the same; or

(b) Owning, operating, managing or controlling any pipe line or any part of any pipe line, plant or equipment for the transportation of crude oil, petroleum or the products thereof, directly or indirectly, to or for the public, for hire, compensation or consideration of any kind, paid or received, directly or indirectly, for such transportation, and which said pipe line, plant or equipment is constructed or maintained upon, along, over or under any public highway, and in favor of whom the right of eminent domain exists; or

(c) Owning, operating, managing or controlling, directly or indirectly, any pipe line or pipe lines, or any part of any pipe line or pipe lines, plant or equipment, or any pipe line system or any part thereof, for the transportation, directly or indirectly, to or for the public for hire or otherwise, of crude oil, petroleum or products thereof, and which said pipe line, or pipe lines, or plant or equipment, or system, is, or are, constructed, operated or maintained across, upon, along, over or under the right of way of any railroad corporation or other common carrier required by law to transport crude oil, petroleum or products thereof as a common carrier; or

(d) Owning, using, operating, managing or controlling, directly or indirectly, or participating in the ownership, use, operation, management or control, directly or indirectly, under lease, contract of purchase, agreement to buy and sell, or other contractual or tacit agreement or arrangement of any kind or character whatsoever, of any pipe line, or pipe lines, or any part of any pipe line, or pipe lines, plant or equipment, or pipe line system, or any part of any pipe line system, for the transportation of crude oil, petroleum or the products thereof, of and from, or of, or from any oil field or place of production within the state of California, to any distributing, refining, or marketing center or reshipping point therefor within said state, whereby, or under, or through which, directly or indirectly, such corporation, or any corporation or association of corporations, or individual, or association of individuals secures, or is enabled to secure, or attempts to secure, or tends to secure, the control of, or monopoly of the purchasing of, or the control of, or monopoly of the transportation of such crude oil, petroleum or the products thereof;

Is hereby declared to be a common carrier and subject to the provisions of the act known as the "Public Utilities Act," approved December 23, 1911.

Companies engaging in transportation of crude oil, etc., declared common carriers.

§ 2. Every corporation organized and existing under the laws of the state of California or under the laws of any other state to transport, or to engage in the business of transporting, within the state of California, any crude oil, petroleum or the products thereof, or for the purpose of acquiring, constructing, leasing, owning, maintaining or operating, directly or indirectly, or of controlling or participating in the control of any pipe line or pipe lines with pumping station or stations, or other appurtenant equipment or plant constructed and maintained, or to be constructed or maintained for the transportation of crude oil, petroleum or the products thereof, actually engaged or engaging in such operation or transportation, directly or indirectly, or shares, directly or indirectly, in the business of such operation or transportation, is hereby declared to be a common carrier and subject to the provisions of the "Public Utilities Act" of the state of California, approved December 23, 1911.

Pipe lines declared public utilities.

§ 3. Any pipe line constructed, acquired, owned, operated, maintained, managed or controlled by any private corporation or individual or association of individuals for any of the purposes or under any of the conditions specified in section 1 or section 2 of this act, is hereby declared to be a public utility and subject to the provisions of the "Public Utilities Act" of the state of California, approved December 23, 1911.

Constitutionality of act.

§ 4. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection, sentence [,] clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Not applicable to certain companies.

§ 5. The provisions of this act are not to be construed as applying to any corporation, individual or association of individuals where the nature and extent of their business is such that the public needs no use in the same, and the conduct of the same is not a matter of public consequence.

1. Constitutionality—Due process of law.

—Subdivision (d) of section 1, and section 2, of the act of 1913, p. 657 (c. 327), except perhaps, as to corporations acquiring pipe lines after the passage of the act, are unconstitutional, as in violation of the fourteenth amendment of the federal constitution, in that they contemplate the taking of private property without provision for compensation and without due process of law. —Associated, etc., Co. v. Railroad Commission, 176 Cal. 518, 530, 169 Pac. 62, L. R. A. 1918C, 8.

2. Same—Same.—The provisions of statutes 1913, chapter 327, p. 657, declaring certain pipe lines to be public utilities, and subject to the provisions of the public utilities act, apply only to pipe lines engaged in the transportation of oil for the public. —Associated, etc., Co. v. Railroad Commission, 176 Cal. 518, 520, 169 Pac. 62, L. R. A. 1918C, 8.

3. Same—Same—Taking of private property for public use without compensation.—Neither by the constitutional provision (§ 23,

Art. XII) nor by this act can the state subject private property to a public use, nor confer authority upon the railroad commission to assume control of private pipe lines engaged in the transportation of crude oil. —Producers' Transportation Co. v. Railroad Commission, 176 Cal. 499, 169 Pac. 59.

4. Same—Same—Same.—Where a pipe line was constructed solely to carry oil for particular producers under strictly private contracts, and never was devoted by its owner to public use, the state could not by mere legislative fiat or by any regulating order of a commission convert it into a public utility or make its owner a common carrier, for that would be taking private property for public use without just compensation, in violation of the due process clause of the constitution. —Producers' Transportation Co. v. Railroad Commission, 251 U. S. 229, 64 L. ed. 239, 40 Sup. Ct. 131.

Sustaining: S. C. 176 Cal. 499, 169 Pac. 59.

5. Same—Same—Same.—A common carrier can not, by making contracts for future transportation, or by mortgaging its

property or pledging its income prevent or postpone the exertion by the state of the power to regulate the carrier's rates and practices.—Producers' Transportation Co. v. Railroad Commission, 251 U. S. 229, 64 L. ed. 239, 40 Sup. Ct. 131.

6. Same—Same—Same.—Neither by act of the legislature nor by declaration of the state constitution can private property be taken for a public use without compensation therefor.—Producers' Transportation Co. v. Railroad Commission, 176 Cal. 499, 169 Pac. 59; Associated, etc., Co. v. Railroad Commission, 176 Cal. 518, L. R. A. 1918C, 849, 169 Pac. 62. See, also, Del Mar Water Co. v. Eshleman, 167 Cal. 666, 140 Pac. 591, 948.

7. Same—Same.—Where the owner of property voluntarily devotes it to public use, he in effect grants to the public an interest in such use, and to the extent of the interest so devoted to the public the public may insist upon a voice in the control and regulation thereof.—Producers' Transportation Co. v. Railroad Commission, 176 Cal. 499, 169 Pac. 59.

8. Same — Same.—Case distinguished: United States v. Ohio Oil Co., 234 U. S. 548, 34 Sup. Ct. 956, 58 L. ed. 1459; Associated, etc., Co. v. Railroad Commission, 176 Cal. 518, L. R. A. 1918C, 849, 169 Pac. 62.

8a. Same—Same.—Where a pipe line company made no irrevocable dedication of its property to public use, as by the exercise of the right of eminent domain, it must be shown that it became a common carrier by voluntarily devoting the facilities of their pipe line to the indiscriminate use of the public for hire.—Associated, etc., Co. v. Railroad Commission, 176 Cal. 518, L. R. A. 1918C, 849, 169 Pac. 62.

9. Same—Same.—It is not the ipse dixit of the law, but the fact that property has been voluntarily devoted to a public use that justifies the control assumed by the Railroad Commission.—Producers' Transportation Co. v. Railroad Commission, 176 Cal. 499, 169 Pac. 59.

10. Same—Same.—The petitioner in the

present case held to have dedicated its property to the public use of crude oil transportation.—Producers' Transportation Co. v. Railroad Commission, 176 Cal. 499, 169 Pac. 59.

11. Same—Same.—The petitioner in the present case held to be engaged in a purely private enterprise and not to have dedicated its property to a public use.—Associated, etc., Co. v. Railroad Commission, 176 Cal. 518, L. R. A. 1918C, 849, 169 Pac. 62.

12. Same—Same—Exercise of right of eminent domain.—The fact that petitioner exercised the right of eminent domain in condemning a right of way for its pipe line is deemed conclusive evidence of dedication to public use, for otherwise no such right would exist.—Producers' Transportation Co. v. Railroad Commission, 176 Cal. 499, 169 Pac. 59.

13. Jurisdiction of railroad commission to determine question of public use.—The act contains no provision specifically conferring jurisdiction upon the commission to determine the question of a public use, but section 60 gives the commission jurisdiction to determine the existence of the facts which confer jurisdiction.—Producers' Transportation Co. v. Railroad Commission, 176 Cal. 499, 169 Pac. 59.

14. Same.—The commission has no power to declare what shall constitute a public utility.—Associated, etc., Co. v. Railroad Commission, 176 Cal. 518, L. R. A. 1918C, 849, 169 Pac. 62.

15. Construction.—The act applies only to pipe lines transporting crude oil and its products to or for the public for hire.—Associated, etc., Co. v. Railroad Commission, 176 Cal. 518, L. R. A. 1918C, 849, 169 Pac. 62.

16. Same—"Common carrier."—One who offers to carry goods for any person between certain termini and who is bound to carry all who tender their goods and the price of carriage is a "common carrier."—Associated, etc., Co. v. Railroad Commission, 176 Cal. 518, L. R. A. 1918C, 849, 169 Pac. 62.

PIPE LINES—LICENSE ACT.

ACT 3779a—An act to require private corporations, individuals or association of individuals to procure licenses to permit them to continue to maintain pipe lines already constructed for the transportation of crude oil, petroleum or any of the products thereof, for any distance whatsoever across, along, over or under any public highway or public road, which are intended to be used in whole or in part for such purpose for an aggregate distance of thirty-five or more miles, continuously or otherwise, and which pipe lines are operated other than as common carriers; and prohibiting the construction of any more such lines for such purposes for any distance whatsoever across, along, over or under any public highway or any public road; and providing for the issuance of such licenses; and fixing fees to be paid for and under such licenses, and establishing liens to secure same; and fixing penalties for violations of this act; and authorizing certain proceedings by and before the railroad commission in connection therewith; and authorizing certain court proceedings in connection therewith.

History: Approved June 4, 1913. In effect August 10, 1913. Stats. 1913, p. 532.

Oil pipe lines required to secure license to continue operating.

§ 1. Every private corporation, individual or association of individuals owning, operating, managing or controlling, either directly or indirectly, or participating, either directly or indirectly, in the ownership, operation, management or control of any pipe line or pipe lines, or any part of any pipe line or pipe lines, plant or equipment for the transportation of crude oil or petroleum or of any of the products thereof, or engaged, either directly or indirectly in the business of transporting by pipe line or pipe lines, in whole or in part, continuously or otherwise, crude oil or petroleum or any of the products thereof from producing points or from points at, in or near any oil field or oil fields to any refinery or refineries, or to any distributing point or points, or to any marketing point or points, or to the vicinity of any thereof for an aggregate distance of thirty-five or more miles, within the state of California, otherwise than as a common carrier, and which said pipe line or pipe lines, or any part thereof, or of such plant or equipment is constructed or maintained for any distance whatsoever across, along, over or under any public highway or public road within the state of California, is hereby required within twenty days after this act goes into effect and before thereafter continuing or commencing to so transport, or to so engage in the business of transporting crude oil, petroleum or any of the products thereof through any part of such pipe line or pipe lines for any distance whatsoever across, along, over or under any public highway or public road, to procure a license from the secretary of state as hereinafter provided, permitting it, him or them to continue, or to commence and continue, to transport and engage in the business of transporting crude oil, petroleum or any of the products thereof through such part or parts of such pipe line or pipe lines as is or are constructed or maintained for any distance whatsoever across, along, over or under any public highway or public road.

Secretary of state may issue license. Fee.

§ 2. The secretary of state is hereby authorized to issue licenses permitting private corporations, individuals or association of individuals to continue to own, operate, manage or control any pipe line or pipe lines already constructed and now being maintained for the transportation of crude oil, petroleum or any of its products, otherwise than as a common carrier across, along, over or under any public highway or public road within this state, to the extent only to which such pipe line or pipe lines is or are now already so constructed, operated and maintained, upon payment of a fee of two hundred and fifty dollars (\$250.00) for each separate pipe line so already constructed

and maintained for any distance whatsoever across, along, over or under any public highway or public road for such length of time only as such licensee shall comply with all the provisions of this act and of any and every other act which may hereafter be enacted in relation to this subject by the legislature of California; provided, further, that the fees hereinafter required to be paid for such permit may hereafter be increased or diminished at any time as the legislature may determine.

Future construction limited to common carriers.

§ 3. The construction hereafter of any pipe line or pipe lines intended for the transportation of crude oil, petroleum or any of its products, otherwise than as a common carrier for an aggregate distance of thirty-five or more miles within this state, continuously or otherwise, by means of such pipe line or pipe lines, in whole or in part, for any distance whatsoever, across, along, over or under any public highway or public road within this state is declared to be contrary to public policy and is hereby expressly prohibited.

Application for license.

§ 4. The license herein provided for shall not be issued by the secretary of state unless and until a written application therefor shall first be filed with him by the private corporation, individual or association of individuals desiring to procure the same, which shall describe in a general way the pipe line or pipe lines for the maintenance and operation of which such license is desired, stating the terminal points of such pipe line or pipe lines and the county and counties through which the same is or are constructed and maintained, and the number of miles thereof in each of such counties, and as nearly as may be the point and points at which such pipe line or pipe lines is or are constructed and maintained across, along, over or under any public highway or public road and the approximate distance thereof in each instance, and which written application shall also set forth the name of the private corporation, individual or association of individuals owning, operating, managing or controlling, either directly or indirectly, such pipe line or pipe lines and each and every part thereof. And such license when issued shall describe such pipe line or pipe lines as described in such application.

Monthly report of oil carried. Subscribed by licensee. Fee, fifty cents per barrel.

§ 5. Every private corporation, individual or association of individuals required to procure the license hereinbefore provided for shall file with the railroad commission of the state of California on or before the tenth day of each calendar month, including and following the second calendar month after this act goes into effect, and in such form as said railroad commission shall require, a full, true and correct report showing the number of barrels (42 gallons to the barrel) of crude oil, petroleum or any of the products thereof which were transported through each and every such pipe line so constructed, operated or maintained for any distance whatsoever across, along, over or under any public highway or any public road within this state during the preceding calendar month. Such report shall be subscribed by such licensee or by its, his or their agent duly appointed in writing for such purpose and shall be accompanied by the affidavit of such subscriber stating in substance and effect that he knows the contents thereof, and that he has had free access to the books and vouchers of such licensee relating to the same for the purpose of determining the truth of the statements contained therein, and that such statements, and each and all thereof, are true according to his best information and belief. Said railroad commission shall examine said report and if it shall have no reason to doubt the correctness of the same, shall, within not less than ten days thereafter, certify it to the secretary of state, and thereupon there shall immediately become due and payable to the people of the

state of California at the office of, and through, the secretary of state, the sum of fifty cents (\$.50) for each such barrel of crude oil, petroleum or any of the products thereof so transported through such pipe line or pipe lines for any distance whatsoever across, along, over or under such public highway or public road. The delivery of such certified report by the railroad commission to the secretary of state shall be deemed notice as of the date of such filing, to said licensee of the amount due as a license fee for such calendar month under the provisions of this act.

Railroad commission may examine into correctness of report. Revocation of license.

§ 6. Whenever the railroad commission shall entertain any doubt of the correctness of such report so filed with it, said railroad commission may subpoena the subscriber of such report and require him to bring before said commission the books and vouchers from which he secured the information set forth in said report, and may examine him under oath, and may subpoena such other witnesses and hear such other testimony in relation to such matter as it deems competent, material and relevant, and shall proceed summarily in the matter and determine the true and correct number of such barrels of crude oil, petroleum or any of the products thereof which were so transported by said licensee through such pipe line so constructed, operated or maintained for any distance whatsoever across, along, over or under any public highway or public road within this state, and shall thereupon certify to the secretary of state its finding of the number of such barrels, and thereupon there shall immediately become due and payable to the people of the state of California at the office of and through the secretary of state, the sum of fifty cents (\$.50) for each such barrel of such crude oil, petroleum or any of the products thereof so transported. The delivery of such certified finding by the railroad commission to the secretary of state shall be deemed notice as of the date of such filing to said licensee of the amount due as a license fee under the provisions of this act. The railroad commission may revoke the license of such licensee if, upon such hearing, it finds that any material statement contained in said sworn report is false and that such falsity was known to such licensee at the time such report was filed with said railroad commission, or that said licensee had reason to believe at such time that such report was false, or that such licensee wilfully aided or abetted the making of such false report, either directly or indirectly, in any manner whatsoever, and said railroad commission may thereupon refuse to authorize the secretary of state to renew any such license, or to issue a new one to any private corporation, individual or association of individuals whose license has thus been revoked, within one year from the time same was revoked.

Penalty.

§ 7. Every individual and every member of any association of individuals, and every officer, agent, attorney or employee of any private corporation, who knowingly and wilfully violates or fails to comply with, or who knowingly and wilfully aids and abets any violation of any provision of this act, or who knowingly and wilfully fails to observe, obey or comply with any order, decision, rule, direction, demand or requirement, or any part or provision thereof, of the said railroad commission, or who knowingly or wilfully procures, aids or abets any failure to observe, obey and comply therewith, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Action against companies failing to take out license. Service of petition. Final judgment. Appeal.

§ 8. Whenever the railroad commission shall entertain the belief that any private corporation, individual or association of individuals required by the provisions of this

act to procure the aforesaid license, is transporting crude oil, petroleum or any of the products thereof, for any distance whatsoever, through any pipe line now constructed and maintained across, along, over or under any public highway or public road within this state without having procured the license herein provided for, or has or is about to construct any pipe line for the transportation of crude oil, petroleum or any of the products thereof for any distance whatsoever across, along, over or under any public highway or any public road within this state, it shall direct the attorney of the commission to commence an action or proceeding in the superior court in and for the county, or city and county, in which such pipe line or any part thereof is so constructed or maintained, or has been or is about to be so constructed, for any distance whatsoever, across, along, over or under any public highway or public road, or in the superior court in and for the county, or city and county, in which the private corporation, individual or association of individuals so transporting or threatening to construct a pipe line or pipe lines for the purpose of transporting crude oil, petroleum or any of the products thereof, maintain or maintains its, his or their principal place of business, and said action or proceeding shall be brought in the name of the people of the state of California for the purpose of having such violation or threatened violation of the provisions of this act stopped and prevented by mandamus, injunction or other appropriate remedy, and for the purpose of recovering a judgment for such damages as may have been incurred by the people of the state of California for such violation or threatened violation of the provisions of this act. It shall thereupon become the duty of the court to specify a time not exceeding twenty days after the service of the copy of the petition in which the private corporation, individual or association of individuals complained of must answer such petition, and in the meantime, said private corporation, individual or association of individuals may be restrained by said court from continuing such violation or threatened violation of any of the provisions of this act. In case of default in the answer, or after the answer has been filed by such defendant or defendants, the court shall immediately hear and determine the case. Such private corporation or individuals as the court may deem necessary or proper in order to make its judgment order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction issue or be made perpetual as prayed for in the petition, or in such modified or other form as will give appropriate relief. An appeal may be taken to the supreme court from such final judgment in the same manner and with the same effect, subject to the provisions of this act, as appeals are taken from the judgments of the superior court in other cases involving mandamus or injunction.

Failure to pay license fees.

§ 9. Any failure on the part of any licensee to pay within twenty days after the same becomes due, the license fees or any portion thereof as required by and provided in the provisions of this act, shall operate to forfeit, ipso facto, such license, and to deprive such licensee of the right to continue to transport any crude oil, petroleum or any of the products thereof through any part of any such pipe line or pipe lines for any distance whatsoever across, along, over or under any public highway or public road.

License fee lien on pipe line.

§ 10. The license fee, and each installment thereof, in this act provided for, upon the same becoming due, as herein provided, is hereby declared to be a lien upon the whole of the pipe line or pipe lines and plant and equipment used in connection therewith of which that part of such pipe line, for the privilege of maintaining and operating which said license is procured, is a part as described in the application for such

license, from the time that such license fee, and each installment thereof, becomes due and payable; and such lien shall be enforceable in the same way that tax liens in the state of California are enforceable, and by the same procedure in so far as the same is or can be made applicable hereto.

Licensee exempt from monthly fees.

§ 11. Any and every licensee under this act who pays a license fee of not less than fifty cents (\$.50) per barrel of forty-two gallons each to the state of California under any other law of this state for the privilege of transporting or of engaging, either directly or indirectly, in the business of transporting crude oil, petroleum or any of the products thereof through a pipe line or pipe lines, is hereby exempted and relieved from the payment of the monthly license fees herein provided for by this act.

Constitutionality of act.

§ 12. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

PIPE LINE COMBINATIONS.

ACT 3780—An act to declare certain contracts, combinations, arrangements and conspiracies between common carrier railroads and pipe lines for the transportation of crude oil, and pipe lines constructed for the transportation of crude oil, petroleum or the products thereof, to be in restraint of trade and unfair practices, contrary to public policy as tending to monopoly, and requiring such pipe lines to either become common carriers and public utilities or to procure license and pay fees, and fixing penalties for violations, and authorizing certain court proceedings.

History: Approved June 4, 1913. In effect August 10, 1913. Stats. 1913, p. 523.

Certain contracts between oil pipe lines and railroads declared illegal.

§ 1. Any and every contract, combination in form of trust or otherwise, or arrangement of any kind, implied, tacit or otherwise, or conspiracy between a common carrier railroad which is equipped for the transportation of crude oil, petroleum or the products thereof, or which has filed, or may lawfully be required to file, a schedule of rates with the railroad commission of California for such transportation, and which operates from or through any crude oil or petroleum producing field or fields or shipping points in the vicinity of any thereof, in the state of California, for a distance of thirty-five miles or more in the aggregate, either continuously or otherwise, to any refinery or refineries of crude oil or petroleum or any of the products thereof, or to or through any selling, marketing, consuming or shipping points or the vicinity of any thereof, for such crude oil or petroleum or any of the products thereof, and any oil pipe line which is used or operated for the transportation of crude oil or petroleum or any of the products thereof, otherwise than as a common carrier, from or through the same, or any of the same oil or petroleum producing fields or shipping points or from the vicinity of any thereof, for a distance of thirty-five miles or more in the aggregate, either continuously or otherwise, and to or through the same, or any of the same refining, selling, marketing or reshipping points or the vicinity of any thereof, and which last mentioned transportation is accomplished in whole or in part by such oil pipe line, and whereby such oil pipe line secures, or is enabled to secure, or attempts to secure, or tends to secure any unreasonable control or monopoly of the purchase, sale or transportation of such crude oil, petroleum or any of the products thereof, or is enabled to secure, or attempts to secure any unreasonable restraint on or over com-

petition or trade in the purchase, sale or transportation of such crude oil, petroleum or of any of the products thereof, is hereby declared to be illegal.

Facts upon which courts must declare contracts in unreasonable restraint of trade.

§ 2. In any and every action or proceeding under this act, whenever it shall appear to the court that any contract, combination, arrangement or conspiracy such as is described in section 1 hereof, exists, or that at the time of the commencement of such action or proceeding it did exist; and it further appears to such court that such oil pipe line is constructed, in whole or in part, upon, over, under or along the right of way of such common carrier railroad, continuously or otherwise, for a distance of five or more miles in the aggregate, with the permission, allowance or consent, actual, implied or otherwise, of such common carrier railroad, and that said oil pipe line is owned or controlled, either directly or indirectly, by said common carrier railroad, or that such oil pipe line and such common carrier railroad have any common or interlocking owner or owners, or director or directors; and it further appears that said oil pipe line is engaged in the business of purchasing, transporting and reselling such crude oil, petroleum or any thereof, or any of the products thereof, or of purchasing and transporting the same, or any thereof, or of purchasing, transporting and refining the same, or any thereof, for sale, or of producing, transporting and reselling the same, or any thereof, or of producing, transporting and refining the same for sale from its own or leased ground, or otherwise, or of producing and transporting the same or any thereof; and it further appears that the schedule of rates, or any of them, for the transportation of such crude oil, petroleum or any of the products thereof, filed by said common carrier railroad with the railroad commission of California, or that the rates, or any of them, published, fixed or charged by such common carrier railroad for such transportation of the same, or any of the same, are sufficiently high as compared with the actual cost of transportation between the same, or approximately or practically the same initial shipping, and the refining, selling, marketing, reshipping or terminal points, by such oil pipe line, as to tend to prevent the transportation of such crude oil, petroleum or any of the products thereof, over or upon such common carrier railroad, or to tend to prevent competition in such transportation between such common carrier railroad and such oil pipe line, or to restrain such competition, or to tend to restrain competition among the producers of such crude oil, petroleum or any of the products thereof in the sale thereof, or of any of the same, or to tend to enable such oil pipe line, either alone or in conjunction with other oil pipe lines, to restrain competition in the sale or the purchase of such crude oil, petroleum or the products thereof, either among the producers or the consumers thereof, or to tend to enable such oil pipe line, either alone or in conjunction with other pipe lines, to secure the control or the monopoly of the purchase of such crude oil, petroleum or the products thereof, or to fix the selling price of any thereof at the oil fields or points of production of the same, or at the shipping points or at the vicinity of any thereof, or to secure the control or the monopoly of the transportation of such crude oil, petroleum or the products thereof from such oil fields or points of production, or from the shipping points or from the vicinity of any thereof, to such refining, selling or marketing points, or any thereof, then such contract, combination, arrangement or conspiracy is hereby declared to be an unfair practice, contrary to the public policy of the state of California, and the same shall and must be deemed by such court in all such actions or proceedings to be an unreasonable contract, combination, arrangement or conspiracy, in restraint of trade, and an unreasonable control or monopoly of the purchase, sale or transportation of such crude oil, petroleum or some of the products thereof, and an unreasonable restraint on or over competition and trade in the purchase, sale or transportation of such crude oil, petroleum or some of the products thereof, and the same shall and must be deemed illegal.

Facts upon which courts must declare contracts in unreasonable restraint of trade.

§ 3. In any and every action or proceeding under this act, whenever it shall appear to the court that any contract, combination, arrangement or conspiracy such as is described in section 1 hereof, exists, or that at the time of the commencement of such action or proceeding it did exist, and it further appears to such court, that such oil pipe line is constructed, in whole or in part, upon, over, under or along the right of way of such common carrier railroad, continuously or otherwise, for a distance of five or more miles in the aggregate, with the permission, allowance or consent, actual, implied or otherwise, of such common carrier railroad, and it appears that said oil pipe line is engaged in the business of purchasing, transporting and reselling such crude oil, petroleum or any thereof, or any of the products thereof, or of purchasing and transporting the same, or any thereof, or of purchasing, transporting and refining the same, or any thereof, for sale, or of producing, transporting and reselling the same, or any thereof, or of producing, transporting and refining the same for sale from its own or leased ground, or otherwise, or of producing and transporting the same, or any thereof; and it further appears that the schedule of rates, or any of them, for the transportation of such crude oil, petroleum or any of the products thereof, filed by said common carrier railroad with the railroad commission of California, or that the rates, or any of them, published, fixed or charged by such common carrier railroad for such transportation of the same, or any of the same, are sufficiently high as compared with the actual cost of transportation between the same, or approximately or practically the same initial shipping, and the refining, selling, marketing, reshipping or terminal points, by such oil pipe line, as to tend to prevent the transportation of such crude oil, petroleum or any of the products thereof, over or upon such common carrier railroad, or to tend to prevent competition in such transportation between such common carrier railroad and such oil pipe line, or to restrain such competition, or to tend to restrain competition among the producers of such crude oil, petroleum or any of the products thereof in the sale thereof, or of any of the same, or to tend to enable such oil pipe line, either alone or in conjunction with other oil pipe lines, to restrain competition in the sale or the purchase of such crude oil, petroleum, or the products thereof, either among the producers or the consumers thereof, or to tend to enable such oil pipe line, either alone or in conjunction with other pipe lines, to secure the competition in the sale or the purchase of such crude oil, petroleum or the products thereof, or to fix the selling price of any thereof at the oil fields or points of production of the same, or at the shipping points or at the vicinity of any thereof, or to secure the control or the monopoly of the transportation of such crude oil, petroleum or the products thereof from such oil fields or points of production, or from the shipping points or from the vicinity of any thereof, to such refining, selling or marketing points, or any thereof, then such contract, combination, arrangement or conspiracy is hereby declared to be an unfair practice, contrary to the public policy of the state of California, and the same shall and must be deemed by such court in all such actions or proceedings to be an unreasonable contract, combination, arrangement or conspiracy, in restraint of trade, and an unreasonable control or monopoly of the purchase, sale, or transportation of such crude oil, petroleum or some of the products thereof, and an unreasonable restraint on or over competition and trade in the purchase, sale or transportation of such crude oil, petroleum or some of the products thereof, and the same shall and must be deemed illegal.

"Unreasonable" defined.

§ 4. The term "unreasonable" wherever used in this act means where the nature and extent of the control or restraint is such that the matter becomes of public consequence or is injurious to the public welfare, or where the nature and extent of the

business is such that the public needs some use in the same, and the control or restraint so exercised prevents, obstructs or in any wise hinders such use.

Penalty.

§ 5. Every person who shall hereafter make any such contract or arrangement or engage in any such combination or conspiracy, or shall hereafter continue to execute any such contract or arrangement, or to do or perform any act in furtherance of any such combination or conspiracy without having first procured the license hereinafter provided for, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

Jurisdiction in superior courts. Proceedings in equity. Temporary restraining order.

§ 6. The several superior courts of the state of California are hereby vested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the counties and of the cities and counties of the state of California in their respective counties and in their respective cities and counties, under the direction of the attorney general of the state of California, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited, and may be brought in any county or city and county in which the defendant or any one of the defendants resides, or in which such unlawful act or any overt act in pursuance of such unlawful contract, combination, arrangement or conspiracy was committed, or in which the defendant or any one of the defendants has his or its principal place of business. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Person injured may recover damages.

§ 7. Any person who shall be injured in his business or property by any other person or corporation or association of persons by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any superior court of the state of California in the county, or in the city and county, in which the defendant or any one of the defendants resides, or in which such unlawful act, or any overt act in pursuance of such unlawful contract, combination or conspiracy was committed, or in which the defendant, or any one of the defendants, has his or its principal place of business, and such petitioner shall recover threefold the damages by him sustained and the costs of suit, including a reasonable attorney's fee.

"Person" defined.

§ 8. That the word "person" wherever used in this act shall be deemed to include corporations and associations existing under, or authorized by the laws of either the United States or the state of California, or any of the territories, or of any state or of any foreign country.

"Common carrier railroad" defined.

§ 9. That the words "common carrier railroad" wherever used in this act, when the context so permits, shall be deemed to include any corporation, individual or association of individuals, either directly or indirectly owning, operating, managing or controlling, or participating, either directly or indirectly in the ownership, operation, management or control of any railroad which is operated as a common carrier within the state of California, or of any such railroad, any part of which is operated in the state of California; and the singular includes the plural.

"Oil pipe line" defined.

§ 10. That the words "oil pipe line" wherever used in this act, when the context so permits, shall be deemed to include any private corporation, individual or association of individuals, either directly or indirectly owning, operating, managing or controlling any pipe line or any part of any pipe line for the transportation of crude oil, petroleum or any of the products thereof, or participating, either directly or indirectly, in the ownership, operation, management or control of any such pipe line, or of any part of any such pipe line; and the singular includes the plural.

Term "oil pipe line" includes what instrumentalities.

§ 11. That the term "oil pipe line" wherever used in this act, when the context so permits, also includes all of the instrumentalities by which crude oil, petroleum or any of the products thereof is transported by or through pipe lines, in whole or in part.

Oil pipe lines adjudged illegal may resume operation on complying with certain conditions. License from secretary of state.

§ 12. Any and every oil pipe line used or operated or which is or has been used or operated for the transportation of crude oil or petroleum or any of the products thereof, not as a common carrier, under the conditions which are declared to be illegal by section 2 of this act, or under the conditions which are declared to be illegal by section 3 of this act, shall and must, before such use or operation is continued, and within thirty days after this act goes into effect, either file with the railroad commission of the state of California its written consent to transport crude oil, petroleum or the products thereof for hire and to and for the public and as a common carrier and public utility, together with a schedule of rates for the transportation of crude oil, petroleum and the products thereof as a common carrier and a public utility, in accordance with the provisions of the act known as the "Public Utilities Act" of the state of California, approved December 23, 1911; or failing to file such written consent to become a common carrier and public utility, together with such schedule of rates with said railroad commission, such oil pipe line must, on or before the time herein specified for such filing, either cease to continue to so operate or to so transport crude oil, petroleum or any of its products otherwise than as a common carrier; or must file with the said railroad commission an application in writing for permission to procure a license from the secretary of state permitting it to continue to so operate and to so transport crude oil, petroleum and the products thereof otherwise than as a common carrier and under the conditions prohibited by section 2 or section 3 of this act, as the case may be; and its failure to comply with any of the provisions of this section of this act shall subject it to the penalty and punishment provided by section 5 of this act, and to the liabilities provided by any and every of the other sections of this act. But nothing contained in this act shall be construed to authorize or permit any contract, combination in form of trust or otherwise, or arrangement of any kind, implied, tacit or otherwise, or conspiracy such as is denounced or prohibited by sections 1, 2 and 3 of this act, or any of such sections, to be hereafter made or entered into, or if so hereafter unlawfully made or entered into, to permit the same, or any of the same, to be executed or performed under a license, or otherwise, or at all.

Facts set forth in application.

§ 13. The application by such oil pipe line for a permit to procure a license as provided for in section 12 of this act, to permit it to continue to transport crude oil, petroleum or any of its products so as aforesaid, otherwise than as a common carrier, shall describe in a general way the oil pipe line for the continued maintenance and operation of which such license is desired, stating the terminal points of such oil pipe line and the county and counties through which the same is constructed and main-

tained, and the aggregate number of miles thereof in each of such counties, and as nearly as may be, the places at which such oil pipe line is constructed or maintained over and along the right of way of such common carrier railroad, and the approximate distance thereof at each of such places, and such application shall also set forth the name of the private corporation, individual or association of individuals owning, operating, managing or controlling, either directly or indirectly, such oil pipe line and each and every part thereof.

Authority of secretary of state to issue license.

§ 14. The railroad commission may authorize in writing the secretary of state to issue a license to such oil pipe line; and the license when so issued by the secretary of state shall describe such oil pipe line as the same is described in such application so filed with said railroad commission. At the time of procuring such license, the sum of two hundred fifty dollars (\$250) must be paid to the secretary of state by such licensee.

Monthly report of oil transported. Fifty cents per barrel due state.

§ 15. Every oil pipe line required to procure the license hereinbefore provided for shall file with the railroad commission of the state of California on or before the tenth day of each calendar month, including and following the second calendar month after this act goes into effect, and in such form as said railroad commission shall require, a full, true and correct report showing the number of barrels (42 gallons to the barrel) of crude oil, petroleum or any of the products thereof which were transported through such pipe line, or any part thereof, during the preceding calendar month. Such report shall be subscribed by such licensee or by its, his or their agent duly appointed in writing for such purpose, and shall be accompanied by the affidavit of such subscriber stating in substance and effect that he knows the contents thereof, and that he has had free access to the books and vouchers of such licensee relating to the same for the purpose of determining the truth of the statements contained therein, and that such statements, and each and all thereof are true according to his best information and belief. Said railroad commission shall examine said sworn report, and if it shall have no reason to doubt the correctness of the same, shall, within not less than ten days thereafter, certify it to the secretary of state, and thereupon there shall immediately become due and payable to the people of the state of California at the office of the secretary of state, the sum of fifty cents (\$.50) for each such barrel of crude oil, petroleum or any of the products thereof so transported through such oil pipe line. The delivery of such certified report by the railroad commission to the secretary of state shall be deemed notice as of the date of such filing to said licensee of the amount due as a licensee fee for such calendar month, under the provisions of this act.

Railroad commission may examine witnesses, etc., as to correctness of report. Revocation of license.

§ 16. Whenever the railroad commission shall entertain any doubt of the correctness of such report so filed with it, said railroad commission may subpoena the subscriber of such sworn report, and require him to bring before the said commission the books and vouchers from which he secured the information set forth in said report, and may examine him under oath, and may subpoena such other witnesses and hear such other testimony in relation to such matter as it deems competent, material and relevant, and said commission shall proceed summarily in the matter and determine the true and correct number of such barrels of crude oil, petroleum or any of the products thereof which were so transported by such licensee through such oil pipe line, and shall thereupon certify to the secretary of state its finding of the number of such barrels, and thereupon there shall immediately become due and payable to the people of the state

of California, at the office of the secretary of state, the sum of fifty cents (\$.50) for each of such barrels of crude oil, petroleum or any of the products thereof so transported through such oil pipe line. The delivery of such certified finding by the railroad commission to the secretary of state shall be deemed notice as of the date of such filing to said licensee of the amount due from such licensee as a license fee under the provisions of this act. The railroad commission may revoke the license of such licensee if, upon such hearing, it finds that any material statement contained in such sworn report is false, and that such falsity was known to such licensee at the time such report was filed with said railroad commission, or that said licensee had reason to believe at such time that such report was false in any particular, or if it finds that such licensee wilfully aided or abetted the making of such false report, either directly or indirectly, in any manner whatsoever; and said railroad commission may thereupon direct the secretary of state to revoke such license and prohibit him from renewing the same and from issuing any new license to such oil pipe line within one year from the time the same was revoked.

Penalty.

§ 17. Every oil pipe line, and every agent, attorney or employee of the same who knowingly or wilfully violates or fails to comply with, or who knowingly or wilfully aids and abets any violation of any of the provisions of this act, or who knowingly and wilfully fails to observe, obey or comply with any order, decision, rule, direction, demand or requirement, or any part or provision thereof, of the said railroad commission, or who knowingly or wilfully procures, aids or abets any failure to observe, obey or comply therewith, is guilty of a misdemeanor and is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Failure to pay license fees.

§ 18. Any failure on the part of any licensee to pay within twenty (20) days after the same becomes due, the license fees or any portion thereof as required by and provided in the provisions of this act, shall operate to forfeit, ipso facto, such license, and to deprive such licensee of the right to continue to so transport, otherwise than as a common carrier, any crude oil, petroleum or any of the products thereof through such oil pipe line.

Fees due become lien on oil pipe line.

§ 19. The license fee, and each installment thereof, in this act provided for, upon the same becoming due, as herein provided, is hereby declared to be a lien upon the whole of the oil pipe line, for the privilege of maintaining and operating which said license is procured, as described in the application for such license, from the time that such license fee, and each installment thereof becomes due and payable; and such lien shall be enforceable in the same way that tax liens in the state of California are enforceable, and by the same procedure in so far as the same is or can be made applicable hereto.

Licensees exempt from monthly license fees.

§ 20. Any and every licensee under this act who pays a license fee of not less than fifty cents (\$.50) per barrel of forty-two (42) gallons each, to the state of California under any other law of this state for the privilege of transporting or of engaging, either directly or indirectly, in the business of transporting crude oil, petroleum or any of the products thereof through a pipe line or pipe lines, is hereby exempted and relieved from the payment of the monthly license fees herein provided for by this act.

Constitutionality of act.

§ 21. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

"FOOD WAREHOUSEMEN ACT."

ACT 3780a—An act defining "food commodities" and "food warehouseman"; declaring food warehousemen to be public utilities and subject to control and regulation by the railroad commission as specifically provided; prohibiting the storage of food commodities except in accordance with the provisions of this act; making unlawful certain discriminating and monopolizing practices by food warehousemen and those dealing with food warehousemen, except as provided by the railroad commission; requiring food warehousemen to file schedules showing certain rates, charges, and other matters with the railroad commission and to keep the same open to public inspection, and providing for the uniform operation of such rates and charges, and prohibiting the business of storing food commodities unless such schedules are filed and made public, and empowering the railroad commission to fix the rates, charges, rules and regulations of food warehousemen, to change the form of such schedules and forbidding, except as otherwise ordered by the railroad commission, changes in or departures from such schedules except on certain conditions, and forbidding acceptance of rates or charges differing from the rates or charges in such schedules by those dealing with food warehousemen, subject to exceptions by the railroad commission; declaring certain contracts illegal and void and forbidding recovery thereon; providing for applications and complaints and other procedure before the railroad commission and the courts in matters wherein authority is conferred by this act upon the commission; defining the duties of the attorney general upon the violation of certain provisions; providing for actions to enjoin violations of certain provisions and to recover damages for such violations; making the violation of certain provisions a misdemeanor; and providing penalties; and declaring the purpose and effect of this act.

History: Approved May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 314.

Title. "Food commodities."

§ 1. This act shall be known as the "food warehousemen act," and shall apply to the public utilities herein described. The term "food commodities" as used in this act shall be construed to mean all products, stuffs, preparations, substances, or articles which are customary or proper for food for human beings, and shall include meat and meat products, fruit, vegetables, fresh fish, shellfish, game, poultry, eggs, butter, cheese and milk.

Definitions. "Commission." "Corporation." "Person." "Food warehouseman."

§ 2. The term "commission" when used in this act means the railroad commission of the state of California. The term "commissioner" when used in this act means one of the members of the commission. The term "corporation" when used in this act, includes a corporation, a company, an association and a joint stock association. The term "person" when used in this act, includes an individual, a firm and a co-partnership. The term "food warehouseman" as used in this act shall be construed to mean and shall include every person, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever owning, controlling, operating, or man-

aging any building, structure, warehouse, elevator or plant in which food commodities, regularly received from the public generally, are stored for compensation, including cold storage plants and refrigerating plants, but not including private homes, hotels, restaurants or exclusively retail establishments or others not storing articles of food for other persons for compensation. Every person, or corporation controlling, operating, or managing any building, structure, warehouse, elevator, or plant as aforesaid, shall be deemed to be engaged in the storage of food commodities within the meaning of this act.

Food warehouses declared public utilities.

§ 3. Every food warehouseman doing business in the state of California is hereby declared to be a public utility, and subject to the jurisdiction, control and regulation of the railroad commission of the state of California as hereinafter in this act provided.

No food warehousemen shall engage in the storage of food commodities in the state of California, except in accordance with the provisions of this act.

Discrimination by warehousemen unlawful.

§ 4. It shall be unlawful for any food warehouseman, doing business in the state of California, to discriminate, attempt to discriminate between persons, firms or corporations offering food commodities for storage or desiring to avail themselves of the warehousing or storage facilities afforded by such food warehouseman; or to accept food commodities from any person, firm or corporation at rates or charges in excess of rates or charges exacted or received from other persons, firms or corporations for the same or substantially similar warehousing or storage service; or to grant, allow, or deduct from the rates or charges exacted or received for warehousing or storage service from any person, firm, or corporation any rebate, discount, deduction, concession, refund, or remittance not granted and allowed to all other persons, firms, or corporations under the same or substantially similar circumstances and conditions; or to make or give, or attempt to make or give, any preference or advantage to any person, firm or corporation not made or given to every other person, firm or corporation; or by any scheme of rebates, discounts, deductions, concessions, refunds, remittances, collateral contracts, discriminating charges, discriminating rates, or in the service or facilities afforded, or by any other device whatsoever, discriminate or show preference, or attempt to discriminate or show preference, between persons, firms, or corporations offering food commodities for storage; or by any of the practices or devices aforesaid to monopolize or attempt to monopolize, or combine, or conspire with others to monopolize in any locality the business of storing food commodities; and it shall likewise be unlawful for any person, firm or corporation to solicit, accept, receive or attempt to obtain from any food warehouseman any rebate, discount, deduction, concession, refund, or remittance, or to solicit, accept, receive, or attempt to obtain from any food warehouseman, any preference, or advantage, either in rates or charges, or in service or facilities afforded.

Power of commission.

The railroad commission shall have full power to determine any fact or question arising under this section and is empowered after hearing by appropriate order to enforce the provisions thereof, and may by rule or order established from time to time such exceptions from the operation of the prohibitions of this section as it may consider just and reasonable.

Schedule of rates to be filed. Permission of commission to change. Refunds prohibited.

§ 5. Every food warehouseman doing business in the state of California shall file with the railroad commission within such time and in such form as the commission may designate and shall also print and keep open to public inspection at each and every

building, structure, warehouse, elevator, or plant for the storing or warehousing of food commodities maintained by him in said state, schedules showing all rates and charges, which are in force for warehousing and storage services of every description, including sorting, handling, weighing, elevating, and packing charges, and all charges directly or indirectly connected with such services, together with all rules and regulations which in any manner affect or relate to rates or charges, and showing plainly when the same became effective, such rates to be uniform in their operation and to apply with equal force and effect to all persons, firms or corporations dealing with said food warehouseman. The railroad commission shall have power after hearing to fix and determine any such rate, charge, rule or regulation, and prescribe by order such changes in the form of the schedules referred to in this section as it may find to be just and reasonable. Unless the commission otherwise orders, no change shall be made by any food warehouseman in any rate or charge, or in any rules or regulations affecting rates or charges, except by permission of the railroad commission after thirty days notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open to public inspection, as aforesaid, new schedules stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes go into effect. The commission, for good cause shown, may allow changes without requiring the thirty days notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. No food warehouseman shall engage in the business of storing food commodities unless the rates and charges upon which the same are stored are filed and open to public inspection as aforesaid. No food warehouseman shall refund or remit in any manner or by any device, any portion of the rates or charges filed and open to public inspection as aforesaid, or demand, collect, or receive, directly or indirectly from any person, firm or corporation, any different sum for warehousing or storage services than the rates and charges filed and open to public inspection as aforesaid, or directly or indirectly make any charge for such services not shown by the schedule aforesaid; nor shall any person, firm, or corporation solicit, accept, receive, or attempt to obtain from any food warehouseman any rate or charge not filed and open to public inspection as aforesaid.

Power of commission.

The railroad commission shall have full power and jurisdiction to determine any fact or question arising under this section and is hereby empowered after hearing by appropriate order to enforce the provisions thereof and may by rule or order establish from time to time such exceptions from the operation of the prohibitions aforesaid, as it may consider just and reasonable.

Contracts in violation void.

§ 6. Every contract, expressed or implied, made by any person, firm or corporation in violation of the provisions of section four or section five of this act, is declared to be illegal and to be utterly void and no recovery thereon shall be had.

Procedure as specified in public utilities act.

§ 7. In all respects in which the railroad commission has power and authority under the provisions of section four or section five of this act, applications and complaints on the commissions on motion or otherwise may be made and filed with the railroad commission, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review or mandate filed with the supreme court of the state of California, considered and disposed of by said court, in the manner, under the conditions and subject to the limitations and with the effect specified in the public utilities act.

Action by attorney general to collect rebates, etc.

§ 8. The attorney general of the state of California is authorized and directed, whenever he has reasonable grounds to believe that any person, firm or corporation has knowingly accepted or received from any food warehouseman, directly or indirectly, any rebate, discount, deduction, concession, refund or remittance from the rates or charges filed and open to public inspection as in section five of this act required, to prosecute a civil action in the name of the people of the state of California in the proper court to collect three times the total sum of such rebates, discounts, deductions, concessions, refunds, or remittances so accepted or received within three years prior to the commencement of such action.

Action to enjoin violations.

§ 9. Any person, firm or corporation may maintain an action to enjoin a continuance of any act or acts in violation of section four or section five of this act, or of any order, rule or regulation of the railroad commission made or enacted by said commission pursuant to the power and authority vested in said commission by said sections of this act, and, if injured thereby, for the recovery of damages in an amount equal to three times the amount of actual damages sustained. If in such action, the court shall find that the defendant is violating section four or section five of this act, or any order, rule, or regulation of the railroad commission, made or enacted by said commission pursuant to the power and authority vested in said commission by said sections of this act, it shall enjoin the defendant from a continuance of such violation, and it shall not be necessary to allege or prove actual damage to plaintiff in addition thereto.

Penalty.

§ 10. Any person or persons, or corporation, who, or which shall violate section four or section five of this act, or any order, rule, or regulation of the railroad commission made or enacted by said commission pursuant to the power and authority vested in said commission by said sections of this act, or who shall procure, aid or abet any person, firm or corporation in any such violation, shall be guilty of a misdemeanor, and upon conviction thereof, shall, if a person, be punished by a fine of not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding six months or by both such fine and imprisonment, and, if a corporation, by a fine not exceeding three thousand dollars. In construing and enforcing the provisions of this act, the act, omission, or failure of any director, agent, employee, or other person acting for or employed by any person, firm or corporation, acting within the scope of his employment, shall in every case be also deemed to be the act, omission or failure of such person, firm, or corporation as well as that of such director, officer, agent, employee, or person.

Constitutionality.

§ 11. If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses, or phrases be declared unconstitutional.

Purpose of act.

§ 12. The legislature hereby declares that the purpose of this act is to safeguard the public against the creation and perpetuation of monopolies, and to foster and encourage competition, by prohibiting unfair and discriminating practices by which fair and honest competition is destroyed. The legislature hereby further declares that

food warehousemen, as defined in section two of this act, are engaged in a business, tending to monopoly, and that by reason of such monopolistic tendency and by reason of its vital connection with the distribution of public necessities, such business is clothed with a public interest and subject to public regulation and control for the public welfare as a public utility, as in this act provided. This act shall be liberally construed that its beneficial purpose may be subserved. The remedies herein prescribed are cumulative. If any conflict shall arise between this act and the public utilities act, the latter shall prevail.

CHAPTER 298.

PUBLIC WELFARE.

CONTENTS OF CHAPTER.

ACT 3781. COUNTY BOARDS OF PUBLIC WELFARE.

COUNTY BOARDS OF PUBLIC WELFARE.

ACT 3781—An act to provide county boards of public welfare and to refine the powers and duties thereof.

History: Approved May 4, 1915. In effect August 8, 1915. Stats. 1915, p. 339.

County boards of public welfare. Term of office.

§ 1. In each county, or city and county, except where county boards of public welfare or boards or officials with like powers as herein enumerated are otherwise provided under a county or a city and county charter, the board of supervisors may and, upon the petition of one hundred electors of the county, shall appoint seven persons, not more than four of whom shall be of the same sex, who shall constitute a county board of public welfare, to serve without compensation, one of whom, as indicated by the board of supervisors making the appointment, shall serve for one year, two for two years, two for three years, and two for four years, and upon the resignation or expiration of the term of each, his or her successor shall in like manner be appointed for the term of four years. Appointments to fill vacancies caused by death, resignation or removal, before the expiration of such terms shall be made for the residue of such terms in the same manner as the original appointment. No person shall be appointed or shall serve on such board who is in any manner officially connected with any charitable or correctional institution within the county supported wholly or partly at public expense.

§ 2. The persons appointed as members of the county board of public welfare, within one week after receiving the notice of their appointment, which the clerk of the board of supervisors is hereby required to give to each of such persons, shall appear before a judge of the superior court and qualify by taking oath faithfully to perform to the best of their ability the duties of members of the county board of public welfare, and within one month after receiving such notice shall meet and organize by electing a chairman and a secretary from their own number. The secretary shall file a report of such organization, signed by himself or herself, and by said chairman, with the clerk of the board of supervisors, for the information of the board of supervisors making such appointment, and shall send a copy of such report to the state board of charities and corrections.

Meetings. Rules. Inspection of certain institutions. Suggestions for improvement.

§ 3. The county board of public welfare shall meet quarterly and as much oftener as in their discretion may be necessary. They may make such rules for the regulation

of their own proceedings as they may deem proper. At least once each quarter and as much oftener as they may deem necessary they shall visit and inspect by the whole board or by a committee of their own members the county hospital, and the county infirmary or relief home for the aged, and the county jail, and they shall visit and inspect in like manner as often as they may deem proper, or as directed by the board of supervisors or by a judge of the superior court, each jail or lock up in the county, and any other charitable or correctional institution receiving any support from the county funds that may exist in the county. They shall examine every department of each institution visited and shall ascertain its condition as to effective and economical administration, the cleanliness, discipline, and comfort of its inmates, and in other respects. They shall carefully study the rules laid down by the county supervisors for the control of each county institution, and the suggestions offered by the state board of charities and corrections upon such subjects, and shall ascertain whether such rules are being complied with. They shall make such suggestions as to improved administration as they think proper to the persons in charge of said county institutions, and may report to the board of supervisors, or any other official having jurisdiction any facts which ought in their judgment to be known by said officials. In case the board or one of its committees shall find any state of things in any institution which in their judgment shall be injurious to the county or to the inmates of the institution, or which is contrary to good order and public policy, it shall be the duty of said board to address a memorial to the board of supervisors, or other officials having jurisdiction, in which memorial they shall set forth the facts observed and shall suggest such remedies as in their judgment may be necessary.

Report to grand jury.

§ 4. On or before the first Monday in March, June, September, and December of each year, the county board of public welfare shall make a report in writing to the grand jury of the county, if any, and if there be none, then such report shall be filed with the district attorney and by said district attorney shall be presented to the next grand jury as soon as impaneled and sworn. And annually on or before the first Monday in June of each year they shall present a report to the board of supervisors appointing them, which report shall be filed as a public document with the clerk of the board of supervisors. Whenever the county board of public welfare shall present a memorial or report to the board of supervisors they shall at the same time transmit a copy of the same to the state board of charities and corrections. In such annual report among other things such county board of public welfare shall report the attendance at each quarterly meeting of each member of the said board, and wherever such report shall show that any member shall have been absent from two consecutive quarterly meetings such member shall be deemed to have resigned from such board, and the board of supervisors shall thereupon appoint a successor for said member to fill such vacancy caused by such resignation as provided in section one of this act.

Appropriation by supervisors.

§ 5. The board of supervisors shall appropriate and allow not to exceed fifty dollars each year for the actual expenses of said county board of public welfare for stationery, blanks, postage stamps, traveling and other necessary incidental expenses, as may be presented and sworn to by the secretary of said board, and approved by the board of supervisors.

Repealed.

§ 6. All acts and parts of acts in conflict herewith are hereby repealed.

CHAPTER 299.

PUBLIC WORKS.

References: See tits. "Hours of Labor"; "State Engineering."

CONTENTS OF CHAPTER.

- ACT 3789. RETENTION OF EX-SOLDIERS, SAILORS AND MARINES IN EMPLOYMENT ON.
 3790. RIGHT OF WAY FOR MORMON CHANNEL CANAL.
 3791. GRANT TO UNITED STATES OF RIGHT OF WAY FOR MORMON CHANNEL CANAL.
 3792. MINIMUM WAGE LAW.
 3793. SECURITY FOR CLAIMS FOR LABOR AND MATERIALS.

RETENTION OF EX-SOLDIERS, SAILORS AND MARINES IN EMPLOYMENT ON.

ACT 3789—An act to provide for, insure, and maintain preference in the appointment, employment, and retention in the public service, and upon public works of the state of California, of honorably discharged ex-Union soldiers, sailors, and marines of the War of the Rebellion.

History: Approved March 31, 1891, Stats. 1891, p. 289.

§ 1. In every department, upon all public works, whether under contract or not, in all offices, employments, places, and positions of trust or profit of this state, honorably discharged ex-Union soldiers, sailors, and marines of the War of the Rebellion must be preferred for appointment, employment, and retention therein; and age, loss of limb, or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the capacity necessary to fill the position; and persons thus preferred or appointed unless appointed or employed for a definite statutory period, shall not be dismissed from such positions, offices, or employments, except upon charges, after a hearing, and for just cause.

§ 2. This act shall take effect immediately.

1. Act merely gives preference not absolute right to appointment.—This act merely gives a veteran the preference, and does not entitle him to the appointment if there are other ex-Union soldiers, equally well qualified, desiring to be appointed.—Allison v. Board of Education, 125 Cal. 72, 57 Pac. 673.

2. Mandate to compel appointment will not be issued where no vacancy exists.—A writ of mandate will not be issued to compel the appointment to the position of janitor of a public school, of an ex-Union vet-

eran, where no vacancy exists, and the incumbent would have to be discharged to make one.—Allison v. Board of Education, 125 Cal. 72, 57 Pac. 673.

3. Petition for mandate defective.—A petition for a writ of mandate to compel the appointment of an ex-Union soldier as janitor of a public school, which fails to state that there are not other ex-Union soldiers, equally well qualified, desiring the appointment, is defective.—Allison v. Board of Education, 125 Cal. 72, 57 Pac. 673.

RIGHT OF WAY FOR MORMON CHANNEL CANAL.

ACT 3790—An act authorizing the commissioner of public works to obtain a right of way for a canal to divert the waters of Mormon channel into the Calaveras river, to maintain condemnation suits therefor, and making an appropriation to pay for said right of way and the costs and expenses of obtaining the same.

History: Approved March 25, 1903, Stats. 1903, p. 476.

See Act 3791.

GRANT TO THE UNITED STATES OF RIGHT OF WAY FOR MORMON CHANNEL CANAL.

ACT 3791—An act to furnish, grant, convey and relinquish to the United States of America the right of way in San Joaquin county now (or hereafter) obtained by the commissioner of public works under an act of the legislature, approved March 25, 1903, entitled "An act authorizing the commissioner of public works to obtain a right of way for a canal to divert the waters of Mormon channel into the Calaveras river, to maintain condemnation suits therefor, and making an appropriation to pay for said right of way, and the costs and expenses of obtaining the same," and under the laws of the state of California relating to such matters, for the purpose of the construction and completion of such right of way by the United States of America of a diverting canal east of the city of Stockton from the Mormon channel to the Calaveras river and along the channel of the Calaveras river to the San Joaquin river, pursuant to an act of congress of June 13, 1902, and to subsequent acts of congress relating thereto, and to authorize the commissioner of public works and the governor of the state to execute conveyances thereof, and to authorize and direct the secretary of state to countersign and make delivery of the same to the United States of America.

History: Approved June 9, 1906, Stats. 1906 (ex. sess.), p. 13.
(See Act 3790.)

See Act 3790.

1. Constitutionality—Title of act.—The title of the act is sufficiently broad to include a claim for material furnished a subcontractor on a state highway.—California, etc., Co. v. Garnsey, 36 Cal. App. 289, 171 Pac. 1078.

2. Same—No mechanic's nor materialman's lien given.—Neither the statutes nor the constitution give mechanics or materialmen liens upon public buildings.—Miles v. Ryan, 172 Cal. 205, 157 Pac. 5.

3. Same—Cumulative remedy—Constitutional lien not excluded.—The act furnishes a means of securing payment of claims of laborers on public work, which is merely cumulative, but it does not, for that reason, exclude or do away with the constitutional lien.—Goldtree v. San Diego, 8 Cal. App. 505, 97 Pac. 216.

4. Act differs in purpose and effect from mechanics' lien statutes.—Act requiring bonds for the protection of persons dealing with contractors on public work are different in their purpose and effect from acts for the establishment and enforcement of mechanics' liens, and the reasons for giving a limited construction to the latter are not applicable to the former.—Pacific, etc., Co. v. Oswald, 179 Cal. 712, 178 Pac. 854.

5. Act does not apply to Vallejo.—The act does not apply to the city of Vallejo as to work done in that city under the charter, which is paramount in the matter, which is a "municipal affair."—Williams v. Vallejo, 36 Cal. App. 133, 171 Pac. 834.

6. Act does not apply to San Francisco.—The act is not applicable to San Francisco, whose charter is paramount on the subject, which is a "municipal affair."—Loop Lumber Co. v. Van Loben Sels, 173 Cal. 228, 159 Pac. 600.

7. Act of 1897 applied to claims against subcontractors on road construction.—The

act of 1897 held to apply to claims against a subcontractor on road construction for materials furnished for such construction.—Amundson Oil Co. v. Connery-Petersen Co., 32 Cal. App. 582, 168 Pac. 702.

8. Bond—Conditions of common law bond.—The fact that one of the conditions of the bond is that the contractors will faithfully execute the terms of their contract to the satisfaction of the district, and that such condition is not required by the statute, does not impress the instrument with the character of a common law bond.—Miles v. Baley, 170 Cal. 151, 158, 149 Pac. 45.

9. Same—Conditions—Effect.—The condition of the bond required under the provisions of the act of March 27, 1897, Stats. 1897, p. 201, to be given by a contractor upon public works, does not cover or include the contractor's tools or plant, the use of which is required in doing the work, and which, barring wear and tear incident to such use, survive for such repeated and other use.—Sherman v. American Surety Co., 178 Cal. 286, 288, 178 Pac. 161.

9. Same—No reference to statute necessary.—The bond need not expressly refer to the statute in order to constitute a statutory bond; and, though not in the words of the statute requiring it to be given, if its substance and legal effect is the same as the form prescribed by the statute, it is a statutory bond.—Miles v. Baley, 170 Cal. 151, 157, 149 Pac. 45.

10. Same—Same—Defeasance clause.—If the defeasance clause of the bond follows the wording of the statute, and its amount is approximately the amount prescribed by the statute, and it was executed on the same day with the contract, to which it expressly refers, the bond will be deemed a statutory bond and not a common law bond, and a materialman can not recover

against a surety on a contractor's bond for school work, without filing his claim as required by section 2 of the act of 1897 (201, 262, Am. 1911-1422).—*Miles v. Baley*, 170 Cal. 151, 153, 119 Pac. 45.

11. Same—Surety liable for work performed by an employee of contractor's assignee.—The surety on a contractor's bond is liable for work performed on a tunnel for the city of Los Angeles employed by the assignee of the contractor.—*French v. Powell*, 135 Cal. 636, 68 Pac. 92.

11a. Same—Sureties responsible for receiver.—A receiver of a contracting firm engaged in the performance of a contract for public work is the official agent and representative of the firm in the performance of said contract, and the surety on his principal's bond given under the act of 1897 (Stats. 1897, p. 201) is as much responsible for his acts and obligations as for the acts and obligations of the principals.—*Bricker v. Rollins & Jarecki*, 178 Cal. 347, 351, 173 Pac. 592.

12. Statute of limitations—Last day of six-month period falling on holiday—Action commenced following day, in time.—An action on a bond given under the provisions of this act commenced on the day following the date of expiration of the six-month period is in time where such date of expiration fell on a holiday.—*Branagh v. Chicago, etc., Co.*, 39 Cal. App. 616, 179 Pac. 543.

12a. Same—Timely filing of lien.—Under the provisions of the act of 1897 (Stats. of 1897, p. 201, as amended by Stats. 1911, p. 1423), where a materialman's claim is filed within ninety days after the completion of the work, and suit brought against the surety within six months. It was in time.—*Bricker v. Rollins & Jarecki*, 178 Cal. 347, 352, 173 Pac. 592.

12b. Same—Time to file lien.—A right of action to enforce a lien for inheritance taxes due under the act of 1905 (Stats. 1905, p. 374) and unpaid accrued upon the death of a donor of property, and an action must be brought within three years thereafter, or it will be barred under subdivision 1, section 323, Code of Civil Procedure.—*Chambers v. Gibson*, 178 Cal. 416, 417, 173 Pac. 752.

13. Complaint—Allegation as to filing bond in statutory time—Essential to state a cause of action.—A complaint in an action by a materialman against a surety on the bond of a contractor on school work which fails to allege the filing of his claim within 30 days from the completion of the work, as required by section 2 of the statute, fails to state a cause of action.—*Miles v. Baley*, 170 Cal. 151, 159, 119 Pac. 45.

14. Claim may be filed prior to completion of entire work.—A claimant for materials furnished for public work may file his claim so as to hold the surety on the bond given under the act liable, prior to the completion of the entire work, and need not wait for such completion.—*French v. Powell*, 135 Cal. 636, 68 Pac. 92.

15. "Material or supplies" — Gasoline used in trucks hauling road material.—A bond given under the act of 1897 held to cover a claim for gasoline used in trucks hauling road material used in a contract for road construction.—*Associated Oil Co. v. Connery-Peterson Co.*, 32 Cal. App. 582, 163 Pac. 702.

15a. Same—Merchandise consumed by men and teams.—A surety on the bond of a contractor upon public work, given under the provisions of the act of 1897 (Stats. 1897, p. 201) is liable for provisions and merchandise sold to the receiver of the contractor and consumed by the men or teams during the progress of the work, and also for powder, caps and fuses, used by them in connection with the work.—*Bricker v. Rollins & Jarecki*, 178 Cal. 347, 351, 173 Pac. 592.

15b. Same—Cost of plant required in work.—Indebtedness incurred by a contractor in the purchase of his plant or any part thereof, the use of which is required in doing the work, is not within the provision of the act, nor included within the bond required by it.—*Sherman v. American Surety Co.*, 178 Cal. 286, 288, 173 Pac. 161.

15c. Same—Rental of tools.—Rental of tools required by a contractor on public work and cost of transportation of the same to the place where used is covered by the surety bond required to be given under the act of May 27, 1897, (Stats. 1897, p. 201).—*Sherman v. American Surety Co.*, 178 Cal. 286, 289, 173 Pac. 161. *Bricker v. Rollins & Jarecki*, 178 Cal. 347, 349, 173 Pac. 592.

16. Same—Hay, used by the contractor on a state highway, held to be covered by his bond, given for materials and supplies under the act.—*Branagh v. Chicago, etc., Co.*, 39 Cal. App. 616, 179 Pac. 543.

17. Same—Same.—Hay used by a contractor will be presumed on appeal to have been used in the performance of his contract, where the record contains nothing to the contrary.—*Branagh v. Chicago, etc., Co.*, 39 Cal. App. 616, 179 Pac. 543.

18. Same—Hay and feed for horses used in road work, under the road district improvement act of 1907, are covered by a bond given by the contractor requiring payment for "materials furnished for or in the doing of the work," irrespective of the presence or absence of the word "supplies."—*Padilla, etc., Co. v. Oswald*, 179 Cal. 712, 172 Pac. 854.

19. Same—Steam shovel — Subleased to subcontractor—Surety not liable to original lessor.—A surety on a contractor's bond was not liable for the rental of a steam shovel used by a subcontractor on a state highway, under a sublease from the lessee of the plaintiff notwithstanding an agreement for the payment of such rental direct to the plaintiff lessor.—*Livermore & Co. v. Guardian, etc., Co.* (Cal. App.), 125 Pac. 412.

20. Same—Materials or supplies furnished a subcontractor.—A surety company on a contractor's bond given under

this act held liable thereon for a balance due one who furnished materials or supplies to a subcontractor on a school building.—*Southern, etc., Co. v. McDonald (Grant)*, 178 Cal. 386, 173 Pac. 760.

21. Same—Teams, horses, and scraper furnished employee of assignee of contractor.—One who furnishes teams, horses, and scraper to an employee of the assignee of a contractor for a tunnel for the city of Los Angeles, may recover on the

contractor's bond, without making claim against employee.—*French v. Powell*, 135 Cal. 626, 68 Pac. 92.

22. Street improvement under Vrooman act.—Where public work on a street is to be paid for by assessments under the Vrooman act, compliance with the requirements of that act was necessary to the maintenance of a suit on the contractor's bond.—*San Dimas, etc., Co. v. American etc., Co.*, 20 Cal. App. 3, 137 Pac. 318.

MINIMUM WAGE LAW.

ACT 3792—An act fixing the minimum rate of compensation for labor on public works.

History: Approved March 9, 1897, Stats. 1897, p. 90.

§ 1. The minimum compensation to be paid for labor upon all work performed under the direction, control, or by the authority of any officer of this state acting in his official capacity, or under the direction, control, or by the authority of any municipal corporation within this state, or of any officer thereof acting as such, is hereby fixed at two (2) dollars per day; and a stipulation to that effect must be made a part of all contracts to which the state, or any municipal corporation therein, is a party; provided, however, that this act shall not apply to persons employed regularly in any of the public institutions of the state, or any city, city and county, or county.

§ 2. This act shall take effect immediately.

SECURITY FOR CLAIMS FOR LABOR AND MATERIALS.

ACT 3793—An act to secure the payment of the claims of persons employed by contractors upon public works, and the claims of persons who furnish materials, supplies, teams, implements or machinery used or consumed by such contractors in the performance of such works, and prescribing the duties of certain public officers with respect thereto.

History: Approved May 10, 1919. In effect July 22, 1919. Stats. 1919, p. 487. Prior act of March 27, 1897, Stats. 1897, p. 201. Amended (1) May 1, 1911, Stats. 1911, p. 1422; (2) May 29, 1915; in effect August 8, 1915, Stats. 1915, p. 926; repealed by the present act.

Bond of contractor on public work. Sureties.

§ 1. Every contractor, person, company, or corporation, to whom is awarded a contract for the improvement, erection or construction of any building, road, excavating, or other mechanical work for this state, or for any political subdivision or agency of the state shall, before entering upon the performance of such work, file with the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by whom such contract was awarded, a good and sufficient bond, to be approved by such contracting body, officers or board, in a sum not less than one-half of the total amount payable by the terms of the contract; such bond shall be executed by the contractor, and either at least two sureties or by corporate surety as provided by law, in an amount not less than the sum specified in the bond, and must provide that if the contractor, person, company, or corporation, or his or its subcontractor, fails to pay for any materials, provisions, provender or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, that the surety or sureties will pay the same in an amount not exceeding the sum specified in the bond, and also, in case suit is brought upon such bond, a reasonable attorney's fee, to be fixed by the court. Unless such bond is filed as herein provided, no claim in favor of the contractor arising under such contract shall be audited, allowed, or paid by any public officer of this state, or of any political subdivision or state agency, but persons who have in good

faith performed work upon such contract, or supplied materials for the execution thereof, shall, upon giving the notice prescribed in section two hereof, be entitled to receive payment of their respective claims in the manner provided by sections one thousand one hundred eighty-four, one thousand one hundred eighty-four a, one thousand one hundred eighty-four b and one thousand one hundred eighty-four c of the Code of Civil Procedure.

Claims of materialmen, etc.

§ 2. Any materialman, person, company or corporation furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contracted to be executed or performed, or any person, company or corporation renting or hiring teams or implements or machinery for or contributing to said work to be done, or any person who performed work or labor upon the same, or any person who supplies both work and materials, and whose claim has not been paid by the contractor, company, or corporation, to whom the contract has been awarded, or by the subcontractor of said contractor, company, or corporation, may at any time prior to the expiration of the period within which claims of lien must be filed for record, as prescribed by the provisions of section one thousand one hundred eighty-seven of the Code of Civil Procedure, file with the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by whom such contract was awarded, a verified statement of such claims, together with a statement that the same have not been paid. At any time within ninety days following the expiration of the period last mentioned, the person, company or corporation filing the same may commence an action against the surety or sureties on the bond, specified and required in section one hereof. And upon the trial of any such action, the court shall award to the prevailing party a reasonable attorney's fee, to be taxed as costs, and to be included in the judgment therein rendered.

Act, Stats. 1897, p. 201 repealed.

§ 3. The act entitled "An act to secure the payment of the claims of materialmen, mechanics, or laborers, employed by contractors upon state, municipal, or other public work," approved March 27, 1897, and all acts amendatory thereof are hereby repealed; saving to all persons, however, all rights which have accrued under the provisions of said statutes, or any thereof.

1. **Timely filing of lien.**—Under the provisions of the act of 1897 (Stats. of 1897, p. 201, as amended by Stats. 1911, p. 1423), where a material man's claim is filed within ninety days after the completion of the work, and suit brought against the surety within six months, it was in time.—*Bricker v. Rollins & Jarecki*, 178 Cal. 347, 352, 173 Pac. 592.

2. **Time to file lien.**—A right of action to enforce a lien for inheritance taxes due under the act of 1905 (Stats. 1905, p. 374) and unpaid accrued upon the death of a donor of property, and an action must be brought within three years thereafter, or it will be barred under subdivision 1, section 238, Code of Civil Procedure.—*Chambers v. Gibson*, 178 Cal. 416, 417, 173 Pac. 752.

3. **Bond—Conditions—Effect.**—The condition of the bond required under the provisions of the act of March 27, 1897, Stats. 1897, p. 201, to be given by a contractor upon public works, does not cover or in-

clude the contractor's tools or plant, the use of which is required in doing the work, and which, barring wear and tear incident to such use, survive for such repeated and other use.—*Sherman v. American Surety Co.*, 178 Cal. 286, 288, 173 Pac. 161.

4. **Same—Sureties responsible for receiver.**—A receiver of a contracting firm engaged in the performance of a contract for public work is the official agent and representative of the firm in the performance of said contract, and the surety on his principal's bond given under the act of 1897 (Stats. 1897, p. 201) is as much responsible for his acts and obligations as for the acts and obligations of the principal.—*Bricker v. Rollins & Jarecki*, 178 Cal. 347, 351, 173 Pac. 592.

5. **Same—Merchandise consumed by men and teams.**—A surety on the bond of a contractor upon public work, given under the provisions of the act of 1897 (Stats. 1897, p. 201) is liable for provisions and merchandise sold to the receiver of the con-

tractor and consumed by the men or teams during the progress of the work, and also for powder, caps and fuse, used by them in connection with the work—*Bricker v. Rollins & Jarecki*, 178 Cal. 347, 351, 173 Pac. 592.

6. **Same—Cost of plant required in work.**—Indebtedness incurred by a contractor in the purchase of his plant or any part thereof, the use of which is required in doing the work, is not within the provisions of the act, nor included within the bond required

by it—*Sherman v. American Surety Co.*, 178 Cal. 286, 288, 173 Pac. 161.

7. **Same—Rental of tools.**—Rental of tools required by a contractor on public work and cost of transportation of the same to the place where used is covered by the surety bond required to be given under the act of May 27, 1897, Stats. 1897, p. 201—*Sherman v. American Surety Co.*, 178 Cal. 286, 289, 173 Pac. 161; *Bricker v. Rollins & Jarecki*, 178 Cal. 347, 349, 173 Pac. 592.

CHAPTER 300.

QUARANTINE.

Reference: See tit. "Livestock."

CONTENTS OF CHAPTER.

ACT 3806. LIVESTOCK QUARANTINE.

LIVESTOCK QUARANTINE.

ACT 3806—An act to regulate quarantine, and the admission of horses, cattle, sheep, and swine into the state of California from infected districts.

History: Approved March 19, 1889, Stats. 1889, p. 375.

Quarantine against entry of domestic animals.

§ 1. The state board of health will be empowered to declare quarantine against the entry of domestic animals from any state or territory or any foreign port or country, in which contagious or infectious diseases are known to exist; said infected parts to be named in the proclamation.

Entry of, through state board of health.

§ 2. All domestic animals coming into the state from districts mentioned in section 1 must be required to enter the state at such points only as the state board of health may by proclamation determine, and designate where they must be unloaded for inspection.

Evidence of owners.

§ 3. All owners of domestic animals coming into this state from localities quarantined against will be required to furnish the following evidence that such animals are free from disease:

First—The affidavit of two disinterested parties, who have known such animals for a period of four months prior to the date of shipment, that they have been healthy, and exposed to no contagious disease, and that no contagious disease is known or believed to exist in the district or country from which they came.

Second—The certificate of the county clerk of the county that persons making such affidavit are responsible and reputable citizens of the county.

Third—The affidavit of the owner or person in charge, made at the point of entry, that such domestic animals are the identical animals described in the foregoing affidavits, and that shipment has been direct and without unloading, except for food and water, and in cleansed and disinfected cars.

Affidavit of owners.

§ 4. Owners or persons in charge of domestic animals from localities not named in such proclamation must certify, under oath, that such domestic animals have been kept

in one place for a period of four months immediately preceding the date of shipment (giving the name of the town and county and state, territory, or country), and have not been exposed to any contagious disease for a period of three months prior to the date of shipment.

Evidence to be submitted.

§ 5. All the foregoing evidence to be submitted to the state veterinarian, or an authorized inspector of the state, when permits for shipments in this state shall be issued.

Quarantined calves.

§ 6. Dealers' calves gathered in quarantined states or territories will be quarantined at the points of entry.

Domestic animals.

§ 7. Domestic animals not receiving permits for shipment, and retained in quarantine, will be held at the owner's risk and expense.

Same.

§ 8. All domestic animals arriving at points of entry shall be inspected free of charge to the owner.

Railway company must have permit.

§ 9. No railway company doing business in this state shall receive for shipment into this state any domestic animals unless accompanied by a permit signed by an authorized inspector.

Cattle, when not to enter state.

§ 10. No cattle shall enter this state from Texas, New Mexico, or Mexico, for grazing purposes during the months of March, April, May, June, July, August, September, October and November in each year.

Shipment for slaughter.

§ 11. All cattle from those parts mentioned in section 10 entering this state during the months mentioned in section 10, and intended for butchering purposes, shall pass from the point of entry into the slaughter-house yard, which yard shall be specially constructed and isolated for the purpose of receiving such stock. The stock shall be unshipped in said yard direct from the cars running into the yards for that purpose.

Character of cars.

§ 12. Said cattle shall moreover be shipped in specially constructed cars, which will prevent the dropping of manure and urine on the tracks during transit, and in unshipping such cattle the cars shall be thoroughly disinfected with carbolized whitewash.

When may be unshipped.

§ 13. All cattle entering this state for the purposes mentioned in section 11 shall only be unshipped between the point of entry and destination at places set apart by the state board of health in its proclamation; and no native stock shall be allowed at any time to enter said places; said places shall be, moreover, thoroughly disinfected in such manner as the state board of health may direct.

Violation of act.

§ 14. Any person or persons, corporations, or firms, who shall violate any of the provisions of this act shall be liable for all damages sustained, and a fine of one thousand dollars, to be recovered in any court of competent jurisdiction, on account of any contagious or infectious disease being communicated from any diseased animal to

any other animal in the neighborhood, or along the line of such transportation of such diseased animals into or through this state, or from one part thereof to another; and the existence or presence of such contagious or infectious disease among the native cattle of this state on the same ranch with or in the vicinity of any such diseased animals, or along the line or route over which they were transported, shall be *prima facie* evidence that the same were affected with such disease at the time of being so removed or transported, and communicated it to such native domestic animals so affected therewith.

Definition.

§ 15. The words "domestic animals," whenever used in this act, shall be construed to mean and include horses, mules, asses, cattle, sheep, goats and swine.

Inspectors to be appointed.

§ 16. The state board of health are hereby authorized to appoint one inspector for each of the points of entry by railroad communication into this state, who shall reside at such point as may be designated by the state board of health, and shall receive such compensation for actual services as may be determined by said board, not to exceed one hundred dollars per month; such compensation to be paid out of any moneys in the state treasury not otherwise appropriated, upon the warrants of the controller of state drawn upon the certificate of the state board of health allowing the same.

§ 17. This act shall take effect immediately.

CHAPTER 301.

RAILROADS.

References: Commissioner of transportation, see tit. "Public Utilities," Act 3775.
Incorporation, management, and powers, see Kerr's Cyc. Civil Code, §§ 288, 454-494.
Particular railroads, see particular title.
Railroad commission, see tit. "Public Utilities," Act 3775.
See, generally, tits. "Corporations"; "Franchises"; "Municipal Corporations"; "Public Utilities."

CONTENTS OF CHAPTER.

- ACT 3821. RIGHT OF WAY THROUGH ASYLUM GROUNDS.
- 3825. EXTENDING TIME FOR COMPLETION.
- 3826. VALIDATING PERMITS FOR RIGHT OF WAY THROUGH MUNICIPALITIES.
- 3828. FREE TRANSPORTATION FOR MAIL CARRIERS.
- 3832. "FULL CREW" ACT.
- 3832a. REGULATING TRANSMISSION OF TRAIN ORDERS.
- 3833. HOURS OF LABOR OF TRAINMEN, DISPATCHERS, AND TELEGRAPH OPERATORS.
- 3834. CONDITIONAL SALES OF EQUIPMENT.
- 3835. REGULATING HEADLIGHTS ON LOCOMOTIVES.
- 3836. REGULATING DERAILING SWITCHES.
- 3837. "SOLID WATER GLASS" FOR LOCOMOTIVES.
- 3838. AUTOMATIC BELL-RINGING DEVICES.

RIGHT OF WAY THROUGH ASYLUM GROUNDS.

ACT 3821—An act granting right of way and station grounds to the Southern California Railway Company over a portion of the asylum grounds in San Bernardino county.

History: Approved March 9, 1893, Stats. 1893, p. 121.

EXTENDING TIME FOR COMPLETION.

ACT 3825—An act to enable railroad companies to complete their railroads.

History: Approved April 1, 1878, Stats. 1877-78, p. 944.

Authorizing construction of railroads.

§ 1. Every railroad company heretofore organized under the laws of this state, and which has completed a portion of its road prior to the passage of this act, is hereby authorized and empowered to complete its road as described in its articles of incorporation, notwithstanding it may not have begun the construction of its road within two years after filing its original articles of incorporation, and notwithstanding it may not have completed and put in operation five miles of its road each year thereafter.

§ 2. This act shall take effect from and after its passage.

VALIDATING PERMITS FOR RIGHT OF WAY THROUGH MUNICIPALITIES.

ACT 3826—An act to confirm, ratify, and make valid ordinances heretofore passed by the trustees, council, or other body intrusted with the government of any incorporated city, city and county, or town, giving authority and permission to propel cars upon railroad tracks laid through the streets and public highways of such incorporated city, city and county, or town, by electricity.

History: Approved February 25, 1891, Stats. 1891, p. 12.

Ordinances giving authority to propel cars by electricity, ratified.

§ 1. In all cases where, prior to the passage of this act, authority to lay railroad tracks through streets or public highways of any incorporated city, city and county, or town, has been obtained for a term of years, not exceeding fifty, from the trustees, council, or other body to whom was intrusted the government of the city, city and county, or town, and permission has been granted by such governing body to propel cars upon such tracks by electricity, such authority and permission shall be, and shall be held and deemed as valid and legal as the same would have been, if, at the time of the obtaining thereof, section four hundred and ninety-seven of the Civil Code had expressly declared that permission might be given to propel cars upon such tracks by electricity, as well as by horses, mules, or wire ropes running under the streets and propelled by stationary steam-engines; provided, that all such permissions or franchises heretofore granted shall be subject to the provisions of the laws of this state applicable to street-railroads in general, and subject to the same regulations from city, city and county, and town authorities as if the said franchises were hereafter granted.

§ 2. This act shall take effect and be in force from and after its passage.

FREE TRANSPORTATION FOR MAIL CARRIERS.

ACT 3828—An act requiring city, city and county, or town authorities to exact and require from persons or corporations seeking permission and authority to lay railroad tracks through streets or public highways of any incorporated city, city and county, or town, a satisfactory promise and undertaking to permit and allow mail-carriers in the employ of the United States government at all times, while engaged in the actual discharge of duty, to ride on the cars of such railroad without paying fare; and to make such promise and undertaking a condition precedent to the granting of such permission and authority by such governing board.

History: Approved February 27, 1893, Stats. 1893, p. 44.

Mail-carriers, permitted to ride free on railroads.

§ 1. In all cases hereafter, where application is made to the city, city and county, or town authorities, or to the trustees, council, or other body to whom is intrusted the government of the city, city and county, or town, for permission and authority to lay railroad tracks through streets or public highways of any incorporated city, city and county, or town, such authorities, before granting such permission and authority, in addition to the terms and restrictions which they are now, by law, authorized to impose, must exact and require from the persons or corporation asking or seeking

such permission and authority, a satisfactory promise and undertaking to permit and allow mail-carriers in the employ of the United States government, at all times, while engaged in the actual discharge of duty, to ride on the cars of such railroad without paying any sum of money whatever for fare or otherwise. And such governing body of city, city and county, or town authorities must make such promise and undertaking on the part of such persons or corporations a condition precedent to the granting of such permission and authority to lay railroad tracks through streets or public highways of such city, city and county, or town; provided, that all such permissions and franchises shall be subject to all other provisions of the laws of this state applicable to street-railroads in general, and subject to regulations from city, city and county, and town authorities.

§ 2. This act shall take effect and be in full force from and after its passage.

"FULL CREW" ACT.

ACT 3832—An act to promote the safety of employees and travelers upon railroads by compelling common carriers by railroad to properly man their trains.

History: Approved February 20, 1911, Stats. 1911, p. 65. Amended May 24, 1913, in effect August 10, 1913, Stats. 1913, p. 249; May 25, 1915, in effect August 10, 1915, Stats. 1915, p. 832.

Full crew for passenger train.

§ 1. It shall be unlawful for any common carrier by railroad in the state of California operating more than four trains each way per day of twenty-four hours on any main track or branch line of railroad within this state to run or permit to be run, any passenger, mail or express train propelled or drawn by steam, electricity or other motive power that has not at least the following named employees thereon: one engineer, and one fireman for each steam locomotive where such train is propelled or drawn by steam, one electric motorman for each train where such train is propelled or run by electricity, and one motor or power control man for every train where said train is propelled by other motive power than steam or electricity, one conductor, one brakeman, one baggage man; provided, that upon any such train upon which baggage is not hauled and on gasoline motor cars, a baggageman need not be employed; provided, further, that on any train where four cars exclusive of railroad officers' private cars, or more than four cars are hauled, exclusive of railroad officers' private cars, two brakemen instead of one shall be employed. [Amendment approved May 24, 1913, Stats. 1913, p. 249. In effect August 10, 1913.]

Minimum crew on freight trains.

§ 2. It shall be unlawful for any common carrier by railroad in the state of California operating more than four trains each way per day of twenty-four hours on any main track or branch line of railroad within this state to run or permit to be run on any main track or branch line operated by it any freight, mixed or work train propelled by steam, electricity or other motive power that has not at least the following employees thereon: One engineer and one fireman for each steam locomotive where such train is propelled or drawn by steam, one motorman for each train where such train is propelled or run by electricity, and one motor or power control man for every train where such train is propelled by motive power other than steam or electricity, one conductor and two brakemen; provided, that on any such train running on any track which attains a grade of one per cent or less than one per cent, for a distance of more than one half mile, there shall be three brakemen for fifty cars, four brakemen for seventy-six cars and an additional brakeman for every additional twenty-five cars; provided, further, that on any such train running on any track which attains a grade of more than one per cent and less than one and one half per cent, for a distance of more than one half mile, there shall be three brakemen for fifty cars and an

additional brakeman for every twenty-five cars or fraction of twenty-five greater than twelve cars; provided, further, that any such train running on a track which attains a grade of more than one and one half per cent, for a distance of more than one half mile, there shall be three brakemen for fifty cars and an additional brakeman for every fifteen cars or fraction of fifteen greater than seven cars. [Amendment of May 25, 1915. In effect August 8, 1915, Stats. 1915, p. 832.]

This section was also amended May 24, 1913, Stats. 1913, p. 250.

Crew of self propelled pile driver.

§ 3. It shall be unlawful for any common carrier by railroad in the state of California operating more than four trains each way per day of twenty-four hours on any main track or branch line of railroad within this state, to run or permit to be run any self propelled pile driver, car or vehicle which has sufficient power to draw or propel itself and one or more standard cars, or any train propelled or drawn by steam, electricity or other motive power other than those trains described in sections one and two of this act that have not at least the following named employees thereon: One engineer and one fireman for each steam locomotive where such train is propelled by steam, one motorman for every train where such train is propelled or drawn by electricity and one motor or power control man for each train propelled by other motive power than steam or electricity and one steam engineer or one motor or power control man for each self propelled pile driver or other self propelled vehicle which has sufficient power to draw or propel itself, and one or more standard cars, one conductor and one brakeman; provided, that nothing in this act contained shall apply to a locomotive or locomotives without cars, except that each locomotive must have one engineer and one fireman when being moved in train under steam, unless engine is disabled, nor shall this act apply to any relief or wrecking train in any case where a sufficient number of employees to comply with this section are not available for service on such relief or wrecking train; provided, however, that the provisions of section three of this act with reference to self propelled pile driver, car or vehicle which has sufficient power to draw or propel itself and one or more standard cars shall apply to such self-propelled pile driver, car or vehicle only when self-propelled pile driver, car or vehicle is moved under its own power from one permanent station or permanent siding to place of work where the distance between said station or siding to place of work is one half mile or more. [Amendment of May 25, 1915. In effect August 8, 1915, Stats. 1915, p. 832.]

This section was also amended May 24, 1913, Stats. 1913, p. 250.

Qualifications of engineer. Conductor. Brakeman.

§ 4. It shall be unlawful for any such common carrier to employ any person as a steam locomotive engineer who shall not have had at least three years' actual service as a steam locomotive fireman or one year's actual service as a steam locomotive engineer, or to employ any person as a conductor who shall not have had at least two years' actual service as a railroad brakeman on steam or electric railroad other than street railway, or one year's actual service as a railroad conductor, or to employ any person as a brakeman who shall not have passed the regular examination required by transcontinental railroads; provided, that nothing in this act contained shall apply to the running or operating of locomotives or motor power cars to and from trains at terminals by hostlers or to the running or operating of steam locomotives or motive power cars to and from engine houses or to the doing of work on steam locomotives or motive power cars at shops or engine houses. [Amendment approved May 24, 1913, Stats. 1913, p. 251. In effect August 10, 1913.]

Penalty.

§ 5. Any violation of this act shall be a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not to

exceed six months, or by both such fine and imprisonment. [Amendment approved May 24, 1913, Stats. 1913, p. 251. In effect August 10, 1913.]

Time of strikes.

§ 6. Nothing in this act contained shall apply to the operation of any train by said common carrier during times of strikes or walkouts, participated in by any of the hereinbefore mentioned employees of such common carriers. [Amendment approved May 24, 1913, Stats. 1913, p. 251. In effect August 10, 1913.]

Not applicable to gasoline motor cars.

§ 7. Nothing contained in this act shall be construed or be held to apply to gasoline motor cars operated exclusively on branch lines nor to trains of less than three cars propelled by electricity. [New section approved May 24, 1913, Stats. 1913, p. 251. In effect August 10, 1913.]

1. **Construction according to rules of Penal Code.**—The language of the act of 1911 (65) should be construed according to the rule of the Penal Code, although it is not a part of that code, according to the fair import of its terms with a view to effect its objects and to promote justice.—Ex parte Galivan, 162 Cal. 331, 333, 122 Pac. 961.

2. **Train with three passenger coaches—One brakeman.**—It is not a violation of

section 1 of the act of February 20, 1911 (65), to operate a train of three passenger coaches with only one brakeman, even though the train also carried a baggage car.—Ex parte Galivan, 162 Cal. 331, 333, 122 Pac. 961.

3. **"Passenger coaches or cars."**—The phrase "passenger coaches or cars" means all ordinary railroad carriages used for the transportation of passengers.—Ex parte Galivan, 162 Cal. 331, 333, 122 Pac. 961.

REGULATING TRANSMISSION OF TRAIN ORDERS.

ACT 3832a—An act to promote the safety of employees and the traveling public upon railroads by prohibiting certain persons, firms and corporations operating railroads in this state from requiring or permitting certain employees to receive, deliver or transmit over telegraph or telephone lines any orders for the movement of trains, except in such cases or classes of cases as may be permitted by the railroad commission.

History: Approved May 24, 1915. In effect August 8, 1915. Stats. 1915, p. 824.

Unlawful for trainman to transmit, etc., orders for moving trains.

§ 1. It shall be unlawful for any person, firm or corporation operating a railroad with more than four trains each way every twenty-four hours, to require or permit any engineer, fireman, conductor, brakeman or trainman to receive, deliver or transmit at any receiving or forwarding instrument of any telegraph or telephone line, any order for the movement of any train, except in such cases or classes of cases as may be permitted by the railroad commission; provided, however, that the foregoing provisions shall not apply to interurban or street railroads. Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment.

HOURS OF LABOR OF TRAINMEN, DISPATCHERS AND TELEGRAPH OPERATORS.

ACT 3833—An act regulating the hours of labor of conductors, engineers, firemen, brakemen, train dispatchers and telegraph operators employed by any corporation or receiver operating a line of railway in whole or in part in the state of California, and prescribing penalties for violation of this act.

History: Approved April 21, 1911, Stats. 1911, p. 952. Amended June 4, 1913, in effect August 10, 1913, Stats. 1913, p. 381.

Sixteen hours on duty, limit for conductors, etc. Ten hours off. Nine hours for train dispatchers, etc. When not applicable.

§ 1. It shall hereafter be unlawful for any corporation or receiver operating any line of steam, electric railroad, or other railway, in whole or in part, in this state, or any officer, agent or representative of such corporation to require or knowingly permit any conductor, motorman, engineer, fireman, brakeman, train dispatcher, or telegraph operator to be or remain on duty for a longer period than sixteen consecutive hours. And whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty; provided, that no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four hours, in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places and stations operated only during the daytime, except in case of emergency; when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four hour period or not exceeding three days in any week; provided, that the provisions of this act shall not apply in any case of casualty or unavoidable accident, or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen; and provided, further, that the provisions of this act shall not apply to the crews of wrecking or relief trains. [Amendment approved June 4, 1913, Stats. 1913, p. 381. In effect August 10, 1913.]

Hours off duty.

§ 2. It shall hereafter be unlawful for any corporation or receiver operating any line of railroad in whole or in part in this state, or any officer, agent, or representative of such company or receiver to require or knowingly permit any conductor, engineer, fireman, brakeman, train dispatcher or telegraph operator, who has been on duty for sixteen consecutive hours and who has gone off duty, to again go on duty or perform any work for such receiver or corporation until he has had at least eight hours off duty.

Penalty for violation.

§ 3. Any corporation or receiver operating a line of railroad in whole or in part within this state, who shall violate any of the provisions of this act shall be liable to the state of California in a penalty of not less than two hundred dollars nor more than one thousand dollars for each offense, and such penalties shall be recovered and suit therefor shall be brought in the name of the state of California in any court having jurisdiction of the amount in any county into or through which said railroad may pass. Such suit or suits may be brought either by the attorney general of the state or under his direction by the district attorney of any county or city and county in the state of California into or through which said railroad may pass.

Officer of railroad liable.

§ 4. Any officer, agent or representative of any corporation or receiver operating any line of railroad in whole or in part within this state, who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction

therefor shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for each offense, or by confinement in the county jail for not less than ten nor more than sixty days, or by both fine and imprisonment, and such person so offending may be prosecuted under this section, either in the county where such person may be at the time of commission of the offense, or in any county where such employee has been permitted or required to work in violation of this act.

Exceptions.

§ 5. Provided, that the provisions of this act shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen; provided, further, that the provisions of this act shall not apply to the crews of wrecking or relief trains.

CONDITIONAL SALES OF EQUIPMENT.

ACT 3834—An act to provide for the conditional sale of railroad and street railway equipment or rolling stock, to regulate the making and recording of contracts therefor and declarations of the payment or performance thereof, and to authorize their recordation in the office of the secretary of state.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1121.

Conditional sale of railroad equipment. Contract not valid against subsequent judgment creditor.

§ 1. In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that title to the property sold or contracted to be sold, although possession thereof may be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. And in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditioned sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor or any subsequent bona fide purchaser for value and without notice, unless (1) the same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee, lessee, or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgments of deeds, and in the same manner as deeds are acknowledged or proved; (2) such instrument shall be filed for record in the office of the secretary of state of this state; (3) each car or locomotive engine so sold, leased, or hired, or contracted to be sold, leased, or hired as aforesaid, shall have the name of the vendor, lessor, or bailor plainly marked in letters not less than one inch in size on each side thereof, followed by the word "owner," or "lessor," or "bailor," as the case may be.

Contracts filed with secretary of state. Fee.

§ 2. The contracts herein authorized shall be filed with the secretary of state and recorded by him in a book of records to be kept for that purpose. And on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect shall be made by the vendor, lessor, or bailor, or his or its assignee, which declaration shall be made by

a separate instrument, to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid. The secretary of state shall collect and pay into the state treasury five dollars for filing each of such contracts or declarations and twenty cents per folio for recording the same.

Contracts not affected.

§ 3. This act shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in section one hereof, and any such contract heretofore made may, upon compliance with the provisions of this act, be recorded as herein provided.

REGULATING HEADLIGHTS ON LOCOMOTIVES.

ACT 3835—An act regulating headlights on all locomotives, and providing a penalty for violation of the provisions of this act.

History: Approved June 4, 1913. In effect August 10, 1913. Stats. 1913, p. 522.

Electric headlights on locomotives.

§ 1. It shall be the duty of every railroad corporation, or receiver or lessee thereof, operating any line of railroad in this state, within six months after the passing of this act, or within such additional time as may be prescribed by order of the railroad commission of California, after such railroad has made a proper showing of its inability to comply therewith, to equip all locomotive engines, used in the transportation of trains over said railroad, with electric or other headlights which will project sufficient light to enable the locomotive engineer to observe clearly a dark object the size of an average man, at a distance of not less than 800 feet on a dark, clear night while his train is running at a rate of speed not less than 30 miles per hour; provided, that this act shall not apply to locomotive engines regularly used in the switching of cars or trains; provided, further, that this act shall not apply to locomotive engines used exclusively between sun up and sundown, nor going to or from repair shops when ordered in for repairs, nor to locomotive engines used on short lines or local lines where in the judgment of the railroad commission, the headlight herein provided for is not necessary for the preservation of public safety.

Penalty.

§ 2. Any railroad company, or receiver or lessee thereof, doing business in the state of California, who shall violate the provisions of this act, shall be liable to the state of California for a penalty of not less than one hundred dollars, nor more than one thousand dollars, for each offense; and suit shall be brought to recover such penalty in a court of competent jurisdiction, in the name of the people of the state of California, by the attorney general or by the district attorney of any county in or through which said railroad may be operated.

§ 3. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

1. Short, local line exempt.—The Boca and Loyaltan Railroad Company, operating a short local line, where a headlight is not necessary for the preservation of the public safety, was exempted from the provisions of the act.—In re Boca and Loyaltan Railroad Company, 3 R. C. D. 1011.

2. All trains run in daylight—Company relieved from compliance.—The trains of the Santa Maria Valley Railroad Company being run entirely, except on rare occasions, between sunrise and sunset, is relieved from compliance with the act.—In re Santa Maria Valley Railroad Company, 5 R. C. D. 438.

REGULATING DERAILING SWITCHES.

ACT 3836—An act to regulate the use of derailing switches or other derailing devices, in the operation of railroads in the state of California; providing for the use of sign boards in connection with such derailing switches or devices for the purpose of designating the location of the same to approaching trains, their engine men and crews; providing penalties for the violation of its provisions; and providing for the enforcement of this act by the railroad commission.

History: Approved May 25, 1915. In effect January 1, 1916. Stats. 1915, p. 827.

Signs in connection with derailing devices. Construction.

§ 1. Every common carrier by railroad operating a line or railroad within this state, or any part, branch, siding or spur track, or any other track thereof, or in connection therewith, shall be required to maintain on what is known as passing track sidings, a sign board in connection with each derailing switch or other derailing device, whether such derailer is operated where located or automatically or otherwise from a distance. Such sign board shall be placed within one hundred feet of the derailer and shall be constructed in either of two forms, viz.: Board five feet high and ten inches wide, or sign constructed of two parts, one of which is an upright and the other a transverse board, said upright to be of sufficient height to securely fasten at the top thereof the transverse board, which shall be not less than two feet three inches long and seven inches wide and placed in such a manner that the upper side of said transverse board shall be not less than four feet above the ties, and shall have painted thereon the word "derail" in large black letters on a white background.

Penalty for violation.

§ 2. Any corporation, company, or person, or any officer, superintendent, manager, or other agent thereof, who shall violate any of the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than twenty-five dollars (\$25.00), nor more than five hundred dollars (\$500.00) for each offense; any failure, refusal or neglect to provide any such sign board at any derailing switch or device as herein specified, shall constitute a separate offense.

Railroad commission to enforce.

§ 3. It shall be the duty of the railroad commission to enforce the provisions of this act.

In effect when.

§ 4. This act shall be in full force and effect on and after January 1st, 1916; provided, however, that none of the provisions of this act shall apply to any track, siding, spur or other track owned by private persons for their own use, except when such track, siding, spur or other track is operated regularly in connection with the line of a common carrier for certain periods, in which case all of the provisions of this act shall apply; provided further, however, that nothing in this act shall apply to the placing of sign boards in places where physical conditions of track will not permit.

"SOLID WATER GLASS" FOR LOCOMOTIVES.

ACT 3837—An act prescribing a certain kind of water glass for use on steam locomotives; providing a penalty for neglect to use such glass.

History: Approved May 25, 1915. In effect January 1, 1916. Stats. 1915, p. 828.

Kind of water glass used on steam locomotives.

§ 1. Every steam locomotive used upon a railroad in this state, carrying passengers or freight for hire, shall be equipped with one or more water glasses of the

type known as the "solid water glass," the same being a solid piece of glass with open flutings at the back thereof, which said flutings will permit the raising and falling of water in the boiler of said locomotive to be plainly visible from each side of the cab without the use of a reflector. The said glass shall not be less than seven inches in length and one and one-quarter inches in width, and five eighths of an inch in thickness.

§ 2. Any person, firm or corporation operating any such steam locomotive which is not equipped with one or more water glasses as described in section one, shall be guilty of a misdemeanor.

In effect when.

§ 3. This act shall take effect on and after January 1, 1916.

AUTOMATIC BELL-RINGING DEVICES.

ACT 3838—An act to provide for the equipment of steam locomotives with automatic bell-ringing devices.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1645.

Automatic bell-ringing devices on locomotives.

§ 1. Every railroad corporation, or receiver or lessee thereof, operating any line of railroad in this state by steam locomotives, shall within one year after the passage of this act or within such additional time as may be prescribed by order of the railroad commission of California after such railroad or receiver or lessee thereof has made a proper showing of its inability to comply therewith, equip all steam locomotives used or to be used in the hauling or propelling of trains over said railroad with a bell-ringer apparatus or device which apparatus or device when set in operation will ring and continue to ring the locomotive bell automatically, such apparatus or device being so constructed that it may be set in operation from either or both sides of the locomotive cab.

Penalty.

§ 2. Any railroad company, receiver or lessee thereof, operating any line of railroad within this state by steam locomotives, violating the provisions of this act shall be punished by a fine of not less than one hundred dollars or more than one thousand dollars for each offense.

CHAPTER 302.

REAL ESTATE BROKERS.

Reference: See tit. "Brokers."

CONTENTS OF CHAPTER.

ACT 3841. REAL ESTATE BROKERS ACT OF 1919.

REAL ESTATE BROKERS ACT OF 1919.

ACT 3841—An act to define real estate brokers and salesmen; to provide for the regulation, supervision and licensing thereof; to create a state real estate department and the office of real estate commissioner; to provide for the enforcement of said act and penalties for the violation thereof; and repealing an act entitled "An act to define real estate brokers, agents, salesmen, solicitors; to provide for the regulation, supervision, and licensing thereof; to create the office of real estate commissioner; and making an appropriation therefor," approved June 1, 1917, and all acts or parts of acts inconsistent with the provisions of this act.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1252. Prior act of June 1, 1917. In effect July 27, 1917. Stats. 1917, p. 1579. Repealed by the present act.

License for real estate business.

§ 1. It shall be unlawful for any person, copartnership or corporation to engage in the business, or act in the capacity of a real estate broker, or a real estate salesman within this state without first obtaining a license therefor.

Real estate broker. Real estate salesman. Application of act. Act constituting person, etc., a broker.

§ 2. A real estate broker within the meaning of this act is a person, copartnership or corporation who, for a compensation, sells, or offers for sale, buys, or offers to buy, or negotiates the purchase or sale or exchange of real estate, or who, for compensation, negotiates loans on real estate, leases, or offers to lease, rents, or places for rent, or collects rent from real estate, or improvements thereon, for others as a whole or partial vocation. A real estate salesman within the meaning of this act is one who for a compensation is employed by a licensed broker to sell, or offer for sale, or to buy, or to offer to buy, or to negotiate the purchase or sale or exchange of real estate, or to negotiate a loan on real estate, or to lease, or offer to lease, rent, or place for rent, any real estate, or improvements thereon, as a whole or partial vocation. The provisions of this act shall not apply to any person, copartnership or corporation who shall perform any of the acts aforesaid with reference to property owned by such person, copartnership or corporation; nor shall the provisions of this act apply to persons holding a duly executed power of attorney from the owner, nor shall this act be construed to include in any way the services rendered by an attorney at law in performing his duties as such attorney at law; nor shall it be held to include any receiver, trustee in bankruptcy, or any person acting under order of any court, nor to a trustee selling under a deed of trust. One act, for a compensation, of buying or selling real estate of or for another, or offering for another to buy or sell or exchange real estate, or negotiating a loan on or leasing or renting or placing for rent real estate, or collecting rent therefrom shall constitute the person, copartnership or corporation making such offer, sale or purchase, exchange or lease, or negotiating said loan, or so renting or placing for rent or collecting said rent a real estate broker within the meaning of this act.

State real estate department created. Clerks and deputies.

§ 3. There is hereby created a state real estate department. The chief officer of such department shall be the real estate commissioner. He shall be appointed by the governor and hold office at the pleasure of the governor. He shall receive an annual salary of five thousand dollars, to be paid monthly out of the state treasury upon a warrant of the controller. He shall within fifteen days from the time of notice of his appointment take and subscribe to the constitutional oath of office, and file the same in the office of the secretary of state and execute to the people of the state of California a bond in the penal sum of ten thousand dollars executed by two or more sureties, or by a surety company duly authorized to do business in this state, to be approved by the governor of the state, for the faithful discharge of the duties of his office. The real estate commissioner shall have full power to regulate and control the issuance and revocation, both temporary and permanent, of the licenses to be issued under the provisions of this act, and to perform all other acts and duties provided in this act and necessary for its enforcement. The real estate commissioner shall employ such deputies, clerks and assistants as he may need to discharge in proper manner the duties imposed upon him by law. Neither the real estate commissioner, nor any of his deputies, clerks or assistants, shall be interested in any real estate company or real estate broker as director, stockholder, officer, member, agent or employee. Such deputies, clerks and assistants shall perform such duties as the real estate commissioner shall assign to them. The real estate commissioner shall fix the compensation of such deputies, clerks and assistants, which compensation shall be paid monthly on a cer-

tificate of the real estate commissioner and on the warrant of the controller out of the state treasury. Each deputy shall, after his appointment, take and subscribe to the constitutional oath of office and file the same in the office of the secretary of state.

Office in Sacramento.

§ 4. The real estate commissioner shall have his principal office in the city of Sacramento, and may establish branch offices in the city and county of San Francisco, and in the city of Los Angeles, and he shall from time to time obtain the necessary furniture, stationery, fuel, light and other proper conveniences for the transactions of business, the expenses of which shall be paid out of the state treasury on the certificate of the real estate commissioner and the warrant of the controller.

"Real estate commissioner's fund."

§ 5. All fees charged and collected under this act shall be paid by the real estate commissioner at least once a week, accompanied by a detailed statement thereof, into the treasury of the state to the credit of a fund to be known as the "real estate commissioner's fund," which fund is hereby created. All moneys which shall be paid into the state treasury and credited to the "real estate commissioner's fund" are hereby appropriated to be used by the commissioner in carrying out the provisions of this act, including the payment of the salaries of the commissioner and his deputies, clerks and assistants; and the controller shall draw his warrant on said fund from time to time in favor of the commissioner for the amounts expended under his direction, and the treasurer shall pay the same; provided, however, that all of the expenditures of said commissioner including his salary shall be paid only from the real estate commissioner's fund. The commissioner may, with the consent of the board of control, withdraw from said fund a sum not exceeding one thousand dollars to be used as a "revolving fund" where cash advances are necessary. The commissioner must account for the sum withdrawn from said "revolving fund" at any time upon demand of the board of control. It shall be the duty of the real estate commissioner semiannually to certify under oath to the state treasurer and secretary of state the total amount of receipts and expenditures of the real estate commissioner's department for the six months preceding. All moneys remaining in the state treasury to the credit of the "real estate commissioner's fund" at noon on the thirty-first day of December of each year shall on or before the fifteenth day of the succeeding January be transferred from said "real estate commissioner's fund" to the general fund of the state.

Seal.

§ 6. The real estate commissioner shall adopt a seal with the words "Real Estate Commissioner State of California" and such other device as the commissioner may desire engraved thereon, by which he shall authenticate the proceedings of his office. Copies of all records and papers in the office of the real estate commissioner's department certified under the hand and seal of the commissioner shall be received in evidence in all cases equally and with like effect as the originals.

Attorney general, attorney for commissioner.

§ 7. The attorney general shall render to the real estate commissioner opinions upon all questions of law relating to the construction or interpretation of this act or arising in the administration thereof that may be submitted to him by the commissioner, and shall act as the attorney for the commissioner in all actions and proceedings brought by or against him under or pursuant to any of the provisions of this act.

Limitations on license.

§ 8. No real estate license shall give authority to do any act mentioned in section two of this act to any person, copartnership or corporation other than those to whom

said license is issued; provided, however, that when a license is issued to a corporation the officers thereof, other than the president, shall be required to obtain a license if engaged in the real estate business as a whole or partial vocation; and provided, further, that when a license is granted to a copartnership the members of said copartnership shall each be required to obtain a separate license, except as provided in section ten hereof.

Applications for license.

§ 9. Application for license as real estate broker shall be made in writing to the real estate commissioner, which application shall be accompanied by the recommendation of two real estate owners of the county in which such applicant resides or has his place of business, certifying that the applicant is honest, truthful and of good reputation, and recommending that a license be granted the applicant. If the applicant shall have resided, or shall have engaged in business for less than one year in the county from which the application is made, the same shall also be accompanied by the recommendation of two real estate owners of each of the counties where he has formerly resided or engaged in business during said period of one year prior to the filing of said application, certifying that the applicant is honest, truthful and of good reputation and recommending that a license be granted the applicant. Where the applicant for a real estate broker's license maintains more than one place of business within the state he shall be required to apply for and procure a duplicate license for each branch office so maintained by him. Such duplicate license shall be issued without additional charge. Every such application shall state the name of the person, copartnership or corporation, and the location of the place or places of business for which such license is desired.

Licenses for salesmen.

Application for license as real estate salesman shall be made in writing to the real estate commissioner, signed by the applicant, setting forth the period of time during which he has been engaged in the business, stating the name of his last employer and the name and place of business of the person, copartnership or corporation then employing him, or in whose employ he is to enter. The application shall be accompanied by the recommendation of his employer, if employed, certifying that the applicant is honest, truthful and of good reputation, and recommending that the license be granted to the applicant.

The real estate commissioner may require such other proof as he may deem advisable of the honesty, truthfulness and good reputation of any applicant for a license, or of the officers of any corporation, or of the members of any copartnership making such application before authorizing the issuance of a license.

License fees.

§ 10. The fees for licenses shall be as follows:

(1) For a broker's license the annual fee shall be ten dollars. If the licensee be a corporation, the license issued to it shall entitle the president thereof to engage in the business of real estate broker within the meaning of this act. For officers other than the president of a licensed corporation, who shall engage in the business of real estate broker, within the meaning of this act, the annual fee shall be two dollars. If the licensee be a copartnership, the license issued to it shall entitle one member of said copartnership to engage in the business of real estate broker within the meaning of this act. For each other member of such copartnership who engages in the business of real estate broker within the meaning of this act the annual fee shall be two dollars.

(2) For a salesman's license the annual fee shall be two dollars.

(3) If application for a license is made during the period beginning on the first day of April and ending on the thirtieth day of June, in any year, three-fourths of the

annual fee shall be paid; if application is made during the period beginning on the first day of July and ending on the thirtieth day of September, one-half of such annual fee; if application is made during the period beginning on the first day of October and ending on the thirty-first day of December, one-fourth of such annual fee.

(4) All applications for license shall be accompanied by the license fee as herein provided, and all licenses shall expire on December thirty-first of each year.

Display of licenses in offices.

§ 11. The licenses of both broker and salesman shall be prominently displayed in the office of the real estate broker, and no license issued hereunder shall authorize the licensee to do business except from the location stipulated in the license. Notice in writing shall be given the commissioner of change of business location or change of employer, whereupon the commissioner shall issue a new license for the unexpired period without charge. The change of business location without notification to the commissioner and the issuance by him of a new license shall automatically cancel the license heretofore issued.

Each person, firm or corporation licensed as a broker under the provisions of this act shall be required to have and maintain a definite place of business in the state of California which shall serve as his office for the transaction of business.

Revocation of licenses

§ 12. The real estate commissioner may upon his own motion, and shall upon the verified complaint in writing of any person, investigate the actions of any person, copartnership or corporation engaged in the business or acting in the capacity of a real estate broker, or a real estate salesman, within this state, and shall have the power to temporarily suspend or permanently revoke licenses issued under the provisions of this act, at any time where the holder thereof in performing, or attempting to perform, any of the acts mentioned in section two hereof is guilty of—

- (1) Making any substantial misrepresentation, or
- (2) Making any false promises of a character likely to influence, persuade or induce, or
- (3) A continued and flagrant course of misrepresentation or making of false promises through agents or salesmen, or
- (4) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto, or
- (5) Any other conduct, whether of the same or a different character than hereinabove specified, which constitutes dishonest dealing.

Appeal from revocation of license.

Before suspending or revoking any license the said commissioner shall notify, in writing, the holder of such license of the charges against him and afford an opportunity to be heard in person or by counsel in reference thereto. The decision of the said commissioner in suspending or revoking any license under this act shall be subject to review in accordance with the provisions of chapter one of title one of part three of the Code of Civil Procedure; and any party aggrieved by such decision of the commissioner may within ten days from the date of said decision appeal therefrom to the superior court of the state of California, in and for the county in which the person affected by such decision resides or has his place of business under the terms of this act, by serving upon the commissioner a notice of such appeal and a demand in writing for a certified transcript of all the papers on file in his office affecting or relating to such decision and all the evidence taken on the hearing and paying ten cents for each folio of the transcript and one dollar for the certification thereof. Thereupon the com-

missioner shall, within thirty days, make and certify such transcript, and the appellant shall, within five days after receiving the same, file the same and the notice of appeal with the clerk of said court. Upon the hearing of such appeal, the burden of proof shall lie upon the appellant, and the court shall receive and consider any pertinent evidence, whether oral or documentary, concerning the action of the commissioner from which the appeal is taken, but shall be limited to a consideration and determination of the question whether there has been an abuse of discretion on the part of the commissioner in making such decision.

The decision of the commissioner shall not take effect until ten days after its date, and if notice of appeal and demand for transcript are served upon the commissioner in accordance with the provisions of this section, then such stay shall remain in full force and effect until decision upon appeal by said superior court. But if said aggrieved party shall fail to perfect his appeal as herein provided, said stay shall automatically terminate.

Powers of commissioners. Service of process.

§ 13. The real estate commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of books and papers. In any hearing in any part of the state the process issued by the commissioner shall extend to all parts of the state and may be served by any person authorized to serve process of courts of record or by any person designated for that purpose by the commissioner. The person serving any such process shall receive such compensation as may be allowed by the commissioner, not to exceed the fees prescribed by law for similar service, and such fees shall be paid in the same manner as provided herein for the payment of the fees of witnesses. Each witness who shall appear by order of the commissioner shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party shall be subpoenaed by the commissioner his fees and mileage shall be paid from the funds appropriated for the use of the real estate department in the same manner as other expenses of said department are paid.

Powers of superior court.

The superior court in and for the county in which any hearing may be held by the commissioner shall have the power to compel the attendance of witnesses, the giving of testimony and the production of books and papers as required by any subpoena issued by the commissioner. In case of the refusal of any witness to attend or testify or produce any papers required by such subpoena the commissioner may report to the superior court in and for the county in which the hearing is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witness or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by subpoena before the commissioner in the cause or proceeding named in the subpoena, or has refused to answer questions propounded to him in the course of such hearing, and ask an order of said court compelling the witness to attend and testify or produce said papers before the commissioner. The court upon petition of the commissioner shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he has not attended or testified or produced said papers before the commissioner. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the

commissioner, the court shall thereupon enter an order that said witness appear before the commissioner at the time and place fixed in said order and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.

Taking of depositions.

The commissioner may in any hearing before him cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state, and to that end may compel the attendance of witnesses and the production of books and papers.

Right to attendance of witnesses.

Any party to any hearing before the commissioner shall have the right to the attendance of witnesses in his behalf at such hearing or upon deposition as set forth in this section upon making request therefor to the commissioner and designating the person or persons sought to be subpoenaed.

When salesman is discharged.

§ 14. When any salesman shall be discharged by his employer for a violation of any of the provisions of section twelve hereof, a written statement of the facts in reference thereto shall be filed forthwith with the real estate commissioner by the employer.

Employer's license not affected by employee's violation.

§ 15. No violation of any of the provisions of this act on the part of any salesman or employee of any licensed broker in this state shall cause the revocation or suspension of the license of the employer of said salesman or employee unless it shall appear upon a hearing to be had by the commissioner in accordance with section twelve hereof that said employer had guilty knowledge of such violation.

Prosecution for violations.

§ 16. The real estate commissioner may prefer a complaint for violation of section one of this act before any court of competent jurisdiction, and said commissioner and his counsel, deputies or assistants may assist in presenting the law or facts at the trial. It shall be the duty of the district attorney of each county in this state to prosecute all violations of the aforesaid provision of this act in their respective counties in which such violations occur.

Penalty for acting without license.

§ 17. Any person or corporation acting as real estate broker or real estate salesman within the meaning of this act without a license as herein provided shall, upon conviction thereof, if a person, be punished by a fine of not to exceed two thousand dollars, or by imprisonment in the county jail or state prison for a term not to exceed two years, or by both such fine and imprisonment, in the discretion of the court; or if a corporation, be punished by a fine of not to exceed five thousand dollars.

No commission to unlicensed persons.

§ 18. It shall be unlawful for any licensed broker to pay a commission for performing any of the acts herein specified to any person who is not a licensed broker, or a licensed salesman.

Violation of sections 14 and 18.

§ 19. For a violation of any of the provisions of sections fourteen and eighteen of this act the real estate commissioner may temporarily suspend or permanently revoke the license of such holder in accordance with the proceedings set forth in section twelve of this act.

Party to action must be licensed.

§ 20. No person, copartnership or corporation engaged in the business or acting in the capacity of a real estate broker or a real estate salesman within this state shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned in section two hereof without alleging and proving that such person, copartnership or corporation was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action arose.

Constitutionality.

§ 21. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Stats. 1917, p. 1579, repealed.

§ 22. An act entitled "An act to define real estate brokers, agents, salesmen, solicitors; to provide for the regulation, supervision and licensing thereof; to create the office of real estate commissioner and making an appropriation therefor," approved June 1, 1917, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

1. Constitutionality—Exceptions of corporations licensed by insurance and building and loan commissioners not proper classification.—The real estate brokers' license law of 1917 is unconstitutional as special legislation, by reason of the exception from its provisions of those corporations and persons who have received licenses from the insurance commissioner or bureau of building and loan supervision.—*In re Raleigh*, 177 Cal. 746, 171 Pac. 950.

2. Same—Same.—The provision of the real estate brokers' license law excepting from its operation, corporations and persons who have received licenses to do business from the insurance commissioner or bureau of building and loan supervision, creates a substantial discrimination between those attempted to be classified without any reasonable basis of classification.—*In re Raleigh*, 177 Cal. 746, 171 Pac. 950.

3. Same—Right to engage in lawful occupation can not be taken away—May be regulated.—The right to engage in a lawful and useful occupation can not, in effect, be taken away under the guise of regulation, but such an occupation may be subjected to regulation in the public interest, and that regulation involves in some degree a limitation upon the exercise of the right regulated.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

4. Same—Same—Same—Test of proper regulation.—The test of the extent to which regulation in the public interest may go is whether the limitation imposed upon the right to engage in the occupation is really in the public interest, and if it is,

it is a proper exercise of the police power.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

5. Same—Limitation of benefits of act to persons of good character—Proper regulation.—A classification which limits the benefits of the act to persons of good character is, in view of the fact that real estate brokers act in a more or less confidential and fiduciary character, not an unreasonable one.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

6. Same—Same.—The requirement of the act that applications for licenses to engage in business as real estate brokers shall be accompanied with a certificate of good character, is a reasonable one.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

7. Same—Brokers and salesmen—Different license fees—Proper classification.—The requirement that brokers shall pay an annual license fee of ten dollars, and salesmen two dollars, is not unreasonable, as discriminating between a broker engaged in business for himself and a salesman working for another.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

8. Same—Collectors of rents—No improper discrimination.—It is not an unconstitutional discrimination to make the act applicable to collectors of rents and not to collectors of other obligations, in view of the intimate and close connection between such occupation and that of real estate brokers and agents.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

9. Same—Salaries of officers—No improper discrimination.—It is not an uncon-

stitutional discrimination to provide that salaries of certain subordinate officials and employees are left to be fixed by the commissioner.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

10. Same—Duty imposed on commissioner not arbitrary.—The duty imposed upon the commissioner by the act is not arbitrary; and if he refuses a license when the facts reasonably justify the conclusion that the applicant is of good character and reputation, he may be compelled to issue such license.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

11. Same—No judicial power conferred on commissioner.—Upon the question as to whether judicial power is conferred upon the commissioner, a nonjudicial officer, to suspend or revoke a license upon a hearing or an opportunity therefor, is not determined, but if so, and that particular part of the act invalid, it is separable from the rest of the act, and its invalidity would not render the essential parts of the act void.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

12. Same—Burden of proof on application—Question of discrimination not decided.—Upon the question as to whether the provision that upon review of the commissioner's action the burden is upon the applicant to show abuse of discretion, is an invalid discrimination, is not determined;

but, if true, the rest of the act is not affected.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

13. Same—Applicant entitled to license.—The applicant for a license is entitled to it if he presents the required recommendation and certificate, unless the commissioner is not satisfied that he has, in fact, the qualifications of honesty, truthfulness, and a good reputation, in which case only has the commissioner any discretion; and the act does not, therefore, confer upon such commissioner the arbitrary power to determine who may lawfully engage in the business.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

14. Purpose of act.—The primary purpose of the act is to require of real estate brokers and salesmen that they may be "honest, truthful, and of good reputation," and all of its provisions, including the requirement of a license, are but incidental to this single purpose and designed to accomplish it.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

15. "Power of attorney."—The phrase "power of attorney" as used in the act means written authority to act for and in place of the principal in consummating the transaction, as distinguished from merely negotiating it.—*Riley v. Chambers*, 181 Cal. 589, 8 A. L. R. 418, 185 Pac. 855.

RECEIVERS.

See tit. "Funds."

RECLAMATION BOARD.

See tit. "Sacramento and San Joaquin Drainage District."

CHAPTER 303.

RECLAMATION DISTRICTS.

References: Formation, management, government, etc., see *Kerr's Cyc. Political Code*, §§ 3446, et seq.

Contracts with federal reclamation service, see tit. "Irrigation Districts," Act 2266d.

See, generally, tits. "Drainage"; "Irrigation and Irrigation Districts"; "Levee Districts"; "Protection Districts"; "Swamp and Overflowed Land."

CONTENTS OF CHAPTER.

- ACT 3843. "AMERICAN RIVER RECLAMATION DISTRICT No. 1."
- 3850. "RECLAMATION DISTRICT No. 10."
- 3853. "RECLAMATION DISTRICT No. 54"—LEGALIZING.
- 3856. "RECLAMATION DISTRICT No. 70."
- 3857. "RECLAMATION DISTRICT No. 108."
- 3858. "RECLAMATION DISTRICT No. 108"—PAYMENT OF ASSESSMENT WARRANTS.
- 3859. RECLAMATION DISTRICTS NOS. 108 AND 729—LEGALIZING CONSOLIDATION.
- 3859a. RECLAMATION DISTRICTS NOS. 108 AND 729—CONSOLIDATED DISTRICT.
- 3859b. CONSOLIDATED "RECLAMATION DISTRICT No. 108"—VALIDATION ACT.
- 3859c. CONSOLIDATED "RECLAMATION DISTRICT No. 108"—BOUNDARIES, ETC., ACT OF 1919.
- 3862. "RECLAMATION DISTRICT No. 124."

- 3866. "RECLAMATION DISTRICT No. 252."
- 3867. "RECLAMATION DISTRICT No. 254."
- 3869. "RECLAMATION DISTRICT No. 317."
- 3870. "RECLAMATION DISTRICT No. 348."
- 3871. "RECLAMATION DISTRICT No. 535."
- 3872. "RECLAMATION DISTRICT No. 548."
- 3873. "RECLAMATION DISTRICT No. 730."
- 3874. "RECLAMATION DISTRICT No. 802"—LEGALIZING FORMATION.
- 3875. RECLAMATION DISTRICTS NOS. 742 AND 900—CONSOLIDATION.
- 3876. "RECLAMATION DISTRICT No. 785."
- 3877. "RECLAMATION DISTRICT No. 787."
- 3878. "RECLAMATION DISTRICT No. 791."
- 3879. "RECLAMATION DISTRICT No. 800."
- 3880. "RECLAMATION DISTRICT No. 800"—LEGALIZING FORMATION.
- 3881. "RECLAMATION DISTRICT No. 812"—VALIDATION ACT.
- 3882. "RECLAMATION DISTRICT No. 830."
- 3884. "RECLAMATION DISTRICT No. 832."
- 3885. "RECLAMATION DISTRICT No. 833."
- 3886. "RECLAMATION DISTRICT No. 900."
- 3886a. "RECLAMATION DISTRICT No. 900"—CHANGING BOUNDARIES.
- 3887. "RECLAMATION DISTRICT No. 999."
- 3887a. "RECLAMATION DISTRICT No. 999"—CHANGING BOUNDARIES.
- 3888. "RECLAMATION DISTRICT No. 1000."
- 3889. "RECLAMATION DISTRICT No. 1001."
- 3890. "RECLAMATION DISTRICT No. 1400."
- 3891. "RECLAMATION DISTRICT No. 1500."
- 3892. "RECLAMATION DISTRICT No. 1600."
- 3893. AUTHORIZING FORMATION OF DISTRICT—MORMON SLOUGH.
- 3894. RECLAMATION DISTRICTS NOS. 209 AND 223—LEGALIZING FORMATION.
- 3897. UNION ISLAND RECLAMATION DISTRICTS NOS. 1 AND 2.
- 3897a. "RECLAMATION DISTRICT No. 1660."
- 3897b. "RECLAMATION DISTRICT No. 2020."
- 3897c. "RECLAMATION DISTRICT No. 2031."
- 3899. RECLAMATION DISTRICTS SUBJECT TO POLITICAL CODE.
- 3901. EQUALIZATION OF ASSESSMENTS.
- 3902. DISSOLUTION.
- 3903. BONDS.
- 3904. ASSESSMENTS TO PAY BONDS ISSUED UNDER ACT 3903.
- 3906. APPEALS FROM ORDERS FORMING OR REFUSING TO FORM RECLAMATION DISTRICTS.

"AMERICAN RIVER RECLAMATION DISTRICT NO. 1."

ACT 3843—An act to create a reclamation district to be called "American River Reclamation District Number 1," and providing for the control and management thereof.

History: Approved April 28, 1909, Stats. 1909, p. 1127.

"RECLAMATION DISTRICT NO. 10."

ACT 3850—An act creating a reclamation district to be known as Reclamation District No. 10, prescribing its boundaries and providing for the management and control thereof; dissolving Protection District No. 10, of Yuba county, California, and providing for the disposition of the indebtedness, rights, rights of way, levees and other works of reclamation of said protection district.

History: Approved May 26, 1913. In effect August 10, 1913. Stats. 1913, p. 337.

"RECLAMATION DISTRICT NO. 54"—LEGALIZING.

ACT 3853—An act ratifying and legalizing Reclamation District Number Fifty-four of this state, in Sacramento county, and the by-laws and proceedings thereof.

History: Approved March 25, 1878. Stats. 1877-78, p. 530.

"RECLAMATION DISTRICT NO. 70."

ACT 3856—An act to create a reclamation district, to be called "Reclamation District Number Seventy," and providing for the control and management thereof.

History: Approved March 21, 1905, Stats. 1905, p. 717.

1. Reclamation district, a government agency, not a corporation.—This act creates a government agency for certain specific purposes, and not a corporation within the meaning of section 1, article XII, of the constitution.—Reclamation District No. 70 v. Sherman, 11 Cal. App. 399, 406, 105 Pac. 277.

2. Assessments.—Under code provisions. Under section 2 of the act an assessment made in accordance with the provisions of the Political Code was within the power of the district.—Reclamation District No. 70 v. Burks, 159 Cal. 233, 113 Pac. 170.

"RECLAMATION DISTRICT NO. 108."

ACT 3857—An act to legalize certain proceedings of the board of supervisors of Yolo county.

History: Approved March 30, 1872, Stats. 1871-72, p. 776.

1. The act is sufficient to establish the legal existence of the district as a public corporation whatever defects there may have been in its original formation. People v. Reclamation District No. 108, 53 Cal. 346.

"RECLAMATION DISTRICT NO 108"—PAYMENT OF ASSESSMENT WARRANTS.

ACT 3858—An act to provide for the presentation to and approval by the board of supervisors, registration, interest upon, time of payment and receipt in payment of assessment of warrants of Reclamation District No. 108, situated in Colusa and Yolo counties.

History: Approved April 16, 1909, Stats. 1909, p. 940. Prior act of March 29, 1872, Stats. 1871-72, p. 696; repealed February 27, 1903, Stats. 1903, p. 53.

"RECLAMATION DISTRICTS NOS. 108 AND 729"—LEGALIZING CONSOLIDATION.

ACT 3859—An act legalizing the consolidation and reorganization of Reclamation District No. 729 with Reclamation District No. 108, in the counties of Yolo and Colusa; fixing, defining and establishing the boundaries of the consolidated district; providing for its management and control, subject to the provisions of the Political Code of California, and to other laws of said state relative to reclamation districts; and repealing all acts and parts of acts inconsistent therewith.

History: Approved April 23, 1913. In effect August 10, 1913, Stats. 1913, p. 62.

RECLAMATION DISTRICTS NOS. 108 AND 729—CONSOLIDATED DISTRICT.

ACT 3859a—An act to provide for the deposit of funds in the county treasury, for the presentation to, and approval by, the board of supervisors, registration, interest upon, time of payment and receipt in payment of assessment of warrants, of Reclamation District No. 108, created by that certain act of the legislature of the state of California, approved April 23, 1913, and entitled, "An act legalizing the consolidation and reorganization of Reclamation District No. 729, with Reclamation District No. 108, in the counties of Yolo and Colusa; fixing, defining and establishing the boundaries of the consolidated district; providing for its management and control, subject to the provisions of the Political Code of California, and to other laws of said state relative to reclamation districts; and repealing all acts and parts of acts inconsistent therewith," and situated in Colusa and Yolo counties, and providing that the board of supervisors of the county of Colusa shall have jurisdiction of all matters concerning said district, and all funds of said district shall be deposited with the county treasurer of the county of Colusa.

History: Approved May 5, 1915. In effect August 8, 1915. Stats. 1915, p. 358.

CONSOLIDATED "RECLAMATION DISTRICT NO. 108"—VALIDATION ACT.

ACT 3859b—An act approving, confirming and declaring valid the creation, formation and organization of reclamation district number one hundred eight, created by that certain act of the legislature of the state of California entitled, "An act legalizing the consolidation and reorganization of reclamation district number seven hundred twenty-nine with reclamation district number one hundred eight, in the counties of Yolo and Colusa; fixing, defining and establishing the boundaries of the consolidated district; providing for its management and control, subject to the provisions of the Political Code of California, and to other laws of said state relative to reclamation districts; and repealing all acts and parts of acts inconsistent therewith," approved April 23, 1913, and all acts and proceedings of said district and the boards of trustees thereof, and also more clearly defining the exterior boundaries of said district.

History: Approved May 18, 1915. In effect August 8, 1915. Stats. 1915, p. 559.

1. The boundaries were subsequently defined in the act of May 26, 1917. Also in the act of May 7, 1919. See, post, Act 3859c.

CONSOLIDATED "RECLAMATION DISTRICT NO. 108"—BOUNDARIES, ETC.—
ACT OF 1919.

ACT 3859c—An act defining henceforth the exterior boundaries of Reclamation District No. 108, situated partly in the counties of Colusa and Yolo, and providing for the continuation in office of the present trustees of said district and for the election and qualification of their successors, and providing that the management and control of the affairs of said Reclamation District No. 108, as defined in this act, are subject to the provisions of the Political Code of the state of California and to all other laws of the state, except as provided in said act, in connection with the issuance and payment of warrants and the payment of assessments, providing that all moneys of the said district shall be paid and deposited with the county treasurer of Colusa county, and conferring jurisdiction upon the board of supervisors of the county of Colusa as to all matters concerning said district; providing also for the management, control and administration of the affairs of said district; also ratifying the incorporation of certain lands in said Reclamation District No. 108, as described in certain notices filed and recorded in the office of the county recorder of the county of Colusa, state of California, and also authorizing the trustees of said Reclamation District No. 108 to make an equitable settlement with the owner of such land so incorporated as to the cost of any work heretofore done by Reclamation District No. 108, or its predecessors in interest, or that may be hereafter done before the going into effect of this act, and also declaring Reclamation District No. 108, as defined in this act, to be the successors in interest of Reclamation District No. 108, defined in that certain act approved May 26, 1917, also that certain Reclamation District No. 108, defined in that certain act approved May 18, 1915, and also that certain Reclamation District No. 108, defined in that certain act approved April 23, 1913, and also directing the commissioners of assessment, heretofore appointed by the board of supervisors of Colusa county, to include the lands in said assessment, as described in this act, in the event that said assessment is not levied before this act shall take effect.

History: Approved May 7, 1919. In effect July 22, 1919. Stats. 1919, p. 357. Prior act of May 26, 1917, in effect July 27, 1917, Stats. 1917, p. 1219, no doubt repealed by the present act.

"RECLAMATION DISTRICT NO. 124."

ACT 3862—An act to legalize certain proceedings in reclamation district number one hundred and twenty-four.

History: Approved March 30, 1874, Stats. 1873-74, p. 957.

1. This act legalized this district.

2. The act is conclusive proof of legislative recognition as of the date thereof.—Reclamation District No. 124 v. Gray, 95 Cal. 601, 30 Pac. 779.

"RECLAMATION DISTRICT NO. 252."

ACT 3866—An act to establish reclamation district number two hundred and fifty-two of this state, in Sacramento county.

History: Approved March 25, 1878, Stats. 1877-78, p. 531.

"RECLAMATION DISTRICT NO. 254."

ACT 3867—An act in relation to certain swamp land, in the county of Sacramento.

History: Approved April 1, 1878, Stats. 1877-78, p. 909.

"RECLAMATION DISTRICT NO. 317."

ACT 3869—An act to create and organize Reclamation District Number Three Hundred and Seventeen, and to define its boundaries and provide for its government.

History: Approved March 27, 1877-78, p. 562.

"RECLAMATION DISTRICT NO. 348."

ACT 3870—An act legalizing the formation and organization of reclamation district number three hundred forty-eight, in the county of San Joaquin, state of California; fixing, defining, and establishing the boundaries thereof; providing for its management and control subject to the provisions of the Political Code of the state of California and to other laws of said state relative to reclamation districts; and repealing all acts and parts of acts inconsistent therewith.

History: Approved March 1, 1911, Stats. 1911, p. 257.

"RECLAMATION DISTRICT NO. 535."

ACT 3871—An act excluding certain lands from Reclamation District No. 535, and providing for the continuance of said district as to the remaining lands within the boundaries thereof, and providing that the lands so excluded shall be liable for their just proportion of the legal indebtedness of said district, when the same shall be ascertained by law.

History: Approved December 18, 1911, Stats. 1911 (ex. sess.), p. 12.

1. This act excluded land within the city of Sacramento. It provided that the excluded lands should be liable for their just proportion of the indebtedness of the district.

"RECLAMATION DISTRICT NO. 548."

ACT 3872—An act legalizing the formation and organization of reclamation district number five hundred forty-eight, in the county of San Joaquin, state of California; fixing, defining, and establishing the boundaries thereof; providing for its management and control subject to the provisions of the Political Code of the state of California and to other laws of said state relative to reclamation districts; and repealing all acts and parts of acts inconsistent therewith.

History: Approved March 1, 1911, Stats. 1911, p. 256.

"RECLAMATION DISTRICT NO. 730."

ACT 3873—An act legalizing the formation and organization of reclamation district number seven hundred and thirty, in the county of Yolo, state of California.

History: Approved March 6, 1909, Stats. 1909, p. 145. See, also, act of same date (Stats. 1909, p. 146), fixing and establishing boundaries.

See, also, act of same date (Stats. 1909, p. 146) fixing, establishing and defining the exterior boundaries of the district.

1. Plan of work—Clearness and definiteness—Rule satisfied.—The rule of the Bonbin case (Reclamation District v. Bonbin, 158 Cal. 197), as to clearness and definiteness of plans of new work, held to have been more than satisfied by the reports in the instant case.—Reclamation Dist. No. 730 v. Hershey, 169 Cal. 793, 796, 148 Pac. 185.

2. Same—Modifications—Statement of work under each not required.—Where there are more than one modification of the original plan, the statute does not require a statement of the work done or to be done under each of the modified plans of reclamation, but only a statement of the cost of the work necessary for the reclamation of the land in pursuance of any of the plans, and if the original assessment is insufficient and further assessments are thus from time to time required, the law exacts merely a statement of the work done or to be done and its estimated cost.—Reclamation Dist. No. 730 v. Hershey, 169 Cal. 793, 798, 148 Pac. 185.

"RECLAMATION DISTRICT NO. 802"—LEGALIZING FORMATION.

ACT 3874—An act legalizing the formation and organization of reclamation district number eight hundred two, in the county of Contra Costa, state of California, fixing, defining and establishing the boundaries thereof, providing for its management and control subject to the provisions of the Political Code of the state of California and to other laws of said state relative to reclamation districts; and repealing all acts and parts of acts inconsistent therewith.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 838.

RECLAMATION DISTRICT NOS. 742 AND 900—CONSOLIDATION.

ACT 3875—An act consolidating Reclamation District No. 742 and Reclamation District No. 900, and providing for their liquidation and payment of all outstanding indebtedness.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 950.

Reclamation Districts Nos. 742 and 900 consolidated.

§ 1. Reclamation District No. 742 and Reclamation District No. 900 are hereby consolidated under the designation of Reclamation District No. 900; provided, however, that the trustees of the respective districts shall have the power and are directed to proceed to liquidate the affairs of each of said districts and to collect upon the assessments now existing against lands of said districts a sufficient amount to pay and discharge all outstanding indebtedness of said districts thereon. All existing laws are continued in force for the purpose of consummating said liquidation and collection of assessments therefor and the payment of outstanding indebtedness. Each of said districts shall respectively pay all of its existing indebtedness including any bonds that may have been heretofore issued.

See Act 3886 creating district No. 900.

"RECLAMATION DISTRICT NO. 785."

ACT 3876—An act legalizing the formation and organization of reclamation district number seven hundred and eighty-five, in the county of Yolo, state of California.

History: Approved April 14, 1909, Stats. 1909, p. 896.

“RECLAMATION DISTRICT NO. 787.”

ACT 3877—An act legalizing the formation and organization of reclamation district number seven hundred and eighty-seven, in the county of Yolo, state of California.

History: Approved April 14, 1909, Stats. 1909, p. 899.

“RECLAMATION DISTRICT NO. 791.”

ACT 3878—An act authorizing the payment of assessments levied in Reclamation District No. 791 to be made to the county treasurer of the county of Sacramento.

History: Approved March 8, 1909, Stats. 1909, p. 231.

Editor's note: See act of March 13, 1909, Stats. 1909, p. 310, authorizing this district to contract for and maintain joint levees or other joint works of reclamation with any person, firm, corporation, district or municipality. See, also, act of March 13, 1909, Stats. 1909, p. 297, authorizing this district to contract for the disposition of drainage and flood waters and for the sale thereof to any person, firm, or corporation for irrigation or any other lawful purpose.

“RECLAMATION DISTRICT NO. 800.”

ACT 3879—An act to create a reclamation district to be called “Reclamation District No. 800,” and providing for the control and management thereof.

History: Approved March 14, 1907, Stats. 1907, p. 259.

“RECLAMATION DISTRICT NO. 800”—LEGALIZING FORMATION.

ACT 3880—An act legalizing the formation and organization of reclamation district number eight hundred, in the county of Contra Costa, state of California, fixing, defining and establishing the boundaries thereof, providing for its management and control subject to the provisions of the Political Code of the state of California and to other laws of said state relative to reclamation districts; and repealing all acts and parts of acts inconsistent therewith.

History: Approved March 2, 1911, Stats. 1911, p. 265.

“RECLAMATION DISTRICT NO. 812”—VALIDATION ACT.

ACT 3881—An act to recognize and declare valid all proceedings in consolidated reclamation district No. 812.

History: Approved April 27, 1911, Stats. 1911, p. 1157.

“RECLAMATION DISTRICT NO. 830.”

ACT 3882—An act to create a reclamation district to be called “Reclamation District Number 830,” and providing for the control and management thereof.

History: Approved March 11, 1911, Stats. 1911, p. 342.

“RECLAMATION DISTRICT NO. 832.”

ACT 3884—An act to create a reclamation district to be called “Reclamation District Number 832,” and providing for the control and management thereof.

History: Approved April 8, 1911, Stats. 1911, p. 808.

“RECLAMATION DISTRICT NO. 833.”

ACT 3885—An act to create a reclamation district to be called “Reclamation District Number 833,” and providing for the control and management thereof.

History: Approved April 8, 1911, Stats. 1911, p. 809.

“RECLAMATION DISTRICT NO. 900.”

ACT 3886—An act to create a reclamation district to be called “Reclamation District Number 900,” and providing for the control and management thereof.

History: Approved March 2, 1911, Stats. 1911, p. 264.

See Act 3875 consolidating Districts 742 and 900; and see Act 3886a, changing boundaries.

"RECLAMATION DISTRICT NO. 900"—CHANGING BOUNDARIES.

ACT 3886a—An act to change and modify the exterior boundaries of Reclamation District No. 900 as set forth and defined by an act of the legislature entitled "An act to create a reclamation district to be called 'reclamation district number nine hundred,' and providing for the control and management thereof," approved March 2, 1911.

History: Approved April 9, 1919. In effect July 22, 1919, Stats. 1919, p. 62.

"RECLAMATION DISTRICT NO. 999."

ACT 3887—An act to create a reclamation district to be called "reclamation district number nine hundred ninety-nine," and providing for the control and management thereof.

History: Approved May 22, 1913. In effect August 10, 1913. Stats. 1913, p. 242.

"RECLAMATION DISTRICT NO. 999"—CHANGING BOUNDARIES.

ACT 3887a—An act to change and modify the exterior boundaries of Reclamation District No. 999, as set forth and defined by an act entitled "An act to create a reclamation district to be called 'reclamation district number nine hundred ninety-nine' and providing for the control and management thereof," approved May 22, 1913.

History: Approved April 9, 1919. In effect July 22, 1919. Stats. 1919, p. 66.

"RECLAMATION DISTRICT NO. 1000."

ACT 3888—An act to create a reclamation district to be called Reclamation District Number 1000, and providing for the management and control thereof, and dissolving certain levee districts, swamp-land districts, and reclamation districts within the boundaries of said Reclamation District No. 1000, and providing for the liquidation and winding up of said dissolved districts.

History: Approved April 8, 1911, Stats. 1911, p. 835.

"RECLAMATION DISTRICT NO. 1001."

ACT 3889—An act to create a reclamation district to be called Reclamation District No. 1001, and providing for the management and control thereof, and dissolving certain levee districts, swamp-land districts and reclamation districts within the boundaries of said Reclamation District No. 1001, and providing for the liquidation and winding up of said dissolved districts.

History: Approved April 8, 1911, Stats. 1911, p. 831. Amended May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 969.

The amendatory act recites that it amends section two so as to change the location of the office of the district, but there are other minor changes in the section.

"RECLAMATION DISTRICT NO. 1400."

ACT 3890—An act creating a reclamation district to be called and known as "Reclamation District No. 1400," and providing for the management and control thereof.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 811.

"RECLAMATION DISTRICT NO. 1500."

ACT 3891—An act creating a reclamation district to be called and known as "Reclamation District No. 1500"; providing for the management and control thereof and dissolving all levee districts, swamp-land districts, and reclamation districts, lying wholly within the boundaries of said Reclamation District No. 1500, providing for the liquidation and winding up of said dissolved districts, and excluding from any levee district, swamp-land district and reclamation district any land lying within the boundaries of said Reclamation District No. 1500.

History: Approved April 30, 1913. In effect August 10, 1913. Stats. 1913, p. 130. Amended (1) June 1, 1915, in effect August 8, 1915, Stats. 1915, p. 1027; (2) May 26, 1917, in effect July 27, 1917, Stats. 1917, p. 966.

Both amendatory acts amended section two.

1. Constitutionality — Title sufficient to cover subject of act.—The title of the act is broad enough to cover the provision authorizing the construction of a levee along a certain specified line.—Reclamation District No. 1500 v. Superior Court, 171 Cal. 672, 154 Pac. 845.

2. Same—Section 14, article I, constitution.—The act is not violative of section 14, article I of the constitution.—Reclamation District No. 1500 v. Superior Court, 171 Cal. 672, 154 Pac. 845.

2a. Same—Destruction of county buildings, roads and bridges.—The fact that a special act creating a reclamation district authorizes the injury or destruction of county buildings, roads and bridges, does not render the act unconstitutional.—Reclamation Dist. No. 1500 v. Superior Court, 171 Cal. 672, 680, 154 Pac. 845.

2b. Same—Constitution refers to private, not public property.—Section 14, article I, of the constitution, relates to the taking of private property and has no reference to the taking by a reclamation district, acting under legislative authority, of county property, inasmuch as such property is under the full control of the legislature.—Reclamation Dist. No. 1500 v. Superior Court, 171 Cal. 672, 679, 154 Pac. 845.

2c. Same—Districts may be formed by special act.—Reclamation districts may be formed by special act, and the legislature, in passing such an act, is not bound to

follow the procedure laid down in the general law governing reclamation districts.—Reclamation Dist. No. 1500 v. Superior Court, 171 Cal. 672, 678, 154 Pac. 845.

3. Act a public statute—Work not a public nuisance.—The statute (Stats. 1913, p. 130) creating Reclamation District No. 1500 is a public statute, and the execution thereof, by the construction of levees therein provided for, is an exercise of the police power of the state, and injunction will not lie at the suit of property owners within the district to prevent the construction of such levees, or the destruction of those already constructed on the ground that the work is a private nuisance, or that it is an unlawful exercise of the right of eminent domain, damaging their property without compensation first paid therefor.—Reclamation District No. 1500 v. Superior Court, 171 Cal. 672, 154 Pac. 845; Gray v. Reclamation District No. 1500, 174 Cal. 622, 163 Pac. 1024; Proper v. Reclamation District No. 1500, 174 Cal. 816, 163 Pac. 1037.

3a. Same—Officers are public officers.—The trustees of the district are public officers of the state, and officers of the law within the meaning of subdivision 4, section 3420, Civil Code, and section 526, Code of Civil Procedure, and can not be enjoined to prevent the execution of their duties under the act.—Reclamation Dist. No. 1500 v. Superior Court, 171 Cal. 672, 675, 154 Pac. 845.

“RECLAMATION DISTRICT NO. 1600.”

ACT 3892—An act creating a reclamation district to be called and known as “reclamation district No. 1600”; providing for the management and control thereof and dissolving all reclamation districts lying wholly within the boundaries of said reclamation district No. 1600, and providing for the liquidation and winding up of said dissolved districts, and excluding from any reclamation district any land lying within the boundaries of said reclamation district No. 1600.

History: Approved May 26, 1913. In effect August 10, 1913. Stats. 1913, p. 338. Amended May 13, 1919. In effect July 22, 1919. Stats. 1919, p. 514.

The amendatory act of 1919 amended section two of the original act.

AUTHORIZING FORMATION OF DISTRICT—MORMON SLOUGH.

ACT 3893—An act to authorize the inhabitants of the Mormon Slough in San Joaquin county, to form a reclamation district, and levy taxes therein.

History: Approved April 1, 1872, Stats. 1871-72, p. 709.

RECLAMATION DISTRICTS NOS. 200 AND 223—LEGALIZING FORMATION.

ACT 3894—An act concerning certain reclamation districts in San Joaquin county.

History: Approved March 14, 1876, Stats. 1875-76, p. 281.

This act validated districts 200 and 223 and provided for the division of district 223.

UNION ISLAND RECLAMATION DISTRICTS NOS. 1 AND 2.

ACT 3897—An act to create and establish two new reclamation districts of this state, to be known, respectively, as Union Island Reclamation District No. 1, and Union Island Reclamation District No. 2, embracing within their respective territorial limits a portion of Union Island, in San Joaquin county; to define the boundaries of such districts, and provide for the organization and government thereof, and to dissolve all other reclamation districts in conflict therewith.

History: Approved February 23, 1903, Stats. 1903, p. 37.

"RECLAMATION DISTRICT NO. 1660."

ACT 3897a—An act to create a reclamation district to be called "reclamation district number sixteen hundred and sixty," and providing for the control and management thereof.

History: Approved June 1, 1915. In effect August 8, 1915. Stats. 1915, p. 1034.

"RECLAMATION DISTRICT NO. 2020."

ACT 3897b—An act to create a reclamation district to be called "reclamation district number two thousand twenty," and providing for the control and management thereof, and repealing all acts and parts of acts inconsistent with this act.

History: Approved May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 956.

"RECLAMATION DISTRICT NO. 2031."

ACT 3897c—An act creating a reclamation district to be known as Reclamation District No. 2031, prescribing its boundaries and providing for the management and control thereof; dissolving Reclamation District No. 663 of Stanislaus county, California, and providing for the disposition of the indebtedness, rights, rights of way, levees and other works of reclamation of said Reclamation District No. 663.

History: Approved May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 658.

RECLAMATION DISTRICT SUBJECT TO POLITICAL CODE.

ACT 3899—An act to subject certain reclamation districts to the provisions of the Political Code.

History: Approved March 10, 1885, Stats. 1885, p. 77.

1. This act made districts organized prior to January 1, 1873, subject to the provisions of the code.

2. Act prospective in operation.—The act is prospective in operation and did not reserve rights of action barred at the time of the enactment of the amendment of 1899 to section 3453, Political Code.—San Francisco Savings Union v. Reclamation District No. 124, 144 Cal. 639, 79 Pac. 374.

3. Same—No subject to code provisions.—The act did not render a reclamation district subject to the provisions of the code as to suits for debts existing at the date of the passage of the act, nor change the sole

pre-existing remedy of mandamus for the enforcement of such a liability.—San Francisco Savings Union v. Reclamation District No. 124, 144 Cal. 639, 79 Pac. 374.

4. Same—Complaint insufficient.—A complaint in an action against a reclamation district which does not allege that, at the time of the passage of the act, it was prosecuting the objects for which it was created, and that it had been so doing ever since its creation, does not show that such district was within the provisions of the act.—San Francisco Savings Union v. Reclamation District No. 124, 144 Cal. 639, 79 Pac. 374.

EQUALIZATION OF ASSESSMENTS.

ACT 3901—An act to facilitate equalization of assessments in reclamation districts.

History: Approved March 7, 1881, Stats. 1881, p. 68. (Ban. ed., p. 70.)

§ 1. Whenever, under the provisions of section three thousand four hundred and seventy-seven of the Political Code, the purchasers from the state of lands included in any reclamation district have been credited with payment in full for such lands,

the trustees of such district may in their discretion allow a credit of one dollar per acre on all lands assessed in such districts for reclamation purposes, the title to which lands has not been derived by purchase of the same from the state as swamp and overflowed lands; such credit to be given on any assessment heretofore made and remaining unpaid, or on any future assessment where the owner of such lands has not theretofore received such credit, whether judgments for the payment of such assessments have been recovered or not; provided, that no such credit shall be given or allowed, or agreed to be given or allowed, until such person shall have paid all assessments levied on such lands, with interest thereon at the rate of ten per centum per annum from date of delinquency, and all judgments therefor in full, less the amount of such credit.

§ 2. This act shall take effect immediately.

DISSOLUTION.

ACT 3902—An act providing for the dissolution and annulment of swamp and overflowed land reclamation districts and protection districts for nonuser of corporate powers.

History: Approved February 17, 1899, Stats. 1899, p. 13.

§ 1. All swamp and overflowed land reclamation districts and protection districts heretofore organized under any law of this state, which have, for more than five years, failed or neglected to use their corporate powers, and are free from debt, or against which all claims are barred by the provisions of the Code of Civil Procedure of this state, may be dissolved and annulled by the judgment of a court of competent jurisdiction on proper proceedings had therefor. The action or proceeding may be brought against said district by any person owning lands therein. The summons shall be served upon a majority of the last elected and acting trustees of the district, if living; if not living, then it may be served generally by publication.

§ 2. All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. This act shall take effect and be in force from and after its passage.

See Kerr's Cyc. Political Code, § 3493.

BONDS.

ACT 3903—An act to provide for the issuing of bonds by reclamation districts, and the disposal thereof for reclamation and other purposes, and their payment by taxation upon the property situated in such reclamation districts.

History: Approved March 27, 1895, Stats. 1895, p. 197. Amended April 15, 1909, Stats. 1909, p. 933.

Editor's Note.—This act appears to have been superseded by the 1911 amendment of section 3480, Political Code, and the text is therefore omitted.

ASSESSMENTS TO PAY BONDS ISSUED UNDER ACT 3903.

ACT 3904—An act to provide for assessments in reclamation districts where such districts have issued bonds pursuant to an act entitled "An act to provide for the issuing of bonds by reclamation districts, and the disposal thereof for reclamation purposes, and their payment by taxation upon the property situated in such reclamation districts," approved March 27, 1895, or amendments thereof, and providing for the payment of such bonds by levying and collecting assessments, pursuant to the Political Code.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 777.

Assessments to pay reclamation district bonds authorized.

§ 1. Any reclamation district that has heretofore issued bonds pursuant to the provisions of an act entitled "An act to provide for the issuing of bonds by reclama-

tion districts, and the disposal thereof for reclamation purposes, and their payment by taxation upon the property situated in such reclamation districts," approved March 27, 1895, or any amendments thereof, is hereby authorized and empowered to levy and collect assessments under the provisions of part III, article II of the Political Code of California, for the purpose of providing funds for the payment of said bonds, and all of the provisions of said Political Code relative to levying and collecting assessments, and the payment of bonds of reclamation districts, are hereby made applicable to the levying and collection of such assessments and the payment of the bonds hereinbefore mentioned.

APPEALS FROM ORDERS FORMING OR REFUSING TO FORM RECLAMATION DISTRICTS.

ACT 3906—An act providing for appeals from orders of the board of supervisors forming or refusing to form reclamation or swamp-land districts, setting off lands from such districts, or including lands in such districts, or consolidating swamp land or reclamation districts.

History: Approved March 11, 1893, Stats. 1893, p. 174. Prior act of April 16, 1880, Stats. 1880, p. 119 (Ban. ed., p. 355), superseded by the present act.

Appeal to superior court, time of.

§ 1. Any person having an interest affected by any order of the board of supervisors of any county, approving or refusing to approve any petition for the formation of a reclamation or swamp land reclamation district, or in any manner creating or consolidating such districts, or including in or excluding from such districts any lands, may, within thirty days after said order is made, appeal therefrom to the superior court of the county.

Appeal, how prosecuted. Judgment of superior court final. Rules of court. Duties of clerk of board and of clerk of court.

§ 2. Such appeal shall be taken and prosecuted in the manner prescribed by law and the rules of said superior court relating to appeals from inferior courts, and the matter shall be tried anew in said superior court. The judgment rendered in the superior court in such matter shall be final. Each superior court held in any county of the state in which there are any reclamation or swamp land reclamation districts shall make rules regulating appeals in the cases hereinbefore mentioned; and the clerk of the board of supervisors shall, upon a notice of appeal and undertaking on appeal being filed with him, transmit the same, and all papers and documents used on the hearing before said board, to the clerk of the superior court in and for said county, who shall thereupon file the same without receiving any fee therefor.

Time of taking effect.

§ 3. This act shall take effect and be in force from and after its passage.

Repeal of conflicting acts.

§ 4. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Citation. *Inglin v. Hoppin*, 156 Cal. 483, 491, 105 Pac. 582.

1. Constitutionality—Appellate jurisdiction conferred on superior court renders act unconstitutional.—The act is unconstitutional as in violation of the provisions of section 5, article 6 of the constitution, limiting the appellate jurisdiction of the superior court, in so far as it attempts to

confer appellate jurisdiction upon that court in relation to the proceedings of boards of supervisors for the establishment of reclamation districts, such board not being superior courts, although exercising quasi judicial functions.—*Inglin v. Hoppin*, 156 Cal. 483, 491, 105 Pac. 582.

CHAPTER 304.

RECORDERS.

CONTENTS OF CHAPTER.

ACT 3911. CERTAIN ACTS LEGALIZED.

3912. CERTIFICATES OF STATUS OF SCHOOL LAND FURNISHED SURVEYOR GENERAL.

CERTAIN ACTS LEGALIZED.

ACT 3911—An act to legalize acts of county recorders and county auditors.

History: Approved March 18, 1864, Stats. 1863-64, p. 187.

CERTIFICATES OF STATUS OF SCHOOL LAND FURNISHED SURVEYOR
GENERAL.

ACT 3912—An act to require county recorders to furnish the surveyor general of the state of California with certificates of the status of sixteenth and thirty-sixth sections and providing the fee therefor.

History: Approved April 21, 1913. In effect August 10, 1913. Stats. 1913, p. 44.

Certificate of status of sixteenth and thirty-sixth sections.

§ 1. It shall be the duty of the county recorder of each county in the state of California, upon the request of the surveyor general of the state of California, to issue his certificate certifying to the status of any sixteenth or thirty-sixth section, or legal subdivision thereof, which are to be used as bases for selections or conveyed to the federal government in accordance with, or pursuant to, the provisions of an act entitled "An act to authorize the adjustment and settlement of a controversy existing between the United States and the state of California, in relation to the grants made by Congress to the state of California for the benefit of the public schools, and internal improvements, authorizing the conveyance of land by officers of the state for the purpose of making such adjustment and settlement, and making an appropriation to carry out the provisions hereof," approved December 24, 1911.

§ 2. The county recorder shall transmit said county recorder's certificate to the surveyor general of the state of California upon the receipt of the fee of one dollar for the issuance of said certificate.

See the act of December 24, 1911, ante, Act 3714.

RECORDS.

See tits. "Burnt or Destroyed Records or Documents"; "Courts," Act 1128.

CHAPTER 305.

RED BLUFF.

Reference: Incorporation, see tit. "Municipal Corporations," Act 3094, note.

CONTENTS OF CHAPTER.

ACT 3923. SURVEY LEGALIZED.

3924. DISTRIBUTION OF TOWNSITE LOTS.

SURVEY LEGALIZED.

ACT 3923—An act to legalize survey of.

History: Approved March 23, 1861, Stats. 1861, p. 72.

This act legalized the survey made by L. B. Healy and made it the official map of the town.

This act was cited in *Red Bluff v. Walbridge*, 15 Cal. App. 770, 776, 778, 779, 780, 116 Pac. 77.

DISTRIBUTION OF TOWN SITE LOTS.

ACT 3924—An act to authorize the county judge of Tehama county to distribute town lots held by him in trust for the citizens of Red Bluff, and to issue certificates of title to the inhabitants in accordance with their respective interests.

History: Approved March 6, 1868, Stats. 1867-68, p. 107. Amended March 28, 1878, Stats. 1877-78, p. 602.

Repealed. Sections 8, 9, 10, 11 and 12 were repealed March 28, 1878, Stats. 1877-78, p. 602.

This act was cited in *Everson v. Mayhew*, 57 Cal. 144, S. C. *Everson v. Mayhew*, 63 Cal. 163, 3 Pac. 641; *Red Bluff v. Walbridge*, 15 Cal. App. 770, 776, 777, 783, 116 Pac. 77.

REDDING.

See Act 3094, note.

REDLANDS.

See Act 3094, note.

CHAPTER 306.

REDONDO BEACH.

Reference: Incorporation, see tit. "Municipal Corporations," Act 3094, note.

CONTENTS OF CHAPTER.

ACT 3940. TIDE LAND GRANT.

TIDE LAND GRANT.

ACT 3940—An act granting certain tide lands and submerged lands of the state of California to the city of Redondo Beach upon certain trusts and conditions.

History: Approved April 12, 1915. In effect August 8, 1915. Stats. 1915, p. 62.

Tide lands granted Redondo Beach.

§ 1. There is hereby granted to the city of Redondo Beach, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty, in and to all the tide lands and submerged lands, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific Ocean, to be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit:

To be used for harbor. May grant franchises.

(a) Said lands shall be used by said city and by its successors, solely for the establishment, improvement and conduct of a harbor and for the establishment and construction of bulkheads or breakwaters for the protection of lands within its boundaries, or for the protection of its harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion or accommodation of commerce and navigation, and the protection of the lands within said city, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatsoever; provided, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof for limited periods, for purposes consistent with the trusts upon which said lands are held by the state of California and with the requirements of commerce or navigation at said harbor;

Harbor to be improved.

(b) Said harbor shall be improved by said city without expense to the state, and shall always remain a public harbor for all purposes of commerce and navigation, and the state of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California;

No discrimination in rates. Right to fish.

(c) In the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph (a), no discrimination in rates, tolls, or charges, or in facilities, for any use or service in connection therewith shall ever be made, authorized or permitted by said city or by its successors. The absolute right to fish in the waters of said harbor, with the right of convenient access to said waters over said lands for said purpose, is hereby reserved to the people of the state of California.

CHAPTER 307.**REDWOOD CITY.**

Reference: Incorporation, see tit. "Municipal Corporations," Act 3094, note.

CONTENTS OF CHAPTER.

ACT 3943. OPENING AND EXTENSION OF STAMBAUGH STREET.

OPENING AND EXTENSION OF STAMBAUGH STREET.

ACT 3943—An act to authorize the board of trustees of Redwood City to extend and open Stambaugh street, in said town, from the intersection of said street with the west side of Maple street to its intersection with Main street, and to condemn private property for the roadway of said street.

History: Approved March 18, 1874, Stats. 1873-74, p. 466.

REEDLEY.

See Act 3094, note.

RESTORATION OF RECORDS.

See tit. "Burnt or Destroyed Records or Documents."

REVENUE.

See tit. "Taxation."

RIALTO.

See Act 3094, note.

CHAPTER 308.**RICHMOND.****CONTENTS OF CHAPTER.**

ACT 3954. FREEHOLDERS' CHARTER.

3955. TIDE LAND GRANT.

3956. TIDE LAND LEASE AUTHORIZED.

FREEHOLDERS' CHARTER.

ACT 3954—Freeholders' charter of the city of Richmond.

History: Voted for and ratified at an election held on February 9, 1909; adopted March 4, 1909, Stats. 1909, p. 1262. Amended at an election held April 8, 1913; filed with the secretary of state June 2, 1913, Stats. 1913, p. 1690. Originally incorporated under the general act of 1883, in 1895, as a sixth-class city.

1. Recall—Grounds of for the electors not the court.—Under the recall provision of the Richmond charter it is for the electors and not the court to determine the sufficiency of the grounds for the recall of an officer.—*Conn v. City Council*, 17 Cal. App. 705, 121 Pac. 714.

2. Same—Jurisdiction depends on filing proper petition.—Under the Richmond charter the jurisdiction of the city council to order a recall election depends upon the filing of a petition, not only signed by the requisite number of electors, but also sufficient in material matters of form and substance.—*Conn v. City Council*, 17 Cal. App. 705, 121 Pac. 714.

3. Same—Same—Same.—The duty of the city council of Richmond to order a recall election upon the presentation of a sufficient petition is, under the charter of that city, mandatory.—*Conn v. City Council*, 17 Cal. App. 705, 121 Pac. 714.

4. Same—Petition—Signing initials and not given name sufficient.—A recall petition is sufficient under the Richmond charter, even though the electors signed by initials of given names, and not such names in full.—*Conn v. City Council*, 17 Cal. App. 705, 121 Pac. 714.

5. Same—Same—Failure to give residence, street, and number.—A recall petition is sufficient under the Richmond charter notwithstanding the fact that some of the electors who signed the same did not comply with the requirement as to place of residence, with street and number.—*Conn v. City Council*, 17 Cal. App. 705, 121 Pac. 714.

5a. Same—Same—Clerk's certificate—Clerk may not arbitrarily refuse to attach.—The clerk may not arbitrarily refuse to attach his certificate to a recall petition under the Richmond charter, and submit the same to the city council on the ground of doubt as to the genuineness of the signatures, or any of them.—*Conn v. City Council*, 17 Cal. App. 705, 121 Pac. 714.

6. Same—Not obnoxious to provisions of constitution.—The recall provisions of the Richmond charter are not obnoxious to the tenure of office, removal and impeachment of officers provisions of the constitution.—*Conn v. City Council*, 17 Cal. App. 705, 121 Pac. 714.

7. Referendum—Power conferred by charter.—The people of the city of Richmond derive the power of referendum from their charter adopted and approved by the legislature of 1909, and from section 1 of article IV of the state constitution, as amended October 10, 1911.—*Hopping v. Council of City of Richmond*, 170 Cal. 605, 609, 150 Pac. 977.

8. Same—Constitutional provisions limited to legislative acts.—Section 1, article IV, of the constitution, as amended in 1911, excludes joint resolutions, and applies only to legislative acts which must be passed in the form of statutes, at least those enacting measures in which all citi-

zens of the entire state are interested.—*Hopping v. Council of City of Richmond*, 170 Cal. 605, 150 Pac. 977.

9. Same—Same.—Section 1, article IV, of the constitution, applies, in so far as municipalities are concerned only to legislative acts, and not to executive action.—*Hopping v. Council of City of Richmond*, 170 Cal. 605, 610, 150 Pac. 977.

10. Same—Same—Constitutional provisions do not limit or enlarge charter provisions.—The declaration of the constitution that its provisions do not affect or limit the referendum power reserved to the people of any city by its charter, does not limit the constitutional reservation nor enlarge those reserved by such charter.—*Hopping v. Council of City of Richmond*, 170 Cal. 605, 610, 150 Pac. 977.

11. Same—Same—Same.—The constitutional reservation goes to the full extent expressed by its language, and if the charter differs, it does not diminish the power reserved by the constitution, and if, on the other hand, it exceeds the constitutional reservation, the effect would be to give to the people of the city the additional powers described.—*Hopping v. Council of City of Richmond*, 170 Cal. 605, 611, 150 Pac. 977.

12. Same—Charter provisions apply to all legislative acts.—The charter of the city of Richmond makes the referendum applicable to every exercise of the legislative power, whether by ordinance or resolution, but not to such acts as constitute an exercise of the executive power.—*Hopping v. Council of City of Richmond*, 170 Cal. 605, 611, 150 Pac. 977.

13. Same—Jurisdiction and duty of city council—Filing proper petition.—The question of the acceptance of an offer of private individuals to build a city hall was a proper and constitutional exercise of the power of referendum reserved to the people of Richmond, and the city council was required to call a referendum election for that purpose on the filing of a sufficient petition therefor.—*Hopping v. City Council*, 170 Cal. 618, 150 Pac. 982.

14. Same—Offer of private individuals to build city hall a proper subject—Resolution of acceptance.—The acceptance by the city council of the city of Richmond of a proposition to donate a certain sum of money toward the erection of a city hall, upon certain named conditions, one of which is the appropriation of an equal amount toward such building, by resolution, involves the exercise of legislative power, and not administrative or executive, and is subject to the referendum provisions of the charter.—*Hopping v. Council of City of Richmond*, 170 Cal. 605, 612, 150 Pac. 977.

15. Improvement of streets—Manner of exercising—Adoption of provisions of street improvement act of 1911.—In view of the provisions of section 6, article XI, of the constitution, making charter cities subject to general laws, except in municipal affairs, and the failure of the charter of Richmond to make provision for the manner of exer-

cising the power to improve streets, the adoption of a resolution of intention under the improvement act of 1911, was an adoption of all the provisions of that act as to the mode of doing the work.—Cutting v. Vaughn, 182 Cal. 151, 187 Pac. 19.

16. Same — Same — Street improvement act of 1911, applicable.—The general law, known as the street improvement act of 1911, is applicable to the city of Richmond, in view of the silence of the charter of that city upon the subject.—Cutting v. Vaughn, 182 Cal. 151, 187 Pac. 19.

17. Salaries of city councilmen — Increase of.—An ordinance of the city of Richmond providing a salary of \$50 per month for city councilmen, not passed in accordance with the provisions of section 2, article VIII, of the charter, is an increase of compensation during their term of office, and violation of section 9, article II, of the constitution, as well as of section 4, article III, of the charter, which fixes such compensation at \$5 per day while engaged as members of the board of equalization.—Cameron v. Richmond (Cal. App.), 183 Pac. 604.

TIDE LAND GRANT.

ACT 3955—An act conveying certain tide lands and lands lying under inland navigable waters situate in the bay of San Francisco and the bay of San Pablo to the city of Richmond in furtherance of navigation and commerce and the fisheries, and providing for the government, management and control thereof.

History: Approved June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 605.

Tide lands held in trust by state. May not alienate.

Whereas, Since the admission of California into the Union, all tide lands along the navigable waters of this state and all lands lying beneath the navigable waters of the state have been and now are held in trust by the state for the benefit of all the inhabitants thereof for the purpose of navigation, commerce and fishing; and

Whereas, It is the duty of the state to govern, administer and control such lands and to improve and develop navigation, commerce and fishing thereon and thereover; and

Whereas, The state has not the general power of alienation of such lands, but may, when the interests of commerce, navigation and fishing require it, convey to municipalities limited and defined areas of such lands with the power to govern, control, improve and develop the same in the interests of all of the inhabitants of the state; and

Whereas, The conveyance to the city of Richmond of the lands hereinafter described, together with the right to govern, control, improve and develop the same will result in great advantage and benefit to all the inhabitants of the state, it is provided; therefore The people of the state of California do enact as follows:

Tide lands granted to Richmond.

§ 1. There is hereby granted and conveyed to the city of Richmond in the county of Contra Costa, in the state of California, all the lands situate on the city of Richmond side of the bay of San Francisco and the bay of San Pablo, lying and being between the line of mean high tide and the line of mean low tide as the same has been or may be hereafter established between the prolongation into the bay of San Pablo of the north boundary line of the said city of Richmond and the prolongation into the bay of San Francisco of the southerly boundary line of the city of Richmond.

City may improve.

§ 2. The city of Richmond shall have and there is hereby granted to it the right to make upon said premises all improvements, betterments and structures of every kind and character, proper, needful and useful for the development of commerce, navigation and fishing, including the construction of all wharves, docks, piers, slips, and the construction and operation of a municipal belt line railroad in connection with said dock system.

City may not transfer lands.

§ 3. (No grant, conveyance or transfer of any character shall ever be made by the city of Richmond of the lands described in paragraph one, or of any part thereof, but the said city shall continue to hold said lands and the whole thereof unless the same revert or be reeded to the state of California. The harbor of Richmond shall remain always a public harbor and the said city shall never charge or permit to be charged on any of the premises by this act conveyed any unreasonable rate or toll, nor make nor suffer to be made any unreasonable charge, burden or discrimination. In the event of a violation of any of the provisions of this act the said lands and the whole thereof shall revert to the state of California.)

May lease wharves, etc.

§ 4. The city of Richmond may lease for a term not exceeding twenty-five years any wharves, docks or piers constructed by it, and all such leases so executed shall reserve to the council of the city of Richmond the right and privilege, by ordinance to annul, change or modify such leases as in its judgment may seem proper. The aggregate amount of all wharves, docks and piers so leased by said city shall never exceed fifty per cent of all of the wharves, docks and piers actually constructed.

May lease land for wharves, etc.

§ 5. The city of Richmond may lease not to exceed an aggregate of fifty per cent of the lands conveyed to it by this act, for a term not to exceed twenty-five years and upon which wharves, docks or piers have not been actually constructed and no such lease shall be for a larger area than forty acres, and such leases shall not be assignable or transferable, nor shall any lessee have the right to sublet the leased premises or any part thereof except by the consent of the city council of said city of Richmond set forth in an order of said city council and all such leases so executed shall reserve to the council of the city of Richmond the right and privilege, by ordinance to annul, change or modify such leases as in its judgment may seem proper.

Condition of grant. Two hundred and fifty thousand dollars. Lands may revert to state.

§ 6. The foregoing conveyance is made upon the condition that the city of Richmond shall, within twelve months from the approval of this act, exclusive of such times as said city may be restrained from so doing by an injunction issued out of any court of this state or of the United States, and exclusive of such further delay as may be caused by unavoidable misfortune or great public or municipal calamity, issue its bonds for harbor improvement purposes in an amount of not less than two hundred and fifty thousand dollars, and shall, within eighteen months after the approval of this act, exclusive of the time in this section hereinbefore mentioned, commence the work of such harbor improvement, and the said work and improvement shall be prosecuted with such diligence that not less than two hundred and fifty thousand dollars shall be expended thereon within three years from the approval of this act exclusive of the time in this section hereinbefore mentioned. The said harbor improvement work shall be so done and performed that accommodation will be furnished and maintained for ocean going vessels and a depth of water shall be obtained and maintained at the piers of not less than twenty feet.

If said bonds be not issued or said work be not prosecuted and completed as and in the manner herein provided, then the lands by this act conveyed to the city of Richmond shall revert to the state of California.

Reservations to state.

§ 7. The state hereby reserves unto itself at all times, the reasonable use of and access to all wharves, docks, piers, slips and quays hereafter constructed under the

provisions of this act, for any vessel or water craft owned, leased or operated by the state.

Actions to recover possession.

§ 8. The city of Richmond shall in the name of the state of California have and is hereby granted the power and authority to maintain and prosecute to final judgment in any court of the state or United States in which jurisdiction may be vested any and all actions necessary to recover possession, from any private persons, partnerships or corporations all or any part of the lands granted in section one hereof.

TIDE LAND LEASE AUTHORIZED.

ACT 3956—An act authorizing the city of Richmond to lease certain tide and submerged lands heretofore granted by the state of California to said city in trust.

History: Approved April 21, 1919. In effect July 22, 1919. Stats. 1919, p. 133.

Lease of tidelands by city of Richmond authorized.

§ 1. The city of Richmond, a municipal corporation of the state of California, is hereby authorized and empowered to lease and let unto the Atchison, Topeka and Santa Fe Railway Company, its successors and assigns, for the term of ninety-nine years from and after the first day of January, 1919, the following described premises:

Beginning at the intersection of the official bulkhead line with the southwestern line of tideland lot number thirty-one in section twenty-two, township one north, range five west, Mount Diablo meridian, in the county of Contra Costa, state of California, said intersection being near the southwest corner of said tideland lot number thirty-one; thence south sixty-one degrees forty-five minutes east, eight hundred ninety-four and fifty-two hundredths feet, more or less, along the southwestern line of said tideland lot number thirty-one and tideland lot number thirty-two in said section to an angle point in the boundary line of said tideland lot number thirty-two; thence south fourteen degrees west, along the western boundary of said tideland lot number thirty-two a distance of three hundred fifty-six and four-tenths feet to station three hundred thirty-six of the exterior boundary of Rancho San Pablo; thence southerly and easterly, along said exterior boundary line, to station three hundred forty-four of said rancho boundary line, said last station being at the most western corner of tideland lot number twenty-five and one-half in section twenty-three, said township and range; thence southeasterly one hundred sixty-six and fifty-three hundredths feet, more or less, along the southwestern line of said tideland lot number twenty-five and one-half and of tideland lot number eight in section twenty-six, said township and range, to a point one hundred thirty feet westerly measured at right angles, from the western line of the sixty foot municipal highway known as Garrard boulevard; thence southerly, parallel with said western line of Garrard boulevard and its prolongation, three hundred nineteen and sixteen hundredths feet, more or less, to said official bulkhead line; thence westerly and northerly, along said bulkhead line, to the place of beginning, in accordance with and upon the considerations, terms and conditions of that certain contract made and entered into between the said city and the said railway company dated May 1, 1918, and on file in the office of the clerk of said city, and the covenants, conditions and terms of such lease shall bind the parties thereto, their successors and assigns, and the state of California.

RIO VISTA.

See Act 3094, note.

CHAPTER 309.

RIVERSIDE CITY.

CONTENTS OF CHAPTER.

ACT 3965. FREEHOLDERS' CHARTER.

FREEHOLDERS' CHARTER.

ACT 3965—Freeholders' charter of the city of Riverside.

History: Voted for and ratified at a special election held March 1, 1907; adopted March 9, 1907; Stats. 1907, p. 1277. Originally incorporated under the general law of 1883, in 1883, as a sixth-class city.

CHAPTER 310.

RIVERSIDE COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3941.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 3970. ORGANIZATION ACT.

ORGANIZATION ACT.

ACT 3970—An act to create the county of Riverside, classify it, define its boundaries, provide for its organization, and the appointment, election of officers, the location of county seat by election, and the adjustment and fulfillment of certain rights and obligations arising between such county and certain other counties.

History: Approved March 11, 1893, Stats. 1893, p. 158.

1. Riverside county—Date of becoming county.—The county of Riverside became a separate political entity May 9, 1893.—*People v. Wallace*, 101 Cal. 281, 35 Pac. 862.

RIVERS AND HARBORS.

See tit. "Waters."

ROADS AND HIGHWAYS.

See tits. "Highways"; "Parks."

ROCKLIN.

See Act 3094, note.

CHAPTER 311.

RODEOS.

Reference: See tit. "Judges of the Plains."

CONTENTS OF CHAPTER.

ACT 3975. RODEOS.

RODEOS.

ACT 3975—An act to regulate rodeos.

History: Passed April 30, 1851, Stats. 1851, p. 445. Amended (1) March 26, 1852, Stats. 1852, p. 102; (2) April 27, 1855, Stats. 1855, p. 163; (3) March 17, 1858, Stats. 1858, p. 70; (4) April 17, 1861, Stats. 1861, p. 180; (5) April 2, 1866, Stats. 1865-66, p. 673; (6) March 30, 1874, Stats. 1873-74, p. 793. Supplemented April 15, 1858, Stats. 1858, p. 155. Continued in force by the codes. See Kerr's Cyc. Political Code, § 19; also Kerr's Cyc. Penal Code, § 23.

ROSEVILLE.

See Act 3094, note.

ROSS.

See Act 3094, note.

ROUGH AND READY.

See tit. "Etna."

CHAPTER 312.**SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT.**

References: See tits. "Drainage Districts"; "Reclamation Districts."

CONTENTS OF CHAPTER.**ACT 3986. RECLAMATION BOARD ACT.**

3987. PURCHASE OF CONSTRUCTION WARRANTS.

3988. BONDS.

3989. CONVEYANCE OF RIGHTS OF WAY, EASEMENTS, WEIR SITES, ETC.

3990. SUTTER BUTTE BY-PASS PROJECT No. 6.

"RECLAMATION BOARD ACT."

ACT 3986—An act approving the report of the California debris commission transmitted to the speaker of the house of representatives by the secretary of war on June 27th, 1911, directing the approval of plans of reclamation along the Sacramento river or its tributaries or upon the swamp lands adjacent to said river, directing the state engineer to procure data and make surveys and examinations for the purpose of perfecting the plans contained in said report of the California debris commission and to make report thereof, making an appropriation to pay the expenses of such examinations and surveys, and creating a reclamation board and defining its powers

History: Approved December 24, 1911, Stats. 1911 (ex. sess.), p. 117. Amended May 26, 1913, in effect August 10, 1913, Stats. 1913, p. 252; June 9, 1915, in effect August 8, 1915, Stats. 1915, p. 1338; May 27, 1919, in effect July 27, 1919, Stats. 1919, p. 1122. Former act approved March 20, 1905, stats. 1905, p. 443. Amended March 20, 1907, Stats. 1907, p. 736; March 23, 1907, Stats. 1907, p. 903; creating a drainage district including territory largely embraced in the district created by the present act, was repealed February 3, 1911, Stats. 1911, p. 5.

Report of commission adopted.

§ 1. The report of the California debris commission transmitted to the speaker of the house of representatives of the United States by the secretary of war on the twenty-seventh day of June, one thousand nine hundred eleven, with such modifications and amendments and such additional plans as have been or may hereafter be adopted by the reclamation board, is hereby approved as a plan for controlling the flood waters of the Sacramento river and San Joaquin river and their tributaries, for the improvement and preservation of navigation and the reclamation and protection of the lands that are susceptible to overflow from said rivers and their tributaries. [Amendment of June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1338.]

This section was also amended May 26, 1913, Stats. 1913, p. 253.

Reclamation board, its powers and duties.

§ 2. There is hereby created a board to be known as the reclamation board, consisting of three persons to be appointed by and to hold office at the pleasure of the governor. It shall be the duty of said reclamation board, and it is hereby empowered to pass upon and approve plans of reclamation that contemplate the construction of levees, embankments or canals along or near the banks of the Sacramento river or its tributaries or connected therewith, or upon any lands adjacent thereto or within any of

the overflow basins thereof. Any original plan of reclamation hereafter adopted that includes or contemplates the construction of any levee, embankment, or canal along or near the banks of the Sacramento river or its tributaries or connected therewith, or upon any lands adjacent thereto or within any of the overflow basins thereof, must be approved by the reclamation board before such plan of reclamation shall have been adopted by the trustees of any reclamation, levee, protection or drainage district or by any person, corporation or association. Any such plan of reclamation shall be void unless first approved by said board, and the construction of any levee, embankment or canal at any of the places hereinbefore mentioned without such approval, is hereby declared to be a public nuisance, and the reclamation board is hereby empowered to prosecute any suit or suits in the name of the people for the prevention or abatement of such nuisance.

State engineer to make surveys. Expenses.

§ 3. The state engineer is hereby directed to procure data and make surveys and examinations upon said rivers and tributaries and the adjacent overflow basins for the purpose of perfecting the plans contained in the report mentioned in section one of this act, and making additional plans for the San Joaquin and Sacramento rivers and their tributaries, and to make a report thereof to the reclamation board. He shall advise and assist the reclamation board, and shall be reimbursed by said board for any necessary expenses incurred by him under the directions of the board. He may at his option appoint the chief engineer of the reclamation board to act also as his assistant in the performance of the duties required of him by this section; in which case the compensation of said chief engineer while acting also as such assistant to the state engineer shall be apportioned as may be agreed upon between the reclamation board and the state engineer. All maps, records and engineering data prepared or obtained by the state engineer for the use of the reclamation board shall be deposited in the office of said board and remain part of its records. [Amendment of June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1339.]

This section was also amended May 26, 1913, Stats. 1913, p. 253.

"Sacramento and San Joaquin drainage district." Boundaries.

§ 4. There is hereby created a drainage district to be known and designated as "Sacramento and San Joaquin drainage district," the boundaries of which said district are as follows:

Commencing at a point on the west boundary of section 26, township 3 north, range 1 east Mount Diablo base and meridian, and 20 chains south of the northwest corner of said section; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{4}$ mile; thence east $1\frac{1}{2}$ mile to the quarter section corner on the east line of said section 26; thence south $1\frac{1}{4}$ mile; thence east $2\frac{1}{2}$ miles to the center to the southwest quarter of section 29, township 3 north, range 2 east; thence northeast to the northeast corner of said section 29; thence east $1\frac{1}{2}$ mile to the quarter section corner on the north line of section 28, township 3 north, range 2 east; thence northeast to the quarter section corner on the north line of section 22, township 3 north, range 2 east; thence east $1\frac{1}{4}$ mile; thence north $1\frac{1}{2}$ mile; thence east $1\frac{1}{2}$ mile; thence north $1\frac{1}{4}$ mile; thence east $1\frac{1}{4}$ mile; thence north $1\frac{1}{4}$ mile to the quarter section corner on the north line of section 14, township 3 north, range 2 east; thence east $1\frac{1}{4}$ mile; thence north $1\frac{1}{4}$ mile; thence east $\frac{1}{2}$ mile; thence north $1\frac{1}{2}$ mile; thence east $1\frac{1}{4}$ mile; thence north $1\frac{1}{4}$ mile; thence east $1\frac{1}{4}$ mile; thence north to the south corporate limit of the town of Rio Vista; thence through said town as follows: northeasterly on a direct line to the intersection of the center line of California street with the center line of First street; thence northwesterly along the center line of California street to its intersection with the center line of the most westerly alley running northeasterly through

block 2; thence northeasterly along the center line of said alley, through blocks 2, 1 and 11, to its intersection with the north line of the alley or street running northwesterly through the center of block 12; thence northeasterly along the north line of said alley to its intersection with the center line of the alley running southwesterly through the center of block 14; thence southwesterly along the center line of said alley to its intersection with the center line of Sacramento street; thence northwesterly along the center line of said street to its intersection with the center line of Third street; thence southwesterly along the center line of Third street to its intersection with the center line of Main street; thence northwesterly along the center line of Main street to its intersection with the center line of Fourth street; thence northwesterly along the center of Fourth street to its intersection with the center line of Sacramento street; thence northwesterly along the center line of Sacramento street to its intersection with the center line of Fifth street; thence northeasterly along the center line of Fifth street; or a continuation thereof, to the north corporate limit of said town of Rio Vista; thence southeasterly along said corporate limit to its intersection with the quarter section line running north and south through the center of section thirty, township 4 north, range 3 east, thence north along said line to the quarter section corner on the north line of said section thirty; thence west $\frac{1}{4}$ mile; thence north $1\frac{1}{4}$ miles; thence west $\frac{1}{4}$ mile to the east line of section 13, township 4 north, range 2 east; thence north $\frac{3}{4}$ mile to the northeast corner of said section; thence west $\frac{1}{2}$ mile; thence south $\frac{1}{4}$ mile; thence west $\frac{1}{2}$ mile; thence north $\frac{1}{4}$ mile to the northwest corner of said section 13; thence east $\frac{1}{4}$ mile; thence north $\frac{1}{4}$ mile; thence east $\frac{1}{4}$ mile; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{2}$ mile; thence north $\frac{1}{4}$ mile to the northeast corner of section 11, township 4 north, range 2 east; thence west 1 mile to the northwest corner of said section 11; thence northwest in a direct line to the southeast corner of section 29, township 5 north, range 2 east; thence northwesterly in a direct line to the quarter section corner on the west line of section 29, township 5 north, range 2 east; thence west 1 mile to the quarter section corner on the west line of section 30, township 5 north, range 2 east; thence north along range line $3\frac{1}{2}$ miles to the southwest corner of section 6, township 5 north, range 2 east; thence east $\frac{1}{2}$ mile to the quarter section corner on the south line of said section 6; thence north $\frac{1}{2}$ mile; thence east $\frac{1}{2}$ mile to the quarter section corner on the west line of section 5, township 5 north, range 2 east; thence north $\frac{1}{2}$ mile to the northwest corner of said section five; thence east along the township line $\frac{3}{4}$ of a mile; thence north $\frac{1}{2}$ mile; thence east $\frac{1}{2}$ mile; thence north $\frac{1}{2}$ mile to the north line of section 33, township 6 north, range 2 east; thence east $\frac{1}{4}$ mile to the quarter section corner on the north line of said section 33; thence north 1 mile to the quarter section corner on the south line of section 21, township 6 north, range 2 east; thence east $\frac{1}{2}$ mile to the southeast corner of said section 21; thence north $\frac{1}{2}$ mile to the quarter section corner on the west line of section 21, township 6 north, range 2 east; thence east $\frac{1}{2}$ mile; thence north $\frac{1}{4}$ mile; thence east $\frac{1}{2}$ mile to the east line of said section 22; thence north $\frac{1}{4}$ mile to the southwest corner of section 14, township 6 north, range 2 east; thence east $\frac{1}{2}$ mile to the quarter section corner on the south line of said section 14; thence north $\frac{3}{4}$ of a mile; thence east $\frac{1}{2}$ mile to the east line of said section 14; thence north $\frac{1}{2}$ mile; thence east 1 mile to the county line between the counties of Solano and Yolo.

Thence east $\frac{1}{2}$ mile to the center of the south half of section 7, township 6 north, range 3 east; thence north $3\frac{3}{4}$ miles to the quarter section corner on the south line of section 19, township 7 north, range 3 east; thence east $\frac{1}{2}$ mile to the southeast corner of said section 19; thence north 1 mile to the southwest corner of section 17, township 7 north, range 3 east; thence east $\frac{1}{4}$ mile; thence north $\frac{1}{4}$ mile; thence east $\frac{1}{4}$ mile; thence north $\frac{1}{2}$ mile; thence east $\frac{1}{2}$ mile to the east line of said

section 17; thence north $\frac{3}{4}$ of a mile to the quarter section corner on the west line of section 9, township 7 north, range 3 east; thence east $\frac{1}{2}$ mile; thence north $\frac{1}{2}$ mile to the quarter section corner on the north line of section 9; thence west $\frac{1}{2}$ mile to the northwest corner of section 9; thence north 2 miles to the southeast corner of section 29, township 8 north, range 3 east; thence west 2 miles to the southwest corner of section 30, township 8 north, range 3 east; thence north 4 miles along the range line to the southwest corner of section 6, township 8 north, range 3 east; thence east $1\frac{1}{2}$ miles to the quarter section corner on the south line of section 5, township 8 north, range 3 east; thence north 1 mile to the quarter section corner on the north line of said section 5; thence west $\frac{3}{4}$ of a mile along the township line; thence north $2\frac{1}{2}$ miles; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{2}$ mile to the quarter section corner on the south line of section 18, township 9 north, range 3 east; thence west $\frac{1}{2}$ mile to the southwest corner of said section 18; thence north on the range line $\frac{1}{2}$ mile to the quarter section corner on the east line of section 13, township 9 north, range 2 east; thence west $\frac{1}{2}$ mile; thence north $\frac{1}{2}$ mile to the quarter section corner on the south line of section 12, township 9 north, range 2 east; thence west $\frac{1}{2}$ mile to the southwest corner of said section 12; thence north 3 miles to the southwest corner of section 25, township 10 north, range 2 east; thence east 2 miles, more or less, to the westerly line of the Yolo by-pass; thence northerly along the westerly line of the Yolo by-pass to the southwesterly line of the Knights Landing ridge cut; thence following the southwesterly line of said cut to the south levee of reclamation district No. 730; thence west to the quarter section corner on the south line of section 35, township 11 north, range 2 east; thence north in a direct line to the quarter section corner at the center of section 35, township 11 north, range 2 east; thence northwest in a direct line to the northwest corner of said section 35; thence following legal subdivision lines in township 11 north, range 2 east, north 2 miles to the northwest corner of section 23; west 2 miles to the southwest corner of section 16; north $\frac{1}{2}$ mile to the quarter section corner on the east line of section 17, west $\frac{1}{2}$ mile to the center of section 17; north $\frac{1}{4}$ mile; west $\frac{1}{2}$ mile to the west line of section 17; north $\frac{1}{4}$ mile to the northwest corner of section 17; thence west on section lines 3 miles to the southwest corner of section 11, township 11 north, range 1 east; thence following the legal subdivision lines in township 11 north, range 1 east, north 1 mile to the northwest corner of section 11; west $\frac{1}{2}$ mile to the quarter section corner on the south line of section three; north $\frac{1}{2}$ mile to the center of section 3; west 3 miles to the center of section 6; north $\frac{1}{2}$ mile to the quarter section corner on the north line of section 6; thence west along township line $\frac{3}{4}$ of a mile; thence following legal subdivision lines in township 12 north, range 1 west, north $\frac{1}{2}$ mile; thence west $\frac{1}{4}$ mile; thence north $1\frac{1}{2}$ miles to the quarter section corner on the north line of section 25; west $\frac{1}{4}$ mile, north 1 mile to the north line of section 24; west $\frac{1}{2}$ mile, north 1 mile to the north line of section fourteen; east $\frac{1}{4}$ mile to the southwest corner of section 12; north 1 mile to the northwest corner of section 12; east $\frac{1}{2}$ mile to the quarter section corner on the south line of section 1; thence north on quarter section line 1 mile to the county line between the counties of Yolo and Colusa.

Thence continuing north 1 mile to the quarter section corner on the north line of section 36, township 13 north, range 1 west, east $\frac{1}{4}$ mile, north $\frac{1}{2}$ mile, west $\frac{1}{4}$ mile, to the center of section 25; north $\frac{1}{4}$ mile, west $\frac{1}{4}$ mile, north $\frac{1}{2}$ mile, west $\frac{1}{4}$ mile to the west line of section 24; north $\frac{1}{4}$ mile to the quarter section corner on the east line of section 23; west $\frac{1}{4}$ mile, north $\frac{1}{4}$ of a mile, west $\frac{1}{4}$ of a mile, north $\frac{1}{4}$ of a mile to the quarter section corner on the north line of section 23; west $\frac{1}{4}$ mile, north $\frac{1}{4}$ mile, west $\frac{1}{2}$ mile, north $\frac{1}{4}$ mile, west $\frac{1}{2}$ mile, north $\frac{1}{4}$ mile, west $\frac{1}{4}$ mile, to the west line of section 15; north $\frac{1}{4}$ mile to the northwest corner of section 15; west $\frac{1}{4}$ mile, north 1 mile to the north line of section 9; west $\frac{1}{4}$ mile to the quarter

section corner on the south line of section 4; north $\frac{1}{2}$ mile to center of section 4, west $\frac{1}{4}$ mile, north $\frac{1}{2}$ mile to the north line of section 4; thence west along the township line $\frac{3}{4}$ of a mile to the quarter section corner on the south line of section 32, township 14 north, range 1 west. Thence following legal subdivision lines in township 14 north, range 1 west, north $1\frac{1}{2}$ miles to the center of section 29; west $\frac{1}{2}$ mile to the quarter section corner on the west line of section 29; north $\frac{3}{4}$ of a mile, west $\frac{1}{4}$ of a mile, north 1 mile, west $\frac{1}{4}$ of a mile, north $\frac{1}{2}$ mile, west $\frac{1}{4}$ mile, north $\frac{1}{4}$ mile to the north line of section 18; west $\frac{1}{4}$ mile to the northwest corner of section 18; thence north along the range line 2 miles to the northwest corner of township 14 north, range 1 west; thence along legal subdivision lines in township 15 north, range 2 west, as follows: west $\frac{1}{2}$ mile to the quarter section corner on the south line of section 36; thence north $1\frac{1}{4}$ mile; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{2}$ mile, thence west $\frac{1}{4}$ mile to the west boundary line of section 25; thence north $1\frac{1}{4}$ miles to the southeast corner of section 14; thence west $\frac{1}{4}$ mile; thence north $1\frac{1}{2}$ miles; thence west $\frac{1}{4}$ mile to the center of section 11; thence north $\frac{1}{2}$ mile to the quarter section corner on the south line of section 2; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{4}$ mile; thence west $\frac{1}{4}$ mile to the west line of said section 2; thence north $\frac{3}{4}$ of a mile to the northwest corner of section 2; thence west $\frac{1}{2}$ mile to the quarter section corner on the south line of section 34, township 16 north, range 2 west; thence following legal subdivision lines in township 16 north, range 2 west, as follows: north $\frac{1}{2}$ mile to the center of section 34; west $\frac{1}{2}$ mile to the quarter section corner on the west line of section 34; thence north $\frac{1}{2}$ mile to the northwest corner of section 34; thence west $\frac{1}{2}$ mile to the quarter section corner on the south line of section 28; thence north $\frac{1}{2}$ mile to the center of section 28; thence west $\frac{1}{2}$ mile to the quarter section corner on the west line of section 28; thence north $\frac{1}{2}$ mile to the southeast corner of section 20, township 16 north, range 2 west; thence west $\frac{1}{2}$ mile to the quarter section corner on the south line of said section 20; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{2}$ mile to the quarter section corner on the west line of section 20; thence north $9\frac{1}{2}$ miles to the southwest corner of section 32, township 18 north, range 2 west; thence west 1 mile to the southwest corner of section 31; thence north three and five-eighths miles to the county line between the counties of Colusa and Glenn.

Thence north $23\frac{3}{8}$ miles to the northwest corner of section 6, township 18 north, range 2 west; thence east along the township line two miles to the southeast corner of section 32, township 19 north, range 2 west; thence north 1 mile to the northeast corner of said section; thence east 2 miles; thence north 1 mile; thence east 1 mile; thence north 2 miles; thence east 1 mile to the southeast corner of section 12, township 19 north, range 2 west; thence north along the range line, $3\frac{1}{2}$ miles to the quarter section corner on the east of section 25, township 20 north, range 2 west; thence east $\frac{1}{2}$ mile; thence north $2\frac{1}{2}$ miles; thence east to the center of the Sacramento river; thence up the center of the said Sacramento river to the mouth of Chico creek; thence up said Chico creek to its intersection with the Mount Diablo meridian; thence south along the Mount Diablo meridian, $9\frac{1}{2}$ miles more or less to the southwest corner of section 18, township 20 north, range 1 east.

Thence east $1\frac{1}{2}$ miles; thence south 2 miles; thence east $2\frac{1}{2}$ miles to the northwest corner of section 35, township 20 north, range 1 east; thence south 2 miles to the southeast corner of section 3, township 19 north, range 1 east; thence west 1 mile to the southwest corner of said section 3; thence south 15 miles to the southeast corner of section 21, township 17 north, range 1 east; thence west $\frac{1}{2}$ mile to the quarter section corner on the south line of said section 21, which is the county line between the counties of Butte and Sutter.

Thence south $1\frac{1}{2}$ miles; thence west $\frac{1}{2}$ mile; thence south $\frac{1}{2}$ mile, to the northeast corner of section 5, township 16 north, range 1 east; thence west $\frac{1}{2}$ mile; thence south

1 mile; thence west $\frac{1}{2}$ mile; thence south $\frac{1}{4}$ mile; thence west $\frac{1}{4}$ mile; thence south $\frac{3}{4}$ of a mile; thence west $\frac{3}{4}$ of a mile, to the southwest corner of section 7, township 16 north, range 1 east; thence south along the Mount Diablo meridian, 2 miles to the southwest corner of section 19, township 16 north, range 1 east; thence east $\frac{1}{4}$ of a mile; thence south $\frac{1}{2}$ mile; thence east $\frac{1}{4}$ mile; thence south $\frac{1}{2}$ mile; thence east $\frac{1}{4}$ mile; thence south $1\frac{1}{2}$ miles; thence east $\frac{3}{4}$ of a mile; thence south $\frac{3}{4}$ of a mile; thence east $\frac{1}{2}$ mile to the west line of section 9, township 15 north, range 1 east; thence south $\frac{1}{4}$ mile, to the quarter section corner on the west line of said section 9; thence east 1 mile to the quarter section corner on the east line of said section 9; thence south $\frac{1}{2}$ mile to the southwest corner of section 10, township 15 north, range 1 east; thence east $1\frac{1}{4}$ miles; thence south $\frac{1}{2}$ mile; thence east $\frac{1}{2}$ mile; thence south $\frac{1}{4}$ mile; thence east 1 mile; thence north $\frac{1}{4}$ mile; thence east $\frac{1}{4}$ mile to the quarter section corner on the west line of section 18, township 15 north, range 2 east; thence north $\frac{1}{4}$ mile, thence east $\frac{1}{2}$ mile; thence south $\frac{1}{2}$ mile; thence east 1 mile; thence south $\frac{1}{4}$ mile; thence east $\frac{1}{4}$ mile; thence south $\frac{1}{4}$ mile, to the south line of section 17, township 15 north, range 2 east; thence east $1\frac{3}{4}$ miles to the quarter section corner on the south line of section 15, township 15 north, range 2 east; thence north $1\frac{1}{2}$ miles; thence east $\frac{1}{2}$ mile, to the quarter section corner on the west line of section 11, township 15 north, range 2 east; thence north 1 mile to the quarter section corner on the west line of section 2 of said township; thence east $\frac{1}{2}$ mile; thence north $\frac{1}{2}$ mile to the quarter section corner on the north line of section 2, township 15 north, range 2 east; thence east along the third standard parallel north, to the southeast corner of section 35, township 16 north, range 2 east.

Thence north $1\frac{1}{2}$ miles to the quarter section corner on the east line of section 26, township 16 north, range 2 east; thence west $\frac{1}{4}$ mile; thence north $1\frac{1}{2}$ miles to the south line of section 14, township 16 north, range 2 east; thence west $\frac{1}{4}$ mile to the quarter section corner on the south line of said section 14; thence north $1\frac{1}{2}$ miles; thence west $\frac{1}{4}$ mile; thence north $\frac{3}{4}$ of a mile; thence west $\frac{1}{2}$ mile; thence north $\frac{3}{4}$ of a mile, to the south line of section thirty-four, township 17 north, range 2 east; thence west along the township line, $\frac{1}{2}$ mile; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{4}$ mile to the quarter section corner on the west line of said section 34; thence north 1 mile to the quarter section corner on the west line of section 27, township 17 north, range 2 east; thence west $\frac{1}{2}$ mile; thence north $\frac{1}{2}$ mile to the county line between the counties of Sutter and Butte.

Thence north $\frac{1}{2}$ mile to the center of section 21, township 17 north, range 2 east; thence west $5\frac{1}{2}$ miles to the quarter section corner on the west line of section 22, township 17 north, range 1 east; thence north 5 miles to the quarter section corner on the west line of section 27, township 18 north, range 1 east; thence east 1 mile to the quarter section corner on the east line of said section 27; thence northeast in a direct line to the quarter section corner on the east line of section thirteen, township 18 north, range 1 east; thence north one mile to the quarter section corner on the east line of section 12, township 18 north, range 1 east; thence northeast in a direct line to the quarter section corner on the east line of section 32, township 19 north, range 2 east; thence east 5 miles; thence north $\frac{1}{4}$ mile; thence east 1 mile; thence north $\frac{1}{4}$ mile; thence east to the center of the Feather river; thence down the center of said Feather river, to the mouth of Honcut creek; thence up said Honcut creek to the mouth of South Honcut creek; thence up said South Honcut creek, to a point due north of the quarter section corner on the south line of section 30, township 17 north, range 4 east, which is the county line between the counties of Butte and Yuba.

Thence south to a point one and one-half miles north of the south line of township 16 north, range 4 east; thence east to a point due north of the northwest corner of section 2, township 15 north, range 4 east; thence south to the northeast corner of section

22, township 15 north, range 4 east; thence southwest in a direct line, to the center of section 28, township 15 north, range 4 east; thence west $1\frac{1}{2}$ mile to the quarter section corner on the west line of said section 28; thence south eight and one-half miles to the southwest corner of section 4, township 13 north, range 4 east; thence east one mile to the southeast corner of said section 4; thence south one-quarter mile; thence east to an intersection with the west line of the Johnson rancho; then south $1\frac{1}{10}$ of a mile to the line running north 64 degrees east and south 64 degrees west through the center of the south half of section 43 of the said Johnson rancho; thence along the legal subdivision line of the Johnson rancho as follows: north 64 degrees east 108.25 chains; thence north 26 degrees west one-quarter mile to the center of section 2 of the said rancho; thence north 64 degrees east $1\frac{1}{2}$ mile; thence north 26 degrees west $\frac{1}{4}$ mile; thence north 64 degrees east four and one-half miles; thence north 26 degrees west $\frac{1}{4}$ mile to the quarter section corner on the south line of section 22 of said rancho; thence north 64 degrees east $\frac{1}{4}$ mile; thence north 26 degrees west $\frac{1}{4}$ mile; thence north 64 degrees east $\frac{3}{4}$ of a mile; thence north 26 degrees west $1\frac{1}{2}$ mile; thence north 64 degrees east $\frac{1}{2}$ mile; thence north 26 degrees west $\frac{1}{4}$ mile, to the northwest corner of section 29 of said rancho; thence north 64 degrees east one and one-half miles to the quarter section corner on the south line of section 31 of said rancho; thence north 26 degrees west $\frac{1}{4}$ mile north 64 degrees east $1\frac{1}{2}$ mile; thence south 26 degrees east $\frac{3}{4}$ of a mile to the quarter section corner on the east line of section 32 of said rancho; thence south 64 degrees west $\frac{1}{4}$ mile; thence south 26 degrees east $\frac{1}{4}$ mile; thence south 64 degrees west one and one-half miles; thence south 26 degrees east $\frac{1}{8}$ mile; thence south 64 degrees west $\frac{1}{4}$ mile; thence south 26 degrees east $\frac{1}{8}$ mile; thence south 64 degrees west $\frac{1}{8}$ mile; thence south 26 degrees east $\frac{1}{8}$ mile; thence south 64 degrees west $\frac{1}{2}$ mile; thence south 26 degrees east $\frac{1}{8}$ mile; thence south 64 degrees west $\frac{1}{4}$ mile; thence south 26 degrees east $\frac{1}{4}$ mile; thence south 64 degrees west $\frac{1}{4}$ mile; thence south 26 degrees east $\frac{1}{4}$ mile; thence south 64 degrees west $\frac{3}{4}$ mile; thence south 26 degrees east $\frac{5}{8}$ of a mile to the quarter section corner on the west line of section 20 of said rancho; thence north 64 degrees east $\frac{1}{4}$ mile; thence north 26 degrees west $\frac{1}{8}$ mile; thence north 64 degrees east $\frac{3}{4}$ of a mile; thence north 26 degrees west $\frac{1}{8}$ mile; thence north 64 degrees east $\frac{1}{4}$ mile; thence south 26 degrees east $\frac{1}{4}$ mile; thence north 64 degrees east $\frac{1}{4}$ mile to the center of section twenty-five of said rancho; thence north 26 degrees west $\frac{1}{8}$ mile; thence north 64 degrees east 1 mile; thence south 26 degrees east to an intersection with the east line of township 14 north, range 5 east; thence south along said township line to the center of Bear river on the line dividing the counties of Yuba and Placer.

Thence down the center of said Bear river to its intersection with the section line running north and south through the center of township 13 north, range 5 east, which is the section line between the counties of Placer and Sutter.

Thence south along said line to the southeast corner of section 16, township 13 north, range 5 east; thence west two miles to the northeast corner of section 19, township 13 north, range 5 east; thence south $\frac{1}{2}$ mile to the quarter section corner on the east line of said section 19; thence west $4\frac{1}{2}$ miles; thence south $\frac{1}{2}$ mile to the quarter section corner on the south line of section 21, township 13 north, range 4 east; thence west $\frac{1}{2}$ mile to the southwest corner of said section 21; thence south 2 miles, to the northeast corner of section 5, township 12 north, range 4 east; thence west $\frac{3}{4}$ of a mile; thence south $2\frac{1}{2}$ miles; thence east $\frac{3}{4}$ of a mile to the quarter section corner on the west line of section 16, township 12 north, range 4 east; thence south 3 miles to the quarter section corner on the west line of section 33, township 12 north, range 4 east; thence east $\frac{1}{2}$ mile; thence south $\frac{1}{2}$ mile to the quarter section corner on the north line of section four, township 11 north, range 4 east; thence east $\frac{1}{2}$ mile to the

northeast corner of said section 4; thence south 1 mile to the southeast corner of said section 4; thence east $\frac{1}{2}$ mile; thence south $\frac{1}{2}$ mile; thence east $\frac{1}{2}$ mile to the quarter section corner on the west line of section 11, township 11 north, range 4 east; thence south $3\frac{1}{2}$ miles to the southwest corner of section 26, township 11 north, range 4 east; thence east 1 mile to the southeast corner of said section 26; thence south 1 mile, to the southwest corner of section 36, township 11 north, range 4 east; thence east along the second standard parallel north, to the northeast corner section 1, township 10 north, range 4 east; thence south to the line dividing the counties of Sutter and Sacramento.

Thence south to the southwest corner of section 18, township 10 north, range 5 east; thence east $\frac{1}{2}$ mile; thence south 3 miles, to the quarter section corner on the south line of section 31, township 10 north, range 5 east; thence east 1 mile to the quarter section corner on the north line of section 5, township 9 north, range 5 east; thence south $2\frac{1}{4}$ miles; thence west $\frac{1}{2}$ mile; thence south $\frac{3}{4}$ of a mile, to the southeast corner of section 18, township 9 north, range 5 east; thence east $\frac{1}{2}$ mile; thence south $\frac{1}{2}$ mile; thence east $\frac{1}{4}$ mile; thence south $\frac{1}{4}$ mile; thence east $\frac{1}{4}$ mile; thence south $\frac{1}{4}$ mile, to the southeast corner of section 20, township 9 north, range 5 east; thence west $\frac{1}{4}$ mile; thence south $\frac{1}{4}$ mile; thence east $\frac{3}{4}$ of a mile; thence south $\frac{1}{4}$ mile; thence east $\frac{3}{4}$ of a mile; thence south 1 mile; thence east $\frac{3}{4}$ of a mile; thence south $3\frac{1}{2}$ miles, to the southeast corner of section 15, township 8 north, range 5 east; thence west 3 miles to the southwest corner of section 17, township 8 north, range 5 east; thence south 1 mile to the southeast corner of section 19, township 8 north, range 5 east; thence west 1 mile to the southwest corner of said section 19; thence south $3\frac{1}{2}$ miles to the quarter section corner on the west line of section 7, township 7 north, range 5 east; thence east $1\frac{1}{4}$ miles, thence south $1\frac{3}{4}$ miles; thence west $\frac{1}{2}$ mile; thence south $\frac{1}{2}$ mile; thence west $\frac{1}{4}$ mile; thence south $\frac{3}{4}$ of a mile to the center of section 30; thence west $\frac{1}{4}$ mile; thence south $\frac{1}{2}$ mile, to the south line of section 30, township 7 north, range 5 east; thence east $\frac{1}{4}$ mile to the quarter section corner on the south line of said section 30; thence south $6\frac{1}{2}$ miles to the center of section 31, township 6 north, range 5 east; thence east $\frac{1}{4}$ mile; thence south $\frac{1}{4}$ mile; thence east $\frac{3}{4}$ of a mile; thence south $\frac{1}{4}$ of a mile to the quarter section corner on the south line of section 32, township 6 north, range 5 east; thence east $\frac{1}{2}$ mile to the northeast corner of section 5, township 5 north, range 5 east; thence south 2 miles, to the southwest corner of section 9, township 5 north, range 5 east; thence east $\frac{1}{2}$ mile; thence south $\frac{1}{2}$ mile to the center of section 16, township 5 north, range 5 east; thence east $3\frac{1}{4}$ miles to the southeast corner of the southwest quarter of the northeast quarter of section 13, township 5 north, range 5 east; thence south 1 mile, thence west $\frac{1}{4}$ mile to the center of section 24; thence south $\frac{1}{4}$ mile; thence west $\frac{1}{4}$ mile; thence south 1 mile; thence east $\frac{1}{4}$ mile; thence south 1 mile; thence east $\frac{1}{4}$ mile; thence south about $\frac{1}{4}$ mile, to the center of Dry creek, which is the county line between the counties of Sacramento and San Joaquin.

Thence continuing south to the south line of section 1, township 4 north, range 5 east; thence east $\frac{1}{4}$ mile to the northeast corner of section 12; thence south 1 mile to the southeast corner of said section 12, township 4 north, range 5 east; thence west $\frac{1}{4}$ mile, thence north $\frac{1}{4}$ mile, thence west $\frac{3}{4}$ mile; thence south $\frac{1}{4}$ mile to the southwest corner of said section 12; thence west 1 mile, thence south $\frac{1}{2}$ mile, thence west $\frac{1}{2}$ mile; thence south $\frac{1}{2}$ mile; thence west $\frac{1}{4}$ mile; thence south 1 mile; thence east $\frac{1}{4}$ mile to the quarter section corner on the north line of section 27, township 4 north, range 5 east; thence south $2\frac{1}{2}$ miles to the center of section 3, township 3 north, range 5 east; thence east $\frac{1}{4}$ mile; thence south $\frac{3}{4}$ mile; thence east $\frac{1}{4}$ mile; thence south $1\frac{1}{2}$ mile; thence east $\frac{1}{4}$ mile; thence south $\frac{1}{2}$ mile; thence east $\frac{1}{4}$ mile; thence south $\frac{1}{2}$ mile; thence east $\frac{1}{4}$ mile; thence south $\frac{1}{2}$ mile; thence east $\frac{1}{4}$ mile; thence south $\frac{1}{4}$ mile to the quarter section corner on the west line of section 25, township 3

north, range 5 east; thence east $1\frac{1}{4}$ mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{4}$ mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{4}$ mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{4}$ mile, to the northeast corner of section 1, township 2 north, range 5 east; thence south 1 mile; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ miles to the northwest corner of section 20, township 2 north, range 6 east; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{4}$ mile; thence south $1\frac{1}{4}$ mile; thence east $1\frac{1}{4}$ mile; thence south $1\frac{3}{4}$ miles to the quarter section corner on the east line of section 32, township 2 north, range 6 east; thence east $1\frac{1}{2}$ mile; thence south $1\frac{3}{4}$ miles; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{4}$ miles; to the quarter section corner on the east line of section 16, township 1 north, range 6 east; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ miles to the quarter section corner on the east line of section 27, township 1 north, range 6 east; thence west $1\frac{1}{4}$ mile; thence south $1\frac{1}{2}$ mile; thence west $1\frac{1}{4}$ mile; thence south 3 miles to the quarter section corner on the north line of section 15, township 1 south, range 6 east; thence east $3\frac{3}{4}$ mile; thence south $3\frac{3}{4}$ mile; thence east $1\frac{1}{4}$ mile; thence south $1\frac{3}{4}$ miles to the center of section 26 of said township and range; thence west $1\frac{1}{4}$ mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{4}$ mile; thence south $1\frac{1}{4}$ mile; thence east $1\frac{1}{4}$ mile; thence south $1\frac{1}{4}$ mile; thence east $1\frac{1}{4}$ mile to the quarter section corner on the east line of section 35, township 1 south, range 6 east; thence south $1\frac{1}{4}$ mile; thence west $1\frac{1}{2}$ mile; thence south $3\frac{3}{4}$ mile to the center of section 2, township 2 south, range 6 east; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{2}$ mile to the quarter section corner on the north line of section 12, township 2 south, range 6 east; thence south 2 miles to the quarter section corner on the north line of section 24 of said township and range; thence east $1\frac{1}{2}$ mile to the northeast corner of said section 24; thence south 2 miles; thence east 1 mile to the northwest corner of section 32, township 2 south, range 7 east; thence southeast to the southeast corner of section 4, township 3 south, range 7 east, and the Stanislaus river, which is the line between San Joaquin and Stanislaus counties.

Thence south 1 mile; thence west $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ miles to the center of section 21, township 3 south, range 7 east; thence east $1\frac{1}{2}$ mile; thence south 1 mile to the quarter section corner on the east line of section 28, thence southeast to the quarter section corner on the west line of section 1, township 4 south, range 7 east, and the Tuolumne river; thence following up the Tuolumne river to its intersection with the quarter section line running north and south through section 20, township 4 south, range 8 east; thence south to the center of section 20, thence southeast to the northwest corner of section 2, township 5 south, range 8 east; thence southeast to the southeast corner of section 12, township 5 south, range 8 east; thence south to the quarter section corner on the west line of section 18, township 5 south, range 9 east; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{2}$ mile, to the southeast corner of said section 18, thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{2}$ mile; thence south 1 mile; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ mile to the southeast corner of section 29, township 5 south, range 9 east; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ mile; to the northwest corner of section 3, township 6 south, range 9 east; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ miles to the center of section 10; thence east $1\frac{1}{2}$ mile; thence south $3\frac{3}{4}$ mile to the county line dividing the counties of Stanislaus and Merced.

Thence continuing south $1\frac{1}{4}$ mile; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{2}$ mile to the southeast corner of section 14, thence south 1 mile; thence east 1 mile; thence south 2 miles to the southeast corner of section 36, township 6 south, range 9 east; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ mile; thence east 1 mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{2}$ mile to the southeast corner of section 5, township 7 south, range 10 east; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{2}$ mile; thence south $1\frac{1}{2}$ mile; thence east $1\frac{1}{2}$ mile to the southeast corner of section 9, thence south $1\frac{1}{2}$ mile; thence east 1 mile; thence south $1\frac{1}{2}$ mile; thence east 1 mile to the southeast corner of section

14; thence south $\frac{1}{2}$ mile; thence east $\frac{1}{2}$ mile; thence south $\frac{1}{2}$ mile; thence east $\frac{1}{2}$ mile to the southeast corner of section 24, township 7 south, range 10 east; thence south $\frac{1}{2}$ mile; thence east 1 mile; thence south $\frac{1}{2}$ mile to the southeast corner of section 30, township 7 south, range 11 east; thence southeast to the southeast corner of section 32, township 7 south, range 11 east; thence east 1 mile; thence south 1 mile; thence east 1 mile to the southeast corner of section 3, township 8 south, range 11 east; thence south $\frac{1}{2}$ mile; thence east 1 mile; thence south $\frac{1}{2}$ mile; thence east 1 mile to the southeast corner of section 12, township 8 south, range 11 east; thence south $\frac{1}{2}$ mile; thence east 1 mile; thence south $\frac{1}{2}$ mile to the southeast corner of section 18, township 8 south, range 12 east; thence east 1 mile; thence south 1 mile; thence east 2 miles; thence south 1 mile; thence east 2 miles; thence south 1 mile to the southeast corner of section 36, township 8 south, range 12 east; thence southeast to the southeast corner of section 8, township 9 south, range 13 east; thence south 1 mile; thence southeast to the county line dividing the counties of Merced and Madera.

Thence continuing southeast to the southeast corner of section 1, township 10 south, range 13 east; thence south 2 miles to the southeast corner of section 13, in said township and range; thence southeasterly to the southeast corner of section 13, township 12 south, range 14 east; thence east 1 mile; thence south 1 mile to the southeast corner of section 19, township 12 south, range 15 east; thence east 2 miles; thence south 1 mile; thence east 2 miles; thence south 1 mile; thence east 1 mile to the southeast corner of section 36, of said township 12 south, range 15 east; thence south 1 mile; thence east 1 mile; thence south 1 mile, to the southeast corner of section 7, township 13 south, range 16 east; thence east 2 miles; thence south $1\frac{1}{2}$ miles more or less, to the county line dividing the counties of Madera and Fresno.

Thence continuing south 3 miles, more or less to the quarter section corner on the east line of section 4, township 14 south, range 16 east; thence west 1 mile; thence south $\frac{1}{2}$ mile, to the southeast corner of section 5, of said township and range; thence west 6 miles to the southwest corner of section 4, township 14 south, range 15 east; thence north 1 mile to the southeast corner of section 32, township 13 south, range 15 east; thence northwest to the southeast corner of section 24, township 12 south, range 13 east; thence west $\frac{1}{2}$ mile; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{2}$ mile; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{2}$ mile; thence north $\frac{1}{2}$ mile; thence west 1 mile to the center of section 15, township 12 south, range 13 east; thence north $\frac{1}{2}$ mile; thence west 1 mile; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{2}$ mile; thence north $\frac{1}{2}$ mile to the northeast corner of section 8, township 12 south, range 13 east; thence west 1 mile; thence north $\frac{1}{2}$ mile; thence west 1 mile; thence north $\frac{1}{2}$ mile to the southeast corner of township 11 south, range 12 east; thence northwest to the center of said township and range, which is the county line dividing the counties of Fresno and Merced.

Thence continuing northwest to the southeast corner of township 9 south, range 10 east; thence north 2 miles to the southeast corner of section 24 of said township 9 south, range 10 east; thence northwest to the southeast corner of section 4, township 8 south, range 9 east; thence north 1 mile to the south boundary line of the Orestimba rancho; thence west to the southwest corner of the said rancho; thence in a northerly and westerly direction following the south and west boundary line of said rancho to a point $\frac{1}{8}$ mile, more or less, north of the quarter section corner on the east line of section 19, township 7 south, range 9 east, which is the intersection of the county line dividing the counties of Merced and Stanislaus.

Thence continuing in a northerly and westerly direction following the south and west boundary lines of said rancho to the northwest corner thereof, at the center of section 14, township 6 south, range 8 east; thence northeasterly following the northwest boundary of said rancho to the left bank of the San Joaquin river; thence follow-

ing down the left bank of said river to the county line dividing the counties of Stanislaus and San Joaquin.

Thence following down the left bank of the San Joaquin river to the quarter section line running east and west through section 13, township 3 south, range 6 east; thence west to the quarter section corner on the east line of section 14, of said township and range; thence northwest to the northeast corner of section 4, of said township and range; thence northwest to the quarter section corner on the north line of section 19, township 2 south, range 6 east; thence west $3\frac{1}{2}$ miles to the southeast corner of section 16, township 2 south, range 5 east; thence north $\frac{1}{2}$ mile; thence west 3 miles to the east line of section 13, township 2 south, range 4 east; thence north $\frac{1}{2}$ mile to the northeast corner of said section 13, township 2 south, range 4 east; thence northwesterly to the northeast corner of section 10; thence northwesterly to the quarter section corner on the north line of section 4 of said township 2 south, range 4 east; thence northwesterly to the county line between Alameda and San Joaquin, at a point $\frac{1}{2}$ mile north of the south line of section 32, township 1 south, range 4 east; thence north on said county line to the bank of Old river and the northeast angle of Alameda county.

Thence west to the southeast corner of the southwest quarter of the northwest quarter of section 30, township 1 south, range 4 east; thence north $\frac{1}{4}$ mile; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{4}$ mile to the northeast corner of section 25, township 1 south, range 3 east; thence west $\frac{1}{2}$ mile; thence north $\frac{1}{4}$ mile; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{2}$ mile; thence north $2\frac{1}{2}$ miles; thence east $\frac{1}{4}$ mile; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{4}$ mile, to the center of section 35, township 1 north, range 3 east; thence west $\frac{1}{4}$ mile; thence north 1 mile; thence east $\frac{1}{4}$ mile, to the center of section 26, township 1 north, range 3 east; thence north $\frac{1}{4}$ mile; thence east $\frac{1}{4}$ mile; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{4}$ mile; thence north $\frac{3}{4}$ mile to the quarter section corner on the south line of section 14, township 1 north, range 3 east; thence west $\frac{1}{4}$ mile, thence north $\frac{3}{4}$ mile; thence east $\frac{1}{4}$ mile, thence north $\frac{1}{2}$ mile; thence west $\frac{1}{4}$ mile; thence north $\frac{3}{4}$ mile, to the south line of section 2, township 1 north, range 3 east; thence west $\frac{1}{2}$ mile; thence north $\frac{1}{4}$ mile; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{4}$ mile to the center of section 3, township 1 north, range 3 east; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{4}$ mile, to the southeast corner of section 33, township 2 north, range 3 east; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{4}$ mile; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{4}$ mile to the quarter section corner on the north line of said section 33; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{4}$ mile; thence west $\frac{3}{4}$ mile; thence north $\frac{1}{4}$ mile, to the center of section 29, township 2 north, range 3 east; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{2}$ mile; thence west $\frac{1}{4}$ mile, to the southeast corner of section 19, township 2 north, range 3 east; thence north $\frac{1}{4}$ mile; thence west $\frac{1}{4}$ mile; thence north $\frac{1}{4}$ mile; thence west $\frac{1}{2}$ mile; thence south $\frac{1}{4}$ mile, to the quarter section corner on the east line of section 24, township 2 north, range 2 east; thence west $1\frac{1}{2}$ miles to the center of section 23, thence north $\frac{1}{4}$ mile; thence west $\frac{1}{2}$ mile; thence north $\frac{1}{4}$ mile; thence west $\frac{1}{2}$ mile; thence north $\frac{1}{4}$ mile; thence west $\frac{3}{4}$ mile; thence north to the San Joaquin river; thence down the San Joaquin river to a point due south from the point of beginning, thence north to the point of beginning.

Said drainage district is hereby declared to be a body corporate and politic and shall have power to sue and to be sued; to acquire, own, hold, use and enjoy for the purposes mentioned in this act, any and all properties herein mentioned, or necessary for the purposes of said district. [Amendment approved May 26, 1913, Stats. 1913, p. 253.]

Management of district.

§ 5. The management and control of said drainage district shall be vested in the reclamation board which shall hereafter consist of seven members. The members of the present reclamation board shall be members of the board as hereby enlarged. The remaining members shall be appointed by the governor of the state within thirty days after this act shall take effect. All the members, whether herein named or appointed by the governor, shall hold office at the pleasure of the governor. In case of a vacancy, the same shall be filled by the governor of the state. [Amendment of June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1339.]

This was a new section added May 26, 1913, Stats. 1913, p. 266.

Secretary, etc. Compensation.

§ 6. The reclamation board shall appoint a secretary, who may be a member of the board, and may appoint a general manager, a chief engineer and an assistant secretary, and may employ an attorney for the board and such assistant engineers, consulting engineers, special attorneys and other assistants, employees and advisers as may appear necessary to said board, and shall fix their compensation. The compensation of any attorney or engineer employed by the board may be fixed at a monthly rate of compensation, or fees for special services rendered, or both. The secretary, assistant secretary, general manager, chief engineer and two assistant engineers, all consulting engineers, the attorney for the board, and all special attorneys employed by the board, and such employees as may be otherwise exempted by law, shall be exempt from the provisions of the civil service laws of this state. [Amendment of June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1339.]

This was a new section added May 26, 1913, Stats. 1913, p. 266.

State's interest supreme. Purpose of act.

§ 7. The state of California and the people thereof are hereby declared to have a primary and supreme interest in having erected, maintained and protected on the banks of the Sacramento and San Joaquin rivers and their tributaries and the by-passes and overflow channels and basins mentioned herein, good and sufficient levees and embankments or other works of reclamation, adequately protecting the lands overflowed or subject to overflow by said streams, and confining the waters of said rivers, tributaries, by-passes and overflow channels and basins within their respective channels and boundaries, and it shall be the duty of the reclamation board at all times to enforce on behalf of the state of California and the people thereof the erection, maintenance and protection of such levees, embankments and channel rectification as will, in their judgment, best serve the interests of the state of California. The purposes and objects of this act are to carry into effect the plans of the California debris commission with such modifications and amendments and such additional plans as have been or may hereafter be adopted by the reclamation board for the control of the flood waters of the Sacramento and San Joaquin rivers and their tributaries and said basins, and to vest in said reclamation board control and jurisdiction over said plans and such other plans as may be adopted by said board, excepting such portions of said plans as relate to channel excavation, enlargement, rectification and control in the Sacramento river and the construction of weirs; it being the intent of this act that all work and control in the said stream and the construction of weirs shall remain with the United States and the state of California, concurrently, but this exception does not apply to the San Joaquin river and its tributaries.

Construction of act.

This act and every part thereof shall be liberally construed to promote its objects and to carry out its intents and purposes. [Amendment of June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1340.]

This was a new section added May 26, 1913, Stats. 1913, p. 266.

Members not to be interested in contract.

§ 8. It shall be unlawful for a member of the board to vote upon any contract or other matter in which he may have an interest or share, or for any employee of said board to receive directly or indirectly for his own use or benefit any portion or share of the money or other thing paid under any contract; but having an interest in lands within said drainage district shall not disqualify a member for voting to execute any part of said plans of flood control, or carrying out the objects of this act. [New section approved May 26, 1913, Stats. 1913, p. 267.]

Office of board. President. Meetings. Minutes. Compensation. Copy of records.

§ 9. The reclamation board shall have its office at the city of Sacramento, which shall be the principal place of business and legal residence of said board and of the said Sacramento and San Joaquin drainage district. The reclamation board shall elect one of its members as president, and may also elect another of its members as vice president who shall have the powers and perform the duties of the president during his absence or inability to act or at his request or when so authorized by the board. The regular meetings of said board shall be held at such times as shall be fixed by the board, and a majority of the board shall constitute a quorum, but no action of said board shall be effective unless the same shall be concurred in by a majority of the members thereof. Special meetings of the board may be called at any time by the president or by a majority of the members upon notice by mail or telegraph to each member at his place of residence or business, and there received at least twelve hours before the hour fixed for such meeting. Any other meeting of the board, at its office, when all of the members are present, shall be considered a legal meeting at which any business may be transacted. It shall be the duty of the reclamation board to keep full and correct minutes of all proceedings and transactions of all meetings of the board, which minutes shall be open for public inspection during office hours. Each member of the board shall receive the necessary expenses incurred by him in the performance of his duties, and twenty dollars for each day attending the meetings of the board, but such per diem shall not exceed one thousand dollars in any one year. The reclamation board shall have a seal of such device as said board may adopt, and any seal heretofore adopted by the reclamation board shall be the seal of said board, and said seal shall also be the seal of the said Sacramento and San Joaquin drainage district. A copy of any record of said board, when certified by its secretary or assistant secretary to be a true copy thereof, and attested by the seal of the board, shall be prima facie evidence of the existence and contents of such record. For making a copy of any record of said board to which any person may be entitled by law, or which may be made at the request of any person, the reclamation board may charge and collect the actual reasonable cost of making such copy, including the time of its employees and materials used, and one dollar for the certificate thereto, if a certified copy be requested, and may require a deposit in advance sufficient to cover such charges. All money so collected shall be paid monthly to the state treasurer and be by him credited to the balance remaining unexpended of any appropriation or assessment available for the general administrative expenses of said board. [Amendment of June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1340.]

This was a new section added May 26, 1913. Stats. 1913, p. 267.

Draw bridges.

§ 10. Whenever so required and notified by the reclamation board it shall be the duty of the owner of and of the person or corporation maintaining or operating any railroad, electric railroad, wire line, wagon road or other structure crossing any of the by-passes or overflow channels herein provided for, to provide and maintain one or more suitable draws or other appliances within any such by-passes or overflow channels to

permit the passage of watercraft, dredgers or other machines used in the construction of reclamation works, and to open said draws or appliances upon reasonable notice given by any person desiring to pass the same and payment of a fee of fifty dollars. Said draws or appliances shall be located at such points as shall be designated by said board. A failure to comply with this section shall render such owner or person or corporation maintaining or operating any of said structures liable to any person for the damages caused to such person by such failure. Compliance with the provisions of this section may be enforced by mandamus or by mandatory injunction, or by any other appropriate remedy authorized by law, in an action or proceeding brought by the reclamation board, which action or proceeding may be commenced and maintained by said board in the name of the people of the state of California. The remedies provided by this section shall not be exclusive of, but shall be concurrent with and in addition to, any other remedy which may exist by law. [Amendment of June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1341.]

This was a new section added May 26, 1913, Stats. 1913, p. 267.

Approval of reclamation plans.

§ 11. Any plan of reclamation, flood control, drainage or other improvement that includes or contemplates the construction, enlargement, revetment or alteration of any levee, embankment, canal or other excavation along or near the banks of the Sacramento or San Joaquin rivers or any of their tributaries or connected therewith, or upon any land adjacent thereto, or within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom, must, unless heretofore approved by the reclamation board, be approved by said board before construction of the same shall be commenced. Any such plan shall be void until approved by said board, and no such work shall be done or constructed without the permission of said board first obtained.

Cutting levees.

No river or by-pass levee at any of the places hereinbefore mentioned, nor any levee forming part of any of the plans of flood control adopted by this act or by said reclamation board, shall be cut or altered without permission of said board first obtained.

Right to raise levees.

Notwithstanding any provision hereinbefore in this section contained, the owner of any existing levee at any of the places above mentioned shall have the right to raise, widen, or strengthen the same to such extent as such owner may desire; provided, that before such work is commenced, the plans, specifications and method of construction therefor shall be submitted to and approved by the reclamation board, and that the work shall be done subject to the supervision of said board, and that no claim shall ever be made against said reclamation board or said Sacramento and San Joaquin drainage district for compensation, through or by any assessment or otherwise, for any part of such work which may be in excess of the requirements of the plan of flood control for that locality finally adopted and approved by said board.

And provided, further, that any such existing levee may be protected or strengthened in case of emergency during the season of floodwater, where it is in danger of injury or destruction therefrom; provided, that notice of such work shall be immediately given to the reclamation board, and provided that all such emergency work shall be subject to the subsequent approval of the reclamation board, and that said board shall have power to require its removal or alteration if not so approved.

And provided, further, that no levee, embankment or other structure within any by-pass or overflow channel adopted by said reclamation board shall be raised, widened, strengthened or altered without permission of said reclamation board first obtained.

Work done without permission declared nuisance.

The construction, enlargement, revetment or alteration of any levee, embankment, canal or other work of reclamation, flood control or drainage at any of the places herebefore mentioned, or the doing of any act or construction of any work in this section mentioned, or permitting the same to remain after such construction, which shall be done without the permission of the reclamation board and in violation of any of the provisions of this section, is hereby declared to be a public nuisance, and the reclamation board is hereby empowered to commence and maintain any suit or suits in the name of the people of the state of California for the prevention or abatement of such nuisance. Any person who shall do any act contrary to or in violation of any of the provisions of this section shall be guilty of a misdemeanor. [Amendment of June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1342.]

This was a new section added May 26, 1913, Stats. 1913, p. 268.

Powers of board to acquire lands, etc. Acquisition of lands acquired by U. S.

§ 12. The reclamation board shall have power to acquire either within or without the boundaries of the district, by purchase, condemnation or by other lawful means, in the name of the Sacramento and San Joaquin drainage district, from private persons, corporations, reclamation, swamp land, levee, protection or drainage districts, or other organizations or associations, all lands, rights of way, easements, property or material necessary or requisite for the purpose of by-passes, weirs, cuts, canals, sumps, levees, overflow channels and basins, reservoirs and other flood control works, and other necessary purposes, including drainage purposes; to construct, clear and maintain by-passes, levees, canals, sumps, overflow channels and basins, reservoirs and other flood control works; to construct and maintain ditches, canals, pumping plants, and other drainage works and to operate the same; to make contracts in the name of said district to indemnify or compensate any owner of land or other property for any injury or damage caused by the exercise of the powers by this act conferred, or arising out of the use, taking or damage of any property for any of such purposes; to maintain actions in the name of the people of the state of California to restrain the doing of any act or thing that may be injurious to any of the works necessary to said plan of flood control or that may interfere with the successful execution of said plan or for damages for injury thereto, and any damages so recovered shall be deposited with the state treasurer to the credit of said district and shall be applicable to the payment of warrants against any assessment for the particular portion or project affected by such injury; to establish a standard of levee construction; to do any and all things necessary or incident to the powers hereby granted or to carry out the objects specified herein; to maintain actions in the name of the people of the state of California to compel by injunction the owner or owners of any bridge, trestle, wire line, viaduct, or embankment or other structure which shall be intersected, traversed or crossed by any by-pass, drainage canal, or overflow channel, so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through any such by-pass, drainage canal, or overflow channel, and wherever necessary in the case of existing works, to compel the removal or alteration of any such embankment or other structure; to maintain actions in the name of the people of the state of California to restrain the diversion of the waters of any stream that will increase the flow of water in said Sacramento or San Joaquin rivers or their tributaries, and such diversion of the waters of any stream into said rivers or either of them or any of their tributaries, is hereby declared to be a public nuisance which may be prevented or abated by the reclamation board. In case any land, right of way or easement is or shall be needed for any work of channel excavation, enlargement, rectification or control, or for the construction of any weir, which is a part of the plans to be carried out as contemplated by this act, and which is to be done or constructed in whole or in part by the United States or by the state of Cali-

ifornia and it is or shall be necessary or be required by the United States or by the state of California before doing such work or constructing such weir, that such land, right of way or easement be conveyed to or provided for the use of the United States or the state of California free of cost, the reclamation board shall have power to acquire such land, right of way or easement and cause the same to be conveyed to the United States or to the state of California free of cost, or to be condemned for the use and in the name of the United States or the state of California in the manner provided by the laws of this state or of the United States, and to pay the cost and expense of acquiring such land, right of way or easement out of the funds of any assessment by said board applicable thereto; or if such land, right of way or easement is or shall have been already acquired by said reclamation board in the name of the Sacramento and San Joaquin drainage district, the said board shall be and is authorized to cause the same to be conveyed by said district to the United States or to the state of California free of cost.

Whenever any work to be done by the reclamation board or the Sacramento and San Joaquin drainage district under any of the provisions of this act is such that it can be so done in connection with work of public improvement of rivers and harbors authorized by the United States government as to bring it within the provisions of section four of the United States river and harbor act approved March 4, 1915, authorizing the receipt by the United States government agencies of funds to be contributed for expenditures in connection with funds appropriated by the United States for such work, then the funds under the control of the reclamation board and available for such work, or so much as may be necessary, may be contributed by the reclamation board to the United States government under the provisions of said section of said river and harbor act in order that the work may be done in the manner thereby contemplated. [Amendment of May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1123.]

This was a new section added May 26, 1913, Stats. 1913, p. 268. It was also amended June 9, 1915, Stats. 1915, p. 1343.

Levy of assessments. Assessors. To hear objections. To exclude lands not benefited.

§ 13. Whenever, in the opinion of the reclamation board it shall be necessary to levy an assessment upon any lands within said drainage district for any of the purposes herein specified, including the expenses of bonding such assessment if authorized by law, said board shall cause an assessment to be levied upon such lands within said drainage district for such purposes. The plans to be carried out shall be divided by said board into separate portions or projects in such manner as will in its judgment best facilitate the levying of assessments for each particular portion or project in a just and equitable manner according to benefits upon the lands in said district affected by such portion or project; provided, however, that each separate and particular project or unit shall include all by-passes, cuts, canals, sumps, levees, pumping plants and other works of flood control and drainage as shall be necessary by reason of the carrying out and construction of the particular project, to properly conduct the water of any stream, natural or otherwise, the outlet of which has been intercepted by the construction of any levee or embankment included in such project or unit into such by-pass.

Said board shall enter in the minutes of the board a resolution to the effect that the execution of each such separate portion or project which they may determine upon is a public necessity. Each such particular portion or project shall be designated by the board in such resolution by name and number. All assessments, plans and funds intended for or connected with the execution of each particular portion or project shall be designated by such name and number and shall be kept separate and shall be used only for the purpose of carrying out such particular portion or project. For the purpose of making any such assessment the board shall appoint three assessors who shall be dis-

interested persons, and shall have no interest in any real estate within said drainage district, and each of whom, before entering upon his duties, shall make and subscribe an oath that he is not in any manner interested in any real estate within said district, directly or indirectly, and that he will perform the duties of an assessor to the best of his ability. Said assessors shall be exempt from the provisions of the civil service laws of this state. Said assessors must assess upon the lands within said drainage district proposed to be assessed for the plans adopted by the reclamation board the said sums included in the estimates of said board, and shall apportion the same according to the benefits that will accrue to each tract of land in said district, respectively, affected by any particular portion or project by reason of the expenditure of said sums of money. After said assessors have examined the plan or plans of the works contemplated and the estimates of the cost, they shall make a preliminary report to the reclamation board indicating the exterior boundaries of the lands that in their opinion will be benefited by the expenditures. The assessors shall then appoint a time and place in each county in which any of said lands proposed to be assessed are situated, when and where they will hear objections to the said report and also evidence concerning the manner in which said assessment should be apportioned. They shall give notice of such hearing in each of such counties by publication in a newspaper published in such county once a week for three weeks, the first publication to be not later than the twenty-first day before the day of hearing, which notice shall contain a general designation of the lands which will in their opinion be so benefited, as aforesaid, and shall refer to said preliminary report on file in the office of the reclamation board for such exterior boundaries. They shall exclude any land that will not be benefited by the expenditure of said sums and shall assess all lands that will be benefited thereby.

In determining the benefits that will or may accrue to each particular tract of land by the construction or maintenance of the works contemplated by any particular project or unit, the works of such project or unit shall be considered as a whole and lands shall be assessed for the works embraced in such project or unit only in the proportion that they will or may be benefited by the construction of the entire works embraced in the said project or unit, and no lands shall be considered as benefited by the construction or maintenance of the works embraced in such project or unit, or any part or portion thereof, nor shall any lands be assessed for the expense of the construction or maintenance of such project or unit or any part or portion thereof, because such lands have been or may be first endangered or flooded, or the natural drainage thereof obstructed by the construction or maintenance of any part or portion of the works embraced in such project or unit in advance of or prior to the completion of the construction of the entire works embraced in such project or unit.

Assessment list. Maps. Hearing of objections.

Said assessors shall make a separate list of the lands so assessed in each county, which list shall contain a description of the tracts of land assessed by swamp land surveys, legal subdivisions, or other boundaries or references sufficient to identify the same, the name of the owner, if known, or if unknown, that fact, and the amount of the charge assessed against each tract. The name of the owner of land which is or is supposed to be the property of the estate of a deceased person in course of administration may be stated as estate of (such person, naming him), deceased. When there are two or more owners or supposed owners of any tract of land, partly known and partly unknown, the assessment may be to such known owner or owners by name and to other owners unknown. No mistake in the name of the owner, or supposed owner, of any real estate shall invalidate the assessment. In the assessment list for any county the assessors may make use of any abbreviation in common use in that county, without explanation thereof. The assessors may also in the assessment list for any county make use of other abbreviations, provided a schedule and explanation thereof with reason-

able certainty shall, unless printed on each page of such assessment list, be prefixed to said assessment list and a reference thereto written, printed or stamped on each page of said assessment list whereon any such abbreviation is used. In case any land shall in the assessment list for any county be described in whole or in part by reference to a map, plat or survey, which map, plat or survey shall be on file or of record in any public office, it shall be sufficient in such description to designate such map, plat or survey by name, number or other designation sufficient to identify the same in a schedule of such maps, plats and surveys, which schedule shall be prefixed to said assessment list and shall set forth with reasonable certainty where each such map, plat or survey may be found, and shall be referred to by a reference written, printed or stamped on each page of said assessment list whereon such method of description is relied upon. The assessors appointed for any assessment may also prepare or cause to be prepared a map or maps of the whole or any part or parts of the lands to be assessed with sufficient detail to indicate thereon and identify the several tracts of lands to be separately assessed or any of them, each of which such separate tracts shall be designated on such map or maps by a distinctive number. Each of such maps shall be inscribed and designated as "reclamation board assessment map No. —," giving each map a distinctive number. Any such map may consist of any number of sheets attached together and designated as one map. Such map or maps when approved by the reclamation board, shall be certified by the secretary of said board as having been so approved, and shall be filed for record in the office of the county recorder of the county wherein the land indicated on such map or maps is situated. Thereupon and thereafter, for the purpose of said assessment, or of any future assessment levied by said reclamation board, the assessment list for any county may, for the description of any tract of land so indicated on any such map, refer to such map and to the number by which such tract is designated on such map, and such reference, if used for that purpose, shall be a sufficient description of such tract for the purposes of such assessment list, and for the purposes of the notice of delinquent sale, certificate of sale and deed in pursuance of such sale, and all other proceedings under this act based upon such assessment. No provision of any other statute of this state relative to the filing or recording of maps in the office of the county recorder shall apply to the maps in this section referred to; provided, however, that the maps herein referred to shall have no legal effect for any purpose except for the convenient reference to and description of the tract of land indicated thereon for the purposes of description of such tracts of land by reference thereto in the matter of assessments levied by the reclamation board and acts and proceedings based thereon as herein provided. No fee shall be charged by any such county recorder for the filing for record of such map as in this section provided. Said lists when completed shall be filed with the secretary of the board and said secretary shall forward to the county treasurer of each county in which any lands so assessed are situated, the assessment list for such county, and the same shall be open for inspection by the public for at least thirty days. The compensation of said assessors shall be fixed and allowed by the board. The reclamation board shall appoint a time and place not less than thirty days after said list has been filed with the county treasurer when and where it will meet in each county wherein any of the lands so assessed are situated for the purpose of hearing objections to said assessments, and notice of such hearing in each county shall be filed with the county treasurer and published once a week for two weeks in some newspaper published in such county. At any time before the date of such hearing any person interested in any land upon which any charge has been assessed, may file in the office of the reclamation board written objections to such assessment, stating the grounds of such objections, which said statement shall be verified by the affidavit of such person or some other person who is familiar with the facts. At such hearing, the board shall hear such evidence as may be offered touching the

correctness of such assessment or the manner of its apportionment, and may modify or amend the same, and may reapportion all or any part of the entire assessment. Unless the aggregate amount of the whole of such assessment shall be modified or amended by the reclamation board so as to cause a difference of more than two and one-half per cent greater or less than the original total amount of said assessment, it shall be deemed that the assessment has not been substantially modified and no necessity shall exist for a reapportionment thereof.

Notice of reapportionment.

If said assessment shall be reapportioned, the board shall give two weeks notice as before and proceed to hear objections in each county affected, as before, and shall then reconsider said assessment and make an order approving said assessment as finally fixed; and the decision of said board shall be final, and thereafter said assessment list shall be conclusive evidence, except in the suit hereinafter provided, that the said assessment has been levied and apportioned according to law. Any person interested, as aforesaid, in any land upon which any charge has been so assessed, aggrieved by the decision of the board approving said assessment, may commence an action against the district in the superior court of the county in which said land or the greater part thereof is situated, to have said assessment upon such land modified or annulled. Such action must be commenced within thirty days after the reclamation board has approved such assessment and the assessment list for such county has been deposited in the office of the county treasurer as provided in the next section, and shall have preference over all civil actions in fixing the time of trial. No objection to said assessment shall be considered by the court unless such objection shall have been made in writing to the reclamation board as hereinbefore prescribed, and, excepting in the action above mentioned, no action or defense shall ever be maintained attacking the said assessment in any respect. Whenever an assessment has been levied by the reclamation board upon lands in said district for general administrative expenses and other expenses not pertaining to any particular project, and the boundaries of said district have been or shall be extended so as to include lands other than the lands included within said district at the time such assessment was levied, the reclamation board shall make an estimate of the fair and equitable amount which should be contributed by the lands so included in the district by such change of boundaries for the purposes of such assessment previously levied by said board for general administrative expenses and other expenses not pertaining to any particular project, and shall levy and cause to be assessed, equalized and collected in the manner in this act provided, an assessment to the amount of such estimate upon lands so included in the district by such change of boundaries, according to benefits in the manner in this act provided. [Amendment of May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1124.]

This was a new section added May 26, 1913, Stats. 1913, p. 269. It was also amended June 9, 1915, Stats. 1915, p. 1344.

Assessment becomes lien on land. Delinquent. Notice of delinquency and sale. Postponement of sale. Certificate of sale. Redemption. Deed. Property deeded to district. Payment may be made in full.

§ 14. After such hearing has been had by the board in any county, said assessment list shall be certified by the secretary of the board to be correct, and said list shall be deposited in the office of the county treasurer of said county, and such assessment shall thereafter constitute a lien upon the lands so assessed and shall impart notice to all subsequent purchasers or incumbrancers or other person acquiring any interest in or lien upon said land, and all unpaid assessments shall bear interest at the rate of seven per cent per annum from the time when the assessment list is so deposited in the office of the county treasurer, and shall be paid to the county treasurer in one or more installments of such amounts, and at such times, respectively, as the board, from time to

time, in its discretion, may, by order entered in its minutes, direct; if any such installment shall remain unpaid at the expiration of thirty days from the date of the order, then said installment shall become delinquent, together with the accrued interest thereon to date of delinquency, and ten per cent of the amount of said installment and interest, and the sum of fifty cents upon each tract of land separately assessed to cover cost of publication of notice of sale, shall be added thereto, and collected for the use of the district; provided, that if an action is pending in any court to have the assessment on any tract of land reviewed, modified or annulled, as provided herein, such assessment, if not annulled in said action, may in the discretion of the board become delinquent thirty days after any judgment rendered therein shall become final. After the said installment has become delinquent, the board shall publish a notice at least once a week for three weeks in some newspaper of general circulation published in the county where the land is situated, which notice shall contain a description of the property assessed as described in the assessment list or by other description sufficient to identify the same, the name of the person to whom it is assessed or a statement that it is assessed to unknown owners, if such is the fact, the amount of the delinquent installment, the amount of the interest at the date of delinquency, the amount of the penalty and cost of publication that has been added as above provided, and notice that the property assessed will be sold on a date therein stated, in front of the courthouse of said county, to pay said installment with accrued interest and the penalty and cost of publication hereinbefore specified. At the time stated in said notice, or such other time to which said sale may have been postponed, the board must cause said property to be sold to the highest bidder for gold coin of the United States. If not completed on the first day the sale may be continued from day to day and over Sundays and legal holidays until completed. The sale may be conducted by such person as the board may appoint for that purpose, whether a licensed auctioneer or not, and no license shall be required of such person for conducting such sale. Out of the proceeds of said sale the board must pay the amount of said installment with accrued interest thereon and the penalty and cost of publication herein provided for to the county treasurer of such county, and the board must pay to the owner of said property any surplus remaining after such payment to the county treasurer. The board may postpone said sale from time to time by announcement at the time and place of sale and by a written notice posted at or near the place of sale which written notice shall be substantially as follows: The sale of property for delinquent assessments under (name and number of assessment) of the Sacramento and San Joaquin drainage district, which was fixed for (time and place of sale) has been postponed to (time to which postponed) at the same place. If no bid is made for said property equal to the amount of said installment, accrued interest and penalty and cost of publication, the district shall become the purchaser, and the said property must be struck off to the district for the amount of said installment, accrued interest and penalty and cost of publication. A certificate of such sale shall be executed by the president of the board to the purchaser, or to the district if the property shall have been struck off to the district, and said certificate of sale shall be recorded in the office of the county recorder of the county in which the land is situated. Any person interested in said property may redeem the same at any time within one year after the date of said sale, by paying to the county treasurer the amount for which said property was sold, and interest on the said sum at the rate of ten per cent per annum from the date of said sale. If no redemption shall be made within said one year, the purchaser, or the district, if said property shall have been sold to the district, shall be entitled to a deed executed by the president of said board. The effect of such deed shall be to convey said property free of all liens and incumbrances, excepting state, county and municipal taxes, assessments levied or assessed by statutory authority, and the unpaid balance of the said or any assessment made by said

drainage district, which said balance must be called in and collected in the same manner as other assessments; provided, that where property shall have been so deeded to the district and shall not have been sold, the same shall not be offered for sale for subsequent installments of the said or any assessment so long as the district shall remain the owner of said property, but the board may sell said property at any time at public auction after notice given for the same period and in the same manner as herein provided for sale for delinquent installments, but not for a sum less than all delinquent unpaid installments of all assessments thereon with accrued interest and penalties, and the deed executed in pursuance of such sale shall convey said property free of all incumbrances except state, county and other municipal taxes, assessments levied or assessed by statutory authority and the unpaid balance of all assessments of said drainage district, which balance must be called in and collected in the same manner as other assessments. The remaining portion not yet ordered paid by said board of the assessment upon any tract of land may be voluntarily paid in full, with the accrued interest thereon, at any time after the lien of such assessment has accrued, and if the total amount of the whole of such assessment on any tract shall be paid in full within thirty days after the first installment of such assessment has been by said board ordered paid, no interest shall be charged. [Amendment of June 9, 1915. In effect August, 8, 1915, Stats. 1915, p. 1348.]

This was a new section added May 26, 1913, Stats. 1913, p. 271.

Deposit of money collected. Paid out on warrants. When there are no funds.

Renewal of warrants. Notice of money to pay warrants. Abandonment of proceedings under assessment.

§ 15. All money collected upon sales or otherwise shall be paid to the county treasurer of the county in which the land is situated, and said money, together with all other money collected by the county treasurer shall, within one month after its receipt by the county treasurer, be by him deposited in the state treasury to the credit of said drainage district in a fund which is hereby created and known as the Sacramento and San Joaquin drainage district fund, specifying the name and number of the assessment from which such money was derived, and shall be paid out upon warrants of the state controller, and the controller is hereby directed to issue warrants upon said funds whenever drafts of the reclamation board shall be presented to him, and the state treasurer is hereby directed to pay such controller's warrants when there is sufficient money in the funds of said drainage district; provided, that all moneys collected from assessments shall be paid out only on warrants issued for works or other expenses covered by the assessment from which such money was derived, which assessments must be numbered consecutively, to the end that all moneys raised by assessment upon any of the lands embraced in said drainage district, shall be expended only for works of reclamation or other expenses beneficial to the lands so assessed, and for the payment of warrants issued for the construction of the works and other expenses for which such assessment was levied, and each warrant must designate the name and number of the assessment from which it is to be paid. Drafts of the reclamation board may be presented to the controller and warrants drawn, as aforesaid, against the funds to be raised by an assessment as soon as the reclamation board has passed its order or resolution for the levy of such assessment and appointed the assessors therefor. In case there are not sufficient funds applicable thereto for the payment of such warrants when presented to the state treasurer he shall endorse on such warrants the date of presentation and register the same, and thereafter such warrants shall bear interest at the rate of seven per cent per annum, and must be paid in the order of their registration. Such warrants shall be considered as contracts in writing for the payment of money, and the period prescribed for the commencement of an action based upon said warrants, or connected therewith, is and shall be four years from the date of their issuance or renewal as

hereinafter provided. Said warrants shall, at any time within four years after their issuance or renewal, be received in payment of any assessment for work or expenses for which such warrants were issued. The reclamation board may, at its option, at any time within four years after the date or previous renewal thereof, renew any warrant for an additional period of four years upon application of the owner or holder of such warrant, by an endorsement thereon of the fact and date of such renewal and notice thereof to the state treasurer and controller. Whenever there is sufficient money in the treasury applicable to the payment of any outstanding warrants of the district, the state treasurer shall give notice that there is money in the treasury to pay certain warrants, giving their numbers in the order of their registration; said notice shall be published for ten days in one newspaper published in the city of Stockton and one published in the city of Sacramento. After the last publication of said notice the warrants therein mentioned shall cease to bear interest. The reclamation board shall designate a paper in each of said cities which shall be the official papers of said district for the purpose of such publication. Whenever in the opinion of the reclamation board it shall appear that the total amount of any assessment previously levied and assessed and which has become a lien upon lands in said drainage district will be greater than required for the purposes for which such assessment was levied, the reclamation board may by resolution entered in its minutes release the lien of and abandon such assessment as to any part thereof not required as aforesaid and not previously ordered to be paid; and a copy of such resolution certified by the secretary of said board and attested with its seal shall be deposited in the office of the county treasurer of each county wherein is situated any land affected by such assessment, and shall be by such county treasurer annexed to the assessment list of such assessment for that county; and in any such case, when any payment has been voluntarily made upon the part of such assessment upon any tract of land so abandoned and released the amount of such overpayment shall be repaid to the person by whom the same was paid, his heirs or assigns; and upon production of the county treasurer's receipt therefor and endorsement thereon by the reclamation board of the fact of such repayment, the reclamation board shall draw a draft on the state controller and the controller shall draw a warrant upon the state treasurer therefor, and the state treasurer shall pay such warrant in the same manner as other warrants against the funds of such assessment. The reclamation board may also in its discretion abandon further proceedings under any assessment at any time prior to the time when the lien of such assessment has accrued. In case of any change of county boundary lines, or creation of any new county, all acts and proceedings in this act provided for in the matter of or relating to or in pursuance of or founded upon any assessment upon lands affected by such change of county boundary lines, or creation of such new county, shall be done and conducted as if such lands were situated in the same county as at the time of appointment of the assessors to make such assessment. [Amendment of June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1350.]

This was a new section added May 26, 1913, Stats. 1913, p. 273.

Lands may be charged in subsequent assessment.

§ 16. In all cases in which an assessment shall be levied upon the lands embraced within said district, and if the assessment upon any tract or tracts of land shall have thereafter been adjudged invalid by any court of competent jurisdiction, or, if for any reason, such tract or tracts of land shall not have been legally charged with said assessment, then such tract or tracts of land shall be charged in any subsequent assessment with such proportion of the former assessment as the benefits derived by said land from the purposes for which said former assessment was levied bears to the whole amount of said former assessment; or a subsequent reassessment of such tract or tracts of land may be made separately for the purpose of charging said land with its

proper proportion of the said assessment. [New section approved May 26, 1913, Stats. 1913, p. 273.]

First projects to be considered.

§ 16½. One of the first projects to be considered by said board shall be that portion of the plans of the California debris commission relating to the Sacramento river and Cache slough below the junction of Yolo basin by-pass and Cache slough known as the project to enlarge the outlet of the Sacramento river. In the estimate of the sum necessary for the project last named, the board shall also ascertain the amount of any expenditures that have heretofore been made by the state of California, any municipal corporation, reclamation district, and by any owner of lands within said drainage district, or by any of them, for the purpose of purchasing rights of way for the enlargement of the outlet of the Sacramento river and actually applied to said purpose, which said sums so expended shall be legal claims against said district upon execution by the claimant of a quit-claim deed of rights of way to the district, and shall be paid from the moneys arising from the assessment for the project in this section first above mentioned. The governor is hereby authorized to execute such quit-claim deed on behalf of the state of California; provided, however, that in cases where such rights of way or lands for use as such rights of way have already been conveyed to, or the title thereto has already been vested in, the United States for use in carrying out said project, the quit-claim deed from any claimant above referred to shall not be required. [Amendment of June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1352.]

This was a new section added May 26, 1913, Stats. 1913, p. 274.

Duty of board to promote levee building. Publication of notice. Application for leave to construct levee. Board may proceed with work. Emergency cases.

§ 17. It shall be the duty of the reclamation board to promote the construction, completion, maintenance and repair of levees along all rivers, streams, overflow channels and basins and by-passes where, in the opinion of the board, such levees are insufficient or necessary for the purpose of the plans for flood control to be carried out by said board under this act. Whenever any such levee is in the opinion of said board insufficient or necessary for the purpose aforesaid, the reclamation board shall give notice, by publication in the manner hereinafter provided, that such levee is insufficient or necessary, and that it is the intention of said board to construct, repair or complete such levee and pay the cost thereof out of an assessment levied or to be levied and assessed upon the lands within said drainage district directly or indirectly benefited by such levee. Such notice shall be signed in the name of the reclamation board by its president and secretary and shall be published once a week for three weeks in some newspaper published in the county wherein such levee or the greater part thereof is situated or is to be constructed, and the giving of such notice by publication shall be deemed completed on the twenty-first day after the first publication thereof. Any land owner or owners, and any reclamation district, drainage district, levee district, municipal corporation or other organization or association authorized by law to construct, repair or complete such levee shall have thirty days after completion of the giving of such notice by publication as aforesaid within which to apply to said reclamation board for leave to construct, repair or complete such levee, which application shall be in writing and signed by such applicants or their respective executors, administrators, guardians, trustees or duly constituted and authorized officers, and filed in the office of the reclamation board; and in case such application be filed within thirty days, as aforesaid, such applicants shall have sixty days after the filing of such application, or such further time as said reclamation board may by order entered in its minutes allow, within which to present to said reclamation board their plans and specifications for the construction, repair or completion of such levee, and obtain the approval by said board of such plans and specifications, and to commence the work. Each such

application for leave to construct, repair or complete such levee shall designate the name and post office address of at least one and not more than three of the applicants signing the same as the person or persons to whom any notice or communication may be addressed by the reclamation board in the matter of such application. In case there shall be two or more such applications filed in the office of the reclamation board within said period of thirty days last above mentioned the reclamation board may determine which of such applications shall be recognized and may reject the others. Any such levee constructed or work done by such applicants as hereinbefore provided, pursuant to such notice from the reclamation board and according to plans and specifications approved by said board, shall be considered as constructed or done with the permission of said board within the meaning of section eighteen of this act. If such application shall not be filed in the office of said reclamation board for permission to do such work, as aforesaid, within thirty days after completion of the giving of such notice by publication, or if such applicants shall fail to present to said board and obtain its approval of such plans and specifications and to commence the work as aforesaid, within said period of sixty days or such further time as the board may allow, or shall fail to complete such work with reasonable diligence after the same shall have been so commenced, the reclamation board shall thereupon be and is hereby empowered to proceed with the construction, repair or completion of such work, and to pay the cost thereof by assessment upon the lands within said drainage district directly or indirectly benefited by such levee according to such benefits, as in this act provided, which assessment may be either an assessment specially levied and assessed for that purpose, or any assessment levied and assessed by said board and applicable to the payment of such work. Notwithstanding anything in this section provided, if in the opinion of the reclamation board a case of emergency exists requiring immediate action to preserve life or property or to protect or preserve the safety of any such levee along any river, stream, overflow channel or basin or by-pass, the reclamation board may cause the necessary work to be done immediately for the protection or preservation of such levee, without giving the notice hereinbefore provided, and may pay the cost thereof, and any damage that may have been done by the performance of such work, by an assessment to be levied and assessed as above provided, or out of the funds of any assessment available for that purpose under the provisions of this act. [Amendment of June 9, 1915. In effect August 8, 1915. Stats. 1915, p. 1353.]

This was a new section added May 26, 1913, Stats. 1913, p. 274.

By-pass of reclamation district, etc., with drainage district.

§ 18. Notwithstanding any provision in this act, any reclamation district, levee district, drainage district or municipal corporation, wholly or partly within the said Sacramento and San Joaquin drainage district, now or hereafter existing, shall have the right, with the permission of the reclamation board, to acquire by grant or eminent domain or otherwise, any right of way or other easement included in any of the plans for controlling the flood waters of the Sacramento and San Joaquin rivers or their tributaries to be carried out by said reclamation board as in this act provided, which right of way or other easement is or shall be required by the plans of such reclamation, levee, or drainage district or municipal corporation for the consummation of its purposes as authorized by law, and shall also have the right, with the permission of the reclamation board, to construct such levees, cuts, canals or gates as may be required to complete any by-pass forming part of said plans to be carried out by said board as aforesaid, or to complete any part of any such by-pass which may in the judgment of said reclamation board be safely and economically constructed as a separate unit or portion thereof, and the title to any such right of way or other easement or levees, cuts, canals or gates shall be conveyed to the said drainage district upon compensation being made at the actual reasonable cost thereof.

Land left for by-pass.

If any reclamation district, levee district, drainage district, municipal corporation, private corporation, association, or person within said Sacramento and San Joaquin drainage district, with the consent of the reclamation board, has provided or left, or shall hereafter provide or leave, any land for a by-pass or waterway storage basin or sump for the purpose of complying with the plans to be carried out by said board as aforesaid, or for carrying out in whole or in part any of the plans or works adopted by it or shall hereafter, with the consent of the reclamation board, erect any levee or levees along said by-pass or waterway, storage basin or sump the said by-pass waterway, storage basin or sump and levees shall be considered as a part of the work to be done pursuant to the provisions of this act and proper compensation shall be made for the right of way or easement through, over and upon such by-pass, waterway, storage basin or sump and for the actual reasonable cost of construction of said levees, cuts, canals or gates. When such compensation shall have been made, such reclamation district, levee district, drainage district, municipal corporation, association, private corporation or person shall convey to the said Sacramento and San Joaquin drainage district a perpetual easement in, over and upon said by-pass, storage basin or sump and levees for all purposes necessary to accomplish the said plans to be carried out by said reclamation board as aforesaid.

Claim against district for right of way.

In the event that any such reclamation district, levee district, drainage district, municipal corporation, private corporation, association, or person, shall, with the consent of the reclamation board, expend any sum of money in the acquisition of such right of way or other easement, or in the construction of such levees, cuts, canals or gates, and shall convey the same to the Sacramento and San Joaquin drainage district, or in the event that it, he or they has or have allowed, or shall allow, any land to be used for the purpose of a by-pass or waterway, storage basin or sump to comply with the plans to be carried out by said board as aforesaid, or shall, with the consent of said board, construct levees along any line of any such by-pass, or storage basin, and shall convey a perpetual easement therein to said Sacramento and San Joaquin drainage district, it, he or they shall have a claim against the said drainage district for the reasonable value or cost of such right of way or other easement or of such levees, cuts, canals or gates, and an assessment shall be levied upon the lands in said drainage district benefited thereby so that the same may be paid, or such cost may be included as one of the items in any assessment that may be levied in the said drainage district.

Definition.

The words "with the permission of the reclamation board" or "with the consent of the reclamation board," as used in this section, shall be construed to mean and are hereby declared to mean the express permission or consent of said board in each particular case, evidenced by resolution or order entered in its minutes, and granted upon application of the particular district, corporation, association or person desiring to obtain benefit of the provisions of this section.

Maximum compensation.

Before granting its permission for the acquiring of any right of way or easement or for the construction of any of the levees or other works in this section mentioned, the reclamation board may require the applicant for such permission to furnish and submit to said board complete and detailed plans and specifications therefor and estimates of the cost thereof, and said board may in its order granting such permission designate a maximum limit of the amount of compensation to be so allowed therefor.

When ownership in fee may be deemed necessary.

In case the reclamation board shall determine that the ownership in fee of, instead of the right of way or easement over, any land required for use as a by pass, or overflow channel or basin, or for any part of the works of flood control to be carried out by said board, is necessary, or that the absolute ownership by said Sacramento and San Joaquin drainage district of any levees, cuts, canals, gates or other flood control works is necessary, for the purposes of said district, then said board may require that such title in fee and absolute ownership shall be conveyed to said Sacramento and San Joaquin drainage district before any compensation shall be allowed therefor pursuant to any of the provisions of this section. [Amendment of June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1354.]

This was a new section added May 26, 1913, Stats. 1913, p. 275.

Appropriation. Liability of state.

§ 19. The sum of one hundred thousand dollars, in addition to the sums heretofore appropriated, is hereby appropriated for the use of the reclamation board, at least twenty thousand dollars of which shall be used by the board to pay the expenses of the state engineer in carrying out the directions of this act. The controller is hereby directed to draw warrants upon the state treasurer whenever drafts of the reclamation board are presented to him, and the treasurer is hereby directed to pay said controller's warrants. In the first assessment levied in said district the sum of fifty thousand dollars shall be levied, collected and paid to the state treasurer as reimbursement of one half of the above appropriation.

The state of California shall not be liable, directly or indirectly, for any obligation, claim, or liability of any kind or character, arising under, or by reason of this act, or any of the provisions thereof, in excess of the one hundred thousand dollars in and by this act appropriated. [New section approved May 26, 1913, Stats. 1913, p. 276.]

Revolving fund.

§ 20. When and as soon as the sum of fifty thousand dollars has been collected and paid to the state treasurer as reimbursement of one-half of the appropriation for the use of the reclamation board made by section nineteen of said act hereby amended, or when and as soon as any part or parts of said sum shall be so repaid from time to time, if the same shall be so repaid in installments, the money so repaid to the state treasurer shall be and is hereby reappropriated for the use of said reclamation board and may be used by said board as a continuing revolving fund in the manner herein-after provided. The controller is hereby directed to draw warrants upon the state treasurer whenever drafts of the reclamation board therefor are presented to him, payable out of such revolving fund, and the state treasurer is hereby directed to pay said warrants. The said revolving fund may be used by said reclamation board from time to time for any purpose for which the funds of said board or of the Sacramento and San Joaquin drainage district, whether raised by assessment or otherwise provided, may be lawfully used. Whenever any assessment has been or shall be levied or ordered by said board applicable to the payment of any expenses or charges so prepaid out of said revolving fund, and such proceedings shall have been taken in the matter of such assessment that it shall be lawful to draw warrants against the funds of such assessment as hereinbefore provided, the reclamation board shall make and present its draft to the controller and the controller shall draw his warrant upon the state treasurer upon the funds of such assessment for the amount of such expenses or charges so prepaid out of said revolving fund, which warrant shall be drawn in favor of the state treasurer. Such warrants may be registered and renewed and shall bear interest and be paid in the same manner as other warrants against the funds of such assessment, as hereinbefore provided, and when so paid the amount of such warrants and the interest thereon, if

any, shall be by the state treasurer credited to said revolving fund and form a part thereof.

Special cash contingent fund.

The reclamation board may from time to time draw such sum from the state treasury out of such revolving fund, not to exceed the sum of five thousand dollars, as shall be approved by the board of control, which sum may be drawn without the submission of estimates, receipts, vouchers or itemized statements, to be used as a special cash contingent fund out of which may be advanced any proper expenses or charges in and about the conduct of its business, requiring prompt payment in cash. All charges and expenses so advanced out of such cash contingent fund must be accounted for and proper vouchers therefor produced to the board of control, and when approved by the board of control the amount thereof shall be paid out of said revolving fund and returned to said cash contingent fund. Said special cash contingent fund must be accounted for by the said state reclamation board at any time upon demand by the controller or state board of control and refunded to the said revolving fund. [New section added June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1356.]

Work may be done by board. Construction of dredgers.

§ 21. Any construction or repair work to be undertaken or done upon the initiative of the reclamation board under any of the provisions of this act may, at the option of said board, be undertaken and done by said board under the sole charge and direct control of said board, its officers, agents and employees, free from any jurisdiction or control of the state department of engineering over the same. Any such work to be so undertaken and done by the reclamation board may be done wholly or partly by contract let by the board in such manner as the board may determine, or may be done wholly or partly by day labor or force account if deemed advisable by the board. Said board is hereby authorized to construct, purchase, rent, sell or exchange, from time to time as may be found necessary or convenient, any and all such dredgers, machines, appliances, tools, apparatus and other property as may be necessary or convenient for doing any such work; and the cost thereof shall be apportioned to and paid from the funds raised from the several assessments levied or to be levied by said board in a just and equitable manner according to the use made of the same in carrying out the several separate portions or projects for which such assessments are levied respectively.

Dredgers may be let.

Any such dredgers or other equipment, when not in use on any work of the reclamation board, may be by said board rented for use by others, and the rental received therefrom by said board shall be paid over to the state treasurer and by him credited to the balance or balances remaining unexpended of the assessment or assessments against which the cost of such equipment has been paid or is to be charged, as indicated to him by said board.

Work may be done by engineering department.

The reclamation board may also, at its option, determine that any such construction or repair work shall be taken charge of and constructed by the state department of engineering, in which case the plans and specifications for such work shall be prepared and approved by the reclamation board and by said board delivered to the state engineer, together with a request that such work be taken charge of and done by the state department of engineering, and thereupon such work shall be done or constructed under the sole charge and direct control of the state department of engineering in the manner provided by law for the doing of such work by that department; and the cost thereof and any necessary and proper expenses incurred by said department of engineering in connection therewith shall be a legal charge against the Sacramento and San Joaquin

drainage district and paid out of any assessment or other fund applicable thereto; provided, however, that any contract let by the state department of engineering for the doing of any such work shall be approved by the reclamation board before becoming effective; and provided further, that any cash, bond, check or other security forfeited by any bidder or contractor for failure to enter into or to perform any contract for the doing of any such work shall be forfeited to and recovered by the reclamation board for the use of the Sacramento and San Joaquin drainage district, and as soon as received or recovered shall be paid to the state treasurer and by him placed to the credit of the assessment out of which the cost of such work is to be paid.

In the case of any such work so done or constructed by said department of engineering, the reclamation board may furnish to said department of engineering for use in such construction any of its dredgers, machines, appliances, tools, apparatus or other property which may be necessary or convenient for doing such work. [New section added June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1357.]

Board may supervise work.

§ 22. The reclamation board shall have the right to inspect and supervise, as the same progresses, any work done or constructed pursuant to any of the provisions of this act, and may insert a stipulation for such inspection and supervision in any order, contract or other instrument permitting or providing for or relating to the doing or construction of any such work. [New section added June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1358.]

Plans may be changed.

§ 23. Any plans or specifications heretofore or hereafter adopted or approved by the reclamation board for any work to be done or constructed pursuant to any of the provisions of this act may be changed or altered, with the consent of said board, at any time before commencement or during progress of the work, if deemed advisable by said board for the purpose of avoiding obstacles or to conform to conditions discovered or existing where such work is to be done, or for any purpose approved by said board; and said board may in like manner and for like purpose at any time change or alter the plans or specifications for work undertaken by the board upon its own initiative. [New section added June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1359.]

Administration of oaths.

§ 24. The president, or any member of said reclamation board, and the secretary and assistant secretary, general manager and chief engineer of said board are and each of them is hereby authorized to administer oaths and to take and certify affidavits relating to any matter pending before said board, or in which said board or the Sacramento and San Joaquin drainage district may be interested. [New section added June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1359.]

Sworn testimony. Meeting any place in state. Depositions of witnesses.

§ 25. Any hearing before the reclamation board shall, if deemed advisable by the board, be conducted upon sworn testimony of the applicants or witnesses except in the case of reports or investigations made by the members, employees or special advisers of the board.

Whenever in the opinion of the board it shall be necessary or proper for the convenience of applicants or witnesses, the reclamation board may meet at any place in this state for a hearing or partial hearing of any application coming before said board; or the board may in its discretion authorize such hearing or partial hearing to be had before a committee of one or more members of the board, or before the general manager or chief engineer of the board, at any place within this state, who shall take and report

the evidence to the board. The board may require that all or such part as it deems proper of the expenses of any such outside hearing, if held at the request of the applicant, including traveling expenses of the members, officers or employees of the board, and the expenses of stenographic reporting and transcribing evidence taken at such hearing, shall be paid by the applicant, including a proportionate allowance, according to their usual rate of compensation, for the time of the members, officers and employees of the board required for such hearing. All money so collected as compensation for the time of the members, officers or employees of the board shall be paid by said board into the state treasury and by the state treasurer credited to the balance remaining unexpended of any appropriation or assessment available for the general administrative expenses of the board.

The reclamation board may also provide, in such manner and upon such terms as to said board may seem proper, for the taking at any place of the deposition under oath of any witness for or against any application pending before the board, which deposition shall be taken before a notary public or other officer or person authorized by law or by this act to administer oaths, and when so taken, the same shall be certified and returned to the office of said board in the manner provided by law for the certifying and returning of depositions in civil actions, and when so taken, certified and returned, the said deposition may be read in evidence before said board at the hearing of such application. [New section added June 9, 1915. In effect August 9, 1915, Stats. 1915, p. 1359.]

Proof of service of notice.

§ 26. An affidavit may be used to prove the service or publication of any notice required or provided for by any of the provisions of this act in the same manner and to the same extent as provided for in sections two thousand nine to two thousand fifteen inclusive of the Code of Civil Procedure, and such affidavit shall be received as prima facie evidence of such service or publication in any court or elsewhere. [New section added June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1360.]

Additional notice.

§ 27. Besides and in addition to the notices required by this act, the reclamation board may in its discretion give such notice as it may deem proper, by publication, mailing or otherwise, of any of its assessments, orders, proceedings, hearings or other acts done or contemplated. [New section added June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1360.]

Rules.

§ 28. The reclamation board may from time to time adopt rules to promote the convenient, orderly and just conduct of the business of said board and of the Sacramento and San Joaquin drainage district, and may amend or repeal the same or any part thereof from time to time, and any such rules or any part thereof may be suspended or compliance therewith may be waived by said board at any meeting to such extent as may be deemed proper. Any rules heretofore adopted by the reclamation board shall be the rules of said board until amended or repealed or until new rules are adopted. [New section added June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1360.]

Property exempt.

§ 29. The property of the reclamation board or of said Sacramento and San Joaquin drainage district shall be exempt from execution or attachment. [New section added June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1360.]

Constitutionality.

§ 30. If any section, sub-section, sentence, clause or phrase of this act shall for any reason be held or found to be unconstitutional, the validity of the remaining portions of

this act shall not be thereby affected. The legislature hereby declares that it would have passed this act and each section, sub-section, sentence, clause and phrase thereof, notwithstanding that any one or more sections, sub-sections, sentences, clauses or phrases be held or found to be unconstitutional. [New section added June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1361.]

Title of act.

§ 31. This act shall be known and may be cited and referred to as the "Reclamation Board Act." [New section added June 9, 1915. In effect August 8, 1915, Stats. 1915, p. 1361.]

Assessment of benefit from flood control features of works.

§ 32. The assessors appointed by the reclamation board pursuant to section thirteen of this act, in apportioning the assessment on each tract of land which may be assessed shall, as information for the said reclamation board or the state of California, state, opposite each sum assessed for each particular tract of land, in separate columns respectively, the amount that they shall determine that each tract is so assessed by reason of benefit from the flood control features of said works involved in said plans, and also the amount that they deem each tract of land is so assessed by reason of all other benefit from the said works. The amounts so stated and placed opposite each assessment charged shall be no part of said assessment and shall in no way affect the assessment charged against each tract of land as the same may be fixed, but shall be subject to review and readjustment in the same manner as the assessment itself. [New section added May 27, 1919. In effect July 27, 1919, Stats. 1919, p. 1129.]

Application of compensation.

§ 33. Any compensation that may be made to any reclamation district, levee district, drainage district, municipal corporation, association, private corporation, or person, in accordance with section eighteen of this act, shall be applied toward the payment of any assessment upon any tract of land assessed for any particular portion or project owned by any such municipal corporation, association, private corporation or person, but in case of any reclamation district, levee district or drainage district, such compensation shall be applied and credited pro rata toward the payment of the balance remaining unpaid upon the assessments levied by the reclamation board against the lands respectively situated within such reclamation district, levee district or drainage district, as part of the assessment out of which such compensation is to be made based upon the total amount of the assessment charges against the lands in such reclamation district, levee district or drainage district respectively, and if such compensation, when so applied, shall exceed the total amount of such credits upon the assessments upon the lands in any such district, the excess shall be paid to the district itself. [New section added May 27, 1919. In effect July 27, 1919, Stats. 1919, p. 1129.]

Application of moneys to flood control benefits.

§ 34. All moneys which may be hereafter paid to the said reclamation board by the state of California under and by virtue of the provisions of an act entitled "An act to appropriate money to be expended under the direction of and by the reclamation board to aid in carrying out the project adopted by the reclamation board for the Sutter-Butte by-pass assessment number six with such modifications and amendments as may hereafter be adopted by the reclamation board, and to aid in carrying out any work described in the plans of said Sutter-Butte by-pass assessment number six, in conformity with the report of the California debris commission, transmitted to the speaker of the house of representatives of the United States by the secretary of war on the twenty-seventh day of June, 1911, and such modifications and amendments as have been, or may be hereafter adopted by the reclamation board, or by the war depart-

ment, or the congress of the United States, and providing for the future completion of the entire project," or by any law of similar import which has been or may be hereafter adopted by the legislature of the state of California, shall be applied on said Sutter-Butte by-pass assessment number six, by said reclamation board, to the pro rata payment of such portions of said assessment as are based upon flood control benefits as set opposite each assessment, in the manner hereinbefore provided; provided, however, that if no flood control benefit amount is set opposite any tract of land, the assessment upon such tract of land shall not be entitled to any credit for any of the moneys so received by said reclamation board from said state. In case the amount remaining unpaid, including interest, upon the total of said assessment on any tract of land entitled to such pro rata payment or credit out of the money so received from the state shall be less than such pro rata payment or credit to which such tract is so entitled then the surplus of such pro rata payment or credit shall be by the reclamation board paid to the owner of such tract in cash out of said money so received from the state and deducted from the amount to be paid over by the reclamation board to the state treasurer as hereinafter directed.

Amounts credited on assessment accounts.

The reclamation board shall prepare and furnish to the several county treasurers a statement of the several amounts so applied to the pro rata payment of such portions of the assessments as are by reason of flood control benefit, and the several county treasurers shall enter such amounts on the original assessment lists as payments or credits on account of the several assessments. In making its calls or orders for the collection of installments on said assessment the percentage to be called and paid shall be calculated upon the original total amount assessed against each tract, but no such call or installment need be paid upon the assessment on any such tract except for the excess of the total of such calls over the total of payments so credited to such tract from application of such money received from the state as aforesaid, or otherwise paid thereon.

Disposition of money received from state.

The money so received by the reclamation board from the state shall, unless bonds based upon said assessment shall have been authorized by law, be by the reclamation board paid over forthwith to the state treasurer and by him credited to the funds of said assessment, to be used and expended in the same manner as funds collected from land owners upon said assessment. But if at the time of the receipt of any such money by the reclamation board from the state, bonds based upon said assessment shall have been authorized by law, the money so received from the state shall be deposited by the reclamation board with the state treasurer to be held as a special fund for the redemption of such bonds and shall, under the direction and as required by the reclamation board, be applied to the payment and cancellation of such bonds in the manner following, to wit:

Purchase of bonds by board.

Upon receipt of any sum of money under said act or acts of similar import, the said reclamation board shall proceed to advertise, at least once a week for four consecutive weeks, in at least one daily newspaper published in the city and county of San Francisco, and one daily newspaper published in the city of Los Angeles, calling for bids or offers for the sale to said state reclamation board of sufficient of the issued and outstanding bonds to cover the amount represented by said money so received from said state; provided, however, that said reclamation board shall not purchase any bonds at a sum in excess of par plus accrued interest. And if the said reclamation board shall receive bids or offers at par plus accrued interest, or less than par plus accrued interest,

then the said reclamation board shall purchase a sufficient amount of said bonds to make up the sum of money so received by them from the state, and shall proceed forthwith to cancel said bonds so purchased, together with all interest coupons attached thereto.

Payment of bonds.

But, if the said reclamation board shall not receive bids or offers of a sufficient amount to cover the money so received from the state, then as to the balance thereof, the said reclamation board shall pay bonds in the order of their numbers, beginning as to the first payment, at bond number one, and continuing in numerical order, in a sufficient amount to cover said first payment, and upon such subsequent payments, shall pay the said bonds according to the next succeeding numbers. [New section added May 27, 1919. In effect July 27, 1919, Stats. 1919, p. 1130.]

Payment of interest on warrants.

§ 35. Whenever any warrant drawn by the state controller upon the state treasurer as provided in section fifteen of this act has been presented to the state treasurer and not paid for want of funds and has been registered by the state treasurer and bears interest as provided in said section fifteen, the state controller shall at any time, on presentation of such warrant to him for that purpose, certify on the back of the warrant, over his signature, the amount of interest accrued thereon to that date, specifying the date, and when the state treasurer pays such warrant he shall, in addition to the amount for which the warrant was drawn, pay the interest accrued thereon as so certified to by the controller. [New section added May 27, 1919. In effect July 27, 1919, Stats. 1919, p. 1132.]

The amending act of 1915 contained the following sections:

Provisions amendatory.

§ 28. It is hereby declared by the legislature that some of the provisions of this amendatory act are for the purpose of more clearly expressing what was intended by the legislature in certain provisions of said act which is hereby amended, and therefore, if any provision of said act hereby amended, when properly construed, shall be held to have the same meaning as a corresponding or any provision of this act, although differently expressed, the amendment thereof by this act shall be construed to be an amendment in form only and not in substance.

§ 29. All acts and parts of acts inconsistent with said act as heretofore and now hereby amended, are hereby repealed to such extent as they may be so inconsistent.

1. **Constitutional law—Section 16, article XII, constitution, has no application to a drainage district.**—The twelfth article of the constitution relates exclusively to private corporations and consequently the provisions of section 16 have no application to a suit against a drainage district.—Gallup v. Sacramento, etc., Dist., 171 Cal. 71, 75, 151 Pac. 1142.

2. **District a corporation, though not a private or municipal corporation.**—The public body known as the Sacramento and San Joaquin drainage district created by an act of the legislature (1911-117, amended 1913-252) is a corporation, though not a private or municipal corporation, and its principal place of business, and place of residence, is Sacramento county.—Gallup v. Sacramento, etc., Co., 171 Cal. 71, 75, 151 Pac. 1142.

3. **Residence of corporations, section 392,**

Code Civil Procedure, not applicable.—The provisions as to the residence of corporations of section 392, Code of Civil Procedure, held to apply to drainage districts.—Gallup v. Sacramento, etc., Drainage Dist., 171 Cal. 71, 72, 151 Pac. 1142.

4. **Act does not apply to previously adopted plans of reclamation.**—The act does not apply to a plan of reclamation adopted prior thereto, and such plan is not required to be submitted to and approved by the reclamation board, notwithstanding certain modifications and additions made thereto after the act became effective, where such modifications did not materially affect the general plan.—Silva v. Reclamation District No. 1001, 41 Cal. App. 326, 182 Pac. 786.

5. **Purpose of act—Uniform plan of reclamation.**—The purpose of the act creating the reclamation board was to secure,

as far as practicable, harmony and uniformity among the various districts in the promotion of reclamation throughout the Sacramento and San Joaquin valleys.—*Silva v. Reclamation District No. 1001*, 41 Cal. App. 326, 182 Pac. 786.

6. Same—Reclamation board—Work is public work.—The work of the reclamation board, under the act, is a public work inaugurated by the state for the primary purpose of aid to navigation, and to prevent destructive floods.—*Reclamation Board v. Chambers* (Cal. App.), 189 Pac. 479.

7. Assessment—Authorized with previous segregation into projects.—The act authorizes the levy of an assessment by the district without first having segregated the general scheme into projects.—*Miller & Lux v. Sacramento, etc., Dist.*, 182 Cal. 252, 187 Pac. 1041.

8. Same—Exclusion of land not justified by the fact of prior reclamation.—The mere fact that land has been reclaimed does not justify its exclusion from a general scheme of improvement to diminish the danger of flood waters, where such land is below the flood level and subject to danger.—*Miller & Lux v. Sacramento, etc., Dist.*, 182 Cal. 252, 187 Pac. 1041.

9. Same—Same—Levy in accordance with benefits.—Neither the fact of a uniform levy on all lands, nor the fact that appellant's land has been reclaimed, necessarily results in the conclusion that the assessment was not levied in accordance with benefits.—*Miller & Lux v. Sacramento, etc., Dist.*, 182 Cal. 252, 187 Pac. 1041.

10. Same—Different amounts in different parts of district.—It is common knowledge, of which the court takes judicial notice, that in the part of the Sacramento valley included in the assessment district there are more reclamation projects and a greater area of reclaimed land requiring supervision and adjustment than in the San Joaquin valley, which was a proper matter for the board to consider in determining the amount of the assessment in each region, and it can not be said as a matter of law that their decision is con-

trary to the facts.—*Miller & Lux v. Sacramento, etc., Dist.*, 182 Cal. 252, 187 Pac. 1041.

11. Same—Same—Exercise of discretion of board sustained.—Where an assessment is made for the general benefit of the whole area, it has no direct relation to the value of the lands assessed, and it can not be said that such an assessment was not in proportion to the benefits derived from the general work.—*Miller & Lux v. Sacramento, etc., Dist.*, 182 Cal. 252, 187 Pac. 1041.

12. Boundaries—When fixed by legislature, courts can not consider question of benefits.—Where the legislature fixes the boundaries of an improvement district, its determination as to the benefits of such improvement is conclusive, and the courts are prevented from considering the question of benefits.—*Miller & Lux v. Sacramento, etc., Dist.*, 182 Cal. 252, 187 Pac. 1041.

13. Same—Amount contributed by the state.—The amount to be contributed by the state for the project inaugurated by this act is a matter for the determination of the legislature, and the state may, if it elects, pay all the costs, or, if it elects, place the cost on the land benefited, or may divide the cost.—*Reclamation Board v. Chambers* (Cal. App.), 189 Pac. 479.

14. Same—Exclusion of land not benefited—Landowner can not complain.—A landowner within the district can not complain of the exclusion of lands lying within the exterior boundaries of the district, where the plan was for general projects which would not benefit the excluded lands.—*Miller & Lux v. Sacramento, etc., Dist.*, 182 Cal. 252, 187 Pac. 1041.

15. Action for compensation not a local action.—An action for compensation for land accepted by the Sacramento and San Joaquin drainage district, under the provisions of section 1 of the act creating the same is not a local action, does not differ from an ordinary action on contract, and should, on defendant's motion, be transferred to the county of defendant's legal residence.—*Gallup v. Sacramento, etc., District*, 171 Cal. 71, 76, 151 Pac. 1142.

PURCHASE OF CONSTRUCTION WARRANTS.

ACT 3987—An act authorizing the state board of control to purchase warrants of the Sacramento and San Joaquin drainage district issued in payment for the expense of continuing construction of the east levee of the Sutter by-pass; appropriating money therefor, and providing for reimbursement to the state of such appropriation.

History: Approved January 30, 1919. In effect immediately. Stats. 1919, p. 5.

Purchase by state of drainage district warrants.

§ 1. The state board of control is hereby authorized to purchase at their fair value, to the extent of not exceeding the total amount hereinafter appropriated, any or all warrants of the Sacramento and San Joaquin drainage district drawn by the state controller as provided in the reclamation board act and payable out of the assessment of the reclamation board known and designated as Sutter-Butte by-pass assessment

number six and issued in payment for the expense of continuing construction of the east levee of the Sutter by-pass, or in payment for rights of way or other necessary expenses incident to the prosecution of said work.

Auditing claims.

§ 2. The board of control shall, in the matter of the purchase of such warrants, adopt such measures and impose such conditions as may to said board appear necessary or proper to ensure the proper auditing or preauditing of the claims upon which such warrants are issued, to the end that the work mentioned in section one of this act may be prosecuted economically.

Contracts for purchase of warrants. Exchange and sale of warrants.

§ 3. The board of control is hereby authorized to enter into contracts, upon such terms and conditions as said board may impose, for the purchase of all or any of the warrants which it is hereby authorized to purchase. And the said board of control is hereby further empowered to exchange any warrants so purchased by it for other warrants drawn against the same assessment, and to sell all or any part of such warrants so purchased or taken in exchange by it; provided, all such exchanges or sales of warrants shall be effected without loss to the state.

Register of warrants.

§ 4. All warrants so purchased or acquired by exchange by the board of control under the provisions of this act against said assessment, shall be registered by the state treasurer, unless already registered, and shall be payable with interest in their proper order of registration, as provided in the reclamation board act, and shall be held by the board of control for the state until paid, whereupon the proceeds thereof shall be returned into the general fund of the state.

Appropriation.

§ 5. The sum of three hundred thousand dollars is hereby appropriated, out of any money in the state treasury not otherwise appropriated, to be expended by the board of control in carrying out the provisions of this act. The state controller shall draw warrants upon the state treasurer, payable out of said appropriation, in such amounts and at such times and in favor of such persons as the board of control may request, and the state treasurer shall pay the same.

Urgency measure.

§ 6. The legislature hereby declares that it deems it necessary for the immediate preservation of the public health and safety that this act shall go into immediate effect, by reason of the following facts, to wit: That unless a sufficient levee along the east side of the Sutter by-pass is constructed without delay, the effect of the levees and other works already constructed under public authority along the west side of the Sutter by-pass and the south side of the Tisdale by-pass will be to cause the spring floods of the year 1919 to overflow and greatly damage a large area of valuable land east of the Sutter by-pass, and to imperil the health and safety of the inhabitants thereof; that the plans of the state for flood control in the Sutter basin contemplate the construction of the east levee of the Sutter by-pass, and that the construction of this levee has been commenced, and in large part completed, by the reclamation board and paid for with warrants against said assessment, but the reclamation board is unable to obtain further prosecution of said work by the issuance of warrants in payment therefor; that without the passage of this act said work can not be further prosecuted until said assessment has been completed and approved and in part collected, which will be not earlier than six months from this time. That the provisions of this act will enable the reclamation board to complete said levee in time to protect said lands to the

east of said by-pass, and the inhabitants thereof, against the damage and injury which would otherwise result from the spring floods of the year 1919; that the portions of said east levee already constructed at large expense will also suffer great damage and injury unless the work is prosecuted diligently to completion. And it is hereby declared that this act constitutes an urgency measure which under the provisions of section one of article four of the constitution of the state of California shall go into immediate effect.

1. Constitutionality—Giving or lending public money.—The act is not violative of the provision of the constitution prohibiting the giving or lending of the credit of the state, or the making of a gift to any individual, municipal, or other corporation.

—Argyle Dredging Co. v. Chambers, 40 Cal. App. 332, 181 Pac. 84.

2. Same—Not special law.—The act is not obnoxious to the provision of the constitution forbidding special laws.—Argyle Dredging Co. v. Chambers, 40 Cal. App. 332, 181 Pac. 84.

BONDS.

ACT 3988—An act to authorize the issuance and sale of bonds of the Sacramento and San Joaquin drainage district based upon assessments levied by the reclamation board upon lands in said district.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1092.

“Reclamation board act.”

§ 1. The words “reclamation board act” when used herein are intended to refer to and mean that certain act of the legislature of the state of California entitled “An act approving the report of the California debris commission transmitted to the speaker of the house of representatives by the secretary of war on June 27, 1911, directing the approval of plans of reclamation along the Sacramento river or its tributaries, or upon the swamp lands adjacent to said river, directing the state engineer to procure data and make surveys and examinations for the purpose of perfecting the plans contained in said report of the California debris commission and to make a report thereof, making an appropriation to pay the expenses of such examinations and surveys, and creating a reclamation board and defining its powers,” approved December 24, 1911, as amended by those two certain acts of the legislature of the state of California approved May 27, 1913, and June 9, 1915, respectively, in which act as so amended it is provided in section thirty-one thereof that said act shall be known and may be cited and referred to as the “reclamation board act.”

Provisions of reclamation board act regarding bond proceedings superseded.

§ 2. Whenever any assessment levied by the reclamation board upon lands within the Sacramento and San Joaquin drainage district has been completed and all of the hearings before the reclamation board in regard thereto have been heard and the reclamation board is ready to make its order approving such assessment as finally fixed, as directed by section thirteen of said reclamation board act, the reclamation board may at the time of making said order finally approving the assessment, and in and by such order and as a part thereof, also determine that in its judgment it would be for the best interests of the owners of land in the Sacramento and San Joaquin drainage district affected by said assessment to issue bonds for the purpose of obtaining money to pay the cost of the works or other expenses for which such assessment was levied; and if the reclamation board shall so determine in and by its said order, then the subsequent proceedings in and about the matter of such assessment and the collection thereof and all other proceedings for the raising of money to be used for the purposes for which said assessment was levied, shall be as in this act provided, notwithstanding any provision or provisions in regard thereto in said reclamation board act contained.

Assessment lists retained.

§ 3. If the reclamation board shall so determine that in its judgment it would be best to issue bonds as aforesaid, then the original assessment lists shall not be deposited in the offices of the respective county treasurers as directed by section fourteen of the reclamation board act, but shall be retained in the office of the reclamation board until after final determination of the judicial proceeding provided for in section four of this act.

Judicial proceeding to validate assessment.

§ 4. If the reclamation board shall in its order approving such assessment as finally fixed determine that in its judgment bonds should be issued as aforesaid, said board shall thereupon and within ten days after the passage of its said order commence a judicial proceeding for the validation of said assessment, which judicial proceeding shall be commenced, prosecuted and determined as hereinafter in sections five to thirteen, inclusive, of this act provided. During said period of ten days no action or proceeding shall in such case be commenced by any party other than said reclamation board to contest or in any manner question or interfere with the validity of said assessment, nor shall any action be commenced to have the assessment upon any land modified or annulled as provided in section thirteen of the said reclamation board act; nor shall any such action or proceeding of any kind be commenced by any party other than the reclamation board at any time thereafter; provided, the reclamation board shall itself within said period of ten days have commenced said judicial proceeding to validate said assessment as herein provided.

Action in county with largest acreage of land affected. Appointment of judges.**Notice of hearing.**

§ 5. Within said period of ten days after the passage by the reclamation board of its order approving said assessment as finally fixed by said board, the reclamation board shall commence in the superior court of the state of California in and for the county within which the largest acreage of land affected by said assessment is situate, a proceeding to validate said assessment, which proceeding shall be commenced by filing a copy of the assessment lists for said assessment, together with a copy of said order of the reclamation board approving said assessment as finally fixed by said board, both duly attested by the certificate of the secretary or assistant secretary of the reclamation board, in the office of the county clerk and ex officio clerk of the superior court in and for the county in which said proceeding is commenced. Thereupon the reclamation board shall notify the governor of the commencement of such proceeding and thereupon it shall be the duty of the governor to designate three judges of the superior court in the state of California, from counties or cities and counties wholly outside the said Sacramento and San Joaquin drainage district, and it shall be the duty of said three judges to sit in bank in said proceeding so commenced. Upon the filing of said assessment lists it shall be the duty of said county clerk to fix a time not less than thirty nor more than forty days from the date of such filing when objections will be heard to the said assessment lists, and thereupon it shall be the duty of said clerk to give notice of the time and place of such hearing by publishing a notice for once a week for four weeks in a newspaper of general circulation published in each county in said drainage district wherein any lands affected by said assessment are situated, and if in the case of any such county no newspaper be published in the county, or if for any reason such notice can not be published therein, then such notice shall be published in a newspaper of general circulation published in an adjoining county. Affidavits showing such publications shall, prior to such hearing, be filed with said county clerk.

Place of sessions.

§ 6. Said court may for the convenience of witnesses and shall upon written demand of ten interested parties filed in the proceeding, by order duly given and made, conduct sessions and take evidence in said proceeding in any county in said drainage district in which lands affected by said assessment are situated.

Filing of written objections.

§ 7. At any time before the day for such hearing fixed in the notice published by said county clerk, any person interested in any land upon which any charge has been assessed in and by said assessment, may file in said proceeding written objections to said assessment, stating in detail the grounds therefor, which said statement shall be verified by the affidavit of such person or of some other person who is familiar with the facts.

Hearing.

§ 8. At said hearing or any adjournment thereof, the said court shall hear such evidence as may be offered touching the correctness or validity of such assessment or the manner of its apportionment and as expeditiously as possible shall determine and pass upon all such written objections filed in said proceeding, and shall make and enter its judgment approving said assessment or annulling, modifying or amending the same or any part thereof. Such judgment shall refer to the assessment apportioned to each county separately and it shall be sufficient to refer to the portions of said assessment which are affected thereby. The decision of a majority of said court shall be final and conclusive, and no motion for a new trial of said proceeding shall be allowed, and no appeal from the judgment given and made by said court shall be had.

No reapportionment.

§ 9. Unless the aggregate amount of the whole of such assessment shall be modified or amended by the judgment in said judicial proceeding so as to cause a difference of more than two and one-half per cent greater or less than the original total amount of said assessment, it shall be deemed that the assessment has not been substantially modified and no necessity shall exist for a reapportionment thereof.

Assessment lists conclusive evidence.

§ 10. Thereupon and thereafter said assessment lists, unless annulled by the judgment in said judicial proceeding, embracing any modifications made by said judgment shall be conclusive evidence that said assessment has been apportioned according to the benefits that will accrue to each tract of land in such drainage district by reason of the expenditure of the sums of money to be raised thereby.

Certified copies of judgment filed.

§ 11. A certified copy of said judgment referring to said assessment lists shall be filed in the office of the reclamation board; and a certified copy of so much of said judgment as relates to the lands in each of said counties affected thereby shall be affixed to the original assessment list for such county; and the reclamation board shall thereupon cause such amendments or modifications to be made and entered upon the original assessment lists as may be necessary to make them conform to the provisions and directions of said judgment. Thereupon the said assessment lists shall be certified to by the secretary or assistant secretary of the reclamation board as being in conformity with the requirements of said judgment.

Objections must be in writing.

§ 12. No objection to said assessment shall be considered by such court unless such objection shall have been made in writing to the reclamation board as provided in

section thirteen of the reclamation board act; and excepting in the said judicial proceeding herein provided for no action or defense shall ever be maintained attacking the said assessment in any respect.

New assessment in case of annulment.

§ 13. In the event that said assessment shall by the judgment in said judicial proceeding be annulled as a whole, it shall be the duty of the reclamation board to cause a new assessment to be made as provided in the reclamation board act, and thereafter the same proceedings shall be had in regard thereto as herein provided.

Assessment becomes lien on land on filing of list.

§ 14. Said assessment lists when the same have been so modified and amended if necessary to conform to the requirements of said judgment and have been certified to as provided in section eleven of this act, shall thereupon be by the reclamation board filed in the offices of the county treasurers, respectively, of the several counties in which are situated any of the lands assessed thereby. Each such county treasurer shall endorse thereon the time to the hour and minute when the same was so filed in his office; and from that time such assessment shall constitute a lien upon the lands in such county so assessed, and shall impart notice to all subsequent purchasers or encumbrancers or any person acquiring any interest in or lien upon said lands.

Payment of assessments.

§ 15. At any time within thirty days after said assessment list has been so filed in the office of the county treasurer as provided in section fourteen hereof, the whole amount of such assessment upon any tract of land therein separately assessed may be paid in cash to the county treasurer and thereupon the county treasurer shall issue his receipt therefor and shall endorse the fact and date of such payment upon the assessment list, and thereupon the lien of such assessment upon such tract of land shall cease. The report of such payment shall be made by the county treasurer at once to the secretary of the reclamation board, and the amount so received by the county treasurer shall, within thirty days after the receipt thereof by him, be deposited by him with the state treasurer and shall be by said state treasurer safely kept and credited to the construction fund of said assessment.

Interest on unpaid assessments.

§ 16. All assessments not paid in full within said period of thirty days as provided in section fifteen hereof shall bear interest at the rate of seven per cent per annum from and after the expiration of said period of thirty days.

Election to determine method of paying cost of works.

§ 17. Upon the expiration of said period of thirty days mentioned in section fifteen of this act, an election shall be called and held by the reclamation board in that part of said Sacramento and San Joaquin drainage district affected by said assessment or the issuance of said bonds, to determine whether the money necessary to pay the cost of the works and other expenses to be paid out of such assessment shall be raised by calls to be made upon such assessment in such installments as may from time to time be determined by said board, or whether bonds of the Sacramento and San Joaquin drainage district shall be issued in an amount equal to the amount of such assessment then remaining unpaid, which amount shall be entered by the board in its records and stated by said board in its order for said election, which order shall be entered upon the minutes of said board.

Polling places.

§ 18. The reclamation board shall in its order providing for said election specify the day on which said election shall be held and shall specify and designate one or more

polling places as it may determine to be necessary in each supervisor district wherein are situated any of the lands affected by said assessment for the holding of such election. In case the board shall consider it necessary or proper to provide more than one polling place in any supervisor district for the holding of such election, the board shall in said order divide the lands in such supervisor district and within said Sacramento and San Joaquin drainage district, into separate voting districts, and shall designate and provide one polling place for and within each such voting district at which shall be cast the votes of the owners of land within such voting district. The board may, however, combine contiguous portions of different supervisor districts into one voting district in cases where the lands in such voting district shall not be assessed to more than one hundred different owners, counting one owner for each tract assessed to unknown owners and counting the estate of a deceased person as one owner.

Board of election.

§ 19. The reclamation board shall also in said order providing such election appoint a board of election for each such polling place, which board of election shall consist of three owners of land assessed in and by said assessment and situated within such voting district where such polling place is located. Each member of such board of election, whether so appointed by the reclamation board or whether acting as a substitute as hereinafter provided, shall be entitled to the sum of five dollars for his services as such, to be paid by said board out of any funds of the Sacramento and San Joaquin drainage district or of said board applicable thereto.

Notice of election.

§ 20. Notice of such election must be given by the reclamation board by posting notices thereof in at least three public places in each voting district at least twenty-one days prior thereto, and also by publication for the same length of time in some newspaper of general circulation published in each county in which any portion of the lands assessed in and by said assessment may be situated. Such notice must specify the time and place of holding such election, the aggregate face value of bonds proposed to be issued, and the names of the persons appointed to act as the board of election. Affidavits of publication and posting of such notices must be filed with the county clerk of the county in which the same have been posted or published, together with a copy of said order calling such election certified to by the secretary or assistant secretary of the reclamation board. Duplicate original affidavits of publication and posting of such notice shall also be filed in the office of the reclamation board.

One vote for each one cent of assessment.

§ 21. At such election the owner or owners of each tract of land assessed in and by such assessment, upon which tract of land the assessment has not been paid as provided in section fifteen of this act, shall have the right in person or by proxy to cast one vote for each one cent of the amount for which said tract of land is assessed by said assessment. In case there shall be more than one owner of any tract of land separately assessed in and by said assessment, all of such owners shall unite in the ballot to be cast at such election for and on behalf of such tract of land, or shall authorize one or more of their number or some other person to cast such vote for them by proxy.

Vote of guardians, corporations, etc. Vote by proxy.

§ 22. Guardians, executors, administrators and other persons holding land in a trust capacity under appointment of court may vote at said election without obtaining special authority therefor. The vote of any public or private corporation or of any reclamation district, levee district, drainage district or other public agency entitled to vote at such election, may be cast by any person authorized by the board of directors

or trustees or other managing body thereof, which authorization shall be in writing and certified to by the secretary or clerk thereof and attested by its seal duly acknowledged and filed with the board of election. No person shall vote by proxy at such election unless authority to cast such vote shall be evidenced by an instrument in writing duly executed, acknowledged and certified in the same manner as grants of real property and filed with the board of election. In case of the change of ownership of any tract of land, or in case the name of the owner of any tract of land be not correctly stated in the voting list, or in case it be assessed to unknown owners, the right to vote shall belong to the owner of such land at the time of the holding of such election; and if the right of any person to vote as the owner of any such tract of land be disputed or challenged, the question of his right to vote shall be determined by the board of election after examining him under oath, which oath any member of such board of election is hereby authorized to administer, and any person testifying falsely upon such examination shall be guilty of perjury. Any person voting or attempting to vote at such election who is not entitled to vote at such election, as herein provided, shall be subject to the same penalties and punishments as provided by the general election laws of this state, for voting or attempting to vote illegally.

Voting lists.

§ 23. The reclamation board shall, prior to such election, cause to be prepared and certified by its secretary or assistant secretary, and furnished to the board of election in each such voting district, a true and correct voting list containing the reference number of each tract separately assessed upon the assessment list, to whom assessed, and the amount of the assessment thereon with reference to which the election is to be held, which voting list shall be used by the board of election in determining the right to vote and the number of votes to be cast by each voter, and shall be sufficient evidence thereof.

Reference number of each tract.

§ 24. For the purpose of determining the so-called "reference number" of each tract separately assessed upon the assessment lists, the reclamation board shall, before preparing such voting lists, cause each tract of land separately assessed upon the assessment lists, unless already done, to be given a separate number to be designated as the "reference number" of such tract, which reference numbers shall be entered upon the assessment lists opposite the several tracts separately assessed, respectively.

Ballots.

§ 25. The ballot cast at such election shall contain the words "Bonds—Yes," or the words "Bonds—No," and also the signature of the person or persons casting the ballot, with the number of votes cast by such voter. If a ballot is cast by proxy, it shall also contain the name of the landowner for whom the ballot is cast and the signature of the person casting the said vote as such proxy. A list of the ballots cast shall be made by the board of election, containing the name of each voter, and if the ballot be cast by proxy, the name of the person casting it and the number of votes cast by each and whether the same be cast for or against the issuing of the bonds.

Failure to attend. Oath of members of board of election.

§ 26. If any person appointed as a member of the board of election shall fail to attend at the opening of the polls, the voters then present may appoint in his place any landowner of the district then present and entitled to vote at such election at such polling place, to fill the position of any such absent member thereof. Each member of such board of election must before entering upon the discharge of his duties as such, take and subscribe an official oath, which oath may be administered by any officer authorized by law to administer oaths, or by any landowner in said drainage district.

Such oath shall be to the effect that he will support the constitution of the United States and the constitution of the state of California, and that he will faithfully perform the duties of member of such election board to the best of his ability.

Canvass of votes. Canvass by reclamation board.

§ 27. The polls at each such polling place for said election shall be kept open from nine o'clock in the forenoon until five o'clock in the afternoon of the day appointed for such election. At the close of the polls the board of election shall at once proceed to canvass the votes and declare the result, and shall forward a certificate showing such result and the number of votes cast for and against the issuing of bonds, to the reclamation board, and shall deliver a duplicate thereof to the county clerk of the county wherein such voting district is located, and shall also deliver to said reclamation board all ballots, voting lists and lists of ballots cast at such election, and all documents and papers used thereat. Thereupon the reclamation board shall examine and canvass said certificates received from such boards of election, and shall determine therefrom and declare, and enter in its minutes as the managing body of said Sacramento and San Joaquin drainage district, the total result of such election. Any person interested may within ten days after the result thereof has been so determined and declared by the reclamation board, contest such election so far and to such extent as the same depends upon the votes or proceedings had in the matter of such election in any county, by bringing suit in the superior court of such county, and if no contest shall be so commenced within said time, the declaration of the result by the reclamation board shall be final and conclusive.

Bonds issued if majority vote favors.

§ 28. If a majority of the votes cast at such election are in favor of the issuance of bonds, the reclamation board shall cause bonds of the Sacramento and San Joaquin drainage district, in the amount stated in said order calling such election, to be prepared and executed and delivered to the state treasurer. Said bonds shall be of the denomination of not less than one hundred dollars nor more than one thousand dollars each. They shall be signed by the president of the reclamation board and attested by the secretary of said board with the seal of said board affixed thereto, and shall be numbered consecutively in the order of their maturity and shall bear date either January first or July first and shall bear interest at a rate to be fixed by the order of the board for issuance of the bonds not to exceed six per cent per annum payable semi-annually on the first day of January and the first day of July in each year, at the office of the state treasurer upon presentation of the proper coupons therefor. Coupons for each installment of interest shall be attached to said bonds and shall bear the facsimile signature of the state controller.

Payment of principal. Redemption of bonds.

§ 29. The principal of said bonds shall by an order of said board entered in its minutes, be made payable on the first day of July or the first day of January and in such years as the board may prescribe, but such bonds shall be payable serially within twenty years from their date in the manner following, to wit: Not less than ten per cent of their aggregate face value of such bonds issued shall be payable within ten years from their date, and not less than nine per cent of the aggregate face value of such bonds issued shall be payable each year beginning with the eleventh year from their date until the whole amount of said bonds have been paid; provided, however, that the reclamation board may call and redeem such an amount of said bonds as in its judgment it may see fit on any interest date subsequent to the first day of July, 1921, at their face value, with accrued interest to date of redemption. Whenever, at any time not less than four weeks before any semi-annual interest date, the amount of

money in the hands of the reclamation board, and applicable to the payment of said bonds, shall amount to a sum of not less than twenty-five thousand dollars, in excess of the amount, if any, falling due on the next two semi-annual interest dates for payments of principal and interest, then and in such case, the said reclamation board shall call and redeem at par, before maturity, so many of the outstanding bonds as such excess will suffice to pay; such bonds to be paid in the regular consecutive order of the serial number of said bonds, beginning with the lowest outstanding number. To effect any such redemption, the reclamation board shall cause to be published once each week for four successive weeks, in a newspaper published in the city and county of San Francisco, in a newspaper published in the city of Sacramento, and in a newspaper published in the city of Los Angeles, a notice stating that at such next semi-annual interest date, the bonds specified in such notice will be redeemed and that there will be due and payable on such bonds at the places specified therein for payment, the amount of the principal thereof with accrued interest.

Payment of bonds or coupons.

§ 30. Out of the bond fund of such assessment the state treasurer shall, on presentation at or after its maturity, pay to the holder thereof each such bond or interest coupon which shall have been sold or which shall have been issued and delivered upon an order of the reclamation board payable in bonds as hereinafter provided. If any bond or interest coupon shall not be presented to the state treasurer for payment when the same becomes due, it shall cease to bear interest, but if presented at or after such time and not paid for want of funds, the state treasurer shall so indorse such bond or coupon, together with the date of presentation, and thereafter such bond or coupon shall bear interest at the rate expressed in the bond until paid or until funds have been provided in the state treasury applicable to its payment.

Form of bond.

§ 31. Said bonds may be substantially in the following form:

UNITED STATES OF AMERICA.

No.

STATE OF CALIFORNIA.

\$.....

SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT.

Sacramento and San Joaquin drainage district, in the state of California, for value received, hereby acknowledges itself indebted to and promises to pay to the holder hereof at the office of the state treasurer of the state of California, on the first day of, 19..., the sum of dollars in gold coin of the United States of America, with interest thereon in like gold coin from date hereof until paid at the rate of per cent per annum, payable at the office of said state treasurer semi-annually on the first day of January and the first day of July in each year on presentation and surrender of the interest coupons hereto attached. This bond is one of a series of bonds of like tenor and effect, except as to denomination and maturity, numbered from to, inclusive, amounting in the aggregate to \$....., issued in accordance with an act of the legislature of the state of California approved, 1919, authorizing the same, and is based upon and secured by an assessment levied on lands in said drainage district known and designated as (name and number of assessment), validated by a judgment of the superior court of the state of California, in and for the county of, on the day of, 19..., and filed in the respective offices of the county treasurers of the counties wherein are situated the lands assessed thereby. And the said Sacramento and San Joaquin drainage district does hereby certify and declare that the issuance of said bonds was duly authorized by an election duly called and held upon due notice, and the result thereof was duly canvassed and ascertained in pursuance of and in strict

conformity with the laws of the state of California applicable thereto, and that all the acts and conditions and things required by law to be done precedent to and in the issuance of the said bonds have been done and performed in regular and due form and in strict accordance with the provisions of law authorizing the issuance of the bonds of said Sacramento and San Joaquin drainage district.

In Witness Whereof, The said Sacramento and San Joaquin drainage district, acting through the reclamation board of said state, has caused this bond to be signed by the president of said board and attested by the secretary of said board with the seal of said board affixed, this day of, 19.....

.....
President of said Reclamation Board.

Attest:
Secretary of said Reclamation Board.

And the interest coupons may be substantially in the following form:

No. \$.....

The treasury of the state of California will pay to the holder hereof on the day of, 19....., at his office in the city of Sacramento, state of California, the sum of \$..... in gold coin of the United States, out of the funds of the Sacramento and San Joaquin drainage district applicable thereto, for interest on bond of said district numbered

Attest:
State Controller.

Action to determine validity of bonds.

§ 32. The reclamation board shall deliver the bonds prepared pursuant to this act duly signed and attested, to the state treasurer. Within ten days after said bonds have been delivered to the state treasurer, an action may be commenced by the reclamation board in the superior court of the state of California, in and for the county within which the largest acreage of land affected by the assessment for which bonds are proposed to be issued is situate, against the lands and all persons owning the same or interested therein, in that portion of the Sacramento and San Joaquin drainage district affected by said assessment or the issuance of said bonds, to have it determined that said bonds are a legal obligation of said drainage district. Such action shall be in the nature of a proceeding in rem and the defendants in such action shall be designated as "All persons owning or claiming any interest in or lien upon any lands within the Sacramento and San Joaquin drainage district affected by that certain assessment levied by the reclamation board known and designated as (giving the name and number of the assessment)." It shall be sufficient to describe said lands as all lands affected by such assessment, without a more specific description. A summons shall be issued in such action which summons, besides the matters required by section four hundred seven of the Code of Civil Procedure, shall contain a statement that the action is brought to determine the validity of bonds of the Sacramento and San Joaquin drainage district to the amount stated therein executed by the reclamation board and delivered to the state treasurer and based upon and to be paid out of an assessment levied by said reclamation board upon lands within the Sacramento and San Joaquin drainage district assessed in and by that certain assessment known and designated as (giving name and number of the assessment). Jurisdiction by the court over all parties interested in said action shall be obtained by publication of a copy of the summons at least once a week for three successive weeks in a newspaper of general circulation published in each county wherein are situated any lands within said Sacramento and San Joaquin drainage district and assessed in and by said assessment, which newspaper, in each county, shall be designated by the court wherein the action is pending or by the judge thereof. If there be no newspaper within

any such county, or if said summons is refused publication in the newspaper so designated for any county, then such summons may be published in a newspaper of general circulation published in an adjoining county. Within thirty days after completion of the publication of such summons in each of such counties any owner of land assessed by said assessment or any one interested in any such land may appear and answer the complaint in such action which answer shall be verified and shall set forth the facts relied upon to show the invalidity of said bonds. The default of all defendants not so appearing may be entered. Such action shall be given precedence in hearing and trial over all other civil actions or proceedings in such court, and judgment shall be rendered therein declaring such bonds either valid or invalid. Any party not in default shall have the right within thirty days after the entry of such judgment to appeal therefrom to the supreme court of this state, which appeal shall be advanced upon the calendar of the court in which the appeal may be pending and shall be determined as early as possible. Judgment for the plaintiff in such action declaring such bonds to be valid shall be considered as a judgment in rem and shall be conclusive against said district and against all lands therein and all owners thereof and all other interested persons. Costs may be awarded to or against any party appearing in such action as the court may in its discretion determine. Any action or proceeding commenced by any party other than the reclamation board to contest or in any manner interfere with the validity or disposition of said bonds must be tried in the superior court of the state of California, in and for the county within which the largest acreage of land affected by said assessment or the issuance of said bonds is situated, and no such action or proceeding shall be commenced by any party other than the reclamation board until the expiration of ten days after such bonds have been so executed and delivered to the state treasurer, nor unless the action in this section provided for shall not have been commenced by the reclamation board within said period of ten days.

Sale of bonds. Payment for works in bonds.

§ 33. The state treasurer shall receive and place the said bonds to the credit of said Sacramento and San Joaquin drainage district, and shall when and as directed by the reclamation board sell any of said bonds for the best price obtainable therefor, but in no event for less than ninety-five per cent of the face value of such bonds and the accrued interest thereon. Before making a sale of any of said bonds, notice shall be given by the state treasurer that he will sell a specified amount of said bonds, stating the day, hour and place of said sale. Such notice shall state that sealed proposals will be received by him for the purchase of said bonds or any part thereof at the day and hour named in the notice. Such notice shall be given by publication once a week for three successive weeks in a newspaper of general circulation published in the city of Sacramento. At the time and place appointed in said notice the state treasurer shall open the bids and shall award the purchase of the bonds or any part thereof to the highest responsible bidder, or if the highest bid is not equal to par and accrued interest he shall notify the reclamation board of the amounts of the highest bids received, and reject any or all bids if so required by said board. At any time before all such bonds held by the state treasurer shall have been sold by him, said reclamation board may draw upon the state treasurer for, and issue and deliver any such unsold bonds at not less than the face value thereof in payment for any of the works or other expenses for which said assessment has been levied and for which such bonds have been authorized, and may make contracts for any of the said works or expenses, payable in whole or in part in such bonds; and in making such payments in bonds, said board shall draw orders upon the state treasurer payable in such bonds to the amount therein named, which orders shall be countersigned by the state controller and shall be paid with such bonds by the state treasurer upon presentation of the amount therein provided for, if there be sufficient bonds on hand to pay the same. In drawing

any such order upon the state treasurer payable in such bonds as aforesaid, the reclamation board may specify the maturity of the bonds which are to be delivered in compliance with such order and such specifications shall be complied with by the state treasurer as far as possible.

Money placed in construction fund.

§ 34. The money derived from the sale of any of said bonds shall be received by the state treasurer and shall be by him safely kept and placed to the credit of the Sacramento and San Joaquin drainage district in a fund to be designated as the "construction fund of (giving name and number of the assessment upon which the bonds are based)," and may be drawn and expended upon warrants drawn by the state controller at the request of the reclamation board upon and payable out of said construction fund, in the same manner as provided by section fifteen of the said reclamation board act with reference to the expenditure of moneys collected upon assessments as in said reclamation board act provided.

Bonds legal investments.

§ 35. The bonds of the Sacramento and San Joaquin drainage district issued pursuant to this act which are investigated and approved by any commission or officer now or hereafter authorized by any law of this state to conduct such investigation and give such approval and by authority of which approval said bonds are declared to be legal investments for savings banks, may be lawfully purchased or received in pledge for loans by banks, trust companies, insurance companies, guardians, executors, administrators and special administrators, or by any public officer or officers of this state or of any county, city, or city and county, or other municipality or corporate body within this state having or holding funds which they are allowed by law to invest or loan.

Payment of interest.

§ 36. From the first money received from the sale of any of such bonds the state treasurer shall retain an amount which with the other funds in his hands applicable to the payment of such interest will be sufficient to pay the interest which will fall due during the period of one year thereafter upon all such bonds which have been so sold, or which have been issued and delivered on orders of the reclamation board payable in bonds, and which are still outstanding; and the state treasurer shall at all times retain in his hands sufficient money from the sale of such bonds which, with other funds applicable thereto in his hands, will be sufficient to pay all interest to accrue within the period of one year next succeeding upon all such bonds so sold or leased and delivered and still outstanding; and the money so withheld by the state treasurer shall be applied on said bonds and interest thereon and shall not be used for any other purpose.

Statement by state treasurer to reclamation board.

§ 37. Whenever any of such bonds are sold or delivered by the state treasurer either to a purchaser thereof or upon an order from said reclamation board payable in such bonds, the state treasurer shall first detach therefrom and cancel all past due interest coupons and deliver such canceled coupons to the reclamation board or its secretary, and shall also at once certify and deliver to said board or its secretary a list of such bonds so sold or delivered, showing the serial numbers, denominations and date of maturity of the bonds so sold or delivered, the price received for each bond sold, and the date of maturity of the earliest maturing interest coupon left attached to each bond so sold or delivered. The state treasurer shall also certify and deliver to the said reclamation board or its secretary whenever requested, a statement of all such bonds and coupons for interest thereon paid by him and of all bonds or coupons presented for payment and not paid for want of funds, with the date of presentation.

Bond record.

§ 38. The reclamation board shall maintain in its office and open to public inspection at all reasonable times during office hours, a book or books to be known as the bond record of the Sacramento and San Joaquin drainage district, containing a complete record of the existing condition of the whole of each such bond issued as compiled from time to time from such reports from the state treasurer, from which can be ascertained the amount of bonds outstanding and the interest accumulated and unpaid thereon.

Separate records for each bond issue.

§ 39. In case there shall be several bond issues under this act based upon several different assessments, respectively, all of the proceedings, records and transactions of every kind herein provided for shall be had and kept separately with reference to each such bond issue.

Construction of works. Warrants.

§ 40. With the money received from the sale of bonds, or with the said bonds as hereinbefore provided, the reclamation board as the managing body of said Sacramento and San Joaquin drainage district shall proceed with the construction and completion or carrying into execution of the works or project for the purpose of which the assessment upon which such bonds are based was levied, in order that the same may be carried out and completed according to the best judgment of said board and without unnecessary delay. For the purpose of paying the cost and expenses of such works or project, and the expenses of making, bonding and collecting the assessment therefor the reclamation board shall from time to time as may be necessary present its written requests to the state controller for the issuance of warrants, specifying the amount of the warrant and the name of the payee thereof, and upon receipt of such written request the state controller shall draw his warrants upon the state treasurer payable out of the said construction fund of the assessment upon which such bonds have been issued, and the state treasurer shall pay the same or make delivery of such bonds as provided herein. Warrants issued by the controller and payable out of such assessment as provided by section fifteen of the reclamation board act shall be paid by the state treasurer out of and only out of the construction fund of such assessment, and in their proper order of registration as in said section fifteen provided.

§ 41. No warrant issued pursuant to any of the provisions of this act or of the said reclamation board act shall be accepted or received by the county treasurer in payment of all or any part of any assessment upon which bonds have been authorized.

Annual installment for bonds.

§ 42. When the bonds of the Sacramento and San Joaquin drainage district have been authorized and issued as herein provided, based upon any assessment levied by the reclamation board, the reclamation board shall annually thereafter before the first day of July of each year, by an order entered in its minutes, ascertain and determine the total amount necessary to be collected upon such assessment for the payment of principal and interest of all such bonds which will or may become due on the first day of January and the first day of July of the succeeding year, and thereafter and before the first day of September of each year said board shall prepare in duplicate, retaining one original thereof, and causing the other original thereof to be certified by its secretary and delivered to the county treasurer of each county wherein are situated any of the lands covered by such assessment, a statement of the installment of such assessment necessary to be collected for such year, to which there shall be added and collected an additional amount of fifteen per cent of the installment so due to cover possible delinquencies, which said additional sum, together with such installment, shall constitute the amount to be collected and paid into the bond fund and shall be known as the install-

ment for bonds. Such installment for bonds shall, unless otherwise determined by the reclamation board by an order entered in its minutes, a copy of which duly certified shall be transmitted to the county treasurer of each of said counties, be payable in two equal portions, the first of which shall be due and payable to such county treasurer, respectively, on the third Monday in October and shall be delinquent on the first Monday in December next thereafter at six o'clock p. m., and the remaining portion may be paid at any time before the last Monday in April next thereafter at six o'clock p. m., at which time the same shall become delinquent.

Annual collection list.

§ 43. For convenience in entering payments of such installments for bonds, the reclamation board shall furnish to the county treasurer of each county affected, an annual collection list in which shall be set forth the reference number of each tract of land assessed and the name of the owner to whom assessed, as stated in the original assessment list, and the total amount assessed upon each tract and the amount to be collected thereon for that year, together with appropriate columns for the entry of payments, sales and redemptions; and the county treasurer shall enter thereon in the proper column all payments, with date of payment, the word "sold" with date of sale, in case of sales for delinquency, and the words "sold to the district" with date of sale, in the case of sales to the district; and shall also enter the word "redeemed," with date of payment, in case such redemption be made. Said county treasurer shall also make a report to the reclamation board as often as requested of all entries so made by him on such collection list.

Penalty for delinquent installment.

§ 44. When either portion of any such installment for bonds shall become delinquent, a penalty of one dollar together with twenty per cent of the amount of such installment on each tract so delinquent, shall be added thereto and collected for the use of the bond fund of said assessment. All moneys so collected by the several county treasurers upon such installment for bonds or for the penalty thereon in case of delinquency shall be by them, respectively, and within thirty days after such collection, paid over to the state treasurer and by him credited to the bond fund of such assessment.

Sale of land for delinquent installments.

§ 45. If both portions of said installment are not paid before the last Monday in April at six o'clock p. m., the reclamation board shall publish in each county where such delinquencies exist, in one notice, a list of all said delinquencies in such county at least once a week for two weeks in some newspaper of general circulation published in the said county, which notice shall contain a description of each parcel of land assessed within the said county whereon such installment or installments are delinquent, as such description appears on the assessment list, the name of the owner to whom it is assessed or a statement that it is assessed to unknown owners if such be the fact, the amount of the installment or installments delinquent on such parcel, the amount of the penalty thereon, and a notice that each of said parcels will be sold at public auction by said county treasurer in front of the courthouse of said county at a specified day and hour, which shall not be less than thirty nor more than ninety days from the date of delinquency, to pay such delinquent installment or installments and penalty. At the time and place stated in said notice the county treasurer shall sell each parcel of land described in said notice to the highest bidder unless prior thereto he shall have received payment in full of said delinquent installment or installments together with such penalty. No bid for any parcel shall be accepted less than the aggregate sum then due for said installment or installments thereon, together with such penalty, except that the treasurer may receive from any purchaser at their face

value, in lieu of cash, bonds of said drainage district issued upon such assessment, or their interest coupons, which bonds or coupons shall be then matured or will mature within one year after such sale. Any said bonds or coupons so received in payment shall be by the treasurer forthwith canceled and transmitted to the state treasurer. If the entire amount of any such bond or coupon tendered in payment shall not be required to complete payment of the purchase money, the county treasurer shall endorse thereon as paid the amount of such purchase money credited thereon. There shall be credited to the bond fund of such assessment the amount of purchase money so paid in bonds or coupons on such delinquent sales, and of all sums endorsed as paid upon account of purchase money on any such bonds or coupons, specifying the same, a statement of which shall be furnished by the county treasurer to the state treasurer.

Sale of land to district.

§ 46. If no bid is made for any parcel at such delinquent sale equal to the amount of installment or installments delinquent thereon including such penalty, the county treasurer shall bid in and sell said parcel to the said Sacramento and San Joaquin drainage district for the amount of said installment or installments and penalty.

Certificate of sale.

§ 47. The county treasurer shall execute to each purchaser at such delinquent sale including said drainage district, a certificate of such sale, which certificate of sale shall be recorded by said purchaser in the county recorder's office of said county.

Disposition of proceeds.

§ 48. Out of the proceeds of said sales the county treasurer shall transmit to the state treasurer the amount due on the property so sold as shown in said notice, together with the penalty thereon, and the state treasurer shall place the same to the credit of the bond fund of said Sacramento and San Joaquin drainage district for the particular bond issue based upon said assessment. The county treasurer shall pay to the owner of said property any surplus remaining after such payment to the state treasurer.

Postponement of sale.

§ 49. The county treasurer may if directed by the reclamation board postpone the said delinquent sale from time to time for not less than ten nor more than thirty days by a written notice posted at the place of sale.

Redemption of property sold. Deed of conveyance if no redemption.

§ 50. Any person interested in any tract of land sold at such delinquent sale may redeem the same at any time within one year after the date of sale by paying to the county treasurer for such purchaser a sum equal to the purchase price stated in the certificate of sale with interest thereon at the rate of twelve per cent per annum from the date of sale to such redemption, together with the amount remaining due and unpaid of any installment upon any assessment on said land under the reclamation board act or this act, with the penalty herein or in said reclamation board act prescribed for delinquency, if any. If no redemption shall be made within one year the reclamation board upon demand and the surrender of such certificate of purchase and the delivery of a certificate of the county treasurer that no redemption has been made within such year from date of sale, shall execute to the purchaser, his heirs or assigns, a deed of conveyance of the parcel of land described in such certificate, which deed shall convey to the grantee therein named the said land free and clear of all encumbrances except state, county and municipal taxes, assessments levied or assessed by statutory authority, and the unpaid balance of the said or any assessment made by said drainage district, each installment whereof may be called and collected as by law provided, except that no parcel sold and conveyed to the Sacramento and San Joaquin drainage district shall thereafter, until redeemed or until sold and disposed of by the

reclamation board, be subject to sale by the treasurer for delinquent installments of any assessment as in this act provided. Every deed by the reclamation board purporting to be executed under this act shall be prima facie evidence of the truth of the matters therein recited and of ownership by the grantee of the lands therein described. All deeds herein required to be executed by the reclamation board may be executed by the president and secretary thereof on behalf of said board.

Sale of land purchased by district.

§ 51. Any parcel of land bid in and purchased by the Sacramento and San Joaquin drainage district at such delinquent sale shall be held in trust for the bond fund of the assessment upon which the same was sold and may be sold and conveyed by said reclamation board or their successors in office at any time after the expiration of said redemption period of one year at public or private sale and with or without notice to any person paying not less than the amount for which said parcel was bid in by said county treasurer at such delinquent sale for said drainage district, with interest thereon at the rate of twelve per cent per annum compounded yearly from the date of such delinquent sale, and also the amount of all subsequent installments then delinquent, with accrued interest and penalties thereon. Payment for the land so purchased may be made by the purchaser either in cash or matured bonds and coupons issued upon said assessment taken at their face value, and the reclamation board shall execute a deed to such purchaser at such sale conveying said property, free of encumbrances except state, county and other municipal taxes, assessments levied or assessed by statutory authority, and the unpaid balance of the said or any assessment thereon levied by the reclamation board on lands in said drainage district. The purchase price so received in cash shall be by the reclamation board forthwith paid over to the state treasurer; and any bonds or coupons so received in payment by the reclamation board shall be by said board canceled and delivered to the state treasurer; and all such money so paid over and such canceled bonds or coupons so delivered to the state treasurer shall be by him credited to the bond fund of such assessment. If any land so held by the Sacramento and San Joaquin drainage district shall remain unsold after the final installment of the assessment shall have been collected by payment or sale, then the reclamation board shall sell all such lands so held by said drainage district at public auction to the highest bidder for cash, upon two weeks' published notice substantially in the manner provided for notice upon such delinquent sales, and shall execute to the purchaser a conveyance thereof free of incumbrances except state, county and municipal taxes, and assessments levied or assessed by statutory authority, and shall deposit the proceeds of such sale with the state treasurer to the credit of the bond fund of such assessment.

Use of surplus in bond fund.

§ 52. Any surplus remaining in the bond fund of such assessment greater than is necessary to pay all of the amounts due or to become due during the ensuing year may, in the discretion of the reclamation board, be devoted to the purchase in the open market and at the fair market price thereof of any bonds other than bonds of said drainage district available for purchase by savings banks in this state, which shall thereupon be delivered to the state treasurer to be held by him for the benefit of said bond fund until the reclamation board shall direct it to sell the same, whereupon the state treasurer shall sell the same and credit the proceeds to the said bond fund; and said reclamation board shall direct such sale to be made whenever necessary for payment of such bonds of the district or interest thereon.

Bond fund held by state treasurer.

§ 53. The said bond fund of each such assessment shall be held and safely kept by the state treasurer and shall be applied by him toward the payment of the bonds and

coupons thereon based upon such assessment, as such bonds and coupons fall due; and if any balance shall remain in the bond fund of such assessment after payment in full of the principal and interest of all outstanding bonds issued upon such assessment, such balance shall be held for the benefit of the lands upon which said assessment was made and in proportion to the amounts assessed thereon, and may be distributed to the owners or other persons interested in such lands by the reclamation board.

Cancellation of proceedings.

§ 54. If within one year from the time said bonds have been authorized to be issued as in this act provided, the same shall not have been sold or disposed of, the reclamation board may at its discretion by an order duly made and entered in its minutes and a copy duly certified sent to the county treasurer of each county wherein lands affected by said assessment are situated, cancel all proceedings taken in connection with such bond issue; and may thereafter call for the payment of such assessment in such installments from time to time as they shall determine and as provided in the said reclamation board act.

Expenses of officers.

§ 55. No officer shall charge or receive any fee for any services required to be performed by him under the provisions of this act; but any reasonable and necessary expense actually incurred by any officer in carrying out any of the provisions of this act relating in any manner to the collection or enforcement of any assessment, shall be paid out of the funds of said drainage district applicable thereto.

Supplementary annual assessment.

§ 56. If the amounts raised by means of and upon such assessment as herein provided shall in the end prove insufficient to pay in full all of said bonds and the interest thereon, the reclamation board shall levy and cause to be collected in the same manner as in said reclamation board act and herein provided, a supplementary annual assessment or assessments from time to time as may be necessary upon the same lands previously assessed in the original assessment, which supplemental assessment or assessments shall be levied by resolution of the reclamation board entered in its minutes. It shall not be necessary to appoint assessors therefor nor to prepare new or additional assessment lists for any such supplemental assessment or assessments, but the same shall be levied and apportioned according to benefits and in the same proportion as specified in the original assessment lists for such assessment; and for the purpose of collecting the same said board shall prepare and cause to be certified to the county treasurers of the several counties annual assessment collection lists in the same manner and at the same times as hereinbefore provided for the annual assessment collection lists upon such original assessment; and the same shall be collected by the county treasurers, and the same percentages, penalties and costs added for delinquency and the same proceedings had for sale of property and for redemption thereof and for disposition of the proceeds of sale, and in all other particulars as hereinbefore provided in the case of such annual assessment collection lists upon the original assessment; and all money collected for or on account of any such supplemental assessment or assessments shall be paid over to the state treasurer in the same manner as hereinbefore provided, and credited by the state treasurer to the said bond redemption fund of said assessment.

Duty of attorney general and governor.

§ 57. If the reclamation board or any member thereof or any officer or appointee or employee thereof or any public officer in this act mentioned or referred to shall fail to perform any duties imposed by this act, at the time and in the manner in this act provided, the attorney general of the state shall have the power and it shall be his duty to

compel the performance of such act by mandamus proceedings or by any other appropriate remedy, legal or equitable; and in case the attorney general shall fail, neglect or refuse so to do, it shall be the duty of the governor to compel the performance of such act by mandamus proceedings or other appropriate legal or equitable remedy and to employ special counsel therefor at the expense of said Sacramento and San Joaquin drainage district.

If election is against issuance of bonds.

§ 58. If the result of such election provided for in section seventeen of this act be against the issuance of bonds, then such assessment, or that portion thereof involved in and affected by such election, shall be ordered paid and collected in such installments and as often as may in the judgment of the reclamation board be necessary for the purpose for which such assessment was originally levied as provided in said reclamation board act; and all subsequent proceedings in regard thereto shall be had and conducted as provided in said reclamation board act and without any further reference to the provisions in this act contained.

CONVEYANCE OF RIGHTS OF WAY, EASEMENTS, WEIR SITES, ETC.

ACT 3989—An act to authorize the conveyance by the state to the Sacramento and San Joaquin drainage district, or to the United States, upon repayment to the state of the cost thereof, of all or any part of any land, right of way, easement or weir site acquired by the state for any work of river channel excavation, enlargement, rectification or control or for the construction of any weir, forming part of the plans approved by the state for flood control in the Sacramento or San Joaquin valleys, and reappropriating the amount so repaid to reimburse the appropriation out of which the same was paid by the state.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1091.

Conveyance of lands, etc., to Sacramento and San Joaquin drainage district authorized.

§ 1. All or any part of any land, right of way or easement required for any work of channel excavation, enlargement, rectification or control or for any site for the construction of any weir, forming part of or incidental to any plan approved by the state for flood control in the Sacramento or San Joaquin valleys, which land, right of way or easement or weir site has been or may hereafter be acquired by the state of California, may, at the request of the reclamation board and with the approval of the state board of control, be sold to the Sacramento and San Joaquin drainage district at a purchase price equal to the cost thereof to the state, to be determined by said board of control, and upon payment to the state of such purchase price, so determined, may be conveyed to the Sacramento and San Joaquin drainage district, or to the United States, as may be requested by the reclamation board.

Conveyance.

§ 2. The chairman of the state board of control is hereby empowered, when so authorized by said board of control, to execute and deliver any such conveyance in the name and on behalf of the state of California, upon payment to the state treasurer of the purchase price.

Purchase price.

§ 3. Such purchase price, when so paid to the state treasurer, shall be credited back to the appropriation out of which the cost of acquiring such land, right of way, easement or weir site was paid by the state, and is hereby reappropriated and shall be available for the same purposes for which such appropriation was made.

SUTTER BUTTE BY-PASS PROJECT NO. 6.

ACT 3990—An act to appropriate money for the purpose of co-operation in the construction of the public works included in and provided for by that certain project heretofore adopted by the reclamation board, known as Sutter Butte By-pass Project No. 6 of the Sacramento and San Joaquin drainage district, with such modifications and amendments thereof as may be hereafter made, in accordance with law, the said work described in the plans of said Sutter Butte By-pass Project No. 6, as heretofore duly modified and amended, being in conformity with the report of the California debris commission transmitted to the speaker of the house of representatives of the United States by the secretary of war on the twenty-seventh day of June, 1911, and the said report of the California debris commission, together with such amendments and modifications thereof as may be made by the reclamation board, having been heretofore duly adopted by the state of California, and directing the said reclamation board to apply the said moneys so appropriated as it is now, or may hereafter be, provided by law, for the benefit of the said Sacramento and San Joaquin drainage district, in connection with said Sutter Butte By-pass Project No. 6, or any modifications or amendments thereof, that may hereafter be made in accordance with law.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1209.

Appropriation for Sutter Butte By-pass Project No. 6.

§ 1. For the purpose of co-operation in the construction of the public works included in and provided for by that certain project heretofore adopted by the reclamation board, known as Sutter Butte By-pass Project No. 6 of the Sacramento and San Joaquin drainage district, with such modifications and amendments thereof as may hereafter be made, in accordance with law, the said work described in the plans of said Sutter Butte By-pass Project No. 6, as heretofore duly modified and amended, being in conformity with the report of the California debris commission transmitted to the speaker of the house of representatives of the United States by the secretary of war on the twenty-seventh day of June, 1911, and the said report of the California debris commission, together with such amendments and modifications thereof as may be made by the reclamation board, having been heretofore duly adopted by the state of California, there is hereby appropriated the sum hereinafter set forth out of any moneys in the state treasury, not otherwise appropriated, to be paid to the said reclamation board, for the benefit of the said Sacramento and San Joaquin drainage district, in connection with the said Sutter Butte By-pass Project No. 6, or any modifications or amendments thereof that may hereafter be made, in accordance with law, the same to be applied as it is now or may hereafter be provided by law by the said reclamation board, in connection with said Sutter Butte By-pass Project No. 6 of the said Sacramento and San Joaquin drainage district.

Amount of appropriation.

§ 2. It is the intent and purpose of the state of California to provide a total of three million dollars for the purpose as expressed in section one of this act and there is hereby, for the said purpose, continuously appropriated therefor, out of any moneys in the state treasury not otherwise appropriated, the said sum of three million dollars to be paid as hereinafter specified.

Time and amount of warrants to be drawn.

§ 3. Immediately upon this act becoming a law, the controller of the state of California shall draw his warrant in favor of the reclamation board for the sum of ten thousand dollars, and the treasurer of the state of California is hereby directed to pay the same out of any moneys in the state treasury, not otherwise appropriated.

Warrants in favor of reclamation board.

§ 4. The controller of the state of California shall, during the seventy-second fiscal year, namely during the fiscal year commencing on the first day of July, 1921, draw his warrant in favor of the reclamation board for the sum of three hundred thousand dollars; and shall, during the seventy-third fiscal year, namely during the fiscal year commencing on the first day of July, 1922, draw his warrant in favor of said reclamation board for the sum of three hundred thousand dollars; and shall, during the seventy-fourth fiscal year, namely during the fiscal year commencing on the first day of July, 1923, draw his warrant in favor of said reclamation board for the sum of three hundred thousand dollars; and shall, during the seventy-fifth fiscal year, namely during the fiscal year commencing on the first day of July, 1924, draw his warrant in favor of said reclamation board for the sum of three hundred thousand dollars; and shall, during the seventy-sixth fiscal year, namely during the fiscal year commencing on the first day of July, 1925, draw his warrant in favor of said reclamation board for the sum of three hundred thousand dollars; and shall, during the seventy-seventh fiscal year, namely during the fiscal year commencing on the first day of July, 1926, draw his warrant in favor of said reclamation board for the sum of three hundred thousand dollars; and shall, during the seventy-eighth fiscal year, namely during the fiscal year commencing on the first day of July, 1927, draw his warrant in favor of said reclamation board for the sum of three hundred thousand dollars; and shall, during the seventy-ninth fiscal year, namely during the fiscal year commencing on the first day of July, 1928, draw his warrant in favor of said reclamation board for the sum of three hundred thousand dollars; and shall, during the eightieth fiscal year, namely during the fiscal year commencing on the first day of July, 1929, draw his warrant in favor of said reclamation board for the sum of three hundred thousand dollars; and shall, during the eighty-first fiscal year, namely during the fiscal year commencing on the first day of July, 1930, draw his warrant in favor of said reclamation board for the sum of two hundred ninety thousand dollars. And the treasurer of the state of California is hereby directed to pay each of said warrants out of any moneys in the state treasury not otherwise appropriated. All of said sums shall be applied by the reclamation board in the manner as provided by section one of this act.

Collection of fund.

§ 5. There shall be collected annually in each of the fiscal years commencing on the first day of July, 1921, and ending on the thirtieth day of June, 1931, at the same time as other state revenue is collected, such a sum as may be necessary to provide the amount hereby appropriated, and all officers charged by law with any duty in regard to the collection of said revenue are hereby required and obligated to do and perform each and every act and thing which shall be necessary to collect such sum.

1. Constitutionality—Not local or special law.—The act does not violate the provision of the constitution forbidding local or special laws releasing or extinguishing any indebtedness of a municipal corporation.—*Reclamation Board v. Chambers* (Cal. App.), 189 Pac. 479.

2. Same—Not gift of public money.—The appropriation act of May 27, 1919, Stats. 1919, p. 1203, is not obnoxious to the provisions of the constitution prohibiting gifts of public money.—*Reclamation*

Board v. Chambers (Cal. App.), 189 Pac. 479.

3. Contribution of state—Legislature to determine.—The legislature is the judge as to the amount to be contributed by the state to the Sacramento and San Joaquin drainage project, and may determine that the state shall pay all the cost, or none, or that it may pay a part thereof.—*Reclamation Board v. Chambers* (Cal. App.), 189 Pac. 479.

CHAPTER 313.

SACRAMENTO CITY.

CONTENTS OF CHAPTER.

ACT 3991. FREEHOLDERS' CHARTER.

4009. GRANT OF CERTAIN SWAMP AND OVERFLOWED LANDS.

FREEHOLDERS' CHARTER.

ACT 3991—Freeholders' charter of the city of Sacramento.

History: Voted for and ratified at an election held November 7, 1911; filed with the secretary of state December 20, 1911, Stats. 1911 (ex. sess.), p. 305. Amended at an election held November 5, 1918; filed with the secretary of state January 24, 1919, Stats. 1919, p. 1427. Originally incorporated in 1850, Stats. 1850, p. 70; supplemented, Stats. 1850, p. 96. Reincorporated March 26, 1851, Stats. 1851, p. 391; amended (1) in 1852, Stats. 1852, p. 194; (2) in 1853, Stats. 1853, p. 38; (3) March 31, 1855, Stats. 1855, p. 63; (4) April 19, 1855, Stats. 1855, p. 128; (5) April 27, 1857, Stats. 1857, p. 265; (6) March 24, 1858, Stats. 1858, p. 83. It was reincorporated as a consolidated city and county April 24, 1858, Stats. 1858, p. 267. Amended (1) April 8, 1859, Stats. 1859, p. 182; (2) April 19, 1859, Stats. 1859, p. 359; (3) April 5, 1861, Stats. 1861, p. 96; (4) April 15, 1861, Stats. 1861, p. 171; (5) April 19, 1861, Stats. 1861, p. 205; (6) April 24, 1861, Stats. 1861, p. 226; (7) April 24, 1861, Stats. 1861, p. 233; (8) April 29, 1861, Stats. 1861, p. 262; (9) May 8, 1861, Stats. 1861, p. 308; (10) May 20, 1861, Stats. 1861, p. 542; (11) May 20, 1861, Stats. 1861, p. 583; (12) May 20, 1861, Stats. 1861, p. 586. The consolidation act was repealed and the city reincorporated as a city April 25, 1863, Stats. 1863, p. 415. The consolidation act was also repealed by an act, approved on the same day, to provide a government for the county of Sacramento. The reincorporation act was amended (1) March 21, 1864, Stats. 1863-64, p. 198; (2) April 4, 1864, Stats. 1863-64, p. 484; (3) March 31, 1866, Stats. 1865-66, p. 639; (4) March 25, 1868, Stats. 1867-68, p. 310; (5) March 18, 1870, Stats. 1869-70, p. 339; (6) March 6, 1872, Stats. 1871-72, p. 243; (7) March 27, 1878, Stats. 1877-78, p. 590; (8) March 14, 1889, Stats. 1889, p. 148. The act of incorporation of 1863 was supplemented (1) March 28, 1864, Stats. 1863-64, p. 258; (2) April 1, 1864, Stats. 1863-64, p. 295; (3) April 1, 1872, Stats. 1871-72, p. 697; (4) March 30, 1872, Stats. 1871-72, p. 697; (5) March 30, 1872, Stats. 1871-72, p. 768; (6) April 1, 1872, Stats. 1871-72, p. 860. The charter of 1863 was superseded by incorporation under a freeholders' charter voted for and ratified at a special election held for the purpose May 17, 1892; adopted February 7, 1893, Stats. 1893, p. 545. This charter was amended at an election held November 3, 1903; adopted February 3, 1905; Stats. 1905, p. 924. It was superseded by the present charter.

1. Police court—Abolished by adoption of charter.—The adoption of charter of 1893 abolished the police court established under the act of 1878 (Stats. 1877-78, p. 590), notwithstanding a recognition of such court by the charter.—Ex parte Sparks, 120 Cal. 395, 52 Pac. 715.

2. Same — Jurisdiction — Violation of medical practice act.—The charter provision giving to the police court of Sacramento jurisdiction of misdemeanors within the jurisdiction of justices' courts, did not confer jurisdiction of a violation of the medical practice act, where the maximum penalty is \$500, as to which justices' courts have no jurisdiction, in view of section 1425 of the Penal Code, and of the fact that the charter neither supersedes nor conflicts with the code provision.—People v. T. Wah Hing (Cal. App.), 190 Pac. 662.

3. Same — Same — Not exclusive.—The

charter of Sacramento does not provide that the jurisdiction conferred upon the police court should be exclusive, and it did not, therefore, have the effect of repealing section 1425 of the Penal Code, so as to deprive the justice court of its jurisdiction over misdemeanors committed in that city.—Ex parte Yee Kim Mah, 31 Cal. App. 196, 159 Pac. 1060.

4. Board of trustees—Members to be nominated by entire city.—The word "represents" in section 7 of the Sacramento charter does not define the power, or prescribe the duties, or limit the territorial authority of a member of the board of trustees, but merely declares one of the several qualifications of eligibility of such member, and in view of subdivision 6, section 5, of the primary election law of 1911, the charter should be construed as requiring nominations to be made by the entire

city, and not by the electors of the ward.—
Hicks v. Desmond, 16 Cal. App. 722, 117
Pac. 943.

5. Declaration of urgency—Effect of.—
The effect of declaring the urgency of an

ordinance when there is none is not to
render it void, but only to postpone its
effective date until the lapse of 30 days.—
Michelson v. Sacramento, 173 Cal. 108, 159
Pac. 431.

GRANT OF CERTAIN SWAMP AND OVERFLOWED LANDS.

ACT 4009—An act granting certain swamp and overflowed lands to the city of Sacramento.

History: Approved March 31, 1857, Stats. 1857, p. 155.

CHAPTER 314.

SACRAMENTO COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3942.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

- ACT 4021. PROTECTION OF EAST PARK.
- 4024. ADDITIONAL JUDGE.
- 4026. CONSTRUCTION AND REPAIR OF LEVEES.
- 4028. TRANSCRIBING RECORDS.
- 4030. GEORGIANA SLOUGH ROAD.
- 4031. SHEEP HERDED AND RUNNING AT LARGE.
- 4035. AUTHORIZING CONVEYANCE OF CERTAIN PROPERTY TO.

PROTECTION OF EAST PARK.

ACT 4021—An act for the protection of the property at East Park, in Sacramento county.

History: Approved March 18, 1874, Stats. 1873-74, p. 465.

ADDITIONAL JUDGE.

ACT 4024—An act to provide an additional judge for the superior court of the county of Sacramento.

History: Approved March 12, 1895, Stats. 1895, p. 48.

CONSTRUCTION AND REPAIR OF LEVEES.

ACT 4026—An act concerning construction and repair of levees in Sacramento county.

History: Approved April 9, 1862, Stats. 1862, p. 151. Amended (1)
April 26, 1862, Stats. 1862, p. 459; (2) May 14, 1862, Stats. 1862, p. 548;
(3) April 25, 1863, Stats. 1863, p. 468.

TRANSCRIBING RECORDS.

ACT 4028—An act authorizing the transcribing of certain records in the county of Sacramento.

History: Approved March 18, 1874, Stats. 1873-74, p. 475.

GEORGIANA SLOUGH ROAD.

ACT 4030—An act to allow certain persons therein named, and their associates and assigns, to take possession of and improve a certain road in the county of Sacramento.

History: Approved March 25, 1874, Stats. 1873-74, p. 599.

SHEEP HERDED AND RUNNING AT LARGE.

ACT 4031—An act to restrict sheep from being herded or running at large in Sacramento county.

History: Approved March 14, 1876, Stats. 1875-76, p. 305.
See tits. "Estrays"; "Sheep"; "Trespassing Animals."

AUTHORIZING CONVEYANCE OF CERTAIN PROPERTY TO.

ACT 4035—An act to authorize the state of California to convey to the county of Sacramento the following described real property, to wit: All that real property situated in the county of Sacramento, state of California, and described as beginning at a point on the north line of section 17, said point being the northwest corner of the property deeded to the board of supervisors of Sacramento county by James Lansing on April 8, 1869, and recorded in book 51 of deeds, page 633, on file in the office of the county recorder of Sacramento county, and described as "The west 17 chains of the east 22 chains of the north $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of section 17, T. 8 N., R. 5 E., M. D. B. & M., and running thence from said point of beginning south 224.6 feet; thence S. $40^{\circ} 56'$ W. 201.6 feet; thence S. $89^{\circ} 22'$ W. 327.3 feet to the east line of the Wright & Kimbrough subdivision No. 14; thence north 380.5 feet along said east line to the northeast corner of said subdivision on the north line of section 17; thence east 464.2 feet along said section line to the place of beginning, containing 3.78 acres. All the above described property lying in section 17, T. 8 N., R. 5 E., M. D. B. & M., and in Sacramento county, California; in consideration of the county of Sacramento conveying to the state of California the following described real property, to wit: All that real property situated in the county of Sacramento, state of California, and described as beginning at a point on the property line between the county hospital grounds and the Elmhurst subdivision, said point being in section 17, T. 8 N., R. 5 E., M. D. B. & M., distant S. $0^{\circ} 27'$ W. 215.7 feet from the north line of said section 17 at a distance of 330 feet west from the northeast corner thereof and running thence N. $71^{\circ} 06'$ W. 621.2 feet; thence S. $89^{\circ} 22'$ W. 178.3 feet; thence S. $84^{\circ} 52'$ W. 54.7 feet; thence S. $80^{\circ} 56'$ W. 65.3 feet; thence S. $73^{\circ} 08'$ W. 56.3 feet; thence S. $66^{\circ} 43'$ W. 64 feet; thence S. $57^{\circ} 52'$ W. 42.6 feet; thence S. $55^{\circ} 29'$ W. 69.7 feet; thence S. $49^{\circ} 37'$ W. 119.7 feet; thence S. $40^{\circ} 56'$ W. 15.6 feet to the property line between the county hospital property and the property of the State Agricultural Society at a distance of 224.6 feet south along said property line from the northwest corner of the tract of land deeded by James Lansing to the board of supervisors of Sacramento county on April 8, 1869, and recorded in book 51 of deeds, page 633, on file in the office of the county recorder of Sacramento county, and described as "The west 17 chains of the east 22 chains of the north $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of section 17, T. 8 N., R. 5 E., M. D. B. & M.," thence south 458 feet along the west line of said tract to the southwest corner thereof; thence east 1183 feet along the south line of said tract to the southeast corner thereof; thence north 467 feet along the east line of said tract to the point of beginning, containing 16.12 acres. All the above-described land lying in section 17, T. 8 N., R. 5 E., M. D. B. & M., and in Sacramento county, California; the purpose of this act being to perfect of record the title of the county of Sacramento to the real property first above described and to perfect of record the title of the state of California to the real property last above described.

History: Approved April 24, 1911, Stats. 1911, p. 1096.

Conveyance of certain real property in Sacramento county to perfect title.

§ 1. In consideration of the county of Sacramento executing and delivering to the state of California a good and valid conveyance conveying to it all its right, title and interest in and to the following described real property, to wit: All that real property situated in the county of Sacramento, state of California, and described as beginning at a point on the property line between the county hospital grounds and the Elmhurst subdivision, said point being in section 17, T. 8 N., R. 5 E., M. D. B. & M., distant S. $0^{\circ} 27'$ W. 215.7 feet from the north line of said section 17 at a distance of 330 feet west from the northeast corner thereof and running thence N. $71^{\circ} 06'$ W. 621.2 feet; thence S. $89^{\circ} 22'$ W. 178.3 feet; thence S. $84^{\circ} 52'$ W. 54.7 feet; thence S. $80^{\circ} 56'$ W.

65.3 feet; thence S. 73° 08' W. 56.3 feet; thence S. 66° 43' W. 64 feet; thence S. 57° 52' W. 42.6 feet; thence S. 55° 20' W. 69.7 feet; thence S. 49° 37' W. 119.7 feet; thence S. 40° 56' W. 15.6 feet to the property line between the county hospital property and the property of the State Agricultural Society at a distance of 224.6 feet south along said property line from the northwest corner of the tract of land deeded by James Lansing to the board of supervisors of Sacramento county on April 8, 1869, and recorded in book 51 of deeds, page 633, on file in the office of the county recorder of Sacramento county, and described as "The west 17 chains of the east 22 chains of the north $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of section 17, T. 8 N., R. 5 E., M. D. B. & M., " thence south 458 feet along the west line of said tract to the southwest corner thereof; thence east 1183 feet along the south line of the said tract to the southeast corner thereof; thence north 467 feet along the east line of said tract to the point of beginning, containing 16.12 acres. All the above-described land lying in section 17, T. 8 N., R. 5 E., M. D. B. & M. and in Sacramento county, California, the governor of the state of California is hereby empowered, authorized and directed to make, execute and deliver to the county of Sacramento a good and valid conveyance, conveying to said county all the right, title and interest of the state of California in and to the following described real property, to wit: All that real property situated in the county of Sacramento, state of California, and described as beginning at a point on the north line of section 17, said point being the northwest corner of the property deeded to the board of supervisors of Sacramento county by James Lansing on April 8, 1869, and recorded in book 51 of deeds, page 633, on file in the office of the county recorder of Sacramento county, and described as "The west 17 chains of the east 22 chains of the north $\frac{1}{2}$ of the northwest $\frac{1}{4}$ of section 17, T. 8 N., R. 5 E., M. D. B. & M., and running thence from said point of beginning south 224.6 feet; thence S. 40° 56' W. 201.6 feet; thence S. 89° 22' W. 327.3 feet to the east line of the Wright & Kimbrough subdivision No. 14; thence north 380.5 feet along said east line to the northeast corner of said subdivision on the north line of section 17; thence east 464.2 feet along said section line to the place of beginning, containing 3.78 acres. All the above-described property lying in section 17, T. 8 N., R. 5 E., M. D. B. & M., and in Sacramento county, California. The said deed shall be made in the name of the state of California, and signed and acknowledged by the governor thereof, and attested by the secretary of state of the state of California.

Purpose of conveyance.

§ 2. The conveyance herein authorized to be made by said state of California is for the purpose of perfecting of record the title of the state of California in and to the property first described in section 1 hereof, and likewise for the purpose of perfecting of record the title of the county of Sacramento in and for the property last described in section 1 hereof.

SALES.

See tit. "Advertisements," Act 62.

CHAPTER 315.

SALINAS CITY.

CONTENTS OF CHAPTER.

ACT 4045. FREEHOLDERS' CHARTER.

FREEHOLDERS' CHARTER.

ACT 4045—Freeholders' charter of Salinas city.

History: Voted for and ratified at an election held November 5, 1918; filed with the secretary of state January 24, 1919, Stats. 1919, p. 1398. Originally incorporated March 4, 1874, Stats. 1873-74, p. 242. This act was repealed and the city was reincorporated by the act of March 2, 1876, Stats. 1875-76, p. 94. Amended March 27, 1895, Stats. 1895, p. 206. The act of 1876 was superseded by incorporation under a freeholders' charter voted for and ratified January 12, 1903; adopted February 11, 1903, Stats. 1903, p. 599. This charter was amended at an election held June 7, 1909; filed with the secretary of state March 1, 1911, Stats. 1911, p. 1739; and was superseded by the present charter.

SALINAS RIVER.

See Kerr's Cyc. Political Code, § 2349.

SAN ANSELMO.

See Act 3094, note.

SAN ANTONIO CREEK.

See Kerr's Cyc. Political Code, § 2349; also, tit. "Alameda County," Act 131.

CHAPTER 316.

SAN BENITO COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3943.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 4059. ORGANIZATION ACT.

4060. TRESPASSING ANIMALS.

4062. LEGALIZING TRANSCRIBED RECORDS.

4063. TRANSCRIPTION OF RECORDS.

ORGANIZATION ACT.

ACT 4059—An act to create the county of San Benito, to establish the boundaries thereof, and to provide for its organization.

History: Approved February 12, 1874, Stats. 1873-74, p. 95. Amended March 11, 1887, Stats. 1887, p. 103. Supplemented March 18, 1874, Stats. 1873-74, p. 428, which was amended March 10, 1876, Stats. 1875-76, p. 177.

TRESPASSING ANIMALS.

ACT 4060—An act to extend the provisions of an act entitled "An act to protect agriculture, and to prevent the trespassing of animals upon private property in the counties of Fresno, Tulare, Kern, Santa Barbara, Ventura, San Luis Obispo and Monterey," approved February 4, 1874.

History: Approved March 18, 1874, Stats. 1873-74, p. 474.

See tits. "Estrays"; "Trespassing Animals."

LEGALIZING TRANSCRIBED RECORDS.

ACT 4062—An act to legalize and make valid the transcribed records of San Benito county.

History: Approved March 28, 1876, Stats. 1875-76, p. 512.

TRANSCRIPTION OF RECORDS.

ACT 4063—An act directing the transcription of matters of record from Fresno and Merced counties to San Benito county, concerning real estate in the territory taken from those counties and added to that of the county of San Benito.

History: Approved March 11, 1889, Stats. 1889, p. 107.

CHAPTER 317.

SAN BERNARDINO CITY.

CONTENTS OF CHAPTER.

ACT 4067. FREEHOLDERS' CHARTER.

4068. GRANT OF CERTAIN LANDS.

FREEHOLDERS' CHARTER.

ACT 4067—Freeholders' charter of the city of San Bernardino.

History: Voted for and ratified at a special election held January 6, 1905; adopted February 8, 1905, Stats. 1905, p. 940. Amended at a special election held December 8, 1908; adopted February 16, 1909, Stats. 1909, p. 1166; April 18, 1913; filed with the secretary of state June 2, 1913, Stats. 1913, p. 1716; March 18, 1919; filed with the secretary of state April 11, 1919, Stats. 1919, p. 1485. Originally incorporated April 13, 1854, Stats. 1854, p. 61; repealed March 6, 1863. Incorporated under the general law in 1886, as a city of the fifth class.

GRANT OF CERTAIN LANDS.

ACT 4068—An act to grant to the town of San Bernardino all the interest of the state to certain real property.

History: Approved March 14, 1872, Stats. 1871-72, p. 362.

CHAPTER 318.

SAN BERNARDINO COUNTY.

References: Boundaries, see Kerr's Cyc. Political Code, § 3944.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 4070. COUNTY CHARTER.

4072. TRESPASSING ANIMALS.

4077. TIME-KEEPERS FOR IRRIGATING DITCHES.

4078. ADDITIONAL JUDGE.

4079. TRANSCRIBING PUBLIC RECORDS.

4081. LEGALIZING CERTAIN RECORDS.

4085. CONSTRUCTION OF WAGON ROAD.

4087. REGULATING BEE-KEEPING.

COUNTY CHARTER.

ACT 4070—Charter of.

History: Voted for and ratified at the general election held November 5, 1912; filed with the secretary of state April 7, 1913, Stats. 1913, p. 1652. Amended (1) November 3, 1914; filed with the secretary of state January 30, 1915, Stats. 1915, p. 1726; (2) November 5, 1918; filed with the secretary of state March 24, 1919, Stats. 1919, p. 1454.

1. Amendment of 1914—Did not supersede section 4018, Political Code.—The amendment did not, in view of section 7½, article XI of the constitution, by providing that county officers should be elected at

general state elections, and for the consolidation of certain county officers, have the effect of superseding sections 4017, 4018, Political Code. — More v. Supervisors, 31 Cal. App. 388, 160 Pac. 702.

2. **Same—Fatally defective in part.**—The amendment of the San Bernardino charter of 1914 was fatally defective as a direct attempt to repeal certain sections of the original charter, because of the impossibility of determining what sections were intended to be repealed.—*More v. Supervisors*, 31 Cal. App. 388, 160 Pac. 702.

3. **Same—Effective as to addition of new section.**—The amendment of 1914 is effective as adding a new section to the San Bernardino charter, and by so doing impliedly repeals these provisions in the original charter which relate to the same subject matter and are in conflict with the new section.—*More v. Supervisors*, 31 Cal. App. 388, 160 Pac. 702.

4. **Same—No inconsistency with sections 1 and 2 of article 2 of original charter.**—There is no inconsistency between the amendment of 1914 and sections 1 and 2 of article 2 of the original charter, which

would require the court to hold that these two sections were repealed by implication by the amendment.—*More v. Supervisors*, 31 Cal. App. 388, 160 Pac. 702.

5. **Same—Same—Election of county officers.**—The amendment of 1914 providing that all county officers should be elected under general law, and that their powers and duties should be as provided by general law, did not have the effect of abolishing the offices of county purchasing agent and county highway commissioner, the original charter continuing in force as to what offices exist and what are their powers and duties.—*More v. Supervisors*, 31 Cal. App. 388, 160 Pac. 702.

6. **Sheriff ex officio coroner.**—The offices of sheriff and coroner are distinct and the latter office does not become vacant when the sheriff becomes, under the charter, by virtue of his office, coroner.—*More v. Supervisors*, 31 Cal. App. 388, 160 Pac. 702.

TRESPASSING ANIMALS.

ACT 4072—An act to protect agriculture and to prevent the trespassing of animals upon private property in the county of San Bernardino.

History: Approved March 16, 1876, Stats. 1875-76, p. 307.

See tits. "Estrays"; "Trespassing Animals."

TIME-KEEPERS FOR IRRIGATING DITCHES.

ACT 4077—An act to protect irrigation and to make water rights responsible for expenses incurred on irrigating ditches in San Bernardino county.

History: Approved March 25, 1876, Stats. 1875-76, p. 486.

ADDITIONAL JUDGE.

ACT 4078—An act to provide an additional judge of the superior court of the county of San Bernardino.

History: Approved March 5, 1887, Stats. 1887, p. 19.

TRANSCRIBING PUBLIC RECORDS.

ACT 4079—An act concerning the public records in the office of the county recorder of San Bernardino county.

History: Approved April 3, 1876, Stats. 1875-76, p. 853.

LEGALIZING CERTAIN RECORDS.

ACT 4081—An act to legalize certain records of the county of San Bernardino, and concerning the recorder of said county.

History: Approved March 13, 1860, Stats. 1860, p. 82.

CONSTRUCTION OF WAGON ROAD.

ACT 4085—An act to authorize the construction of a wagon road in the county of San Bernardino, and to provide for the payment of the cost of the same.

History: Approved March 27, 1878, Stats. 1877-78, p. 586.

REGULATING BEE-KEEPING.

ACT 4087—An act to regulate and protect bee-keeping in the county of San Bernardino.

History: Approved March 27, 1878, Stats. 1877-78, p. 563. Probably superseded by the general law. See Act 282.

Penalty for keeping diseased bees.

§ 1. Any person owning any hive or colony of honey bees, or any number of the same, in the county of San Bernardino, which are diseased with any infectious or

contagious disease, who, for the space of ten days after being informed that the same are so diseased, fails to apply some approved and recognized remedy to cure the same, shall be and is hereby made liable to pay to any person suing therefor in any court of competent jurisdiction, a penalty of two and one-half dollars for each hive or colony so diseased, and to which such person has failed to apply such remedy.

What person may sue.

§ 2. No person, other than one who is the owner of twenty hives or colonies of bees in said county, shall be entitled to sue for or recover any penalty under this act, and the recovery of such penalty, as to any hive or colony, by any one person, shall be a bar to any other suit for a like penalty as to the same hive or colony for the term of one year from the date of the judgment.

Prevailing party entitled to costs.

§ 3. In actions brought under the provisions of this act, the prevailing party shall be entitled to costs of suit.

§ 4. This act shall be in force from and after its passage.

SAN BRUNO.

See Act 3094, note.

SAN BUENAVENTURA.

See Act 3094, note.

CHAPTER 319.

SAN DIEGO CITY.

Reference: San Diego sea wall, see tit. "Harbor Commissioners," Act 1873.

CONTENTS OF CHAPTER.

ACT 4094. FREEHOLDERS' CHARTER.

4095. LEGALIZING CONVEYANCES OF PUEBLO LANDS.

4096. VALIDATING CONVEYANCES BY MUNICIPAL AUTHORITIES. ACT OF 1874.

4097. VALIDATING CONVEYANCES BY MUNICIPAL AUTHORITIES. ACT OF 1872.

4098. CONVEYANCE OF LANDS TO UNITED STATES FOR MILITARY PURPOSES.

4099. CONVEYANCE OF CERTAIN PUEBLO LANDS TO THE UNITED STATES.

4100. RATIFYING CONVEYANCE TO RICHARD C. MCCORMICK.

4101. RATIFYING AND REPEALING ORDINANCES.

4103. BOUNDARIES OF SCHOOL DISTRICTS.

4104. CONVEYANCE OF PART OF LA JOLLA PARK TO UNIVERSITY OF CALIFORNIA.

4106. TIDE LAND GRANT.

4107. PURCHASE OF ARMORY BUILDING AND WHARF.

FREEHOLDERS' CHARTER.

ACT 4094—Freeholders' charter of the city of San Diego.

History: Voted for and ratified at a special election held March 2, 1889; adopted March 16, 1889, Stats. 1889, p. 643. Amended (1) January 12, 1901; adopted January 29, 1901, Stats. 1901, p. 879; (2) January 7, 1905; adopted February 3, 1905, Stats. 1905, p. 901; (3) January 12, 1909; adopted February 1, 1909, Stats. 1909, p. 1137; (4) February 14, 1911; filed with the secretary of state March 10, 1911, Stats. 1911, p. 1856; (5) February 27, 1913; filed with the secretary of state April 7, 1913, Stats. 1913, p. 1663; (6) March 23, 1915; filed with the secretary of state April 8, 1915, Stats. 1915, p. 1817; (7) April 8, 1919; filed with the secretary of state April 26, 1919, Stats. 1919, p. 1524. Originally incorporated in 1850, Stats. 1850, p. 121. This act was repealed in 1852, Stats. 1852, p. 223. Reincorporated March 7, 1872, Stats. 1871-72, p. 285. This act was repealed by a reincorporation act April 1, 1876, Stats. 1876, p. 806. This act was amended March 16, 1889, Stats. 1889, p. 302, and was on the same day incorporated under the present charter.

1. Constitutionality—"Municipal affairs" amendment of 1896.—Section 10, article 2, chapter 2, San Diego charter, was not in conflict with general law, and was not therefore invalid prior to 1896 amendment to the constitution relating to "municipal affairs," and was not, therefore, a charter provision affected by such amendment.—*Western Salt Co. v. San Diego*, 181 Cal. 696, 186 Pac. 345.

2. Franchises for railroads — Charter strictly construed.—The charter provisions with respect to granting franchises for steam, street and interurban railroads should be strictly construed in favor of the city.—*San Diego v. Kerckhoff* (Cal. App.), 193 Pac. 801.

3. Same—Same—Void for non-compliance with charter.—A grant of a franchise to operate a railroad is void where the provisions of the charter were not complied with.—*San Diego v. Kerckhoff*, 33 Cal. App. Dec. 286.

4. Same—Same—Same.—An ordinance of the city of San Diego granting to certain individuals a perpetual right of way over certain lands of the city without complying with the provisions of the charter, is void.—*San Diego v. Kerckhoff*, 33 Cal. App. Dec. 286.

5. Same—Same—Can not be granted to individual.—The San Diego charter provides that franchises for steam railroads shall be granted only to companies or corporations, and a grant in favor of an individual for such a franchise is void.—*San Diego v. Kerckhoff*, 33 Cal. App. Dec. 286.

6. Superintendent of schools—Amendment of 1905 — Authorized election.—The amendment of 1905 to the charter of San Diego authorized the school board to elect a superintendent of schools, whose salary may be fixed as authorized by section 1793, Political Code.—*Davidson v. Baldwin*, 2 Cal. App. 733, 84 Pac. 238.

7. Same — Bondsmen not liable — Damages.—The failure of the superintendent of streets of San Diego to repair a street would not render his bondsmen liable for resulting injuries in the absence of an ordinance or order directing such repairs to be made, even though he knew such street to be in a dangerous condition.—*Edwards v. Brockway*, 16 Cal. App. 626, 117 Pac. 787.

8. Recall—Members of board of education subject to.—Members of the board of education of San Diego are subject to recall, under the charter and the constitution, notwithstanding part of the territory of the district is outside of the city, and they are paid by county warrants.—*Akerman v. Moody*, 38 Cal. App. 461, 176 Pac. 696.

9. Same—All elective officers hold office subject to.—Every elective officer of the city of Los Angeles, elected after the adoption of the recall amendment, holds his office subject to the condition that twenty-five per cent of the electors of the district may express their disapproval of his action upon some measure, or as to some policy, and demand that he be sustained by a vote of confidence, or failing such vote of

confidence that he retire.—*Good v. San Diego*, 5 Cal. App. 265, 90 Pac. 44.

10. City council—Authority to provide salaries for.—The city council of the city of San Diego has no power under the charter to provide for salaries for its members.—*Woods v. Porter*, 8 Cal. App. 41, 93 Pac. 1125.

10a. Chief of police—Reduction of salary—Not amendment of charter.—Under section 1, article 3, chapter 9 of the charter the common council is empowered to reduce the salary of the chief of police, and such a reduction, if made, is an exercise of this power and not an amendment of the charter.—*Coyne v. Rennie*, 97 Cal. 590, 32 Pac. 578.

11. Water commissioners—"Owner" includes "control" by lease.—Under provisions of the charter authorizing the appointment of water commission when the city becomes the owner of a water supply, such commissioners may be appointed where the city leases such supply, the word "owner" being used in the sense of one who controls.—*Higgins v. San Diego*, 131 Cal. 294, 63 Pac. 470.

12. Same—Same.—The word "owner" in the provision of the charter authorizing the appointment of water commissioners when the city shall become the owner of a water supply, is used in the sense of having control of a water supply.—*Higgins v. San Diego*, 131 Cal. 294, 63 Pac. 470.

13. Water company—Recovery of rental for lease of water plant.—A water company may enforce payment for the use of its plant against San Diego out of the surplus of any funds left at the end of the fiscal year, after payment of claims chargeable against the same, where the water and general funds, which were primarily liable, were exhausted.—*Higgins v. San Diego*, 131 Cal. 294, 63 Pac. 470.

14. Abatement of public nuisance by private citizen, section 731, Code Civil Procedure, not affected by charter.—The right of a private citizen to proceed to abate a private nuisance under section 731, Code Civil Procedure, and to have the relief therein provided for, is not affected by the provisions of the San Diego charter vesting in the common council the power to declare what should constitute a nuisance.—*Humphrey v. Dunnells*, 21 Cal. App. 312, 131 Pac. 761.

15. Claim for damages—Failure to present in six months fatal to cause of action.—A failure to present a claim for damages against the city within the six months period required by section 10, article 2, chapter 2, San Diego charter, is fatal to the cause of action.—*Bancroft v. San Diego*, 120 Cal. 432.

16. Same — Same — Whether in exercise of powers governmental, or not.—And this is regardless of whether the liability was incurred in the exercise of powers not governmental, or not.—*Western Salt Co. v. San Diego*, 181 Cal. 696, 186 Pac. 345.

17. Same—Same.—A cause of action for damages for tort against the city of San

Diego is, under the charter, barred, unless filed with the city clerk within six months after its accrual.—*Bancroft v. San Diego*, 120 Cal. 432, 52 Pac. 712.

18. Public improvements — Bonds — Disposition of funds—General law controls in absence of charter provision.—In view of the silence of the charter as to how money derived from bonds issued for public improvements shall be spent, it is not a "municipal affair," so that the general law is controlling which forbids the spending of such funds without competitive bidding.—*Clouse v. San Diego*, 159 Cal. 434, 114 Pac. 573.

19. Intoxicating liquors — "Sale" — Dispensing at club to members.—The dispensing of liquor at a club to club members is a "sale" within the meaning of the San Diego charter empowering the city council to regulate the sale of intoxicants.—*Ex parte Cutting*, 17 Cal. App. 604, 121 Pac. 304.

20. Special counsel — Endorsement of auditor—Absence of—Void.—A resolution of the city council providing for the employment of special counsel, and fixing the terms of such employment, without the endorsement thereon or attachment thereto of the auditor's certificate that the liability so incurred could be so incurred without violating the provisions of the charter, was void.—*Pollok v. San Diego*, 118 Cal. 593, 50 Pac. 769.

21. Same—"Litigation"—Not authorized—No liability.—The term "litigation" as used in section 2, article 3, chapter 5, of the San Diego charter, applies to civil actions, and that section does not authorize the council to appoint a special prosecutor to prosecute criminal violations of ordinances, and no liability to the city results from such an appointment.—*Dadmum v. San Diego*, 9 Cal. App. 549, 99 Pac. 983.

22. Fire commission—Removal by mayor not judicial, not reviewable.—Notice and hearing were not necessary to the removal of a fire commissioner by the mayor of San Diego, under the charter, and in making such removal, therefore, he was not exercising judicial functions, and his action was not reviewable on certiorari.—*In re Carter*, 141 Cal. 316, 74 Cal. 997.

23. Taxes—Levy made at later date than second Monday in May, void.—The provisions of section 2, article 6, of the charter relative to the levy of taxes on the second Monday in May of each year, is peremptory and a levy made at a later date is void.—*Board of Education v. Common Council*, 128 Cal. 369, 60 Pac. 976.

24. School fund—Subject to requisition by county superintendent—Not subject to call by city.—All moneys apportioned to the county of San Diego from the school fund,

as well as all moneys raised for school purposes in that county by taxation remain in the county treasury until withdrawn under requisition of the county superintendent of schools, and are not subject to call by the city of San Diego for deposit in the city treasury.—*Kennedy v. Miller*, 97 Cal. 429, 32 Pac. 558.

25. Citations.—The charter of San Diego was cited in the following cases for the most part noted under other charters: *Public school fund*, *Kennedy v. Miller*, 97 Cal. 429, 430, 431, 32 Pac. 558; *Barber v. Mulford*, 117 Cal. 356, 357, 49 Pac. 206. Change of boundaries—exclusion of Coronado Beach, *People ex rel. Connolly v. Coronado*, 100 Cal. 571, 572, 35 Pac. 162. Lease of water plant, *Higgins v. San Diego W. Co.*, 118 Cal. 524, 541, 544, 545, 552, 45 Pac. 824, 50 Pac. 670. Employment of special counsel, *Pollok v. San Diego*, 118 Cal. 593, 595, 596, 50 Pac. 769. Claims against city for damages, *Bancroft v. San Diego City*, 120 Cal. 432, 438, 52 Pac. 712. Time of levying taxes, *Board of Education of San Diego County v. San Diego City*, 128 Cal. 369, 372, 60 Pac. 976. Apportionment of funds, *Higgins v. San Diego City*, 131 Cal. 294, 299, 300, 301, 303, 306, 307, 63 Pac. 470. Mayor's power of removal, *Matter of Carter*, 141 Cal. 316, 318, 320, 74 Pac. 997; *Bannerman v. Boyle*, 160 Cal. 197, 206, 207, 116 Pac. 732. Incurring bonded indebtedness, *Clouse v. City of San Diego*, 159 Cal. 434, 436, 438, 114 Pac. 573. Demand against city, deducting indebtedness, *Puterbaugh v. Wadham*, 162 Cal. 611, 614, 615, 123 Pac. 804. Superintendent of Schools, appointment and salary, *Davidson v. Baldwin*, 2 Cal. App. 733, 734, 84 Pac. 238. Recall of officers, *Good v. San Diego City*, 5 Cal. App. 265, 266, 268, 269, 272, 90 Pac. 44. Jurisdiction of city justice's court, *In re Johnson*, 6 Cal. App. 734, 738, 93 Pac. 199. Compensation of members of common council, *Woods v. Potter*, 8 Cal. App. 41, 42, 43, 44, 45, 46, 95 Pac. 1125. Franchise from harbor commissioners to railroad company, *Webster v. San Diego City*, 8 Cal. App. 480, 481, 97 Pac. 92. Special prosecutor, ordinance providing for, *Dadmum v. San Diego City*, 9 Cal. App. 549, 551, 552, 99 Pac. 983. Duties of street superintendent, *Edwards v. Brockway*, 16 Cal. App. 626, 628, 117 Pac. 787. License on liquor sold to club, *In re Cutting*, 17 Cal. App. 604, 606, 607, 121 Pac. 304.

The act of 1876 was cited in the following cases: *Palmer v. Snyder*, 67 Cal. 105, 106, 7 Pac. 196; *San Diego City v. Grannis*, 77 Cal. 511, 513, 514, 515, 516, 517, 19 Pac. 875; *Hamilton v. San Diego Co.*, 108 Cal. 273, 277, 41 Pac. 305. The amendment of 1889 to the act of 1876 was declared unconstitutional in *People ex rel. Miller v. San Diego*, 85 Cal. 369, 24 Pac. 727. See, also, *Fisher v. Police Court*, 86 Cal. 158, 24 Pac. 1000.

LEGALIZING CONVEYANCES OF PUEBLO LANDS.

ACT 4095—An act to legalize, ratify and confirm deeds of conveyance and grants of lands within the pueblo lands of San Diego.

History: Approved March 26, 1870, Stats. 1869-70, p. 409.

VALIDATING CONVEYANCES BY MUNICIPAL AUTHORITIES. ACT OF 1874.
ACT 4096—An act concerning conveyances by the municipal authorities of the city of San Diego.

History: Approved February 7, 1874, Stats. 1873-74, p. 85.

VALIDATING CONVEYANCES BY MUNICIPAL AUTHORITIES. ACT OF 1872.
ACT 4097—An act to legalize, ratify, and confirm certain conveyances of land made by municipal authorities of.

History: Approved March 9, 1872, Stats. 1871-72, p. 309.

CONVEYANCE OF LANDS TO UNITED STATES FOR MILITARY PURPOSES.
ACT 4098—An act to authorize the president and trustees of the city of San Diego to convey certain real estate to the United States.

History: Approved January 17, 1868, Stats. 1867-68, p. 8.

CONVEYANCE OF CERTAIN PUEBLO LANDS TO THE UNITED STATES.
ACT 4099—An act to authorize the president and trustees of the city of San Diego to convey certain real estate to the United States.

History: Approved March 8, 1876, Stats. 1875-76, p. 154.

RATIFYING CONVEYANCE TO RICHARD C. McCORMICK.
ACT 4100—An act ratifying a conveyance made by the city of [San Diego] to Richard C. McCormick. (Stats. 1875-76, p. 882.)

History: Approved April 3, 1876, Stats. 1875-76, p. 882.

RATIFYING AND REPEALING ORDINANCES.
ACT 4101—An act legalizing certain ordinances of [San Diego] and repealing others with reference to Texas & Pacific Railroad Company.

History: Approved March 16, 1874, Stats. 1873-74, p. 370.

BOUNDARIES OF SCHOOL DISTRICTS.
ACT 4103—An act legalizing and confirming the boundaries of school districts in the city of San Diego.

History: Approved March 16, 1874, Stats. 1873-74, p. 391.

CONVEYANCE OF PART OF LA JOLLA PARK TO THE UNIVERSITY OF CALIFORNIA.
ACT 4104—An act authorizing the city of San Diego and the authorities thereof to convey a portion of La Jolla park, in said city, to the regents of the University of California for the purposes of a biological station.

History: Approved February 7, 1907, Stats. 1907, p. 2.

TIDE LAND GRANT.

ACT 4106—An act conveying certain tide lands and lands lying under inland navigable waters situate in the bay of San Diego to the city of San Diego in furtherance of navigation and commerce and the fisheries, and providing for the government, management and control thereof.

History: Approved May 1, 1911, Stats. 1911, p. 1357. Amended (1) April 23, 1913, in effect August 10, 1913, Stats. 1913, p. 77; (2) June 8, 1915, in effect August 8, 1915, Stats. 1915, p. 1323; (3) May 24, 1917, in effect July 27, 1917, Stats. 1917, p. 416.

Whereas, Since the admission of California into the Union, all tide lands along the navigable waters of this state and all lands lying beneath the navigable waters of the state have been and now are held in trust by the state for the benefit of all the inhabitants thereof for the purpose of navigation, commerce and fishing; and

Whereas, It is the duty of the state to govern, administer and control such lands and to improve and develop navigation, commerce and fishing thereon and thereover; and

Whereas, The state has not the general power of alienation of such lands but may, when the interests of commerce, navigation and fishing require it, convey to municipalities limited and defined areas of such lands with the power to govern, control, improve and develop the same in the interests of all the inhabitants of the state; and

Whereas, The conveyance to the city of San Diego of the lands hereinafter described, together with the right to govern, control, improve and develop the same will result in great advantage and benefit to all the inhabitants of the state, it is provided:

Tide lands granted to San Diego.

§ 1. There is hereby granted and conveyed to the city of San Diego, in the county of San Diego, state of California, all of the lands situate on the city of San Diego side of said bay, lying and being between the line of mean high tide and the pier head line in said bay, as the same has been or may hereafter be established by the federal government, and between the prolongation into the bay of San Diego to the pier head line of the boundary line between the city of San Diego and National City, and the prolongation into the bay of San Diego to the pier head line of the northerly line of the United States military reservation on Point Loma.

City to improve.

§ 2. The city of San Diego shall have and there is hereby granted to it the right to make upon said premises all improvements, betterments and structures of every kind and character, proper, needful and useful for the development of commerce, navigation and fishing, including the construction of all wharves, docks, piers, slips, and the construction and operation of a municipal belt line railroad in connection with said dock system.

Lands not to be transferred by city.

§ 3. No grant, conveyance or transfer of any character shall ever be made by the city of San Diego of the lands described in paragraph 1, or of any part thereof, but the said city shall continue to hold said lands and the whole thereof unless the same revert or be ceded to the state of California. The harbor of San Diego shall remain always a public harbor and the said city shall never charge or permit to be charged on any of the premises by this act conveyed any unreasonable rate or toll, nor make nor suffer to be made any unreasonable charge, burden or discrimination. In the event of a violation of any of the provisions of this act the said lands and the whole thereof shall revert to the state of California.

San Diego may lease wharves. Not to exceed 75 per cent.

§ 4. The city of San Diego may lease for a term not exceeding fifteen years any wharves, docks, piers, or bulkhead piers constructed by it, and may grant franchises or privileges for wharves, docks, piers or bulkhead piers to be erected by others than said city for a term not exceeding fifteen years, except as otherwise hereinafter provided in section 5, and all such leases, franchises or privileges shall be authorized by ordinance of said city and shall reserve to the common council and the people of the city of San Diego the right and privilege by ordinance of said city to annul, change or modify such leases, franchises and privileges as in their judgment may seem proper upon paying said lessee or holder of said franchise or privilege reasonable compensation for damages occasioned by such modifications, amendments, or repeal. The aggregate amount of all wharves, docks, piers, or bulkhead piers, leased by said city after construction by it shall never exceed seventy-five per cent of all the wharves, docks, piers or bulkhead piers actually constructed by it. [Amendment of June 8, 1915. In effect August 8, 1915, Stats. 1915, p. 1323.]

Restrictions on land leases.

§ 5. The city of San Diego may lease lands granted and conveyed to it by this act under the following restrictions and conditions:

Term of 50 years. Rentals. Revaluation. Right to sublet. Improvement by lessee.

(a) All that portion of the said lands lying on the shores of the bay of San Diego, between a prolongation into the bay of San Diego of the south line of Laurel street and the prolongation into the bay of San Diego of the northerly line of the United States military reservation on Point Loma, and also that portion of said lands lying between a prolongation into the bay of San Diego of the easterly line of Twenty-eighth street, and a prolongation into the bay of San Diego, of the boundary line between the city of San Diego and the city of National City, which shall not have been developed or improved by the city of San Diego at the date of such leasing may be leased by the said city in such areas as, in the judgment of the common council of said city of San Diego, may seem proper, and for a term not to exceed fifty years; provided, however, that said city may have the right to renew such lease or leases for a further term not exceeding twenty-five years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases. Every such lease shall provide for the payment of rentals to the city of San Diego, which said rentals shall be either an agreed per cent of the gross earnings derived from the leased lands, or shall be fixed upon a basis of the valuation of such lands. In the event that the rental is an agreed per cent of the gross earnings, the lease shall provide a method for ascertaining and determining from time to time during the term, such gross earnings. In the event that the rentals shall, by any such lease, be provided to be fixed upon the basis of the valuation of the leased lands, then in such event the lease shall provide a method for ascertaining at stated periods during the term, the reasonable value of the leased lands, and in all cases in which the rental is provided to be fixed upon the basis of the valuation of the leased lands, then in such event the lease shall provide a method for ascertaining at stated periods during the term, the reasonable value of the leased lands, and in all cases in which the rental is provided to be fixed upon the basis of the value of the leased lands, the lease shall provide for the payment of a certain per cent of such value ascertained in the manner provided by the lease, and such per cent shall be the rental to be paid until a different valuation is fixed; provided, however, that there shall be no revaluation of any leased lands for the purpose of fixing the rentals oftener than once every ten years. Said leases shall also provide that at no time during their terms shall the said city of San Diego be required to make any improvements on or for the benefit of the leased lands. The lessees named in such leases shall have the right to sublet the said lands, or any part thereof, which subleases shall be subject to the same conditions and restrictions as the original and each lease executed by the city shall contain provisions to this effect. The said city of San Diego may grant wharf franchises for wharves adjoining and extending into the bay from the above mentioned territory for terms, not to exceed in duration the terms of the leases on the adjacent lands, and the right to regulate and control the waters of the harbor adjacent to said leased land and to fix reasonable rates and tolls for the use of such wharves and docks abutting or adjoining such leased lands, shall be reserved to the city of San Diego and the state of California. Said lease or leases shall provide that a sum of money be expended upon the improvement of said lands by the said lessee or lessees within a reasonable time and said lease or leases shall contain provisions fixing the amount of money to be so expended and the time within which it shall be spent. The city may place such further restrictions or conditions in such leases and franchises when granted as do not conflict with the terms of this act and all grants of leases or franchises shall be authorized by ordinance.

Remainder for 50 years.

(b) All the remaining portions of said lands may be leased for a term not to exceed fifty years, and no such lease shall be for a larger area than for forty acres, and such lease shall not be assignable or transferable nor shall any lessee have the right to sublet the leased premises or any part thereof without the consent of the common council by ordinance duly adopted; provided, however, that every lease so executed shall reserve to the common council and to the people of San Diego the right and privilege by ordinance duly adopted to terminate, change or modify such lease or leases on such terms, reservations and conditions as may be stipulated in such lease or leases.

Right of way reserved.

(c) The city of San Diego shall reserve over the lands mentioned in subsections (a) and (b) a continuous right of way for a municipal belt line of railway tracks, which right of way shall be not less than one hundred feet in width and shall be so located as to practically parallel the United States bulkhead line, and no lease, franchise or privilege, shall be granted upon any of the lands mentioned in said subsections (a) and (b) that will in any way interfere with said right of way unless there be reserved in said lease, franchise or privilege to the city a right of way for said railroad of not less than one hundred feet in width. [Amendment of May 24, 1917. In effect July 27, 1917. Stats. 1917, p. 916.]

This section was also amended June 8, 1915, Stats. 1915, p. 1323.

Improvement bonds to be issued.

§ 6. The foregoing conveyance is made upon the condition that the city of San Diego, shall, within twelve months from the approval of this act, exclusive of such time as said city may be restrained from so doing by injunction issued out of any court of this state or of the United States, and exclusive of such further delay as may be caused by unavoidable misfortune or great public or municipal calamity, issue its bonds for harbor improvement purposes in an amount of not less than one million dollars, and shall within eighteen months after the approval of this act, exclusive of the time in this section hereinbefore mentioned, commence the work of such harbor improvement, and the said work and improvement shall be prosecuted with such diligence that not less than one million dollars shall be expended thereon within five years from the original approval of this act exclusive of the time in this section hereinbefore mentioned. The said harbor improvement work shall be so done and performed that accommodation will be furnished and maintained for ocean going vessels of the largest class, and a depth of water shall be obtained and maintained at the piers of not less than thirty-five feet. If said bonds be not issued or said work be not prosecuted and completed as and in the manner herein provided, then the lands by this act conveyed to the city of San Diego shall revert to the state of California. [Amendment of June 8, 1915. In effect August 8, 1915, Stats. 1915, p. 1325.]

This section was also amended April 23, 1913, Stats. 1913, p. 78.

Rights reserved to state.

§ 7. The state hereby reserves unto itself at all times, the reasonable use of and access to all wharves, docks, piers, slips and quays hereafter constructed under the provisions of this act, for any vessel or water craft owned, leased or operated by the state.

§ 8. This act shall take effect immediately.

1. City succeeded to powers and privileges of board of harbor commissioners.—As a necessary incident of the grant or transfer to the city there was transferred the right to the municipality, as substituted for the board of harbor commissioners, to

take advantage of any condition reserved in the franchise for the benefit of the state. Santa Fe, etc., Co. v. San Diego, 38 Cal. App. 380, 176 Pac. 377.

2. Same—Termination of wharf franchise.—Under section 2606, Political Code,

and the terms of the wharf franchise, the city as the successor of the board of harbor commissioners had the right to terminate the wharf franchise in question, and

take possession of the ground on payment of the value of the wharf only. *Santa Fe, etc., Co. v. San Diego*, 33 Cal. App. 380, 176 Pac. 377.

PURCHASE OF ARMORY BUILDING AND WHARF.

ACT 4107—An act to provide for the purchase by the state of California of the armory building and wharf located on the bay of San Diego, and making an appropriation therefor.

History: Approved April 5, 1911, Stats. 1911, p. 638.

This act appropriated \$3500 for the purpose indicated.

CHAPTER 320.

SAN DIEGO COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3945.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

- ACT 4111. TRANSFER OF TIDE LANDS TO UNITED STATES.
- 4114. TRESPASSING ANIMALS.
- 4121. FUNDING INDEBTEDNESS AGAINST ROAD FUND.
- 4125. INCREASING NUMBER OF JUDGES.
- 4127. USE OF WATERS OF "FALSE BAY" TO PROPEL MACHINERY.

TRANSFER OF TIDE LANDS TO UNITED STATES.

ACT 4111—An act to authorize and provide for the transfer to the United States of the title to and the jurisdiction over certain tide lands in San Diego bay, San Diego county, state of California, and to empower the board of state harbor commissioners for the bay of San Diego as the agent of the state to make such transfer.

History: Approved June 16, 1906, Stats. 1906, p. 77.

TRESPASSING ANIMALS.

ACT 4114—An act to protect agriculture, and prevent trespassing of animals upon private property.

History: Approved March 24, 1876, Stats. 1875-76, p. 458. Amended March 14, 1878, Stats. 1877-78, p. 245.

FUNDING INDEBTEDNESS AGAINST ROAD FUND.

ACT 4121—An act to fund certain indebtedness of San Diego county.

History: Approved March 26, 1878, Stats. 1877-78, p. 540.

INCREASING NUMBER OF JUDGES.

ACT 4125—An act increasing the number of judges of the superior court of the county of San Diego, state of California, and for the appointment of such additional judge.

History: Approved April 14, 1913; in effect August 10, 1913; Stats. 1913, p. 25. Prior act of February 8, 1889 (Stats. 1889, p. 5) increased the number of judges from one to three. The act of March 5, 1895 (Stats. 1895, p. 24) decreased the number from three to two. The act of February 23, 1911 (Stats. 1911, p. 67) increased the number from two to three.

USE OF WATERS OF "FALSE BAY" TO PROPEL MACHINERY.

ACT 4127—An act providing for authority to use the tide waters of the entrance to "False bay" in San Diego county, and certain lands adjacent thereto, to propel machinery; and to permit the erection and maintenance of structures for the installation, maintenance and operation of such machinery; and fixing the charge therefor.

History: Approved March 20, 1905, Stats. 1905, p. 294.

CHAPTER 321.

SAN FRANCISCO.

References: Boundary, see Kerr's Cyc. Political Code, § 3946.

Harbor, see Kerr's Cyc. Political Code, §§ 2520, et seq.; also, tit. "Harbor Commissioners."

Health and Quarantine, see Kerr's Cyc. Political Code, §§ 3004, et seq.; also tit. "Public Health."

Islais creek, see Kerr's Cyc. Political Code, § 2349.

Mission creek, see Kerr's Cyc. Political Code, § 2349.

CONTENTS OF CHAPTER.

- ACT 4133. FREEHOLDERS' CHARTER.
 4135. OPENING ARMY STREET.
 4138. GRADING BAY STREET.
 4139. EXCHANGE OF PUBLIC SCHOOL LOT 122, POTRERO NUEVO.
 4141. "WATER LOT ACT."
 4142. ERECTION OF CITY HALL. SALE OF LOTS.
 4143. DEEDS TO PURCHASERS OF CITY HALL LOTS.
 4144. COMPLETION OF CITY HALL.
 4146. CEMETERY AVENUE.
 4147. CANAL THROUGH CHANNEL STREET.
 4148. SANITARY CANAL THROUGH CHANNEL STREET AND MISSION CREEK.
 4153. LEGALIZING CERTAIN CONVEYANCES.
 4155. CONVEYANCE OF LANDS TO LYING-IN HOSPITAL AND FOUNDLING ASYLUM.
 4157. CONVEYANCE OF OVERFLOWED LANDS TO SOUTH SAN FRANCISCO HOMESTEAD AND RAILROAD ASSOCIATION.
 4169. PRESERVATION OF NAME OF DUPONT STREET.
 4170. WIDENING OF DUPONT STREET.
 4171. DEFINE AND ESTABLISH THE WIDTH OF EAST STREET.
 4172. CLOSING PORTION OF ELM STREET.
 4174. OPENING FIFTEENTH AVENUE EXTENSION.
 4181. AUTHORIZING CERTAIN OFFICERS TO ADMINISTER OATHS.
 4184. FREE PUBLIC MARKET ON WATERFRONT.
 4192. HUNTING ON PRIVATE GROUNDS.
 4199. CLOSING IVY AVENUE.
 4203. OPENING AND EXTENDING LEIDESDORFF STREET.
 4212. ESTABLISHING AND OPENING MONTGOMERY STREET SOUTH.
 4213. OPENING AND ESTABLISHING MONTGOMERY AVENUE.
 4215. SALES AND CONVEYANCE OF "MUTUAL REAL ESTATE COMPANY."
 4221. NOTARY PUBLIC AT YERBA BUENA ISLAND.
 4246. CONVEYANCE OF LOT TO LADIES' PROTECTION AND RELIEF SOCIETY.
 4253. MODIFICATION OF GRADES OF CERTAIN STREETS.
 4254. CHANGE OF CERTAIN STREET GRADES.
 4255. LEGALIZING THE GRADES OF CERTAIN STREETS.
 4256. OPENING SEVENTH STREET.
 4257. OPENING SIXTH STREET.
 4263. VACATING CERTAIN STREETS AND MARKET PLACES.
 4275. CHANNEL STREET AND MISSION CREEK. OPENING STREET AND CONSTRUCTING SEWER.
 4278. OPENING AND EXTENDING TEHAMA STREET.
 4284. OPENING VALENCIA STREET.
 4285. ESTABLISHING GRADE AT VALLEJO STREET.
 4286. RATIFYING AND CONFIRMING VAN NESS ORDINANCE.
 4287. IMPROVEMENT OF VAN NESS AVENUE.
 4291. SALE OF CERTAIN STATE LAND WITHIN THE WATERFRONT LINE.
 4292. FURTHER EXTENSION OF WATERFRONT LINE.
 4293. CONFIRMING TITLE TO CERTAIN WATERFRONT PROPERTY.
 4294. QUITCLAIMING CITY SLIP LOT No. 116.
 4295. QUITCLAIMING WATER LOT No. 415.
 4298. COMPROMISE OF LITIGATION CONCERNING WATERFRONT PROPERTY.
 4299. CONVEYANCE TO WILLIAM SCHOLLE.

- 4300. SALES OF PERISHABLE PRODUCTS ON WHARVES.
- 4301. MUNICIPAL STREET RAILROAD.
- 4302. MAINTENANCE OF FIRE BOATS.
- 4303. EXCHANGE OF REAL ESTATE.
- 4306. SAN FRANCISCO AND SAN MATEO CONSOLIDATION ACT.
- 4307. PASSENGER TRANSPORTATION ON THE EMBARCADERO.

FREEHOLDERS' CHARTER.

ACT 4133—Freeholders' charter of the city and county of San Francisco.

History: Voted for and ratified at a special election held for that purpose May 26, 1898; resolution of approval adopted January 26, 1899, Stats. 1899, p. 241. Amended (1) December 4, 1902; adopted February 5, 1903, Stats. 1903, p. 583; (2) November 5, 1907; adopted November 22, 1907, Stats. 1907 (ex. sess.), p. 10; (3) November 5, 1907; adopted November 23, 1907, Stats. 1907 (ex. sess.), p. 29; (4) November 15, 1910; filed with the secretary of state January 11, 1911, Stats. 1911, p. 1469; (5) November 15, 1910; filed with the secretary of state February 23, 1911, Stats. 1911, p. 1661; (6) December 10, 1912; filed with the secretary of state January 27, 1913, Stats. 1913, p. 1473; (7) December 10, 1912; filed with the secretary of state April 7, 1913, Stats. 1913, p. 1602; (8) March 16, 1915; filed with the secretary of state April 8, 1915, Stats. 1915, p. 1807; (9) November 7, 1916; filed with the secretary of state January 24, 1917, Stats. 1917, p. 1708; (10) November 5, 1918; filed with the secretary of state January 21, 1919, Stats. 1919, p. 1376. Originally incorporated April 15, 1850, Stats. 1850, p. 223. This act was repealed and the city was reincorporated by the act of April 15, 1851, Stats. 1851, p. 366. This act was repealed and the city reincorporated by the act of May 5, 1855, Stats. 1855, p. 251. This act was supplemented and explained by the act of May 7, 1855, Stats. 1855, p. 284. All prior charters were repealed and the city was reincorporated as a consolidated city and county by the so-called "Consolidation Act" of April 19, 1856, Stats. 1856, p. 145. The "Consolidation Act" was amended (1) April 18, 1857, Stats. 1857, p. 209; (2) April 25, 1857, Stats. 1857, p. 253; (3) March 24, 1859, Stats. 1859, p. 131; (4) March 28, 1859, Stats. 1859, p. 141; (5) April 16, 1859, Stats. 1859, p. 257; (6) January 31, 1861, Stats. 1861, p. 5; (7) May 14, 1861, Stats. 1861, p. 375; (8) May 18, 1861, Stats. 1861, p. 544; (9) April 25, 1862, Stats. 1862, p. 391; (10) April 26, 1862, Stats. 1862, p. 468; (11) April 25, 1863, Stats. 1863, p. 525; (12) April 25, 1863, Stats. 1863, p. 540; (13) March 26, 1866, Stats. 1865-66, p. 436; (14) March 31, 1866, Stats. 1865-66, p. 549; (15) March 26, 1868, Stats. 1867-68, p. 358; (16) April 4, 1870, Stats. 1869-70, p. 874; (17) April 4, 1870, Stats. 1869-70, p. 890; (18) April 1, 1872, Stats. 1871-72, p. 804; (19) March 2, 1878, Stats. 1877-78, p. 139.

I. CONSTITUTIONAL LAW.

1. Civil service—Removal of employees only for cause.
2. Section 2, chap. II, art. IX, charter, validated.
3. General police power.
4. Same—Ordinance prohibiting interments.
5. Same—Same—Not in conflict with any general law.
6. Section 2, chap. I, art. II, charter, directory.
7. Same—Ordinance not violative of.
8. Due process—Section 1, chap. IV, art. VIII, charter, unconstitutional in part.
9. Same—Same—Constitutional construction.
- 9a. Public work—"Municipal affair"—Act of 1897 has no application.

II. CHARTER CONSTRUED AND APPLIED GENERALLY.

10. General rule.
11. Charter supersedes code in "municipal affairs."

12. Same—Almshouse.

13. Charter amendment—Properly approved.

14. Same—Same—Title of resolution of approval.

15. Park and boulevard act superseded by charter—Issue of bonds.

16. School houses, construction and repair a "municipal affair"—Charter provisions paramount.

17. "Children's playgrounds"—Right to acquire as part of "park purposes."

18. Section 21, chap. I, art. II, and section 29, art. XVI, of the charter are not conflicting.

19. Charter equal to general law except in case of conflict.

20. Purchase of land in excess of \$50,000 in value.

III. POWERS.

a. In general.

- 20a. General rule as to municipal powers.
- 20b. Same—"Government," scope defined.

21. "Legislative authority" — Mayor not included.
22. Public utilities—Municipal control retained.
23. Same—Same—Police power to regulate.
24. Same—Same—"Quality of service" of water supply.
- 24a. Temporary wooden building in fire limits—Supervisors have no power to authorize erection.
25. Fire limits—Authority to remove wooden building.

b. Purchase of supplies.

26. Unauthorized conditions of contracts.
27. Same—Patronizing only union labor.
28. Contract for work—Contract to furnish certain finished materials.
29. Wages and hours of labor on public work—Does not apply to contract for printed supplies.
- 29a. "Quantity and quality considered"—Defined and applied.

c. Public moneys.

30. Deposit of municipal funds in banks.
31. Same—"Municipal affair."
32. Same—Effect of the act of 1907 (Stats. 1907, p. 974).

d. Licenses.

33. Restaurant keeper not engaged in the sale of goods.
34. Same—Ordinance imposing license tax valid.
35. Pawnbrokers—Power to license.
36. Sale of liquor—Permit from police commissioners.
37. Same—Same—Ordinance invalid.
38. "License tax," defined.
39. Theater tickets—"Goods."
40. License tax on slot machines held void.

IV. ELECTIONS.

a. In general.

41. Vacancies on board of election commissioners—Manner of filling—Duty of mayor.
42. Same—Same—Same—Computation of vote.
43. Conflicting measures—1911 amendment applied to future elections.
44. Same—Section 38a, art. XVI, charter, does not conflict with chap. II, art. XI.
45. Same—Same—Purpose of amendment of chap. II, art. XI, charter.
46. Same—Same—Purpose of section 38a, art. XVI, charter.
47. Same—Same—Not void.
48. Alternative propositions, section 8, chap. II, art. XI, charter, permissive.
49. Same—Same—Does not apply to independent propositions.

b. Bond issue.

50. Change in denomination.
51. Two-thirds vote of all electors voting at the election necessary to authorize.

52. Vote on separate bond issues, at same election—Failure of one does not affect others.

c. Primary elections.

53. Act of 1909 has no application to San Francisco in election of municipal officers.

d. Recall.

- 53a. Duty of election board directory merely.
- 53b. Same—Refusal to act in time—Proceeding not terminated.
54. Jurisdiction of registrar—Refusal to receive proof not reviewable.
55. Petition—Determination of sufficiency left to registrar of voters.
56. Same—Same—Consideration by court excluded.
57. Same—Duty of registrar of voters.
58. Same—Section 1083a Political Code not part of charter by adoption.
59. Same—Date to signature not required.
60. Same—Charter contains a complete scheme.
61. Same—Jurisdiction of registrar to determine sufficiency—Superior court without jurisdiction.
62. Same—Same—Registrar's jurisdiction exclusive.
63. Same—Investigation of registrar.
64. Same—Same—Officer may question signatures.
65. Same—An elective officer accepts his office subject to the recall provisions of the charter.

V. BOARD OF PUBLIC WORKS.

a. Street improvement.

66. Affidavit of non-conclusive bid indispensable.
67. Same—Construction of charter—Joint bidder.
68. Same—Affidavit held sufficient.
69. Assessment for more than 50 per cent of assessed value of property—Installment payments.
70. Same—Non-curable on appeal to board of supervisors.
- 71, 72. Same—Same—Defects not going to the jurisdiction may be cured—Due process.
73. Accepted street.
74. Same—Chap. II, art. VI, charter.
75. Same—Recommendation of board of public works.
76. Same—Order of board of supervisors.
77. Same—Board of public works under control of board of supervisors.
78. Same—Same—All work must be done by order of the board of supervisors—Urgent repairs.
79. Contract—Patented pavement—Compliance with section 26, chap. II, art. VI, charter.
80. Same—Same—Contracts for material—Charter requirements apply to both accepted and unaccepted streets.

81. Same—Same—Assignment required before pavement ordered.
 82. Same—Approval of materials required in oral contracts.
 83. Same—Lien—Not a personal liability.
 84. Same—Statute of limitations—Accrual of right of action.
 85. Liability for injuries from defective sidewalks.
 86. Same—"Street" includes "sidewalks"—Section 16, chap. II, art. VI, charter.
 87. Same—Jurisdiction of board of public works—Repair of sidewalks.
 88. Same—Repairs not original construction.
 89. Same—Notice of special defect not necessary.
 90. Same—Methods.
 - 91, 92. Same—Can not escape liability—Defective notice.
 93. Same—Same—Notice to repair by new construction with different material.
 94. Same—Same—Construction of sidewalk where none had been before.
 95. Same—Application for appropriations—Time—Charter provisions are directory.
 96. Same—Sidewalks at street intersections—Property owners not liable for construction or repairs.
- b. Tunnels.*
97. Delegation of legislative power.
 98. Assessment based on benefits.
 99. Two separate and distinct districts may be created.
 100. Power to construct includes incidental power to change grade of street.
 101. Accepted streets improved at city's expense.
 102. Power to construct includes power to pave sidewalk.
 103. Power of board of supervisors to provide procedure.
 104. Same—Decision of board of supervisors conclusive on review.
 105. Same—Determination of benefits.
 106. Use of Twin Peaks tunnel—City and county have no exclusive right.
 107. Same—Purpose of constructing.
 108. Same—Acquisition of property.
 109. Assessment of cost on limited district.
 110. Same—Same—Payment out of city revenues.
 111. Change of street grade—Not authorized.
 112. Same—Cost of tunnel on old grade of street.
 113. Same—Improvement of accepted street can not be done at expense of property owners.
 - 114, 115. District assessment plan authorized.
 116. Same—Levy and collection of assessments before order of construction adopted, and before contract.
 117. Same—Sale for delinquent assessments—Postponements.
 118. Same—Same—Irregularities in sale.
 119. Same—Same—In advance of doing work.
 120. Same—Increase of award of damages over estimate—Power of board of supervisors.
 121. Same—Notice of hearing—Continuance.
 122. Same—Assessment—Allowance for damages may be included.
- VI. PUBLIC UTILITIES.
- a. In general.*
- 122a. Same—"Public utilities" defined.
 123. Acquisition of public utilities—Petition—Duty of clerk to verify signatures—Mandamus.
 124. Same—Same—Clerk not required to certify that signers are electors, but to verify genuineness of signatures.
 125. Same—Same—Duty of clerk to refuse to verify petition containing improper matter.
 126. Same—"Plans and estimates of costs," defined.
 127. Same—"Estimates."
 128. Same—Petition—Other charter provisions have no application to verification of signatures.
 129. Same—Same—Signatures—"Voters"—"Electors."
 130. Purpose of 1903 amendment—Power to acquire public utilities not affected.
 131. Proper subject for vesting local power.
 132. Same—Power to sell and lease limited by constitutional provision.
 133. Same—"Solicit and consider offers for sale"—May precede preliminary resolution.
 134. Same—Same—Soliciting offers for sale may be by resolution.
 135. Same—Same—Resolution calling for offers need not be published.
 136. Ordinance of public interest and necessity, sufficient.
 137. Same—Omission of word "acquisition."
 138. Same—Construction to completion.
 139. Same—Determination of supervisors of question of public interest or necessity is conclusive.
 140. Contracts for public utilities—Manner of making may be provided by ordinance.
- b. Municipal railway.*
141. Construction and operation—Power of city.
 142. Same—Same—Proceedings regular.
 - 143, 144. "Extensions and improvements," defined.
 145. Automobile bus extensions.
 146. Charter power includes street railroads.

c. Hetch Hetchy project.

- 147. "Cost-plus" contract.
- 148. Same—Guaranty of bond.
- 149. Same — Bonds — Compliance with charter provisions.

VII. POLICE DEPARTMENT.

a. Police court.

- 150. Jurisdiction.
- 151. Same—No jurisdiction over violations of dentistry act.
- 152. Same—Same—Charter superseded general law.
- 153. Same—Charter jurisdiction in preliminary examinations unconstitutional.
- 154. Same—Same—Jurisdiction in preliminary examinations in felony cases under section 808, Penal Code.
- 155. "Attaches" — Charter supersedes section 869, Penal Code.
- 156. Same—Stenographers.
- 157. Police court reporters—Municipal officers—Salary fixed by charter.
- 158. Same—Duties not limited to services at preliminary examinations required by section 870, Penal Code.
- 159. Same—Same—Charter supersedes code provisions so far as inconsistent.
- 160. Bail bond—Bond and warrant clerk not empowered to fix.

b. Police relief and pension fund.

- 161. Charter superseded the general law.
- 162. Same—Police pension relief act of 1889, superseded.
- 163. Amendment of section 4, chap. X, art. XIII, charter, not retroactive.
- 164. Board without jurisdiction to finally determine question of fact.
- 165, 166. Duty of board of trustees.
- 167. Board of trustees not vested with judicial power.
- 168. Same—Board of trustees have no judicial power to pass on essential facts.
- 169. Continuance of pension during disability.
- 170. Right of widow measured by charter provisions.
- 171. Widow entitled to pension only when husband killed in service.
- 172. Same—Intention of charter.
- 173. Same—"Killed in the performance of duty."
- 174. Same—Same—Retirement after injury in service.
- 175. Same—Same—"To cease at his death."

c. In general.

- 176. Membership in department continues after retirement from active service.
- 177. Rules of police department—Neglect to pay debts.
- 178. Same—Same—Board not required to wait court judgment.

- 179. Same—Dismissal for conduct unbecoming an officer.
- 180. Same—Same—No penalty previously prescribed.

VIII. FIRE DEPARTMENT.

- 181. Selection of former clerk.
- 182. Removal of member without cause—Misconduct of fire commissioner.
- 183. Firemen's relief and pension fund—Auxiliary fire system.
- 184. Same—"Killed in the performance of duty"—Suicide while insane from injuries.
- 184a. Secretary not under civil service.

IX. CIVIL SERVICE.

- 184b. Employment of private legal counsel by civil service commission.
- 185. Physical tests.
- 186. Same—First and second assistant engineers—Promotion to battalion chief.
- 187. Classification—Must be by duties not salaries.
- 188. Striking off names from list of eligibles.
- 189. Judgment annulling list of eligibles—Not final when appeal taken.
- 190. Temporary appointment—Not reviewable, when.
- 191, 192. Appointment of deputy registrars of voters—Void.

X. BOARD OF EDUCATION.

- 193, 194. Rules—Amendment or repeal.
- 195. Power to let removal of garbage contract.
- 196. Power to reduce classes and retire teacher.
- 197. Power to employ special counsel.
- 198. Same—Right to have services of city attorney.
- 199. Power to hear and determine charges against teachers.
- 200. Superintendent of schools a county officer.
- 201. Teachers may be required to reside in the city and county.
- 202. Same—Reasonableness of resolution.
- 203. Same—Interference with performance of duties not material.
- 204. Same—Not imposition of additional qualification.
- 205. Same—Insubordination and ground for dismissal.
- 206. Lease of school land.
- 207. Political code sections not inconsistent with charter.

XI. HEALTH DEPARTMENT.

- 208. Quo warranto will not lie against board of health.

XII. TAXATION.

- 209. Unsold bonds not obligations.
- 210. Same—Tax to pay interest and redeem unsold bonds not valid.
- 211. Same—Same—Inconvenience to city and county will not justify.
- 212. "Dollar limit" — Suspension — "Great" defined.

213. Same—Fostering and nursing an "emergency" over undetermined number of years.
214. Same—Unanimous vote of supervisors present required to suspend.
215. Same—Action to recover tax paid under protest—Allegation of no "great emergency" good on general demurrer.
216. Same—Same—Existence of "great emergency" a question of fact and jurisdictional.
217. Same—Same—Same—Inclusion of purpose not emergency.
- 218, 219. Same—Same—Same—Determination of board of supervisors not final.
220. Same—Applies to both city and county purposes.
221. Same—Void levy of tax under suspension—Deducting part of illegal levy does not cure.
222. Same—Provisions of article XII mandatory.
223. Same—Same—Reversal of action of board renders proceedings functus officio.
- 224, 224a. Same—Prior decision followed.

XIII. OFFICES AND OFFICERS.

a. City architect.

225. City architect—Not under civil service—Not required to be paid monthly salary.
226. Same—Employment by special contract.
- b. District attorney.*
227. Powers of district attorney under charter same as under section 4307, Political Code.
228. Deputy district attorney.
229. Employment of detective by district attorney.
230. Same—Charter refers to temporary employment.

c. County clerk.

231. Fees in naturalization cases.
232. Same—Not agent of the United States.
233. Same—Charter provisions unambiguous.
234. Same—"Source"—Naturalization fees included.
235. Same—Retention of fees matter between county clerk and city and county.
236. Same—Same—Failure to turn over naturalization fees—Sureties on official bond liable.

d. Tax collector.

237. Qualifications—Five years as an elector.
- e. Residence.*
238. Charter provision not applicable to independent garbage contractor.
239. Same—Independent contractor not an employee.

f. Removal from office.

240. Superior court jurisdiction.
241. Chief of police—Mistakenly—Charter supersedes Penal Code.
242. Same—Same—A municipal officer.
243. Member of board of education—Notice and hearing required.
244. Same—Same—Notice to board does not dispense with necessity of notice and hearing.
245. Same—Removal without notice and hearing void.
246. Civil service clerks—Protected only during term of regular appointment.
247. Same—Tenure of office.
248. Appointive officers—Members of boards.

XIV. JUDGMENTS AND DEMANDS.

249. Act of 1901 not in conflict with charter.
250. Budget provisions of charter have no application.
251. Salary of city employee—Subject to execution under section 710, Code Civil Procedure.
252. Chief of police and police commissioners not required to present salary demands for audit or approval.
253. Allowance of claims for compensation—Governed by charter, not Political Code.
254. Treasurer can not pay demands until approved by auditor.
255. Treasurer not in default until confronted with auditor's warrant.
256. Taxes paid under protest—Claims held six months without action amounts to rejection.
257. Same—Demand must be presented to auditor not board of supervisors.
258. Damages—Six months bar claim existing at date of adoption of charter not affected.
259. Same—Same—Claim arising after the adoption of the charter.
260. Same—Defective sewer—Not "trespass on real property."
261. Salary fixed by valid ordinance—Warrants drawn on unexhausted specific appropriation.

XV. MISCELLANEOUS.

262. Construction of municipal opera house by private persons—Agreement not authorized.
263. Same—Same—Authority of city to erect opera house.
- 264, 265. Same—Same—Same—Can not be turned over to private management.
266. Same—City may accept the gift of.

I. CONSTITUTIONAL LAW.

1. Civil service—Removal of employees only for cause.—The provisions of the charter as to civil service are constitutional and valid, and, even if the provision as to removal of civil service employees, except for cause, is unconstitutional, a ques-

tion not decided, that provision is independent, and may be stricken out without affecting the other sections of the article.—*Cohen v. Wells*, 132 Cal. 447, 64 Pac. 599.

2. Section 2, chapter II, article IX, charter validated.—Section 2, chapter II, article IX, of the charter, was, on the adoption of the charter, void for conflict with section 16, article XX, of the constitution, but was validated by the amendment of 1914, to section 8½, article XI, of the constitution.—*Spader v. Rolph*, 29 Cal. App. 774, 156 Pac. 977.

3. General police power.—A municipality exercises within the city limits all of the police power of the state subject to general laws, and the word "necessary" in the San Francisco charter does not limit or restrict the constitutional grant of power conferred upon its legislative body.—*Odd Fellows, etc., Association v. San Francisco*, 140 Cal. 226, 73 Pac. 987.

4. Same—Ordinance prohibiting interments.—An ordinance of the city and county of San Francisco, prohibiting the interment of dead bodies within the city limits, is a valid exercise of the cities' general police power under section 11, article XI of the constitution.—*Odd Fellows, etc., Association v. San Francisco*, 140 Cal. 226, 73 Pac. 987.

5. Same—Same—Not in conflict with any general law.—Such an ordinance is not in conflict with the rural cemetery association act (Stats. 1859, p. 281; sections 608, 616, Civil Code), or the provisions of the Penal Code regulating burials.—*Odd Fellows, etc., Association v. San Francisco*, 140 Cal. 226, 73 Pac. 987.

6. Section 2, chapter I, article II, charter, directory.—The provision of section 2, chapter I, article II, of the charter that "an ordinance shall embrace but one subject, which shall be expressed in its title," is directory to the legislative body alone, and not a subject of judicial cognizance.—*Law v. San Francisco*, 144 Cal. 384, 77 Pac. 1014.

7. Same—Ordinance not violative of.—An ordinance providing for the issuance, sale, and redemption of an aggregate amount, distributed in specified sums to specified municipal improvements, embraces but one subject which is embraced in the title; and all of which are germane to the general subject submitted to the voters—the expediency of issuing bonds for specific public improvements.—*Law v. San Francisco*, 144 Cal. 384, 77 Pac. 1014.

8. Due process.—Section 1, chapter IV, article VIII, charter, unconstitutional in part.—The provision of section 1, chapter IV, article VIII, of the charter, as to presentation of demands within one month after the same became due, or be forever barred, unless the same be audited in so far as it contemplates that the question of audit or non-audit shall be left to the whim or caprice of the auditor, is unreasonable and unconstitutional, as putting it within the power of that officer to deprive the claimant of his demand without due

process of law.—*Geimann v. Board of Police Commissioners*, 158 Cal. 748, 112 Pac. 553.

9. Same—Same—Constitutional construction.—Construing the section as giving the claimant thirty days within which to present his demand, it is reasonable and valid, and he would then have a reasonable time to commence suit, and, in the absence of special charter provision, this would be the time fixed by the statute of limitations.—*Geimann v. Board of Police Commissioners*, 158 Cal. 748, 112 Pac. 553.

9a. Public work — "Municipal affair"—Act of 1897 has no application.—The provisions of the act of 1897 as amended in 1911, as to the giving of a bond by a public works contractor, has no application to a contract for sewer work in the city and county of San Francisco, in view of the "municipal affairs" clause of section 6 of article XI of the state constitution, and of the provisions of article VI of the San Francisco charter.—*Loop, etc., Co. v. Van Loben Sells*, 173 Cal. 228, 231, 159 Pac. 600.

II. CHARTER CONSTRUED AND APPLIED GENERALLY.

10. General rule.—It is a fundamental rule of construction that effect should be given to all the language of the charter.—*Crowe v. Boyle (Cal.)*, 193 Pac. 111.

11. Charter supersedes code in "municipal affairs."—Code provisions inconsistent with the charter are superseded by the latter in so far as relating to "municipal affairs."—*People ex rel. Lawlor v. Williamson*, 135 Cal. 445, 67 Pac. 504.

12. Same — Almshouse.—The control of the almshouse is a municipal affair, and the board of health has exclusive jurisdiction, under the charter, and the authority of the state board is divested.—*Weaver v. Reddy*, 135 Cal. 430, 67 Pac. 683.

13. Charter amendment — Properly approved.—The charter amendment of November 15, 1910, was properly approved by the legislature.—*Comstock v. Davis (Cal. App.)*, 186 Pac. 380.

14. Same—Same—Title of resolution of approval.—The title of a concurrent resolution approving an amendment to a freeholders' charter need not contain a statement of the subject-matter of the amendment.—*Comstock v. Davis (Cal. App.)*, 186 Pac. 380.

15. Park and boulevard act superseded by charter—Issue of bonds.—The park and boulevard act is inconsistent with the San Francisco charter, and is superseded by it, and no bonds for park and boulevard purposes can be issued by the city, unless issued under charter provisions.—*Fritz v. San Francisco*, 132 Cal. 373, 64 Pac. 566.

See, also, as to the public improvement act.—*McHugh v. San Francisco*, 132 Cal. 381, 64 Pac. 570.

16. School houses—Acquisition, construction, and repair a "municipal affair"—Charter provisions paramount.—School houses are municipal buildings, and their acquisition, construction, and repair is a "municipal affair," and the charter provisions on

the subject are paramount and prevail over the general improvement act of 1891.—*Law v. San Francisco*, 144 Cal. 384, 77 Pac. 1014.

17. "Children's playgrounds"—Right to acquire is part of "park purposes."—"Children's playgrounds" are a legitimate part of the right to acquire land for park purposes.—*Law v. San Francisco*, 144 Cal. 384, 77 Pac. 1014.

18. Section 21, chapter I, article II, and section 29, article XVI, of the charter are not conflicting.—The provisions of section 21, chapter I, article II of the charter do not conflict with the provisions of section 29, article XVI.—*Law v. San Francisco*, 144 Cal. 384, 77 Pac. 1014.

19. Charter equal to general law, except in case of conflict.—The charter must be regarded as a state law in relation to school matters, of equal dignity with general laws, so long as it does not conflict with such general laws in such matters.—*Grosjean v. Board of Education*, 40 Cal. App. 434, 181 Pac. 113.

20. Purchase of land in excess of \$50,000 in value.—The provisions of section 21, chapter I, article II, of the charter relative to the submission to the voters of an ordinance calling for the purchase of land in excess of \$50,000 in value contemplates a specific purchase of particular lands with available funds and the question to be submitted is merely the wisdom and propriety of buying the land.—*Law v. San Francisco*, 144 Cal. 384, 77 Pac. 1014.

III. POWERS.

a. In general.

20a. General rule as to municipal powers.—A city has no powers not expressly given by its charter, or necessarily implied from its terms, and all the parts of a charter are to be considered in arriving at the meaning of any part of it, wherever it appears that the context aids or controls such meaning, and if, with the aid of the context, or the application of other correct rules of interpretation, the conclusion is reached that the power is granted, the rule first above stated is satisfied.—*Hayne v. San Francisco*, 174 Cal. 185, 196, 62 Pac. 625; *Cooper v. San Francisco*, 174 Cal. 813, 162 Pac. 631; *Telegraph Hill, etc., v. San Francisco*, 174 Cal. 814, 162 Pac. 630; *Simpson v. San Francisco*, 174 Cal. 815, 162 Pac. 631.

20b. Same—"Government" scope defined.—The word "government" in the phrase "frame a charter for its own government" includes every function which a municipality may perform.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

21. "Legislative authority"—Mayor not included.—The mayor is not included in the "legislative authority of a city," and an amendment to the charter proposed by the board of supervisors, which constitutes such "legislative authority" in San Francisco, need not be presented to the mayor for his approval.—*Harrison v. Roberts*, 145 Cal. 173, 78 Pac. 537.

22. Public utilities—Municipal control retained.—Under section 23, article XII, of the constitution, the city and county of San Francisco retains its "powers of control over any public utility vested" in the city on March 23, 1912.—*Pratt v. Spring Valley Water Co.*, 4 R. C. D. 1077.

23. Same—Same—Police power to regulate.—The power to regulate, under the general welfare clause, does not confer upon a municipality the power to regulate rates or service, or in any other way to regulate the relationship between the utility and its customers and patrons, as distinguished from the city and its inhabitants in general.—*Pratt v. Spring Valley Water Co.*, 4 R. C. D. 1077.

24. Same—Same—"Quality of service" of water supply.—Subsection 11, section 2, chapter II, article II, of the San Francisco charter, gives the city the power "to prescribe the quality of the service" of water supplied within the municipality, and the commission has no jurisdiction over the subject.—*Pratt v. Spring Valley Water Co.*, 4 R. C. D. 1077.

24a. Temporary wooden buildings within fire limits—Supervisors have no power to authorize erection.—Under the San Francisco charter, the board of supervisors have no authority to permit the erection and maintenance temporarily of wooden buildings within the fire limits, even by ordinance, when the fire limits are once established.—*Howell v. City of Hamburg Co.*, 165 Cal. 172, 175, 131 Pac. 130.

25. Fire limits—Authority to remove wooden building.—The board of supervisors were empowered by the charter to authorize by ordinance the board of public works to provide and take steps to remove a wooden building constructed and maintained in the fire limits in violation of a city ordinance.—*Maguire v. Reardon*, 41 Cal. App. 596, 183 Pac. 303.

b. Purchase of supplies.

26. Unauthorized conditions of contracts.—The board of supervisors can not, in letting contracts for the furnishing supplies, impose conditions not authorized by the charter, and a resolution purporting to do so is without effect.—*Neal Publishing Co. v. Rolph*, 169 Cal. 190, 197, 146 Pac. 659.

27. Same—Patronizing only union labor.—A resolution of the board of supervisors directing the heads of city departments and the printing committee to patronize printing offices only who are entitled to use the union label, is held to be in conflict with sections 1 and 3, chapter III, article II, of the subsequently adopted charter, requiring competitive bidding for such supplies.—*Neal Publishing Co. v. Rolph*, 169 Cal. 190, 196, 146 Pac. 659.

28. Contract for work—Contract to furnish certain finished articles.—A contract to furnish certain finished articles of merchandise to the city of San Francisco, is not a contract for work within the meaning of section 1, chapter III, article II, of the

charter of that city.—*Neal Publishing Co. v. Rolph*, 169 Cal. 190, 193, 146 Pac. 659.

29. Wages and hours of labor on public works.—Does not apply to contract for printed supplies.—The provisions of section 1, chapter III, article II, of the San Francisco charter, relative to minimum wages and maximum hours of labor on public works, and declaring void contracts which do not comply therewith, has no application to a contract for printed supplies for the use of the several departments of the city government.—*Neal Publishing Co. v. James Rolph, Jr., Mayor*, 169 Cal. 190, 193, 146 Pac. 659.

29a. "Quantity and quality considered"—Defined and applied.—The words "quantity and quality being considered" in the charter simply mean that in determining what is the lowest bid made, the quantity and quality of the supplies offered may be considered.—*Neal Publishing Co. v. Rolph*, 169 Cal. 190, 193, 146 Pac. 659.

c. Public moneys.

30. Deposit of municipal funds in banks.—The charter expressly prohibits the deposit of public funds in banks.—*Rothschild v. Bantel*, 152 Cal. 5, 91 Pac. 803.

31. Same—"Municipal affair."—The uses of public funds is a municipal affair, and the provisions of the charter prohibiting the deposit of public funds in banks is paramount to any law.—*Rothschild v. Bantel*, 152 Cal. 5, 91 Pac. 803.

32. Same—Effect of the act of 1907 (Stats. 1907, p. 974).—Section 16½ of article XI of the constitution does not empower the legislature to enact a law which would authorize the deposit of public funds in banks, contrary to the express provisions of the charter of San Francisco.—*Rothschild v. Bantel*, 152 Cal. 5, 91 Pac. 803.

d. Licenses.

33. Restaurant keeper not engaged in the sale of goods.—The business of keeping a restaurant involves, technically, a sale of food, but this single point of coincidence does not necessarily bring the restaurant keeper within the class of those who, at a fixed place of business, sells, etc., goods, etc., within the exempt clause of section 1, chapter II article II of the charter.—*San Francisco v. Larsen*, 165 Cal. 179, 131 Pac. 366.

34. Same—Ordinance imposing license tax valid.—An ordinance of the city and county of San Francisco imposing a license tax upon restaurant keepers is valid, notwithstanding the prohibition of section 1, chapter II, article II, against the imposition of a license tax upon the sale and manufacture of goods, wares or merchandise.—*City and County of San Francisco v. Larsen*, 165 Cal. 179, 131 Pac. 366.

35. Pawnbrokers—Power to license.—The city and county of San Francisco is given the power by subdivisions 1, 16, chapter II, article II, and section 7, chapter IV, article VIII, of its charter, to license and regulate pawnbrokers, and to enact

regulations to protect the public in dealing with them, to fix the amount of the license, and to impose fines, penalties, and forfeitures for the violation of such ordinances.—*Levinson v. Boas*, 150 Cal. 185, 11 Ann. Cas. 661, 12 L. R. A. (N. S.) 575, 88 Pac. 825.

36. Sale of liquor—Permit from police commissioners.—The only provisions in the charter that require a permit from the police commissioners for the sale, etc., of liquor, are those contained in chapter III, article VIII, and such provisions are confined to those persons who sell liquor "in less quantity than one quart," and to those who sell liquor "to be drunk on the premises."—*John Rapp & Son v. Kiel*, 159 Cal. 702, 115 Pac. 651.

37. Same—Same—Ordinance invalid.—The board of supervisors have no power to pass an ordinance imposing a license charge, fee, or tax of any kind, for purposes either of regulation or revenue, except where the sale of liquor is in quantities less than a quart and sales of liquor to be drunk on the premises of the licensee.—*John Rapp & Son v. Kiel*, 159 Cal. 702, 115 Pac. 651.

38. "License tax" defined.—A "license tax" within the meaning of the charter, includes a license fee or charge imposed by a purely regulatory ordinance.—*John Rapp & Son v. Kiel*, 159 Cal. 702, 115 Pac. 651.

39. Theater tickets—"Goods."—Theater tickets are "goods" within the meaning of section 15, chapter II, article II, charter, and the city can not impose a license tax on the business of selling the same at a fixed place of business.—*Ex parte Dees* (Cal. App.), 194 Pac. 717.

40. License tax on slot machines held void.—The license tax on slot machines is a tax for revenue, imposed on mode of doing business and not on amount of sales, and is an unreasonable classification and void.—*In re Richardson*, 170 Cal. 63, 148 Pac. 213.

IV. ELECTIONS.

a. In general.

41. Vacancies on board of election commissioners — Manner of filling — Duty of mayor.—It is the duty of the mayor to fill vacancies on the board of election commissioners so as to give both political parties equal representation, and may be compelled by mandate to do so, notwithstanding an attempt on his part to fill vacancies with parties ineligible, under the requirements of the charter.—*Independence League v. Taylor*, 154 Cal. 179, 97 Pac. 303.

42. Same—Same—Same—Computation of vote.—In filling vacancies on the election board the mayor is not restricted to an official statement of the vote issued by the secretary of state, in which the vote of a dual nominee for governor was credited to him under a single party designation, but may consult the record of the vote for other candidates who received only a single party nomination.—*Independence League v. Taylor*, 155 Cal. 294, 100 Pac. 860.

43. **Conflicting measures—1911 amendment applied to future elections.**—Section 7, chapter II, article III, of the San Francisco charter, as amended in 1911, with reference to conflicting measures, applies solely to future elections, and not to measures voted on at the election at which it was adopted.—*Apple v. Zemansky*, 166 Cal. 83, 89, 134 Pac. 1149.

44. **Same—Section 38a, article XVI, charter, does not conflict with chapter II, article XI.**—The amendment of the charter of San Francisco, adding section 38a to article XVI, and the amendment of chapter II, article XI, nominating and electing candidates for office, are not conflicting.—*Apple v. Zemansky*, 166 Cal. 83, 90, 134 Pac. 1149.

45. **Same—Same—Purpose of amendment of chapter II, article XI, charter.**—The only purpose of the amendment of chapter II, article XI, of the San Francisco charter, was to provide a different method of electing officers, without contemplating any change in their terms.—*Apple v. Zemansky*, 166 Cal. 83, 90, 134 Pac. 1149.

46. **Same—Same—Purpose of section 38a, article XVI, charter.**—The 1911 amendment to the San Francisco charter, adding section 38a to article XVI thereof, deals entirely with the terms of office, and expressly declares that it is amendatory of all other provisions of the charter upon that particular subject.—*Apple v. Zemansky*, 166 Cal. 83, 90, 134 Pac. 1149.

47. **Same—Same—Not void.**—Section 38a, article XVI, of the San Francisco charter is not void as an attempt to amend various provisions of the charter, without specifying them, some of which were not then in existence.—*Apple v. Zemansky*, 166 Cal. 83, 91, 134 Pac. 1149.

48. **Alternative propositions—Section 8, chapter II, article XI, charter, permissive.**—Section 8, article XI, of the constitution, relative to the submission of alternative propositions, is simply permissive and has nothing mandatory, except the provision that the right to submit alternative propositions shall not be denied the legislative body or the requisite number of electors.—*Apple v. Zemansky*, 166 Cal. 83, 93, 134 Pac. 1149.

49. **Same—Same—Does not apply to independent propositions.**—The provision of section 8, chapter II, article XI of the constitution, authorizing the submission of alternative propositions to the voters, has no application to independent propositions having no relation to each other so far as the question of adoption or rejection is concerned.—*Apple v. Zemansky*, 166 Cal. 83, 92, 134 Pac. 1149.

b. Bond issue.

50. **Change in denomination.**—A change in denominations of some of the bonds appearing in the election ordinance does not invalidate the issue where the issue conformed to the requirements of the charter that bonds should not be issued in denominations of less than ten nor more than one

thousand dollars.—*Law v. San Francisco*, 144 Cal. 384, 77 Pac. 1914.

51. **Two-thirds vote of all electors voting at the election necessary to authorize.**—Two-thirds vote of all electors voting at the election, and not two-thirds of those voting on the question of the bond issue, is necessary to authorize the same.—*Law v. San Francisco*, 144 Cal. 384, 77 Pac. 1914.

52. **Vote on separate bond issues at same election—Failure of one does not affect others.**—Where more than one issue of bonds are voted on separately at same election, the failure of one does not affect the others.—*Law v. San Francisco*, 144 Cal. 384, 77 Pac. 1914.

c. Primary elections.

53. **Act of 1909 has no application to San Francisco, in the election of municipal officers.**—The primary election act of 1909 has no application to San Francisco in "municipal affairs," and the election of municipal officers is strictly a "municipal affair."—*Socialist Party v. Uhl*, 155 Cal. 776, 103 Pac. 181.

d. Recall.

53a. **Duty of election board directory merely.**—The provisions of section 3, chapter III, article XI, San Francisco charter, relative to the duty of the election board in the matter of a recall petition, are directory merely.—*Schaefer v. Herman*, 172 Cal. 338, 344, 155 Pac. 1084.

53b. **Same—Refusal to act in time—Proceeding not terminated.**—The refusal of the election board of San Francisco to act upon a petition for a recall under the charter, within the time prescribed, does not destroy the rights of the persons signing the petition, nor terminate the proceeding.—*Schaefer v. Herman*, 172 Cal. 338, 344, 155 Pac. 1084.

54. **Jurisdiction of registrar—Refusal to receive proof not reviewable.**—If the registrar mistakenly refuses to receive proof that he should receive and consider, it is a mere error of law not reviewable by certiorari.—*Fickert v. Zemansky*, 176 Cal. 443, 168 Pac. 891.

55. **Petition—Determination of sufficiency left to registrar of voters.**—The question as to whether a recall petition conforms to all legal requirements, the extent of the inquiry, and the determination of the evidence required, is left by the San Francisco charter to the discretion of the registrar of voters, and his refusal to receive proof, if error, is an error of law committed in the exercise of his jurisdiction, and can not be considered in certiorari.—*Fickert v. Zemansky*, 176 Cal. 443, 445, 168 Pac. 891.

56. **Same—Same—Consideration by court excluded.**—Under the last paragraph of subdivision 4, section 8½ of article XI of the constitution, it is competent for a freeholders' charter to provide for the sufficiency of the petition and the legality and regularity of other proceedings for a recall by an officer specially authorized and to exclude the superior court from revising or annulling his determination, whether his

function is judicial or ministerial.—*Baines v. Zemansky*, 176 Cal. 369, 375, 168 Pac. 565.

57. Same—Duty of registrar of voters.—Under the San Francisco charter, as amended January 24, 1917, when a "recall" petition, with the requisite number of signatures, is filed with the election board, it is the duty of the registrar of voters, if the signatures are genuine and not subject to lawful objection otherwise, to so certify and report the same to the board, and it is then the duty of the board to call an election to vote on the recall.—*Baines v. Zemansky*, 176 Cal. 369, 371, 168 Pac. 565.

58. Same—Section 1083a, Political Code, not part of charter by adoption. Section 1083a, Political Code, as amended in 1915, did not become a part of the San Francisco charter, by adoption, under section 7, chapter V, article XI, and section 5, chapter I of article XI, of the charter.—*Schaefer v. Herman*, 172 Cal. 338, 342, 155 Pac. 1084.

59. Same—Date to signature not required.—The provisions of the San Francisco charter, relating to the recall of municipal officers, do not require the voter to add to his signature the date upon which he writes it.—*Schaefer v. Herman*, 172 Cal. 338, 341, 155 Pac. 1084.

60. Same—Charter contains a complete scheme.—The San Francisco charter, article XI, chapter V, contains a complete scheme for the recall of municipal officers.—*Schaefer v. Herman*, 172 Cal. 338, 340, 155 Pac. 1084.

61. Jurisdiction of registrar to determine sufficiency.—Superior court without jurisdiction.—The provision of the charter that the question of the sufficiency of a recall petition or the legality of the other proceedings relating thereto should be determined by the registrar of voters, has the effect of excluding from the superior court the power of revising or annulling the jurisdiction of that officer, and is valid.—*Baines v. Zemansky*, 176 Cal. 369, 168 Pac. 565.

62. Same—Same—Registrar's jurisdiction exclusive.—Whether judicial or ministerial the jurisdiction of the registrar to determine the sufficiency of a recall petition, and the regularity of the other proceedings relating thereto, is exclusive and the superior court has no jurisdiction to prohibit him from doing so.—*Baines v. Zemansky*, 176 Cal. 369, 168 Pac. 565.

63. Same—Investigation of registrar.—The registrar of voters, in determining the sufficiency of a recall petition, is not limited to a consideration of the facts shown on the face of the petition and the records of registration of voters, but may consider the testimony or affidavits of the voters to whom notices have been mailed, as provided by the charter, and may inquire and take evidence during the fifteen days in which he must conclude his investigation.—*Baines v. Zemansky*, 176 Cal. 369, 168 Pac. 565.

64. Same—Same—Officer may question signatures.—The officer to be recalled is entitled to call in question a signature of
II Gen. Laws—69

a voter, and to have the voter notified.—*Baines v. Zemansky*, 176 Cal. 369, 168 Pac. 565.

65. Same—An elective officer accepts his office subject to the recall provisions of the charter.—An elective officer of San Francisco accepts his office upon the condition that his tenure thereof may be terminated at any time in the manner prescribed by the charter.—*Baines v. Zemansky*, 176 Cal. 369, 168 Pac. 565.

V. BOARD OF PUBLIC WORKS.

a. Street improvement.

66. Affidavit of noncollusive bid indispensable.—The failure to make the affidavit of noncollusive bidding required by the charter renders the contract and the assessment void.—*Flinn v. Strauss*, 4 Cal. App. 245, 87 Pac. 414.

67. Same—Construction of charter—Joint bidders.—The purpose of the provision requiring a noncollusive affidavit to accompany bids for street improvements is not satisfied by the affidavit of one of several joint bidders; but each must make the affidavit required.—*Flinn v. Strauss*, 4 Cal. App. 245, 87 Pac. 414.

68. Same—Affidavit held insufficient.—The affidavit in the present case signed by one of two joint bidders, undated, and without any official designation of the person making the verification, was held insufficient.—*Flinn v. Strauss*, 4 Cal. App. 245, 87 Pac. 414.

69. Assessment for more than 50 per cent of assessed value of property—Installment payments.—In the absence of a provision for installment payments an assessment for street improvements in excess of fifty per cent of the value of the property assessed is invalid.—*City Street Imp. Co. v. Pearson*, 181 Cal. 640, 185 Pac. 962.

70. Same—Not curable on appeal to board of supervisors.—Such defective assessment is not curable on appeal to the board of supervisors.—*City Street Imp. Co. v. Pearson*, 181 Cal. 640, 185 Pac. 962.

71. Same—Same—Defects not going to the jurisdiction may be cured—Due process.—Defects not going to the jurisdiction, or in the proceedings which the legislature might have omitted without resulting in a denial of due process or some other constitutional guaranty, may be cured by the curative provisions of the charter.—*City Street Imp. Co. v. Pearson*, 181 Cal. 640, 185 Pac. 962.

72. Same—Same—Same.—Curative provisions in the charter relative to the improvement of streets were not intended to apply to jurisdictional steps.—*City Street Imp. Co. v. Pearson*, 181 Cal. 640, 185 Pac. 962.

73. Accepted street.—The charter authorizes the city to improve an accepted street under the direction and control of the board of public works.—*Warren Bros. Co. v. Boyle* (Cal. App.), 183 Pac. 706.

74. Same—Chapter II, article VI, charter.—Chapter II, article VI, of the charter has reference to the improvement of streets by assessments on property benefited and

to improvements made by the city on accepted streets and in other cases under section 9, chapter II, article II.—Warren Bros. Co. v. Boyle (Cal. App.), 183 Pac. 706.

75. Same—Recommendation of board of public works.—The recommendation of the board of public works is all that is required to initiate a proceeding to improve an accepted street at the expense of the city and county, and thereafter, upon an order of the board of supervisors to do the work, may proceed to make the improvement by contract or by or through its own organization.—Warren Bros. Co. v. Boyle (Cal. App.), 183 Pac. 706.

76. Same—Order of board of supervisors.—The fixing and allowing in the budget of an item for the improvement of an accepted street pursuant to the recommendation of the board of public works is not "order" sufficient to satisfy the requirements of sections 1, 2, chapter II, article VI, of the charter, empowering the board of supervisors to "order" such an improvement.—Warren Bros. Co. v. Boyle, (Cal. App.), 183 Pac. 706.

77. Same—Board of public works under control of board of supervisors.—Under the provisions of section 9, chapter I, article II, of the charter, the action of the board of public works in the improvement of accepted streets is under the control of the board of supervisors.—Warren Bros. Co. v. Boyle (Cal. App.), 183 Pac. 706.

78. Same—Same—All work must be by order of board of supervisors—Urgent repairs.—All street work in San Francisco, except urgent repairs, must be done by order of the board of supervisors.—Warren Bros. Co. v. Boyle (Cal. App.), 183 Pac. 706.

79. Contract—Patented pavement—Compliance with section 26, chapter II, article VI, charter.—The agreement in this case for furnishing patented pavement material to the city held to be in compliance with section 26, chapter II, article VI, of the charter.—Warren Bros. Co. v. Boyle (Cal. App.), 183 Pac. 706.

80. Same—Contracts for material—Charter requirements apply to both accepted and unaccepted streets.—The requirements of the charter requiring the board of public works to write proposals for contract to supply paving materials for street improvement, apply to accepted as well as unaccepted streets.—Warren Bros. Co. v. Boyle (Cal. App.), 183 Pac. 706.

81. Same—Same—Assignment required before pavement ordered.—Under the charter the assignment of the right to use a patented pavement must be made, assigning the right to manufacture and lay the same to any one who may make a contract to do so, before the board of supervisors order such pavement.—Warren Bros. Co. v. Boyle (Cal. App.), 183 Pac. 706.

82. Same—Approval of materials required in oral contracts.—The requirement of section 22, chapter I, article VI of the charter, as to the approval of the materials used in a contract for public work by the board of public works, applies to oral as

well as written contract.—Flinn v. Zion, 37 Cal. App. 116, 173 Pac. 602.

83. Same—Lien—Not a personal liability.—A street improvement lien is enforceable against the property and not as a personal liability against the owner.—City Street Imp. Co. v. Pearson, 181 Cal. 640, 185 Pac. 962.

84. Same—Statute of limitations—Accrual of right of action.—The contractor's right of action for street work does not begin to work until the passage of a resolution of the board of public works accepting the work under section 22, chapter I, and subdivisions 9, 10, of section 9, chapter II, article VI, of the charter.—Flinn v. Zion, 37 Cal. App. 116, 173 Pac. 602.

85. Liability for injuries from defective sidewalk.—Notwithstanding section 16, chapter II, article VI, and article I, of the charter, in effect providing against liability of the city and county for damages from defective sidewalks, prior to acceptance of same, the owner of the abutting property would not be liable for such damages, unless defectively constructed, or unless he had notice of defect.—Calvert v. Burnett Estate Co., (Cal. App.) 185 Pac. 428.

86. Same—"Street" includes "sidewalks"—Section 16, chapter II, article VI, charter.—The word "street" in section 16, chapter II, article VI, of the charter, is used with full and broad significance to include the sidewalks which are always a part of it.—Heath v. Manson, 147 Cal. 694, 82 Pac. 331.

87. Same—Jurisdiction of board of public works—Repair of sidewalks.—The charter gives the board of public works jurisdiction of the subject of the repair of sidewalks.—Heath v. Manson, 147 Cal. 694, 82 Pac. 331.

88. Same—Repairs not original construction.—It can not be said that the provision of the charter making such person or persons on whom the law imposes the obligation to repair a defect liable for damages resulting from the failure to make the repairs, applies to a case of injury from a sidewalk injury where no sidewalk construction had ever been made.—Taylor v. Manson, 9 Cal. App. 382, 99 Pac. 410.

89. Same—Notice of special defect not necessary.—Where the board had notice of the general unsafe condition of the sidewalk, it was not necessary that they should have notice of a particular defect.—Heath v. Manson, 147 Cal. 694, 82 Pac. 331.

90. Same—Methods.—The board has power to compel abutting property owners to make needed repairs to sidewalks, and they may do it themselves, or enter into a contract to have it done, and the contractor would have the lien for the amount expended; or the board may ask an appropriation to make such repairs, or may make the repairs out of a special fund derived from fines collected from the abutting property owners in default.—Heath v. Manson, 147 Cal. 694, 82 Pac. 331.

91. Same—Can not escape liability—Defective notice.—After the need of repairs of

a sidewalk comes under the observation of the board of public works, it can not escape liability for its negligent performance or nonperformance of its duty to make repairs, by proof of the negligent failure to perform another duty—that is to say, by proof that the notices it actually sent were improper or insufficient.—*Heath v. Manson*, 147 Cal. 694, 82 Pac. 331.

92. Same—Same—Same.—The board can not excuse themselves for a negligent performance, or a nonperformance of duty to make needed sidewalk repairs, by proof of mailing the notice to property owners instead of the delivery of such notice personally, by urging that the notice was not given in the form required by the charter.—*Heath v. Manson*, 147 Cal. 694, 82 Pac. 331.

93. Same—Same—Notice to repair by new construction with different material.—A notice to “repair” a wooden sidewalk, given by the board of public works to abutting property owners, is not necessarily defective because it requires such “repairs” to be by the construction of a bituminous rock or cement sidewalk, inasmuch as the word “repairs” frequently means new construction of a different material.—*Heath v. Manson*, 147 Cal. 694, 82 Pac. 331.

94. Same—Same—Construction of sidewalk where none had been before.—If it be conceded that it was the duty of the board of public works, under the charter, to repair an unsafe sidewalk condition by original construction of a sidewalk where none had ever been, the board can not be held liable for negligent nonperformance of duty where they had no funds in their possession or under their control to meet the cost of the work.—*Taylor v. Manson*, 9 Cal. App. 382, 99 Pac. 410.

95. Same—Applications for appropriations—Time—Charter provisions are directory.—The provisions of section 1, chapter I, article III, of the charter, relative to the time at which application is to be made for appropriations by department heads, boards, etc., are directory.—*Taylor v. Manson*, 9 Cal. App. 382, 99 Pac. 410.

96. Same—Sidewalks at street intersections—Property owners not liable for construction or repair.—Property owners are not liable for the repair of a sidewalk which borders on the curb at the intersection of two streets, and the board of public works was not negligent in failing to compel such property owners to construct or repair such sidewalk.—*Taylor v. Manson*, 9 Cal. App. 382, 99 Pac. 410.

b. Tunnels.

97. Delegation of legislative power.—The authority conferred upon the supervisors by section 33, chapter II, article VI, of the charter, to provide a method of procedure to construct a tunnel different from the two alternative methods there provided, was not an unauthorized delegation of legislative power.—*Mardis v. McCarthy*, 162 Cal. 94, 98, 121 Pac. 389.

98. Assessment based on benefits.—An “assessment” within the meaning of section 33 of chapter II, and chapter VIII, of article VI, of the San Francisco charter, relating to the construction of tunnels means a burden imposed upon property to pay the cost of a tunnel improvement, and is based upon the benefit which such property is supposed to receive from the expenditure of the money.—*Mardis v. McCarthy*, 162 Cal. 94, 101, 121 Pac. 389.

99. Two separate and distinct districts may be created.—Two distinct and separate assessment districts may be created for tunnel construction.—*Mardis v. McCarthy*, 162 Cal. 94, 105, 121 Pac. 389.

100. Power to construct includes incidental power to change grade of streets.—The power to construct a tunnel includes the incidental power to change the grade of streets to be used as approaches thereto.—*Mardis v. McCarthy*, 162 Cal. 94, 103, 121 Pac. 389.

101. Accepted streets improved at city's expense.—The grant of authority to construct tunnels in, on, or under any accepted street, takes the construction of such tunnels out of the operation of section 23, chapter II, article VI, of the charter, requiring the municipality to keep accepted streets improved at its own expense.—*Mardis v. McCarthy*, 162 Cal. 94, 103, 121 Pac. 389.

102. Power to construct includes power to pave or sidewalk.—The power given by the charter to construct tunnels includes the power to pave or sidewalk or otherwise make the same fit for use.—*Mardis v. McCarthy*, 162 Cal. 94, 102, 121 Pac. 389.

103. Power of board of supervisors to provide mode of procedure.—Under the provisions of the charter the board of supervisors were authorized to adopt a procedure for the construction of a tunnel entirely different from that provided by the charter.—*Larsen v. San Francisco*, 182 Cal. 1, 186 Pac. 757.

104. Same—Decision of board of supervisors conclusive on review.—Where property owners had the right to object, and the board of supervisors reviewed the assessments after notice, and the boundaries of the district were subject to change, the decision of the board was conclusive, except for fraud or mistake.—*Larsen v. San Francisco*, 182 Cal. 1, 186 Pac. 757.

105. Same—Determination of benefits.—The determination of benefits is ultimately with the board of supervisors, and the court will not declare an assessment void except when the assessment plainly is not proportional to benefits, or that no benefits could accrue to property assessed.—*Larsen v. San Francisco*, 182 Cal. 1, 186 Pac. 757.

106. Use of Twin Peaks tunnel—City and county have no exclusive right.—Under the charter the city and county can have no exclusive right to the use of the Twin Peaks tunnel.—*Larsen v. San Francisco*, 182 Cal. 1, 186 Pac. 757.

107. Same—Purpose of constructing.—The object of constructing the Twin Peaks

tunnel was to provide a way for rapid transit between the two sections of the city for one or more street car lines.—*Larsen v. San Francisco*, 182 Cal. 1, 186 Pac. 757.

108. Same—Acquisition of property.—The city and county, in constructing a tunnel, is not limited to construction through land where it previously had an easement, but may acquire such property as may be required, in the same proceeding with the construction of the tunnel.—*Larsen v. San Francisco*, 182 Cal. 1, 186 Pac. 757.

109. Assessment of cost on limited district.—The city and county of San Francisco has no power under its charter to assess the cost of a tunnel upon a limited district.—*Gassner v. McCarthy*, 160 Cal. 82, 116 Pac. 73.

110. Same—Same—Payment out of city revenues.—The expense of the work of constructing a tunnel must be paid out of current revenues or by the issue of bonds, by the city as a whole.—*Gassner v. McCarthy*, 160 Cal. 82, 116 Pac. 73.

111. Change of street grade not authorized.—The change of grade upon two blocks of Stockton street and the construction of a tunnel under the two intervening blocks is not an exercise of the power to "regrade, repave, sewer, sidewalk, curb, or otherwise improve the same to conform to such change or modified grade," within the meaning of chapter VI, article VI, of the charter.—*Gassner v. McCarthy*, 160 Cal. 82, 116 Pac. 73.

112. Same—Cost of tunnel on old grade of street.—Chapter VI, article VI, of the charter does not authorize the creation of an assessment district to bear the cost of the tunnel in or under the portion of the street remaining at the former grade.—*Gassner v. McCarthy*, 160 Cal. 82, 116 Pac. 73.

113. Same—Improvement of accepted street can not be done at expense of property owners.—Under the provisions of sections 8 and 23, chapter II, article VI, of the charter, the city has no power to impose the cost of improving in any way authorized thereby an accepted street upon the private property owners, by any plan.—*Gassner v. McCarthy*, 160 Cal. 82, 116 Pac. 73.

114. District assessment plan authorized.—Section 33, chapter II, article VI, and chapter VIII, article VI, of the San Francisco charter, authorizes the supervisors to construct a tunnel under accepted or unaccepted streets of the city and impose the cost of the same upon the private property of a special assessment district.—*Mardis v. McCarthy*, 162 Cal. 94, 97, 121 Pac. 389.

115. Same—Same.—Under the amendment of 1911 (Stats. 1911, p. 1686) of the charter of San Francisco, the board of supervisors were authorized to provide by ordinance that the costs and expenses of a tunnel under a public street should be levied upon a special district.—*Hayne v. San Francisco*, 174 Cal. 185, 189, 162 Pac. 625; *Cooper v. San Francisco*, 174 Cal. 813,

162 Pac. 611; *Telegraph Hill, etc. v. San Francisco*, 174 Cal. 814, 162 Pac. 629; *Simpson v. San Francisco*, 174 Cal. 815, 162 Pac. 631.

116. Same—Levy and collection of assessments before order of construction adopted, and before contract.—The assessment levied by the board of supervisors to pay the costs and expenses of a tunnel constructed under the authority of chapter VIII, article VI, of the charter of San Francisco, may be so levied and collected before the order for its construction has been adopted and before the letting of the contract for the work.—*Hayne v. San Francisco*, 174 Cal. 185, 191, 162 Pac. 625; *Cooper v. San Francisco*, 174 Cal. 813, 162 Pac. 631; *Telegraph Hill, etc., Co. v. San Francisco*, 174 Cal. 814, 162 Pac. 630; *Simpson v. San Francisco*, 174 Cal. 815, 162 Pac. 631.

117. Same—Sale for delinquent assessments—Postponements.—When a tunnel construction ordinance provides for the summary sale of property to pay assessments, and that if for any reason the sale does not take place on the day fixed "the sale may be continued from day to day, or postponed until another day, not more than ten days," postponements may be made indefinitely, but no single postponement may be made for more than ten days.—*Hayne v. San Francisco*, 174 Cal. 185, 196, 162 Pac. 625; *Cooper v. San Francisco*, 174 Cal. 813, 162 Pac. 631; *Telegraph Hill, etc. v. San Francisco*, 174 Cal. 814, 162 Pac. 630; *Simpson v. San Francisco*, 174 Cal. 815, 162 Pac. 631.

118. Same—Same—Irregularities in sale.—If a tunnel assessment is valid the property owner is not entitled to equitable relief on account of irregularities in the sale of his property unless he pays or offers to pay the amount actually due under the assessment.—*Hayne v. San Francisco*, 174 Cal. 185, 197, 162 Pac. 625; *Cooper v. San Francisco*, 174 Cal. 813, 162 Pac. 631; *Telegraph Hill, etc., v. San Francisco*, 174 Cal. 814, 162 Pac. 630; *Simpson v. San Francisco*, 174 Cal. 815, 162 Pac. 631.

119. Same—In advance of doing work.—Section 33, chapter II, article VI, and section 1, chapter VIII, of the same article of the charter of San Francisco, authorize the board of supervisors in a tunnel construction proceeding to direct a summary sale of property to pay an assessment for such construction, and to authorize such sale in advance of doing the work.—*Hayne v. San Francisco*, 174 Cal. 185, 194, 162 Pac. 625; *Cooper v. San Francisco*, 174 Cal. 813, 162 Pac. 631; *Telegraph Hill, etc., v. San Francisco*, 174 Cal. 814, 162 Pac. 630; *Simpson v. San Francisco*, 174 Cal. 815, 162 Pac. 631.

120. Same—Increase of award of damages over estimate—Power of board of supervisors.—The board of supervisors are authorized to increase the amount of damages to be awarded to owners of property for injury to their property caused by a tunnel and its construction over the estimate of the board of public works and

make the assessment conform to such increase.—*Hayne v. San Francisco*, 174 Cal. 185, 193, 162 Pac. 625; *Cooper v. San Francisco*, 174 Cal. 813, 162 Pac. 631; *Telegraph Hill, etc., v. San Francisco*, 174 Cal. 814, 162 Pac. 630; *Simpson v. San Francisco*, 174 Cal. 815, 162 Pac. 631.

121. Same—Notice of hearing—Continuance.—Where an ordinance authorizing a tunnel construction provides for notice of the time and place of hearing and recites that the hearing may be continued from time to time, the first notice being given no further notice, was required to bind interested parties.—*Hayne v. San Francisco*, 174 Cal. 185, 194, 162 Pac. 625; *Cooper v. San Francisco*, 174 Cal. 813, 162 Pac. 631; *Telegraph Hill, etc., v. San Francisco*, 174 Cal. 814, 162 Pac. 630; *Simpson v. San Francisco*, 174 Cal. 815, 162 Pac. 631.

122. Same—Assessment—Allowance for damages may be included.—Allowances to owners of abutting lots for damages caused by the tunnel and its construction may be included in an assessment to pay costs and expenses of the tunnel construction.—*Hayne v. San Francisco*, 174 Cal. 185, 189, 162 Pac. 625; *Cooper v. San Francisco*, 174 Cal. 813, 162 Pac. 631; *Telegraph Hill, etc., v. San Francisco*, 174 Cal. 814, 162 Pac. 630; *Simpson v. San Francisco*, 174 Cal. 815, 162 Pac. 631.

VI. PUBLIC UTILITIES.

a. In general.

122a. Same—"Public utilities" defined.—A "public utility," within the meaning of section 14, article XII of the charter is a utility employed in the rendition of a quasi public service, such as waterworks, gas works, a telephone system, street railroads, etc., and is used in that section to embrace all such utilities.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

123. Acquisition of public utilities—Petition—Duty of clerk to verify signatures—Mandamus.—It is the duty of the clerk of the board of supervisors, under the charter, to examine, verify, and certify to the board the signatures of the requisite number of electors to a petition for the acquisition of public utilities, but he can not be compelled by mandamus to do so, where the signatures are not verified by any signer, and no means are provided by the charter whereby he can ascertain the fact which he is required to verify.—*O'Connell v. Behan*, 19 Cal. App. 111, 124 Pac. 1038.

124. Same—Same—Clerk not required to certify that signers are electors, but to verify genuineness of signatures.—The clerk is not required to certify that the signers of the petition are electors, but to verify the genuineness of signatures.—*O'Connell v. Behan*, 19 Cal. App. 111, 124 Pac. 1038.

125. Same—Same—Duty of clerk to refuse to verify petition containing improper matter.—The petition must be for original construction, although the board of supervisors may submit a proposition for the purchase of an existing utility, and a peti-

tion which contains improper subject matter, for the purchase of an existing utility, is not a proper petition under section 3, article XII of the charter, and it is the duty of the clerk to refuse to examine and verify such a petition, even if he had the means of doing so.—*O'Connell v. Behan*, 19 Cal. App. 111, 124 Pac. 1038.

126. Same—"Plans and estimates of costs," defined.—The phrase "plans and estimates of costs" refers to new construction and not those of past construction of an existing utility.—*O'Connell v. Behan*, 19 Cal. App. 111, 124 Pac. 1038.

127. Same—"Estimates."—The term "estimates" is not an appropriate expression to indicate the determination of the cost of past construction and completion.—*O'Connell v. Behan*, 19 Cal. App. 111, 124 Pac. 1038.

128. Same—Petition—Other charter provisions have no application to verification of signatures.—Section 3 of article XII of the charter contains no provision as to the method of verifying the signatures of signers to a petition for the acquisition of public utilities, as in other similar cases, and the provisions of the charter in such other cases have no application to such a petition.—*O'Connell v. Behan*, 19 Cal. App. 111, 124 Pac. 1038.

129. Same—Same—Signatures—"Voters"—"Electors."—An "elector" is not necessarily a "voter," who is a registered "elector," and a mere statement that the signers to the petition were "electors of the city and county of San Francisco" without stating their places of residence, leaves it impossible for the clerk to verify their signatures.—*O'Connell v. Behan*, 19 Cal. App. 111, 124 Pac. 1038.

130. Purpose of 1903 amendment—Power to acquire public utilities not affected.—The purpose of the 1903 amendment was to relieve the city engineer and board of labor estimates of the duty of making estimates every two years, as required by section 1 of the charter as originally enacted, and there was no intention to take away the power to acquire public utilities in accordance with the purpose of the city, expressed in the charter, to gradually acquire and ultimately own its public utilities.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

131. Proper subject for vesting local power.—The power to acquire, own, and control its own public utilities is one that may be properly vested under the constitution in a city by freeholders' charter and amendments thereto.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

132. Same—Power to sell and lease limited by constitutional provisions.—The power given by section 14, article XII of the charter, to sell and lease public utilities acquired by the city is not a power that may be exercised in violation of any constitutional provision.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

133. Same—"Solicit and consider offers for the sale"—May precede preliminary

resolution. The requirement of the charter that the board of supervisors "must solicit and consider offers for the sale," etc., is for the purpose of enabling the board to know whether an existing utility can be acquired, and upon what terms, and, if so, whether the public interest and necessity demand such acquisition, or the original construction of a new utility, and this may properly be done before the preliminary ordinance is adopted.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

134. Same—Same—Soliciting offers for sale may be by resolution.—The soliciting of offers for sale of a public utility is not required to be by ordinance, but may be by resolution.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

135. Same—Same—Resolution calling for offers need not be published.—The resolution calling for offers for the sale to the city of a public utility is not required to be published for five days.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

136. Ordinance of public interest and necessity, sufficient.—Though the ordinance determining the demands of public interest and necessity for the "acquisition or completion by the city and county," omitted the words "by the city and county," it was sufficient where it was in the form prescribed by the charter, described the streets over which the street railways should be constructed, and directed the board of public works to make and file estimates of costs.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

137. Same—Omission of word "acquisition."—The failure of the ordinance of public interest and necessity to include the "acquisition of an existing street railway," did not invalidate it where the bonded indebtedness proposed to be incurred is not in any part for the acquisition of an existing utility, but only for the construction of a new one.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

138. Same—Construction to completion.—The word "construction" means construction to completion.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

139. Same—Determination of supervisors of the question of public interest or necessity is conclusive.—The determination of the board of supervisors upon the question of public interest or necessity is conclusive and a subject for review by the courts.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

140. Contracts for public utilities—Manner of making may be provided by ordinance.—The charter, by sections 9, 14, chapter I, article VI, authorizes the supervisors to regulate the manner of making contracts for the construction of public utilities by ordinance, and the general scheme contained in section 14 does not apply.—*Crowe v. Boyle* (Cal.), 193 Pac. 111.

b. Municipal railway.

141. Construction and operation—Power of the city.—The city and county of San Francisco is empowered by its charter to

construct and operate street railways and to incur a bonded indebtedness therefor.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

142. Same—Same—Proceedings regular.—The proceedings of the city and county of San Francisco for the construction and operation of municipally owned street railways and the incurring of a bonded indebtedness therefor, were free from substantial irregularity.—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

143. "Extensions and improvements" defined.—The words "extensions and improvements" in section 16, article XII of the charter can not be construed so as to include an entirely independent privately owned and operated street railway system, located on other streets and sections of the city not occupied by the municipal railway.—*Mobley v. Board of Public Works* (Cal. App.), 186 Pac. 412.

144. Same.—The words "extensions and improvements" in section 16, article XII of the charter, can not be construed so as to permit the expenditure out of the earnings of the municipal railway of moneys to pay the cost of investigating the desirability of acquiring by purchase a part of another street railway system.—*Mobley v. Board of Public Works*, (Cal. App.) 186 Pac. 412.

145. Automobile bus extensions.—Purchase of automobile busses authorized to provide extension for street railways of city.—*Vale v. Boyle*, 179 Cal. 180, 175 Pac. 787.

146. Charter power includes street railroads.—Section 14 of article XII of the charter, added in 1907, providing for the acquisition of public utilities by the city, is comprehensive enough to include street railroads, although the article as amended in 1903, did not include the words "street railroads."—*Platt v. San Francisco*, 158 Cal. 74, 110 Pac. 304.

c. Hetch Hetchy project.

147. "Cost-plus" contract.—Bidding and letting of contract for Hetch Hetchy aqueduct on "cost plus" basis was held to be in accordance with the ordinance authorizing such a form of procedure, a "cost-plus" contract being characterized by payment of the work by the city.—*Crowe v. Boyle* (Cal.), 193 Pac. 111.

148. Same—Guaranty of bond.—The guaranty of the bond on a "cost-plus" contract in connection with the Hetch Hetchy project should be the amount of the "cost-plus" fee due the contractor in the hands of the city, and a bond which expressly provided that it was not intended to guaranty the estimated maximum cost substantially complied with the ordinance.—*Crowe v. Boyle* (Cal.), 193 Pac. 111.

149. Same—Bonds—Compliance with charter provisions.—The supervisors regularly followed the authority vested in them by the charter with reference to the sale of bonds for the construction of the Hetch Hetchy project, and the auditor complied with the essential requirements of the

charter.—*Crowe v. Boyle* (Cal.), 193 Pac. 111.

VII. POLICE DEPARTMENT.

a. Police court.

150. Jurisdiction.—The police court of San Francisco is vested with jurisdiction of violations of municipal ordinances only, and such jurisdiction of misdemeanors as is vested by general law in justices' courts.—*People v. Fortch*, 13 Cal. App. 770, 110 Pac. 823.

151. Same—No jurisdiction over violations of dentistry act.—The police court of San Francisco has no jurisdiction of violations of the dentistry act.—*People v. Fortch*, 13 Cal. App. 770, 110 Pac. 823.

152. Same—Same—Charter superseded general law.—The charter of San Francisco superseded the general laws relating to the establishment and jurisdiction of police courts in cities.—*People v. Fortch*, 13 Cal. App. 770, 110 Pac. 823.

153. Same—Charter jurisdiction in preliminary examinations unconstitutional.—The provision of the charter conferring jurisdiction to conduct preliminary examinations in felony cases is unconstitutional.—*Elder v. McDougald*, 145 Cal. 740, 79 Pac. 429.

154. Same—Same—Jurisdiction in preliminary examinations in felony cases under section 808, Penal Code.—The police court may hold preliminary examinations in felony cases as a committing magistrate under the general provisions of section 808, Penal Code.—*Elder v. McDougald*, 145 Cal. 740, 79 Pac. 429.

155. "Attaches"—Charter supersedes section 869, Penal Code.—The provisions of the charter as to the appointment and compensation of attaches of police courts supersede section 869, Penal Code, and a police judge has no power under that section to appoint a stenographic reporter and fix his compensation as a charge on the municipal treasury.—*Elder v. McDougald*, 145 Cal. 740, 79 Pac. 429.

156. Same—Stenographers.—Stenographers are "attaches" of the police court within the meaning of section 8½ of article XI of the constitution.—*Elder v. McDougald*, 145 Cal. 740, 79 Pac. 429.

157. Police court reporters—Municipal officers—Salary fixed by charter.—Police court reporters are, under the charter, municipal officers and their compensation is fixed by the charter.—*Trefts v. McDougald*, 15 Cal. App. 584, 115 Pac. 655.

158. Same—Duties not limited to services at preliminary examinations required by section 870, Penal Code.—The charter provisions do not limit the duties of police court reporters to services at preliminary examinations under section 870, Penal Code, but all work done at such examinations is work done in the performance of official duty.—*Trefts v. McDougald*, 15 Cal. App. 584, 115 Pac. 655.

159. Same—Same—Charter supersedes code provision, so far as inconsistent.—The San Francisco charter supersedes section 870, Penal Code, as to the duties of

police court reporters so far as inconsistent.—*Trefts v. McDougald*, 15 Cal. App. 584, 115 Pac. 655.

160. Bail bond—Bond and warrant clerk not empowered to fix.—The charter of San Francisco vests no power in the bond and warrant clerk to fix the amount of a bail bond of a person charged with grand larceny, and such bond is void.—*San Francisco v. Hartnett*, 1 Cal. App. 652, 82 Pac. 1064.

b. Police relief and pension fund.

161. Charter superseded the general law.—The present charter became the organic law of the city and county of San Francisco on January 1, 1900, and superseded the previously existing charter and all law inconsistent therewith, and thereafter the city and county was no longer subject to general laws, among them the police relief and pension laws.—*Burke v. Board of Trustees*, 4 Cal. App. 235, 87 Pac. 421.

162. Same—Police pension relief act of 1889 superseded.—The pension relief act of 1889 for the benefit of police officers, their wives and dependents, was superseded by the San Francisco charter which took effect January 1, 1900, as to San Francisco.—*Cohn v. Henderson*, 19 Cal. App. 89, 134 Pac. 1037.

163. Amendment of section 4, chapter X, article VIII, charter, not retroactive.—Amendment of section 4, chapter X, article VIII, of the San Francisco charter, relating to pensions of families of members of police department, held not to have a retroactive effect.—*O'Dea v. Cook*, 176 Cal. 659, 660, 169 Pac. 366.

164. Board without jurisdiction to finally determine a question of fact.—The board of police commissioners, acting as a board of police relief and pension fund commissioners, has no power, under the charter, to finally determine a question of fact, and its attempt to do so, without any proof and practically contrary to the undisputed fact, is void.—*Sheehan v. Police Commissioners* (Cal. App.), 190 Cal. 51.

165. Duty of board of trustees.—The board of trustees of the police pension and relief fund are required by the charter to grant a police officer's widow's application for pension when it appears that her husband was injured in the performance of his duty and died as a result of such injuries within a year.—*French v. Cook*, 173 Cal. 126, 160 Pac. 411.

166. Same.—Under the San Francisco charter it is the duty of the trustees of the police relief and pension fund, upon an application for a pension by a widow of a deceased police officer, to grant the application upon a showing that the latter died within a year from an injury received in the performance of his duty as such police officer.—*French v. Cook*, 173 Cal. 126, 127, 160 Pac. 411.

167. Board of trustees not vested with judicial power.—The trustees of the San Francisco police relief and pension fund are vested with no judicial power to de-

termine a question of fact in connection with an application for a pension, and when they are not satisfied with the evidence, they may refuse to act until required to do so by the judgment of a proper tribunal.—*French v. Cook*, 173 Cal. 126, 129, 160 Pac. 411.

168. Same—Board of trustees have no judicial power to pass on essential facts.—The board of trustees have no judicial power to act upon the determination of a question of fact, and if they are in doubt as to the essential facts may refuse to act until compelled to do so in a proper proceeding.—*French v. Cook*, 173 Cal. 126, 160 Pac. 411.

169. Continuation of pension during disability.—A police officer who has been retired and pensioned for disability had a vested right to have his pension continued until his disabilities ceased.—*Sheehan v. Police Commissioners* (Cal. App.), 190 Pac. 51.

170. Right of widow measured by charter provisions.—The right of the widow of a police officer to payment out of the police relief and pension fund, created by the charter, is measured solely by charter provisions, and by no rights she may have had under a preceding law, not recognized by the charter, and as to which it can not be presumed the trustees have any funds under their control, can be available to her.—*Burke v. Board of Trustees*, 4 Cal. App. 235, 87 Pac. 421.

171. Widow entitled to pension only when husband killed in service.—Under the charter the widow of a police officer is entitled to a pension only when her husband is killed in service, and he died, after retirement on a disability pension for life which ceased with his death, she can claim no pension.—*Edwards v. Sweigert*, 15 Cal. App. 503, 115 Pac. 256.

172. Same—Intention of charter.—It is the manifest intention of the charter to exclude a widow of an officer retired on pension for life from claiming a pension under its provisions.—*Edwards v. Sweigert* 15 Cal. App. 503, 115 Pac. 256.

173. Same—"Killed in the performance of duty."—A police officer is "killed in the performance of duty," within the meaning of the charter, when he dies soon after receiving an injury while on duty.—*Edwards v. Sweigert*, 15 Cal. App. 503, 115 Pac. 256.

174. Same—Same—Retirement after injury in service.—A police officer can not be said to have been killed in service when he dies two years after retirement, and nine years after the injury and disability from which such retirement resulted, and his widow is not entitled to a pension under the charter.—*Edwards v. Sweigert*, 15 Cal. App. 503, 115 Pac. 256.

175. Same—Same—"To cease at his death."—The words "to cease at his death" as applied to a police officer's disability pension adds nothing to the meaning unless it was intended to cut off the widow's

claim to a pension.—*Edwards v. Sweigert*, 15 Cal. App. 503, 115 Pac. 256.

c. In general.

176. Membership continues after retirement from active service.—A police officer of San Francisco, retired from active duty, for an amount of age, who had never resigned or been dismissed, still remains a member of the department.—*Kavanagh v. Police Commissioners*, 134 Cal. 33, 34 Pac. 36.

177. Rules of police department—Neglect to pay debts.—The board of police commissioners were empowered under section 1, chapter III, article VII, of the charter to adopt a regulation that any member of the police department who refused to pay any debt, shall be subject to reprimand, fine, or dismissal.—*Cleu v. Police Commissioners*, 3 Cal. App. 174, 84 Pac. 672.

178. Same—Same—Board not required to wait court judgment.—Before punishing neglect of police officer the board of police commissioners need not wait for a judgment against the officer.—*Cleu v. Police Commissioners*, 3 Cal. App. 174, 84 Pac. 672.

179. Same—Dismissal for conduct unbecoming an officer.—The board of police commissioners is empowered to dismiss an officer of the department for conduct unbecoming an officer upon evidence that showing a robbery was being committed he gave his revolver to a private individual who with it killed the robber.—*Imeson v. Police Commissioners*, 32 Cal. App. 233, 163 Pac. 63.

180. Same—Same—No penalty previously prescribed.—The fact that no penalty for the violation of the particular rule had been previously provided, does not affect the jurisdiction of the board, in view of charter provisions empowering the board to prescribe penalties, and in view of the provision of the rules that this particular offense should subject the offender to such penalty as the board might deem proper under the law.—*Donovan v. Police Commissioners*, 22 Cal. App. 393, 163 Pac. 66.

VIII. FIRE DEPARTMENT.

181. Selection of former clerk.—The secretary of the board of fire commissioners in service at the going into effect of the charter was not included in the list of those officers and members of the department required to be reappointed under the terms of the charter, and mandamus would not lie to compel the board to reappoint him.—*Maxwell v. Fire Commissioners*, 129 Cal. 229, 72 Pac. 936.

182. Removal of member without cause—Misconduct of fire commissioners.—Under the charter the board of fire commissioners have no right to remove a member of the charter without cause, and if they do so without assigning a cause, and after being advised by the city attorney, and warned by the mayor, they are guilty of misconduct, and subject to removal from office.—*Spader v. Rolph*, 29 Cal. App. 774, 156 Pac. 977.

183. Firemen's relief and pension fund.—Auxiliary fire system.—The provision of the charter excepting from the benefits of relief and pension the employees and appointees in the auxiliary fire system, applies also to their families.—*Comstock v. Lewis* (Cal. App.), 186 Pac. 386.

184. "Killed in the performance of duty"—**Suicide while insane from injuries.**—A member of the fire department was "killed in the performance of duty," within the meaning of the charter, who committed suicide while insane from injuries received while on duty, and his widow was entitled to a pension.—*Baker v. Fire Commissioners*, 18 Cal. App. 433, 123 Pac. 344.

184a. Secretary not under civil service.—The secretary of the board of fire commissioners is not, under the charter, under civil service rules.—*McCarthy v. Fire Commissioners*, 37 Cal. App. 495, 174 Pac. 402.

IX. CIVIL SERVICE.

184b. Employment of private legal counsel by civil service commission.—The charter contains no authority to the civil service commission to employ private legal counsel at the city's expense, when the city attorney is willing to perform services, as such officer, and is alone authorized to conduct the legal business of the municipality.—*Rafael v. Boyle*, 31 Cal. App. 623, 161 Pac. 126.

185. Physical tests.—The determination as to whether physical tests are to be applied to an applicant for the municipal civil service is a matter resting in the sound discretion of the civil service commission.—*Maxwell v. Civil Service Commission*, 169 Cal. 336, 146 Pac. 809.

186. Same.—First and second assistant engineers.—Promotion to battalion chief.—The commission had discretionary power to include both first and second assistant chief engineers in the same classification for examination for appointment as battalion chief, though their salaries were not the same.—*Maxwell v. Civil Service Commission*, 169 Cal. 336, 146 Pac. 869.

187. Classification.—Must be by duties not salaries.—A classification of clerks by salaries is not authorized by the charter, and if the commission makes a wrong classification, they are justified in rescinding the same, and restoring a former classification as authorized by the charter.—*Hinton v. Bahrs*, 18 Cal. App. 53, 122 Pac. 80, 82.

188. Striking off names from the list of eligibles.—The only authority in the charter for striking names from the list of eligibles is the provision of section 10, article XIII, that "the commissioners may strike off names of candidates from the register after they have remained thereon more than two years."—*Cook v. Civil Service Commission*, 160 Cal. 598, 117 Pac. 662.

189. Judgment annulling list of eligibles.—Not final when appeal taken.—A judgment of the superior court ordering the annulment of a list of eligibles under an examination held void, from which an appeal had been taken, has no mandatory

effect and does not justify the commission in setting aside such list, until made final by the appellate court.—*Cook v. Civil Service Commission*, 160 Cal. 598, 117 Pac. 662.

190. Temporary appointment.—Not reviewable, when.—An order making a temporary appointment of a superintendent of street repairs under charter authority, for sixty days, becomes *functus officio* at the end of that period, and is not subject to review.—*Reagan v. Civil Service Commissioners*, 11 Cal. App. 234, 104 Pac. 589.

191. Same.—Appointment of deputy registrars of voters.—Void.—Appointments of deputy registrars by the board of election commissioners, not made from the civil service eligible list, without examination, and in disregard of the charter provisions are void and confer no rights on the appointees.—*Shaw v. San Francisco*, 13 Cal. App. 547, 110 Pac. 149.

192. Same.—Same.—To permit a liability to be imposed upon the municipality to pay for services rendered under appointments made, as in this case, contrary to the explicit provisions of the law, and by the law declared to be void, would be to fritter away the entire scheme for civil service appointments contained in the charter.—*Shaw v. San Francisco*, 13 Cal. App. 547, 110 Pac. 149.

X. BOARD OF EDUCATION.

193. Rules.—Amendment or repeal.—The rules of the board of education are mere rules of procedure for its own guidance, and they may suspend or require the same as they please, and the members only can complain of the failure to comply with the rules as to amending and repealing the same.—*Grosjean v. Board of Education*, 40 Cal. App. 434, 181 Pac. 113.

194. Same.—Same.—The rules may be regarded as suspended by the unanimous action of the board, by unanimously passing an amendment without the previous notice required.—*Grosjean v. Board of Education*, 40 Cal. App. 434, 181 Pac. 113.

195. Power to let removal of garbage contract.—The board of education was empowered to let a contract for the removal of garbage from public school buildings to the lowest responsible bidder, as an independent contractor.—*Elgone v. Repetti*, 11 Cal. App. 251, 104 Pac. 583.

196. Power to reduce classes and retire teacher.—The board of education of San Francisco, in the interest of economy, or for any other good and sufficient reason may reduce the number of classes in the public schools, and may determine what teacher, in such event, shall be retired.—*Bates v. Board of Education*, 139 Cal. 145, 72 Pac. 907.

197. Power to employ special counsel.—The board of education of San Francisco has no power, even in case of the refusal of the city attorney to act, to employ other counsel to defend it against a writ of mandate to admit a person to a seat as a member of the board.—*Denman v. Webster*, 139 Cal. 452, 37 Pac. 139.

198. Same—Right to have services of city attorney.—The board of education has the right to require the services of the city attorney in all matters by or against the board.—*Denman v. Webster*, 139 Cal. 452, 37 Pac. 139.

199. Power to hear and determine charges against teacher.—The board of education is empowered to hear and determine charges against public school teacher made in writing by a citizen, notwithstanding the charter provision that the superintendent must prefer such charges after investigation.—*McKenzie v. Board of Education*, 1 Cal. App. 406, 82 Pac. 392.

200. Superintendent of schools a county officer.—The superintendent of schools of the city and county of San Francisco is a county officer, and his duties are prescribed by section 1543 of the Political Code, and the charter can not impose duties upon him as such officer.—*McKenzie v. Board of Education*, 1 Cal. App. 406, 82 Pac. 392.

201. Teachers may be required to reside in the city and county.—The charter and section 1616, Political Code, empower the board of education, by resolution, to require public school teachers and other employees to reside in the city and county while so employed.—*Stuart v. Board of Education*, 161 Cal. 210, 118 Pac. 712.

202. Same—Reasonableness of resolution.—Such a resolution would be reasonable in view of the fact that the charter requires all its officers, deputies, clerks, assistants, and other employees, including members of the board of education, to reside in the city and county, and section 996, Political Code, contemplates a like residence.—*Stuart v. Board of Education*, 161 Cal. 211, 118 Pac. 712.

203. Same—Interference with performance of duties not material.—The fact that the residence of a public school teacher elsewhere than in the city and county "does not interfere in any manner with the performance of her duties" is immaterial and does not affect the question of the validity of the resolution.—*Stuart v. Board of Education*, 161 Cal. 210, 118 Pac. 712.

204. Same—Not imposition of additional qualification.—Such a resolution is not the imposition of a qualification in addition to those prescribed by sections 1791 and 1793 of the Political Code.—*Stuart v. Board of Education*, 161 Cal. 210, 118 Pac. 712.

205. Same—Insubordination and ground for dismissal.—The refusal of a teacher to comply with a reasonable regulation of the board is insubordination, for which she may be dismissed under section 1793, Political Code.—*Stuart v. Board of Education*, 161 Cal. 210, 118 Pac. 712.

206. Lease of school land.—A lease of school land not needed for school purposes made by the board of education under the authority of chapter III, article VII of the charter, is as valid and effective as if authorized and directed by the legislature.—*Mahoney v. Board of Education*, 12 Cal. App. 293, 107 Pac. 584.

207. Same—Political Code sections not inconsistent with charter provisions.—There is nothing in section 1617, Political Code, inconsistent with section 1616, nor with the provisions of the charter authorizing the board of education to lease school land not needed for school purposes.—*Mahoney v. Board of Education*, 12 Cal. App. 291, 107 Pac. 584.

XI. HEALTH DEPARTMENT.

208. Quo warranto will not lie against board of health.—quo warranto will not lie to prevent the San Francisco board of health from exercising any powers, since it was created by the charter, and is entitled to perform such functions as are purely "municipal affairs."—*People ex rel Lawlor v. Williamson*, 135 Cal. 415, 67 Pac. 504.

XII. TAXATION.

209. Unsold bonds not obligations.—Under the San Francisco charter unsold bonds of the city and county are not obligations to meet which taxes are authorized to be levied.—*Connelly v. San Francisco*, 164 Cal. 101, 105, 127 Pac. 834.

210. Same—Tax to pay interest and redeem unsold bonds not valid.—The city and county of San Francisco is authorized by its charter to levy taxes to pay interest on and to redeem bonds only which have been sold and have therefore become an obligation of the municipality, and a tax levied for the purpose of paying interest upon and to redeem bonds that have not been sold or contracted to be sold is unlawful.—*Connelly v. San Francisco*, 164 Cal. 101, 105, 127 Pac. 834.

211. Same—Same—Inconvenience to city and county will not justify.—Inconvenience to the city and county will not justify an unlawful levy of taxes by the city and county of San Francisco to pay interest upon and for the redemption of bonds unsold and not contracted to be sold.—*Connelly v. San Francisco*, 164 Cal. 101, 106, 127 Pac. 834.

212. "Dollar limit"—Suspension—"Great" defined.—The use of the adjective "great" in the San Francisco charter in connection with the suspension of the "dollar limit" provision, plainly means a necessity or emergency of grave character and serious moment.—*San Christina, etc., Co. v. San Francisco*, 167 Cal. 762, 773, 52 L. R. A. (N. S.) 676, 141 Pac. 384.

213. Same—Fostering and nursing an "emergency" over undetermined number of years.—It was not contemplated in providing for the suspension of the "dollar limit" provision of the charter that the supervisors could foster and nurse an "emergency" so as to spread their taxing power over an undetermined number of years.—*San Christina, etc., Co. v. San Francisco*, 167 Cal. 762, 773, 52 L. R. A. (N. S.) 676, 141 Pac. 384.

214. Same—Unanimous vote of supervisors present required to remove.—The San Francisco charter provision as to suspension of the "dollar limit" of taxation does

not require the unanimous vote of all the members constituting the board of supervisors, but only the unanimous vote of those present at the meeting.—*San Christina, etc., Co. v. San Francisco*, 167 Cal. 762, 768, 52 L. R. A. (N. S.) 676, 141 Pac. 384.

215. Same—Action to recover taxes paid under protest—Allegation of no "great emergency" good on general demurrer.—In an action to recover taxes paid under protest as in excess of the "dollar limit," an allegation "that no great emergency existed so as to authorize all or any part of said extra tax levy" is good on general demurrer, but not against special demurrer as the pleading of a legal conclusion.—*San Christina, etc., Co. v. San Francisco*, 167 Cal. 762, 769, 52 L. R. A. (N. S.) 676, 141 Pac. 384.

216. Same—Same—Existence of "great emergency" question of fact—Jurisdictional.—The question whether a great necessity or emergency exists to justify a suspension of the "dollar limit" provision of the San Francisco charter, is one of fact, and the finding of the existence of such fact is a prerequisite to the exercise by the supervisors of the power of suspension conferred by the charter.—*San Christina, etc., Co. v. San Francisco*, 167 Cal. 762, 769, 52 L. R. A. (N. S.) 676, 141 Pac. 384.

217. Same—Same—Same—Inclusion of purpose not emergency.—The question whether an emergency tax levy made under a suspension of the "dollar limit" provision of the San Francisco charter includes a purpose which is not an emergency purpose is a question for first consideration by the trial court and not for determination on appeal.—*San Christina, etc., Co. v. San Francisco*, 167 Cal. 762, 773, 52 L. R. A. (N. S.) 676, 141 Pac. 384.

218. Same—Same—Same—Determination of board of supervisors not final.—The determination of the board of supervisors that a great necessity and emergency exists authorizing the suspension of the "dollar limit" provision of the San Francisco charter, is not final, but is subject to review by the courts.—*San Christina, etc., Co. v. San Francisco*, 167 Cal. 762, 769, 52 L. R. A. (N. S.) 676, 141 Pac. 384.

219. Same—Determination of supervisors as to existence of great emergency not final.—The question as to the existence of a necessity for the suspension of the "dollar limit," as fixed by section 11, chapter I, article III, of the charter of San Francisco, is one of fact, and the determination of the supervisors is not final.—*Josselyn v. San Francisco*, 168 Cal. 436, 143 Pac. 705.

220. Same—Applies to both county and city purposes.—The "dollar limit" applies to taxes for both county and city purposes.—*Josselyn v. San Francisco*, 168 Cal. 436, 143 Pac. 705.

221. Same—Void levy of tax under suspension—Deducting of part of illegal levy does not cure.—Where an ordinance of the city and county of San Francisco levying a tax in excess of the "dollar limit" for two special purposes upon a determination

made of a great public necessity and emergency, is void because no such necessity and emergency are found to exist, and such levy and such tax are therefore void, the special levy for one of said purposes can not be sustained on the ground that said levy when added to the general levy, after an illegal item has been eliminated from the latter, does not exceed the "dollar limit."—*Josselyn v. San Francisco*, 168 Cal. 436, 143 Pac. 705.

222. Same—Provisions of article XII mandatory.—The provisions of article XII of the San Francisco charter are mandatory, and the failure to comply with them makes void the attempted levy of the tax for the Geary street road.—*Josselyn v. San Francisco*, 168 Cal. 436, 143 Pac. 705.

223. Same—Same—Reversal of action of board renders proceedings functus officio.—The proceedings under article XII of the San Francisco charter taken in 1903, toward the acquisition of the Geary street railroad, under a determination of the existence of public necessity, terminated with the election reversing the action by the board and became functus officio, and it was thereafter necessary for supervisors to proceed anew to raise money either by taxation or a bond election, for the purpose named.—*Josselyn v. San Francisco*, 168 Cal. 436, 143 Pac. 705.

224. Same—Prior decision followed.—*Josselyn v. City and County of San Francisco*, 168 Cal. 436, as to invalid levy of taxes in excess of charter limit, followed and approved.—*Otis v. City and County of San Francisco*, 170 Cal. 98, 148 Pac. 933.

224a. Same—Same.—*Otis v. City and County of San Francisco*, 170 Cal. 70, followed and approved.—*Credit, etc., Bureau v. City and County of San Francisco*, 170 Cal. 803, 148 Pac. 933.

XIII. OFFICES AND OFFICERS.

a. City architect.

225. City architect—Not under civil service—Not required to be paid a monthly salary.—The city architect is exempted from civil service provisions under subdivision a, section 11, article XIII of the charter, is not an ordinary employee required to be paid a monthly salary under section 3, chapter IV, article III, of the charter, and may be appointed by resolution of board of public works to do work specified in the resolution.—*Reid v. Boyle* (Cal. App.), 184 Pac. 423.

226. Same—Employment by special contract.—The board of public works is authorized to employ an architect in a special case by special contract.—*Miller v. Boyle* (Cal. App.), 184 Pac. 421.

b. District attorney.

227. Powers of district attorney under charter same as under section 4307, Political Code.—Section 2, chapter III, article V, of the San Francisco charter, confers upon the district attorney the same powers that are conferred upon district attorneys in general by section 4307 of the Political

Code, as to employment of detectives to aid in ascertaining the guilt of persons suspected or charged with public offenses, and the compensation of such detectives for that purpose is a legal charge against the city and county.—*Rocca v. Boyle*, 166 Cal. 94, 96, Ann. Cas. 1915B, 857, 135 Pac. 34.

228. Deputy district attorney.—An ordinance for the appointment of an additional assistant district attorney makes the appointee a deputy or assistant as though embodied in the charter, and mandamus will lie to compel the auditor to draw his warrant for the salary of such deputy or assistant payable out of the general fund as provided by the ordinance.—*Harrison v. Horton*, 5 Cal. App. 415, 90 Pac. 716.

229. Employment of detective by district attorney.—The district attorney of the city and county of San Francisco is person empowered to employ, within the meaning of section 12, chapter III, article III, of the charter, and a detective employed temporarily to assist him in the detection of crime is a person who may be employed.—*Rocca v. Boyle*, 166 Cal. 94, 98, Ann. Cas. 1915B, 857, 135 Pac. 34.

230. Same.—(Charter refers to temporary employment.)—The meaning of the clause in section 12, chapter III, article III, of the San Francisco charter, reading "when an officer, legally authorized to employ a person other than his deputies or assistants at a stated compensation fixed by law, has employed such person," as officially printed, and clearly referring to a temporary employment, will not be changed, by arbitrary punctuation, so as to give it a different signification.—*Rocca v. Boyle*, 166 Cal. 94, 99, Ann. Cas. 1915B, 857, 135 Pac. 34.

c. County clerk.

231. Fees in naturalization cases.—The county clerk, who is ex officio clerk of the superior court, and a salaried official under the charter, can not retain any part of the fees in naturalization cases, but is required to turn the same over to the treasury within twenty-four hours of the receipt of the same.—*San Francisco v. Mulcrevy*, 15 Cal. App. 11, 113 Pac. 339.

232. Same.—Not an agent of the United States.—The county clerk is not a mere agent designated by the act of congress to act in naturalization cases, for a compensation of one-half the fees in such cases to pay for extra work and clerk hire is not tenable.—*San Francisco v. Mulcrevy*, 15 Cal. App. 11, 113 Pac. 339.

233. Same.—Charter provision unambiguous.—The charter is unambiguous as to the salary and compensation of the county clerk, and as to the requirement to pay all fees to the treasury within twenty-four hours of the receipt of the same, regardless of the source, and does not admit of doubt.—*San Francisco v. Mulcrevy*, 15 Cal. App. 11, 113 Pac. 339.

234. Same.—"Source"—Naturalization fees included.—The county clerk receives naturalization fees as county clerk and ex officio clerk of the superior court, and

such fees are included in the phrase "the matter from what source derived"—*San Francisco v. Mulcrevy*, 15 Cal. App. 11, 113 Pac. 339.

235. Same.—Retention of fees matter between county clerk and city and county.—The subject of the retention of fees in naturalization cases is a matter solely between the county clerk and the city and county, so far as the United States government is concerned.—*San Francisco v. Mulcrevy*, 15 Cal. App. 11, 113 Pac. 339.

236. Same.—Same.—Failure to turn over naturalization fees.—Sureties on official bond liable.—The naturalization act of Congress is a law within the meaning of that word as used in the oath of office of the county clerk, and naturalization fees and their disposition under that act are within the conditions of his official bonds, and for a failure to turn over such fees to the treasury of the city and county as required by the charter, the sureties on such are liable.—*San Francisco v. Mulcrevy*, 15 Cal. App. 11, 113 Pac. 339.

d. Tax collector.

237. Qualifications.—Five years as an elector.—The qualifications, under the charter, of the tax collector includes five years residence as an elector, and if he does not have that qualification when elected, he is not entitled to office, although he may have such qualification at the time of taking office.—*Sheehan v. Scott*, 145 Cal. 684, 79 Pac. 350.

e. Residence.

238. Charter provision not applicable to independent garbage contractor.—The requirement of the charter as to residence of municipal employees does not apply to an independent contractor for the removal of garbage.—*Figone v. Repetti*, 11 Cal. App. 251, 104 Pac. 583.

239. Same.—Independent contractor not an employee.—An "independent contractor" who selects his own materials, and furnishes his own means of carrying out his contract, is not an "employee" within the meaning of the charter which forbids the employment by the city of non-residents.—*Figone v. Repetti*, 11 Cal. App. 251, 104 Pac. 583.

f. Removal from office.

240. Superior court jurisdiction.—The superior court has jurisdiction to try an accusation of a grand jury under the code for the removal of an officer of San Francisco, for wilful and corrupt misconduct, notwithstanding the powers vested in the mayor, under the charter.—*Roberts v. Superior Court*, 147 Cal. 568, 82 Pac. 201. Decided on the authority of *Coffey v. Superior Court*, 147 Cal. 525, 82 Pac. 75. But see *Spader v. Rolph*, 29 Cal. App. 774, 156 Pac. 977.

241. Chief of police.—Misconduct.—Charter supersedes Penal Code.—The San Francisco charter supersedes the conflicting provisions of the Penal Code in the matter of the removal of the chief of police for misconduct in office, and are exclusive, and

prohibition will lie to prevent such removal in a proceeding under the code.—*Dinan v. Superior Court*, 6 Cal. App. 217, 91 Pac. 806.

242. Same—Same—A municipal affair.—The chief of police is a municipal officer and his removal is a municipal affair.—*Dinan v. Superior Court*, 6 Cal. App. 217, 91 Pac. 806.

243. Member of board of education—Notice and hearing required.—Notice and hearing are necessary to the removal of an appointive officer for cause by the mayor, under section 18, article XVI of the charter.—*Bannerman v. Boyle*, 160 Cal. 197, 116 Pac. 732.

244. Same—Same—Notice to board does not dispense with necessity of notice and hearing.—The requirement of section 20, article XVI of the charter as to notification of the board of supervisors by the mayor of the removal of an appointive officer, and the cause of such removal does not dispense with necessity of notice and hearing.—*Bannerman v. Boyle*, 160 Cal. 197, 116 Pac. 732.

245. Same—Removal without notice and hearing void.—A removal of a member of the board of education by the mayor without notice and a hearing is void.—*Bannerman v. Boyle*, 160 Cal. 197, 116 Pac. 732.

246. Civil service clerks—Protected only during term of regular appointment.—The charter provisions as to the appointment of civil service employees are to be construed to protect such employees from removal without cause only during the term of their regular appointment.—*Rodrigue v. Rogers*, 4 Cal. App. 257, 87 Pac. 563.

247. Same—Tenure of office.—The charter does not contemplate that a civil service employee of the city, upon the expiration of the term of his appointment, should hold a similar or other position in any office or department of the city government, but that the heads of the departments should have the authority to appoint his own subordinates on requisition and certification by the civil service commission.—*Rodrigue v. Rogers*, 4 Cal. App. 257, 87 Pac. 563.

248. Appointive officers—Members of boards.—The provisions of section 18, article XVI of the charter as to the removal of appointive officers by the mayor are practically confined to the members of the several boards appointed by him.—*Bannerman v. Boyle*, 160 Cal. 197, 116 Pac. 732.

XIV. JUDGMENTS AND DEMANDS.

249. Act of 1901 not in conflict with charter.—The act of 1901 (Stats. 1901, p. 274) is not in conflict with the charter.—*Metropolitan, etc., Co. v. Deasy*, 41 Cal. App. 667, 183 Pac. 243.

250. Budget provisions of charter have no application.—The provisions of the charter as to the budget do not apply to judgments.—*Metropolitan, etc., Co. v. Deasy*, 41 Cal. App. 667, 183 Pac. 243.

251. Salary of city employee—Subject to execution under section 710, Code Civil Procedure.—There is no insuperable difficulty in applying section 710, Code Civil

Procedure, to a city employee's salary, under the San Francisco charter, and the auditor may be required to draw his warrant for the amount owing such employee by the city for salary not exempt under subdivision 1, section 690, Code Civil Procedure, in favor of the court or the proper officer authorized to receive money paid into court.—*Ruperich v. Baehr*, 142 Cal. 190, 75 Pac. 782.

252. Chief of police and police commissioners not required to present salary demands for audit or approval.—Neither the chief of police nor the board of police commissioners are required to approve a salary demand of a police officer, or to present the same to the auditor and their failure to do so would not excuse the officers neglect to present it.—*Germann v. Board of Police Commissioners*, 158 Cal. 748, 112 Pac. 553.

253. Allowance of claims for compensation—Governed by charter not Political Code.—The city of San Francisco is not governed by the provision of the Political Code as to the settlement and allowance of claims against the county for compensation, but by its charter.—*Rocca v. Boyle*, 166 Cal. 94, 97, 135 Pac. 34, Ann. Cas. 1915B, 857.

254. Treasurer can not pay demands until approved by auditor.—Under the charter the treasurer can not pay a claim against the city until the demand thereon has been checked and approved by the auditor.—*Metropolitan, etc., Co. v. Rolph (Cal.)*, 194 Pac. 1005.

255. Treasurer not in default until confronted with auditor's warrant.—Judgment creditor can not have mandamus against the treasurer for the payment of the judgment until demand has been presented and warrant refused by the auditor, or, if warrant issued by auditor the treasurer is in default after confrontation with warrant.—*Metropolitan, etc., Co. v. Rolph (Cal.)*, 194 Pac. 1005.

256. Taxes paid under protest—Claim held six months within action amounts to rejection.—Where a taxpayer seasonably after payment of taxes under protest made demand upon the board of supervisors by verified claim for an order to refund, and no action was taken on said demand, and it was neither allowed nor rejected by the board, such inaction for a period of more than six months is held to be so unreasonable as to amount to a rejection, and to authorize the prosecution of a taxpayer's action to recover such taxes.—*Otis v. City and County of San Francisco*, 170 Cal. 98, 148 Pac. 933.

257. Same—Demand must be presented to auditor not board of supervisors.—Under section 12, chapter III, article III, of the San Francisco charter the duty of auditing demands for compensation against the city and county devolves upon the auditor, and such demands do not have to be presented to the board of supervisors, the treasurer being required to pay such claims "without further approval," when audited and al-

lowed by the auditor.—*Rocca v. Boyle*, 166 Cal. 94, 98, 135 Pac. 34, Ann. Cas. 1915B, 857.

258. Damages—Six months bar—Claim existing at date of adoption of charter not affected.—The provision of the charter requiring demand for damages to be made within six months does not apply to a claim accruing prior to the adoption of the San Francisco charter, and not barred at that time.—*Crim v. San Francisco*, 152 Cal. 279, 92 Pac. 640.

259. Same—Same—Claim arising after the adoption of the charter.—A claim for damages to land caused by deflecting sewerage system, arising after the adoption of the charter, must, under section 8, chapter II, article II of the charter be presented within six months, otherwise it is barred.—*Crim v. San Francisco*, 152 Cal. 279, 92 Pac. 640.

260. Same—Defective sewer—Not "trespass on real property."—The cause of action arising from damages to land caused by a defective sewer system is not a trespass on real property within the three-year statute of limitations.—*Crim v. San Francisco*, 152 Cal. 279, 92 Pac. 640.

261. Salary fixed by valid ordinance—Warrants drawn on unexhausted specific appropriations.—The charter provision forbidding the auditor to draw warrants except upon unexhausted specific appropriation has no application to the drawing of a warrant for the salary of an officer provided by a valid ordinance.—*Harrison v. Horton*, 5 Cal. App. 415, 90 Pac. 716.

XV. MISCELLANEOUS.

262. Construction of municipal opera house by private persons—Agreement not authorized.—The city and county of San Francisco has no power to authorize, by agreement with a private corporation, the construction of an opera house on land belonging to the municipality, the entire

management and control of which is to be given in perpetuity to a board partly composed of persons over whose selection the city and county is to have no voice, and over whose actions it has no control, even though it is to hold the legal title, and is to be given a minority representation on the board.—*Egan v. San Francisco*, 165 Cal. 576, 581, 133 Pac. 294, Ann. Cas. 1915A, 754.

263. Same—Same—Authority of city to erect opera house. Section 19, chapter II, article II, of the San Francisco charter is not to be construed as empowering the city and county to erect only one of the buildings therein named; but to erect one or all of such buildings, including an opera house.—*Egan v. San Francisco*, 165 Cal. 576, 582, 133 Pac. 294, Ann. Cas. 1915A, 754.

264. Same—Same—Same—Can not be turned over for private management.—The San Francisco charter contains nothing authorizing the municipality, after erecting an opera house on municipally owned land, to turn over its control and management in perpetuity to private persons.—*Egan v. San Francisco*, 165 Cal. 576, 583, 133 Pac. 294, Ann. Cas. 1915A, 754.

265. Same—Same—Same—Same.—There is nothing in the San Francisco charter authorizing the municipality to delegate its right and duty to management and control city property applied to a public purpose.—*Egan v. San Francisco*, 165 Cal. 576, 584, 133 Pac. 294, Ann. Cas. 1915A, 754.

266. Same—City may accept the gift of.—Under section 1, article I of its charter the city and county of San Francisco is authorized to accept the gift of an opera house, upon condition of its management by a board of private persons, but it does not authorize it to turn over its land to such a board for use as an opera house.—*Egan v. San Francisco*, 165 Cal. 576, 585, 133 Pac. 294, Ann. Cas. 1915A, 754.

OPENING ARMY STREET.

ACT 4135—An act to confer additional powers on the board of supervisors of the city and county of San Francisco, to provide for the opening of Army street, and the condemnation of private property therefor.

History: Approved March 16, 1878, Stats. 1877-78, p. 270.

GRADING BAY STREET.

ACT 4138—An act to authorize the board of supervisors of the city and county of San Francisco to order Bay street graded, and to change its grade.

History: Approved April 1, 1878, Stats. 1877-78, p. 931.

1. Constitutionality—Act not unconstitutional.—This act was not violative of any constitutional provision at the time of its passage.—*Jennings v. LeRoy*, 63 Cal. 397.

2. Application of general law.—The general law relating to street grades and improvements govern the subject of assessments for work and proceedings prior to this act.—*Jennings v. LeRoy*, 63 Cal. 397.

3. Liability of city and county under the act.—The refusal of the general in command of the United States forces on the

reservation, of the assistant treasurer of the United States and of the secretary of war, to pay for the grading, are sufficient to fix the liability of the city and county under the act.—*Onderdonk v. San Francisco*, 75 Cal. 534, 17 Pac. 678.

4. Statute of limitations—Action for grading—Not barred by subdivision 1, section 389, Code Civil Procedure.—The right of action for grading under this act is based upon either a contract founded on an instrument in writing or an obligation arising out of an assessment made in writing,

and is not barred by subdivision 1, section 389, Code Civil Procedure.—Onderdonk v. San Francisco, 75 Cal. 534, 17 Pac. 678.

5. Act modified general street law—**Provided no compensation.**—The act had

the effect to modify pro tanto the general law as to street grades, and no provision was made for the compensation of owners. —Jennings v. LeRoy, 63 Cal. 397.

EXCHANGE OF PUBLIC SCHOOL LOT 122, POTRERO NUEVO.

ACT 4139—An act authorizing the board of education of the city and county of San Francisco to exchange a lot of land in said city and county.

History: Approved March 24, 1874, Stats. 1873-74, p. 574.

"WATER LOT ACT."

ACT 4141—An act to provide for the disposition of certain property of the state of California.

History: Passed March 26, 1851, Stats. 1851, p. 307. Supplemented by the act of May 18, 1853, Stats. 1853, p. 219. For further history, see notes.

Editor's note: By statute of same year (Stats. 1851, p. 311), San Francisco was empowered to construct wharves at the ends of streets to a distance not exceeding two hundred yards beyond the line of beach and water lots, and the right of the state to beach and water lots was granted, with certain reservations; but this statute was repealed by Stats. 1853, p. 36.

By Stats. 1853, 219 (Compiled Laws, 1850-53, 767), provision was made for the sale of the reversionary interest of the state within the limits defined by the statute of 1851, above. The latter statute was supplemented by Stats. 1855, 226, and 1858, 139.

By Stats. 1858, 323, the governor was authorized to sell certain of the beach and water lots remaining and situate between Sacramento and Clay streets, confirming streets that had been laid out crossing the tract; and by Stats. 1877-8, 417, the deeds of the commissioners appointed under the statutes of 1851 and 1853 to certain lots believed to be outside of the waterfront line, as defined by those statutes, were confirmed and made valid.

The subject is now past history, but the following decisions are given for the benefit of those desiring to investigate:

Stats. 1851, 307; 1853, 219.—Chapin v. Bourne, 8 Cal. 294; Holladay v. Frisbie, 15 Cal. 630, 631; Wheeler v. Miller, 16 Cal. 125.

Concerning the relation of San Francisco to this property, and certain sales thereof, and the action of the state legislature in connection therewith, see Grogan v. San Francisco, 18 Cal. 590, 607-615; Pimental v. San Francisco, 21 Cal. 652.

The state reserved its control of the navigable waters, in connection with other legislation.—See People v. Williams, 64 Cal. 498, 2 Pac. 393; San Francisco v. Straut, 84 Cal. 124, 24 Pac. 814. And see United State v. Mission Rock Co., 189 U. S. 391, 406, 47 L. ed. 865, 869, 23 Sup. Ct. 606.

Beach and water lots of San Francisco.—By the above-mentioned statute the state granted to San Francisco for a period of ninety-nine years the beach and water lots within certain limits, to be thereafter defined by a red line on a map to be pro-

cured by San Francisco and to be deposited in the offices of secretary of state and state surveyor general. The red line is to denote the permanent line of the waterfront. The statute expressly reserved to the state its right to regulate the construction of wharves and other improvements.

1. **As to titles to pueblo lots and lands,** see Act 4286, and notes.

2. **State's jurisdiction over Channel street not relinquished.**—The act does not deprive the state of jurisdiction, by its board of harbor commissioners, over Channel street, which is a mere navigable arm of the bay.—Payne v. English, 79 Cal. 540, 21 Pac. 952. See, also, People v. Williams, 64 Cal. 498, 2 Pac. 393.

3. **As to waterfront line.**—See Knight v. United Land Association, 142 U. S. 161, 35 L. ed. 971, 12 Sup. Ct. 254.

4. **Judicial notice of the ebb and flow of the tide over a particular lot.**—Constructing this act and the acts of 1868 (Stats. 1867-68, p. 355) and 1878 (Stats. 1877-78, p. 263) together, and assuming that some of the blocks granted by this act to the city and county for 99 years have not been reclaimed, and that the tide still ebbs and flows over them, the court will not take judicial notice that any particular block is still subject to the ebb and flow of the tide.—People v. Southern Pacific Co., 177 Cal. 555, 171 Pac. 294.

5. **Same—Abandonment of innavigable blocks.**—It is presumed the blocks granted by this act were not navigable, even if covered by the tide, or that the public easement as to them was intended to be abandoned, and consequently that such blocks are not now within the jurisdiction of the state harbor commission.—People v. Southern Pacific Co., 177 Cal. 555, 171 Pac. 294.

6. **Grantees and purchasers acquired 99-year title to lots within section 2 of the act.**—California on admission into the Union became the owner of her navigable waters and the soil under them, and the water and beach lots within the exception of section 2 of this act, were confirmed by the act, as the state had a right to do, for 99 years, to the purchasers and grantees

thereof.—*Mumford v. Wardwell*, 73 U. S. (6 Wall.) 423, 18 L. ed. 756.

7. **Character of title conveyed** by this and other similar acts was fully defined in *Smith v. Morse*, 2 Cal. 524; *Eldridge v. Cowell*, 4 Cal. 87; *Chapin v. Bourne*, 8 Cal. 294; *Hyman v. Read*, 13 Cal. 445; *Holladay v. Frisbie*, 15 Cal. 635; *Wheeler v. Miller*, 16 Cal. 125; *San Francisco v. Straut*, 84 Cal. 124, 24 Pac. 814; *Pacific, etc., Co. v. Ellert*, 64 Fed. 421.

8. **Same.**—See, also, *Taylor v. Underhill*, 40 Cal. 473, and *United States v. Mission Rock Co.*, 189 U. S. 391, 47 L. ed. 865, 23 Sup. Ct. 606, where McKenna, J., said "The decisions cover a period of many years, and have become a rule of property and the foundation of many titles."

9. **Same.**—"A large and valuable part of the city of San Francisco, extending from the present waterfront to, in some places,

Montgomery street, was at the time of, and subsequent to, the admission of California into the Union, a part of the submerged lands of the bay, but has since been filled in by the many hundred grantees under the city and state, who have erected buildings and improvements thereon at costs running into many millions of dollars. All this has been done in aid of commerce, in the up-building of a great city upon the bay, and with the encouragement and consent of the general government. Under such circumstances, we regard it as very clear that no court would be justified in holding titles thus secured invalid."—*Mission Rock Co. v. United States*, 109 Fed. 763, 48 C. C. A. 641.

10. **The supplementary act May 18, 1853** (Stats. 1854, p. 218) provided for the disposition of the state's reversionary title in the lands covered by the act.

ERECTION OF CITY HALL—SALE OF LOTS.

ACT 4142—An act to provide for the erection of a city hall in the city and county of San Francisco.

History: Approved April 4, 1870, Stats. 1869-70, p. 738.

Citations. *San Francisco v. Canavan*, 42 Cal. 541, 550; *Laver v. Ellert*, 110 Cal. 221, 222, 42 Pac. 806.

DEEDS TO PURCHASERS OF CITY HALL LOTS.

ACT 4143—Purchaser of city hall lots, execution and delivery of deeds to. [Stats. 1873-74, p. 939.]

History: Approved March 30, 1874, Stats. 1873-74, p. 939.

COMPLETION OF CITY HALL.

ACT 4144—An act to provide for the completion of the building in the city and county of San Francisco known as the new city hall.

History: Approved March 24, 1876, Stats. 1875-76, p. 461. Amended March 20, 1878, Stats. 1877-78, p. 382. Supplemented February 15, 1878, Stats. 1877-78, p. 82.

Citations. *Carter v. Kalloch*, 56 Cal. 335, 336; *Greathouse v. Dunn*, 60 Cal. 311, 313; *Mulrein v. Kalloch*, 61 Cal. 522, 524; *People v. Bartlett*, 67 Cal. 156, 158, 159, 7 Pac. 417; *Laver v. Ellert*, 110 Cal. 221, 222, 42 Pac. 806; *Kahn v. Sutro*, 114 Cal. 317, 330, 33 L. R. A. 620, 46 Pac. 87.

CEMETERY AVENUE.

ACT 4146—An act to authorize the board of supervisors of the city and county of San Francisco to sell and convey a certain piece of land comprising old Cemetery avenue and the triangular plaza, reserved by the outsand land committee, up to Central avenue, and for other purposes.

History: Approved March 4, 1874, Stats. 1873-74, p. 272. Prior act of March 4, 1872, Stats. 1871-72, p. 234.

CANAL THROUGH CHANNEL STREET.

ACT 4147—An act to provide for an open canal through Channel street in.

History: Approved March 26, 1868, Stats. 1867-68, p. 355.

1. **Dedication**—The act did not operate as a dedication, *per se*, but was only an offer to dedicate.—The act did not operate as a dedication, *per se*, of any portion of Channel street, but was merely an offer to dedicate, if the city would deepen it and

improve it as the act provided.—*People v. Williams*, 64 Cal. 498, 2 Pac. 393.

2. **Same**—Dedication not accepted.—State could recall offer.—The offer to dedicate was not accepted or the improvements made, and the state had the right to recall

its offer to dedicate.—*People v. Williams*, 64 Cal. 498, 2 Pac. 393.

3. **Presumption as to non-navigability of strips outside the 140-foot channel.**—It is presumed that strips of land outside the

140-foot navigable channel provided for by the act are not navigable waters.—*People v. Southern Pacific Co.*, 177 Cal. 559, 177 Pac. 294.

SANITARY CANAL THROUGH CHANNEL STREET AND MISSION CREEK.

ACT 4148—An act to provide for the construction of an open canal through Channel street and Mission creek, in the city and county of San Francisco, for sanitary purposes, and for the taking of private lands for public use.

History: Approved April 1, 1872, Stats. 1871-72, p. 926.

Citations. *San Francisco v. Ellis*, 54 Cal. 72, 73; *People v. Williams*, 64 Cal. 498, 501, 502, 2 Pac. 393.

LEGALIZING CERTAIN CONVEYANCES.

ACT 4153—An act to legalize certain conveyances.

History: Approved April 14, 1857, Stats. 1857, p. 200. Later act of March 25, 1858, Stats. 1858, p. 84, confirmed certain sales by the commissioners of funded debt on January 25, 1851.

1. **Confirmation of commissioners' sales at auction.**—This act confirmed sales at auction by the commissioners of the funded debt of San Francisco before January 1, 1854; and the later act of March 25, 1858, Stats. 1858, p. 84, confirmed certain sales by the commissioners on January 25, 1851.

CONVEYANCE OF LANDS TO LYING-IN HOSPITAL AND FOUNDLING ASYLUM.

ACT 4155—An act authorizing mayor of to convey certain lands, to the San Francisco lying-in hospital and foundling asylum.

History: Approved March 23, 1872, Stats. 1871-72, p. 513.

CONVEYANCE OF OVERFLOWED LANDS TO SOUTH SAN FRANCISCO HOMESTEAD AND RAILROAD ASSOCIATION.

ACT 4157—An act authorizing conveyances to South San Francisco homestead and railroad association, of certain overflowed lands in San Francisco.

History: Approved April 25, 1863, Stats. 1863, p. 487.

PRESERVATION OF NAME OF DUPONT STREET.

ACT 4169—An act to preserve the name of a street in the city of San Francisco.

History: Approved January 15, 1878, Stats. 1877-78, p. 23.

WIDENING OF DUPONT STREET.

ACT 4170—An act to authorize the widening of Dupont street, in the city of San Francisco.

History: Approved March 23, 1876, Stats. 1875-76, p. 433.

Citations. *Priet v. Hubert*, 62 Cal. 9, 13, 14, 18; *Ex parte Ambrose*, 72 Cal. 398, 409, 440, 442, 14 Pac. 33; *In re Madera Irrig. Dist.* 92 Cal. 296, 327, 28 Pac. 272, 675, 27 *Am. St. Rep.* 106, 14 L. R. A. 755; *Priet v. Reis*, 93 Cal. 85, 86, 28 Pac. 798; *Esterbrook v. O'Brien*, 98 Cal. 671, 672, 33 Pac. 765;

Davis v. San Francisco, 115 Cal. 67, 68, 46 Pac. 863; *Phelan v. San Francisco*, 120 Cal. 1, 3, 6, 52 Pac. 38; *Haines v. Young*, 132 Cal. 512, 513, 65 Pac. 1079; *Meyer v. San Francisco*, 150 Cal. 131, 133, 134, 139, 88 Pac. 722.

DEFINE AND ESTABLISH THE WIDTH OF EAST STREET.

ACT 4171—An act to define and establish the width of East street.

History: Approved March 22, 1866, Stats. 1865-66, p. 361.

CLOSING PORTION OF ELM STREET.

ACT 4172—An act authorizing closing part of Elm street in San Francisco.

History: Approved April 1, 1878, Stats. 1877-78, p. 961.

OPENING FIFTEENTH AVENUE EXTENSION.

ACT 4174—An act to open, establish, grade, and macadamize a public street in the city and county of San Francisco, known and to be called Fifteenth avenue extension, and to take private lands therefor, and to build and construct a bridge over and across Islais creek, in said city and county.

History: Approved April 3, 1876, Stats. 1875-76, p. 762.

AUTHORIZING CERTAIN OFFICERS TO ADMINISTER OATHS.

ACT 4181—An act authorizing president and secretary of exempt fire company to administer oaths in certain cases.

History: Approved March 31, 1876, Stats. 1875-76, p. 610.

HUNTING ON PRIVATE GROUNDS.

ACT 4192—An act preventing any hunting and shooting on private grounds in.

History: Approved March 30, 1872, Stats. 1871-72, p. 764.

CLOSING IVY AVENUE.

ACT 4199—An act to close an unused street in San Francisco.

History: Approved March 29, 1878, Stats. 1877-78, p. 682.

OPENING AND EXTENDING LEIDESDORFF STREET.

ACT 4203—An act to provide for the opening and extending of Leidesdorff street, in the city and county of San Francisco.

History: Approved March 30, 1876, Stats. 1875-76, p. 563.

ESTABLISHING AND OPENING MONTGOMERY STREET SOUTH.

ACT 4212—An act establishing and opening Montgomery street south.

History: Approved April 1, 1878, Stats. 1877-78, p. 932. Prior act of April 1, 1870, Stats. 1869-70 (supp.), p. 3, was repealed in part by the present act.

OPENING AND ESTABLISHING "MONTGOMERY AVENUE."

ACT 4213—An act to open and establish a public street in the city and county of San Francisco, to be called "Montgomery avenue," and to take private lands therefor.

History: Approved April 1, 1872, Stats. 1871-72, p. 911. Supplemented March 23, 1874, Stats. 1873-74, p. 522. Later acts: Act of April 3, 1876, Stats. 1875-76, p. 753, changing the grade of this street; and the act of March 19, 1878, Stats. 1877-78, p. 341, ratifying orders of the board of supervisors relative to street work on the same, are noted.

Citations. People ex rel. Doyle v. Austin, 47 Cal. 353, 357, 359, 361; Omnibus R. R. Co. v. Baldwin, 57 Cal. 160, 164, 166, 167, 174, 175, 177; Mulligan v. Smith, 59 Cal. 206, 220, 221, 223, 227, 228, 230, 234; Kahn v. Sup. of San Francisco, 79 Cal. 388, 392, 21 Pac. 849;

Spaulding v. North S. F., etc., R. R. Assn. 87 Cal. 40, 47, 24 Pac. 600, 25 Pac. 249; Crall v. Poso Irrig. Dist., 87 Cal. 140, 149, 26 Pac. 797; Union T. Co. v. State, 154 Cal. 716, 718, 727, 99 Pac. 183.

SALES AND CONVEYANCES OF "MUTUAL REAL ESTATE COMPANY."

ACT 4215—An act in relation to sales and conveyances of the "Mutual Real Estate Company."

History: Approved March 28, 1876, Stats. 1875-76, p. 525.

NOTARY PUBLIC AT YERBA BUENA ISLAND.

ACT 4221—An act authorizing the appointment of a notary public in the city and county of San Francisco, to reside and transact notarial duties at Yerba Buena island, or Goat island, in the bay of San Francisco, in addition to the number of notaries now authorized by law for said city and county.

History: Approved February 12, 1903, Stats. 1903, p. 26.

CONVEYANCE OF LOT TO LADIES' PROTECTION AND RELIEF SOCIETY.

ACT 4246—An act authorizing the conveyance of a certain lot to San Francisco Ladies' Protection and Relief Society.

History: Approved March 30, 1872, Stats. 1871-72, p. 765.

MODIFICATION OF GRADES OF CERTAIN STREETS.

ACT 4253—An act to modify the grades of certain streets in the city and county of San Francisco.

History: Approved March 27, 1876, Stats. 1875-76, p. 500.

CHANGE OF CERTAIN STREET GRADES.

ACT 4254—An act to change the grades of certain streets in the city and county of San Francisco.

History: Approved April 1, 1878, Stats. 1877-78, p. 966.

LEGALIZING GRADES OF CERTAIN STREETS.

ACT 4255—An act to legalize the grades of certain streets in the city and county of San Francisco.

History: Approved March 25, 1874, Stats. 1873-74, p. 590.

OPENING SEVENTH STREET.

ACT 4256—An act to open and establish a public street in the city and county of San Francisco, to be called "Seventh street," to take private lands therefor; and to grade, macadamize, and improve a portion of Seventh street, and to construct a bridge thereon.

History: Approved April 3, 1876, Stats. 1875-76, p. 772. The later act of March 13, 1878, Stats. 1877-78, p. 233, established the grade of Seventh street between Bryant and Brannan streets.

OPENING SIXTH STREET.

ACT 4257—An act to open and establish a public street in the city and county of San Francisco, to be called "Sixth street"; to take private lands therefor; and to grade, macadamize, and improve a portion of Sixth street, and to construct a bridge across Channel street.

History: Approved April 3, 1876, Stats. 1875-76, p. 866.

VACATING CERTAIN STREETS AND MARKET PLACES.

ACT 4263—An act to vacate certain streets, alleys, and market places in the city and county of San Francisco, and to donate the same and other tide lands belonging to the state of California to the city and county of San Francisco for commercial purposes, and other matters relating thereto.

History: Approved March 30, 1872, Stats. 1871-72, p. 722. Amended (1) March 11, 1874, Stats. 1873-74, p. 359; (2) March 24, 1903, Stats. 1903, p. 363.

CHANNEL STREET AND MISSION CREEK—OPENING STREET AND CONSTRUCTING SEWER.

ACT 4275—An act to confer additional powers upon the board of supervisors of the city and county of San Francisco, and upon the auditor and treasurer thereof, and to authorize certain appropriations of money by said board.

History: Approved March 27, 1874, Stats. 1873-74, p. 711. Supplemented February 8, 1876, Stats. 1875-76, p. 74.

This act authorized the making of certain appropriations, the acquiring of certain lands, including lands contiguous to Channel street and Mission creek, and the vaca-

tion and sale of certain parts of Channel street and Mission creek.

1. Act did not operate as a grant.—This act did not operate as a grant to the city

and county.—San Francisco v. Ellis, 54 Cal. 72.

2. Navigable waters did not pass out of state's control.—None of the Channel street

acts surrendered the state's control of that part of the street covered by the navigable waters of the bay.—People v. Williams, 64 Cal. 495, 2 Pac. 339

OPENING AND EXTENDING TEHAMA STREET.

ACT 4278—An act to provide for the opening and extending of Tehama street, in the city and county of San Francisco.

History: Approved March 30, 1878, Stats. 1877-78, p. 802.

OPENING VALENCIA STREET.

ACT 4284—An act to authorize the board of supervisors of the city and county of San Francisco to open Valencia street, in said city and county, from a point about four hundred feet north of Mission street to the northwesterly line of Mission, and to condemn property for the roadway of said street.

History: Approved April 1, 1878, Stats. 1877-78, p. 923.

ESTABLISHING GRADE OF VALLEJO STREET.

ACT 4285—An act to confer further powers on the board of supervisors of the city and county of San Francisco, and to establish the grade of Vallejo street, in said city and county.

History: Approved April 1, 1878, Stats. 1877-78, p. 931.

RATIFYING AND CONFIRMING VAN NESS ORDINANCE.

ACT 4286—An act concerning the city of San Francisco, and to ratify and confirm certain ordinances of the common council of said city.

History: Approved March 11, 1858, Stats. 1858, p. 52.

Editor's note.—The act also confirmed the supplementary ordinance No. 845, approved September 27, 1855, selecting and designating public squares and reservations for hospitals, fire engines, and school purposes, and for adopting the plan of streets in the western and southwestern sections of the city and also confirming the Van Ness ordinance.

Commissioners were appointed under the ordinances to make a plan of and report on the location of streets, etc. Their report was made accompanied by the map, and the same was adopted, approved, and ratified October 16, 1856; and this order was also set out in the act and ratified and confirmed.

The act itself, with the ordinances and orders, appear as note 3 to Hart v. Burnett, 15 Cal. 530, at p. 627. Note 1 contains a synopsis of grants of land by Mexican governors within or partly within the limits of the pueblo of San Francisco. Note 2 contains a schedule of grants made by the principal authorities between the year 1835 and July 7, 1846. Note 4 is a translation of what is known as the "Zamorano Document" giving the boundaries of the pueblo and authorizing the establishment of the first Ayuntamiento. It is dated at Monterey November 4, 1834, and signed by Governor Jose Figueroa.

The legal questions arising under the Van Ness ordinance and the present act were at one time of absorbing interest, and the earlier California reports are filled with them. It is a phase of litigation that be-

longs exclusively to the past, however; a subject with which the legal antiquarian alone is likely to busy himself. No good purpose would be served in annotating, in a book designed for the practical use of the busy professional man, the scores of decisions dealing with the subject; and a few of the leading cases will be merely referred to.

The first important case involving the validity and effect of the Van Ness ordinance and of the present act confirming and approving it, was Hart v. Burnett, 15 Cal. 530, where it was held, in a very voluminous opinion, that the act was a constitutional exercise of sovereign power, and that the ordinance vested in the possessors therein described, as against the city and county, and the state, a title to the lands covered by it, and this decision has never been seriously questioned.

The board of supervisors attempted to repeal the Van Ness ordinance March 2, 1858, nine days before the approval of the present act. The supreme court does not appear to have passed directly on the validity of the act, in view of this repeal or attempted repeal, but the court, in Hart v. Burnett, on petition for rehearing (15 Cal. 624), had this to say on that point:

"It is now insisted that we were misled in relation to the Van Ness ordinance; that 'in point of fact' that ordinance was repealed prior to the passage of the act of 1858, confirming it. . . . But we are by no means convinced that the mere order—if it were properly before us—of the board

of supervisors (appended to the petition, and of date March 2, 1858) destroyed the power of the legislature to give effect to the previous ordinances of the city. (See 3 How. 550; 9 How. 184, in addition to the cases cited in the opinion.) And this, even if the board of supervisors, under the stringent and restrictive provisions of the consolidation bill, had authority to act upon the subject. (But see sections 67-74 of the act.) It would be difficult to show that if the legislature has the acknowledged power of repealing the charter of a municipal corporation, the effect of which repeal would be to cause the whole property held for public use to revert to the state, why it would not have power to give effect to an ordinance disposing of portions of it on a professed consideration, when such ordinance had been partially executed and continued in force for a number of years, and probably important rights had vested under it."

Whatever merit there might have been in the contention as to the effect of the attempted repeal, it is certain that both state and federal courts have recognized the validity of the act and its effect as a vesting of the title of the city and state in the persons who were described in the ordinance. See *Payne v. Treadwell*, 16 Cal. 221; *San Francisco v. Beideman*, 17 Cal. 443; *Hubbard v. Sullivan*, 18 Cal. 508; *Board of Education v. Fowler*, 19 Cal. 11; *Carlton v. Townsend*, 28 Cal. 219; *Brooks v. Hyde*, 37 Cal. 366; *San Francisco v. Cannavan*, 42 Cal. 556; *LeRoy v. Dunkerly*, 54 Cal. 453; and many later cases.

In *Burk v. Howe*, 171 Cal. 242, 152 Pac. 434, a case in which the title to 50 vara lot number 428, was involved, Justice Shaw said:

"The plaintiffs established their title to the lot under a grant from John W. Geary, alcalde of San Francisco, dated and duly recorded on December 10, 1849. This title was confirmed to the holders thereof, so far as the city of San Francisco was con-

cerned, by the Van Ness ordinance of 1855, approved by the state legislature by the act of March 11, 1858 (Stats. 1858, p. 52). It was fed up to the full quality of a fee simple absolute by the act of congress of July 1, 1864 (13 U. S. Stats. 333), the act of March 8, 1866 (14 U. S. Stats. 4), and by the decree of the land commission of the United States circuit court confirming the pueblo grant from the Mexican government to San Francisco (*Cohas v. Raisin*, 3 Cal. 443; *Hart v. Burnett*, 15 Cal. 530, 614; *San Francisco v. LeRoy*, 133 U. S. 666 [34 L. ed. 1096, 11 Sup. Ct. 364]; *Grisar v. McDowell*, 73 U. S. (6 Wall.) 363 [18 L. ed. 863])."

The act and the acts of congress referred to in Judge Shaw's opinion, were fully discussed in the following: *Clark v. San Francisco*, 124 U. S. 639, 31 L. ed. 553, 8 Sup. Ct. 659; *Pacific, etc., Co. v. Ellert*, 64 Fed. 421; *Mission Rock Co. v. United States*, 109 Fed. 763, 48 C. C. A. 641.

Citations.—*McLeran v. Benton*, 43 Cal. 476; *Pickett v. Hastings*, 47 Cal. 269, 284; *Umbarger v. Chaboya*, 49 Cal. 525, 537, 538; *Hoadley v. San Francisco*, 50 Cal. 265, 271, 272; *Sawyer v. San Francisco*, 50 Cal. 370, 375, *Whiting v. Quackenbush*, 54 Cal. 306, 310; *Brady v. Page*, 59 Cal. 52, 55; *Brook v. Horton*, 68 Cal. 554, 555, 10 Pac. 204; *Hoadley v. San Francisco*, 70 Cal. 320, 325, 12 Pac. 125; *San Francisco v. Holladay*, 76 Cal. 18, 20, 17 Pac. 942; *San Francisco v. Bradbury*, 92 Cal. 414, 416, 28 Pac. 803; *People ex rel. Bryant v. Holladay*, 93 Cal. 241, 244, 29 Pac. 54, 27 Am. St. Rep. 186; *Labs v. Cooper*, 107 Cal. 656, 658, 40 Pac. 1042; *San Francisco v. Burr*, 108 Cal. 460, 462, 41 Pac. 482; *Holladay v. San Francisco*, 124 Cal. 352, 354, 57 Pac. 146; *San Francisco v. Sharp*, 125 Cal. 534, 535, 536, 58 Pac. 173; *San Francisco, etc., Land Co. v. Hartung*, 138 Cal. 223, 226, 71 Pac. 337; *Gwin v. Calegaris*, 139 Cal. 384, 389, 73 Pac. 851; *Monterey v. Jacks*, 139 Cal. 542, 548, 73 Pac. 436.

IMPROVEMENT OF VAN NESS AVENUE.

ACT 4287—An act to provide for the improvement of Van Ness avenue in the city and county of San Francisco.

History: Approved March 30, 1878, Stats. 1877-78, p. 829.

SALE OF CERTAIN STATE LAND WITHIN THE WATERFRONT LINE.

ACT 4291—An act to provide for the sale of certain property of the state of California, within the waterfront line of the city and county of San Francisco.

History: Approved April 26, 1858, Stats. 1858, p. 323.

This act authorized the sale of land bounded by Davis, Sacramento and Clay streets.

FURTHER EXTENSION OF WATERFRONT LINE.

ACT 4292—An act to provide for the further extension of the waterfront line.

History: Approved April 23, 1880, Stats. 1880, p. 132.

CONFIRMING TITLE TO CERTAIN WATERFRONT PROPERTY.

ACT 4293—An act to confirm the title to certain property on the waterfront in the city and county of San Francisco.

History: Approved March 23, 1878, Stats. 1877-78, p. 417.

QUITCLAIMING CITY SLIP LOT NO. 116.

ACT 4294—An act quitclaiming to the successors in interest of Sallie C. Perry all claim of the state of California in that certain tract of land in the city and county of San Francisco known as "city slip lot number one hundred and sixteen," and empowering and directing the governor to execute a deed of quitclaim therefor to said successors in interest of said Sallie C. Perry.

History: Approved March 9, 1893, Stats. 1893, p. 102.

QUITCLAIMING WATER LOT NO. 415.

ACT 4295—An act quitclaiming to the successors in interest of James Bowman all claim of the state in "Water Lot No. 415," in San Francisco.

History: Approved March 11, 1893, Stats. 1893, p. 151.

COMPROMISE OF LITIGATION CONCERNING WATERFRONT PROPERTY.

ACT 4298—An act to authorize the compromise of litigation concerning a portion of the waterfront of the city and county of San Francisco.

History: Approved April 3, 1876, Stats. 1875-76, p. 905.

CONVEYANCE TO WILLIAM SCHOLLE.

ACT 4299—An act releasing to William Scholle, and his assigns, certain lands in San Francisco, and authorizing the governor to make conveyances thereof.

History: Approved February 15, 1881, Stats. 1881, p. 3.

SALES OF PERISHABLE PRODUCTS ON WHARVES.

ACT 4300—An act to regulate the sales of perishable products on the wharves and other state property in the city and county of San Francisco by prohibiting such sales except by or in behalf of those holding permits from the board of state harbor commissioners and making such unlawful sales a misdemeanor, and prescribing the penalty therefor, and providing the conditions upon which such permits shall be issued.

History: Approved March 2, 1903, Stats. 1903, p. 73.

Unlawful to sell perishable products on state wharves without permit.

§ 1. It shall be unlawful for any person to sell, upon the public wharves or other property belonging to this state, in the city and county of San Francisco, and within the jurisdiction of the board of state harbor commissioners, any fruit, vegetables, poultry, eggs, honey, game, or other produce commonly known, and hereinafter referred to as perishable products, unless such person or the person, firm or corporation, which he may duly represent, shall hold the permit hereinafter described authorizing such sales to be made. Any violation of this act shall be deemed a misdemeanor punishable by a fine of not less than twenty-five dollars or more than five hundred dollars.

Persons not holding permits must remove products. Tolls.

§ 2. Perishable products consigned to persons, firms or corporations not holding the permit hereinafter described, and delivered by carrier upon any wharf on the San Francisco waterfront, must be removed from said wharf within twenty-four hours after their arrival, and the board of state harbor commissioners must levy and collect on such perishable products in addition to the regular state tolls, such additional wharfage as they may prescribe, but not less than the amount of the regular tolls, for each twenty-four hours or fraction thereof which such perishable products shall remain upon the wharf.

Conditions upon which permits shall be issued. Form of application.

§ 3. Upon application of any person, firm or corporation receiving or expecting to receive perishable products to be delivered by carrier upon any wharf on the San

Francisco waterfront, the board of state harbor commissioners shall issue free of charge to such applicant, a permit authorizing him to sell such products when delivered on the wharves or state property, during the time such perishables are permitted to remain there, under the general regulations prescribed by the commission; provided, nevertheless that said permit shall not be issued until the applicant shall have signed the application which shall read as follows:

"I (or we), expecting to receive consignments of perishable products to be delivered by carrier on the wharves or other property of the state of California in the city and county of San Francisco, and desiring to dispose of the same before removal, hereby make application for a permit to be valid for one year from the date of issue, to sell perishable products on said wharves or other state property. In consideration of the receipt of such permit, I (or we) promise to faithfully observe all the regulations which are or may be prescribed by the board of the state harbor commissioners in regard to such sales, and in particular I (or we) agree that I (or we) will not, during the life of such permit, be a party to any conspiracy, agreement or understanding whereby I (or we) shall refuse to sell [to] any solvent purchaser or buy from any person whatever, and I (or we) agree that I (or we) will sell, impartially, and at the same prices, to all who desire to purchase for cash, without regard to their business or intended disposition of the products, and will exercise no discrimination whatever between buyers or sellers, by reason of their occupation, affiliations or nonaffiliations. I (or we) also agree that in case of violation of this agreement, the board of state harbor commissioners may revoke the permit hereby applied for, whereupon I (or we) agree to surrender the same, and I (or we) agree that the board of state harbor commissioners shall be the sole judges of the fact of such violation, I (or we) having had a hearing in the matter.

Date,

Form of permit.

§ 4. The permit herein provided for shall be in such form as the board of state harbor commissioners may determine and shall be valid for one year from date of issue and no longer.

Violation of agreement. Penalty.

§ 5. In case of violation of this agreement by the holder of any permit the board of state harbor commissioners upon a hearing after giving due notice to all parties concerned, and finding the fact of such violation shall revoke and cancel the permit, and shall not issue a new permit to the offending party, except upon a new execution of the agreement hereinbefore set forth and the payment of a fee of fifty dollars, and the right to receive a new permit shall rest in the discretion of said board of state harbor commissioners.

Duty of harbor commissioners.

§ 6. The board of state harbor commissioners and all its officials and employees are charged with the enforcement of this act, and shall eject from the wharves or other state property all persons found attempting to make sales in violation of this act. And the board of state harbor commissioners through such officials as it may from time to time designate, shall prosecute all violations of this act in the proper court.

Repeal of conflicting acts.

- § 7. All acts and parts of acts in conflict with this act are hereby repealed.
- § 8. This act shall take effect immediately.

MUNICIPAL STREET RAILROAD.

ACT 4301—An act granting to the city and county of San Francisco the right to construct, maintain and operate a municipal street railroad over, upon and along the lands under the control of the state board of harbor commissioners within the said city and county of San Francisco.

History: Approved March 6, 1911, Stats. 1911, p. 284.

Granting San Francisco right to construct railroad on state lands.

§ 1. The right is hereby granted to the city and county of San Francisco to construct, maintain and operate a single or double track municipal street railroad, with the necessary switches, turnouts, cross-overs and appurtenances, over, upon and along the lands of the state of California under the jurisdiction and control of the state board of harbor commissioners, from a point where the boundary line of said state lands intersects the eastern boundary of the Presidio and following the general direction of the waterfront line to the southern boundary thereof at the northerly line of the county of San Mateo, provided that the right hereby granted shall never be assigned or transferred by said city and county of San Francisco.

Location of tracks.

§ 2. The precise location of the tracks to be laid down shall be determined by the mutual agreement of the board of state harbor commissioners and the municipal authorities of said city and county, but shall be as near as practicable to the seawall, constructed and to be constructed, with as little obstruction as possible to the free use of the property of the state. The city and county of San Francisco shall keep in a good state of repair the space occupied by its tracks, between the tracks and for a space of two feet on each side thereof, and shall pave and repave the same as may be directed by the state board of harbor commissioners.

§ 3. This act shall take effect immediately.

MAINTENANCE OF FIRE BOATS.

ACT 4302—An act providing that one-half of the cost and expense of the maintenance and of the salaries of the officers, firemen and crew of the fire boats "David Scannell" and "Dennis Sullivan" shall be borne and paid by the state of California out of the general fund in the state treasury and making an appropriation therefor.

History: Approved April 21, 1911, Stats. 1911, p. 1067.

State to pay half cost of maintaining fire boats "David Scannell" and "Dennis Sullivan."

§ 1. The state of California shall pay one-half of the cost and expense of the maintenance and of the salaries of the officers, firemen and crew of the fire boats "David Scannell" and "Dennis Sullivan," owned by the city and county of San Francisco, which shall not exceed in the aggregate the sum of fifty thousand dollars per annum and which shall be paid out of the general fund in the state treasury for the use thereof while said fire boats remain in commission and are used on the bay of San Francisco and tributary waters and said boats shall be used for protection against fire to wharves, shipping and the property of the state on the waterfront of San Francisco and elsewhere without any further cost to the state of California.

Monthly statement of expenses.

§ 2. The board of fire commissioners of the city and county of San Francisco may, each month, present to the state board of examiners an itemized account of the cost and expense of the maintenance and of the salaries of the officers, firemen and crew of said fire boats for the preceding month. The state board of examiners shall thereupon audit and approve one-half of said cost and expense as disclosed by said itemized account.

Appropriation.

§ 3. There is hereby appropriated out of the general fund in the state treasury the sum of one hundred thousand dollars to be expended in the manner herein specified.

Controller authorized to draw warrants.

§ 4. The controller of state is hereby authorized and directed to draw his warrant in favor of the city and county of San Francisco, each month for the amount audited by the state board of examiners, and the treasurer is directed to pay the same.

EXCHANGE OF REAL ESTATE.

ACT 4303—An act to authorize the exchange of certain real estate belonging to the state of California, situated in the city and county of San Francisco, for other lands belonging to the city and county of San Francisco, and to authorize the governor to execute and to receive the necessary deeds of conveyance thereof.

History: Approved April 23, 1913. In effect August 10, 1913. Stats. 1913, p. 70.

Authority to exchange state land in San Francisco.

§ 1. The consent of the state of California is hereby given to exchange with the city and county of San Francisco, that certain lot and parcel of land situated in the city and county of San Francisco and described as follows: Commencing at a point formed by the intersection of the easterly line of Polk street with the northerly line of Fulton street; and running thence northerly along said easterly line of Polk street 120 feet to the southerly line of Ash street; thence at a right angle easterly along said southerly line of Ash street 100 feet; thence at a right angle southerly 120 feet to the said northerly line of Fulton street; thence at a right angle westerly along said northerly line of Fulton street 100 feet to the said easterly line of Polk street and point of commencement. Being a portion of Western addition block No. 4. The land to be received in exchange for the land herein described, shall be located in the vicinity of the above described lot or parcel of land and shall be of equal value thereto as may be determined by the governor, who is hereby authorized to execute under the seal of the state of California the necessary deed of conveyance therefor, and to receive from the city and county of San Francisco a like deed of conveyance of the land to be exchanged.

ANNEXATION OF SAN MATEO TERRITORY.

ACT 4306—An act to carry into effect the provisions of subdivisions six and seven of section eight and one-half of article eleven of the constitution of the state of California; and also to provide for the alteration of the boundaries of and for the annexation of territory located in the county of San Mateo to the city and county of San Francisco, for the incorporation of such annexed territory in and as a part thereof, and for the government of such annexed territory as an integral part of such city and county of San Francisco.

History: Approved April 24, 1917. In effect—see section 31, Stats. 1917, p. 175.

City and county of San Francisco may annex territory in San Mateo county.

§ 1. It shall be competent for the city and county of San Francisco a municipal corporation organized and incorporated under a freeholders' charter under and by virtue of the constitution and laws of the state of California, to annex territory contiguous to such consolidated city and county, unincorporated or otherwise, situate wholly in the county of San Mateo, state of California, said annexed territory to be an integral part of such city and county.

Election in incorporated cities on proposal for annexation. Notice of election.

Description of territory and debts. Precincts. Election officers.

§ 2. If additional territory, including more than one incorporated city or town, is proposed to be annexed to said city and county of San Francisco, the board of supervisors of said city and county will be empowered to give notice by a resolution of said board of supervisors, to the legislative bodies of any such incorporated cities or towns proposed to be so annexed of the said annexation proposal. Upon a petition requesting such notice to be so given, filed with said board of supervisors of said city and county and signed by not less than fifteen per centum of the qualified electors of said city and county, it shall be the duty of said board of supervisors of said city and county to thereupon by resolution of said board of supervisors, so give notice to the legislative bodies of such incorporated cities or towns proposed to be so annexed. Each of said last described legislative bodies of said incorporated cities or towns may, upon such notice, given by said board of supervisors of the city and county of San Francisco either by its own initiative or upon the initiative of such a petition so filed with said board of supervisors, and in any such incorporated city or town, upon a petition requesting such action filed with such a legislative body thereof and signed by not less than fifteen per centum of the qualified electors of such incorporated city or town, proposed to be so annexed, must, thereupon cause notice to be given of an election to be held in such incorporated city, or town, proposed to be so annexed, at which shall be submitted to the qualified electors of such city, or town, a proposal for the annexation thereof to said city and county of San Francisco. Said notice shall be given by publication for at least five successive publications in a newspaper of general circulation printed and published in such incorporated city or town so proposed to be annexed, the last publication to be not less than twenty days prior to any such election. This notice shall include a particular description of any such incorporated cities or towns so proposed to be annexed by naming such incorporated cities or towns, together with a particular description of any debts to be assumed by the district as hereinafter set forth, unless such particular description is contained in the said election proposal so submitted. If there be no such newspaper so printed and published in any such incorporated city or town then such publication may be made in any newspaper of general circulation printed and published in the nearest incorporated city or town where such a newspaper may be so printed and published. The electors of said incorporated city or town shall be directed by such notice to vote upon such question in the manner hereinafter set forth. Such legislative body of said incorporated city or town proposed to be so annexed is hereby empowered and it shall be its duty to establish, and in such notice of election, to designate the voting precinct or precincts and the place or places at which the polls will be open for such election in such incorporated city or town so proposed to be annexed, which said place or places shall be that or those usually used as voting places within such incorporated city or town, if any such there be. The legislative body of said incorporated city or town, proposed to be so annexed, is hereby empowered to, and it shall appoint the officers of such election, who shall be, for each voting place in such incorporated city or town, two judges and one inspector, each of whom shall be a qualified elector of the voting precinct in which he is appointed to act as an officer of such election.

Question for forming district to vote on consolidation. Counting ballots.

§ 3. Upon the ballots to be used at any such election there shall be printed the words "Shall (herein insert name of the city or town to be included in such annexed territory) be included in a district to be hereafter defined by the city and county of San Francisco which district shall, within two years from the date of this election, vote upon a proposal submitted as one indivisible question, that such district to be then described and set forth shall consolidate with the city and county of San Francisco in

a consolidated city and county government, and that such district shall become subject to taxation, along with the entire territory of the proposed city and county in accordance with the assessable valuation of the property of said district for the following indebtedness of said city and county of San Francisco to wit: (herein insert in general terms, reference to any debt to be assumed and if none insert 'None'), 'Yes,' '' and "Shall (herein insert name of the city or town, to be included in such annexed territory) be included in a district to be hereafter defined by the city and county of San Francisco, which district shall, within two years from the date of this election, vote upon a proposal submitted as one indivisible question, that such district to be then described and set forth shall consolidate with the city and county of San Francisco in a consolidated city and county government, and that such district shall become subject to taxation, along with the entire territory of the proposed city and county in accordance with the assessable valuation of the property of said district for the following indebtedness of said city and county of San Francisco to wit: (herein insert in general terms reference to any debt to be assumed, and if none insert 'None'), 'No.' '' There shall be a voting square to the right of and opposite each such proposition. If an elector shall stamp a cross (X) in the voting square after the printed word "Yes" the vote of such elector shall be counted in favor of the said proposal, and if an elector shall stamp a cross (X) in the voting square after the printed word "No" the vote of such elector shall be counted against such proposal. The judges and inspector of such election for each polling place shall immediately, upon the closing of the polls, count the ballots, make up, certify and seal the ballots and tally-sheets of the ballots cast at their respective polling places, doing so as nearly as practicable, in the manner provided in the laws of this state relating to general elections, and they shall thereupon deliver the ballots, tally-sheets and returns to and deposit the same with the clerk of the legislative body of such incorporated city or town proposed to be so annexed.

Canvass of returns. Returns sent to board of supervisors of San Francisco. Returns sent to secretary of state.

§ 4. Such legislative body of said incorporated city or town proposed to be so annexed shall, at the time provided for its regular meeting next after the expiration of five days from and after the date of said election meet and proceed to canvass said returns, and said canvass shall be completed at such meeting, if practicable, and in any event, as soon as practicable, avoiding adjournment or adjournments until said canvass is completed. Immediately upon the completion of such canvass such canvassing body shall cause a record thereof to be made and entered upon its minutes stating the proposal submitted and showing the whole number of votes cast on the proposal submitted to such incorporated city or town, the number of votes cast therein in favor of the said proposal, and the number of votes cast therein against the said proposal. The clerk or other officer performing the duties of clerk of such canvassing body shall promptly, and within ten days of the completion of such canvass by said body make and certify under the seal thereof, and transmit to the board of supervisors of the city and county of San Francisco a copy of the records of the canvass of the returns of the election so canvassed by said canvassing body, together with a statement showing the date of such election, and the time and the result of the canvass of the returns of such election, and containing a description of such incorporated city or town, by naming the said incorporated city or town. And if it shall appear, from a canvass of the returns of the election held in the said incorporated city or town that a majority of the qualified electors voting on such proposal voted in favor thereof the said clerk or other officer performing the duties of clerk of such body so canvassing such returns shall also, promptly, and within said ten days, make and certify, under the seal thereof, and transmit to the secretary of state of the state of California, a like copy of the record of the canvass of said returns, together with a like statement showing the date of such

election, and the time and the result of the canvass of the returns of such election, and containing a description of such incorporated city or town, by naming said incorporated city or town. Said document shall be filed by the secretary of state immediately upon receipt thereof.

Limit to number of elections.

§ 5. Nothing herein contained shall be construed as prohibiting a further election or further elections to be held in any such incorporated city or town to which the foregoing proposal shall have been submitted, and a majority of whose qualified electors voting thereon shall not have voted in favor thereof; provided, that there must be an interval of at least ninety days between said elections, and that not more than three such elections shall be held in any one incorporated city or town, upon any one initiation of an annexation proposal by the city and county of San Francisco; and further provided, that no annexation proposal shall be so initiated by the city and county of San Francisco, more than once in a period of two years.

District formed of incorporated and unincorporated territory. Size of district.

§ 6. Any and all of the said incorporated cities or towns, to which the foregoing proposal shall have been submitted, and a majority of whose qualified electors voting thereon shall have voted in favor thereof together with such unincorporated territory as the board of supervisors of the said city and county of San Francisco may determine to have included, the whole to form an area contiguous to said city and county shall be by the board of supervisors of said city and county created into a district; provided, however, that with reference to any such district which may be first created following the adoption of this act, no such district shall in any event be created containing a population of less than 9,000 people or a total area of less than 75 square miles. The population as ascertained and established by the last preceding census taken under the authority of the congress of the United States, or the legislature of California, or of the board of supervisors of said county of San Mateo, or of any legislative body of any such incorporated city or town may be used as the basis for ascertaining such population. Also, if necessary, such population of the said district or any portion thereof, may be determined by the board of supervisors of said county of San Mateo; and as to any incorporated city or town in said district, such population may, if necessary, be determined by the legislative body of such incorporated city or town.

Question for consolidation.

§ 7. Subsequent to said elections in said incorporated cities or towns, and within the two years above described, there shall be submitted by the board of supervisors of the county of San Mateo a proposal to the voters of said entire district, as one indivisible question, substantially in the following form: "Shall the territory (herein designate in general terms the territory to be annexed) consolidate with the city and county of San Francisco in a consolidated city and county government, said consolidation to take effect (herein insert date when such consolidation shall take effect) and shall the said annexed territory become subject to taxation, as an integral part of the city and county so formed, in accordance with the assessable valuation of property of said territory for the following indebtedness of said city and county of San Francisco to wit: (herein insert in general terms, reference to any debts to be assumed, and if none, insert 'None'), 'Yes,' " and "Shall the territory (herein designate in general terms the territory to be annexed) consolidate with the city and county of San Francisco in a consolidated city and county government, said consolidation to take effect (herein insert date when such consolidation shall take effect) and shall the said annexed territory become subject to taxation, as an integral part of the city and county so formed, in accordance with the assessable valuation of property of said territory for the following indebtedness of said city and county of San Francisco (herein insert in general

terms, reference to any debts to be assumed, and if none, insert 'None'), 'No.''' There shall be a voting square to the right of and opposite each such proposition. If an elector shall stamp a cross (X) in the voting square after the printed word "Yes" the vote of such elector shall be counted in favor of the said proposal and if an elector shall stamp a cross (X) in the voting square after the printed word "No" the vote of such elector shall be counted against such proposal.

Manner of submitting question. Notice. Description of territory and debts.

§ 8. The manner to be followed by the board of supervisors of said county of San Mateo in the submission of said question and the holding of such election, their establishment of election precincts and their appointment of election officers, and the publication of the notice of such election, shall be substantially the same as that set forth in section two of this act for the submission of an annexation proposal to any incorporated city or town, and the notice thereof shall be published in the incorporated city or town included in said district containing the largest population as ascertained and established by the last preceding census taken under the authority of the congress of the United States, or of the legislature of California; provided, that if there be no newspaper printed and published in said incorporated city or town, as provided for herein, then in the nearest incorporated city or town where such a newspaper is so printed and published. This notice shall include a particular description of any such incorporated city or town so proposed to be annexed, by naming such incorporated city or town together with a particular description of any debts to be assumed by such district, as in this act set forth, unless such particular description is contained in the said election proposal so submitted. In addition to such description such territory as may be made up of unincorporated territory, shall also be designated in such notice by some appropriate name or other words of identification, by which such territory may be referred to and indicated upon the ballots to be used at any election at which the question of annexation or consolidation of additional territory is submitted as herein provided. Any such unincorporated territory must in said notice be specifically described by giving the boundaries thereof, unless such particular description is contained in the said election proposal so submitted.

Proposal for permitting territory to withdraw from San Mateo county.

§ 9. At the same election so held in said district there must also be held throughout the county of San Mateo, and also under the supervision of the board of supervisors of said county of San Mateo, an election at which a proposition must be submitted to the electors of such county for the consent of such county to such annexation of said district to the city and county of San Francisco. The board of supervisors of said county of San Mateo shall submit a proposal to the voters of said entire county, substantially in the following form: "Shall the territory (herein designate in general terms the territory to be annexed) be permitted to withdraw from the county of San Mateo and consolidate with the city and county of San Francisco in a consolidated city and county government, said consolidation to take effect (herein insert date when such consolidation shall take effect) 'Yes,' " and "Shall the territory (herein designate in general terms the territory to be annexed) be permitted to withdraw from the county of San Mateo and consolidate with the city and county of San Francisco in a consolidated city and county government, said consolidation to take effect (herein insert date when such consolidation shall take effect) 'No.' " There shall be a voting square to the right of and opposite each such proposition. If an elector shall stamp a cross (X) in the voting square after the printed word "Yes" the vote of such elector shall be counted in favor of the said proposal, and if an elector shall stamp a cross (X) in the voting square after the printed word "No" the vote of such elector shall be counted against such proposal.

Manner of submitting question. Notice. Description of territory.

§ 10. The manner to be followed by the board of supervisors of the said county of San Mateo in the submission of said question and the holding of such election, their establishment of election precincts, and their appointment of election officers, and the publication of notice of such election shall be substantially the same as that set forth in sections two and eight of this act for the submission of an annexation proposal to any incorporated city or town, and to any district as provided for in this act, and the notice thereof shall be published in the incorporated city or town in said county containing the largest population as ascertained and established by the last preceding census taken under the authority of the congress of the United States or of the legislature of California. And if there be no such newspaper so published in said last described city, then in the nearest incorporated city or town where such a newspaper is so printed and published. This notice shall contain a description of the territory proposed to be annexed the same as provided for in section eight of this act for the notice to be given to the district referred to in said section eight. So far as possible, the notices to be published to the county of San Mateo and to the district proposed to be annexed to the city and county of San Francisco shall be consolidated in one notice. And further, so far as possible the election precincts and polling places and election officers for both the county and the district election shall be identical.

Returns sent to supervisors of San Mateo county.

§ 11. The judges and inspectors of such elections in said county of San Mateo and in said district so proposed to be annexed, for each polling place, shall immediately, upon the closing of the polls, count the ballots, make up, certify and seal the ballots and tally-sheets of the ballots cast at their respective polling places, doing so as nearly as practicable in the manner provided in the laws of this state relating to general elections and they shall thereupon deliver the ballots, tally-sheets and returns to and deposit the same with the clerk of the said board of supervisors of the county of San Mateo.

Canvass of returns. Returns sent to board of supervisors of San Francisco. Returns to secretary of state.

§ 12. Such board of supervisors of the county of San Mateo shall at the time provided for its regular meeting next after the expiration of ten days from and after the date of said elections meet and proceed to canvass said returns, and said canvass shall be completed at such meeting, if practicable, and in any event, as soon as practicable, avoiding adjournment or adjournments until said canvass is completed. The said board of supervisors shall so canvass the returns of any such election held in the county to determine whether the county will permit the withdrawal therefrom of any territory, and likewise the returns of any such election held in any such district. Immediately upon the completion of such canvass such canvassing body shall cause a record thereof to be made and entered upon its minutes stating the proposals submitted and showing: first, the whole number of votes cast on the proposal submitted to the county of San Mateo, the number of votes cast therein in favor of such proposal and the number of votes cast therein against such proposal; and second, the whole number of votes cast on the proposal submitted to the district proposed to be annexed, the number of votes cast therein in favor of such proposal and the number of votes cast therein against such proposal. The clerk or other officer performing the duties of clerk of such canvassing body shall promptly, and within ten days of the completion of such canvass by said body, make and certify under the seal thereof, and transmit to the board of supervisors of the city and county of San Francisco a copy of the records of the canvass of the returns of the elections so canvassed by said canvassing body, together with a statement showing the date of such elections, and the time and the result of the canvass of the returns of such elections, and containing a description of

such district so proposed to be annexed, by naming the incorporated cities or towns in said district and also the unincorporated territory in said district, as said incorporated cities or towns and unincorporated territory were described in the election notice as provided for in this act for the elections held in said district. And if it shall appear, from a canvass of the returns of the election held in the county of San Mateo or of the election held in the district so proposed to be annexed, that a majority of the qualified electors voting on such proposal voted in favor thereof, either in such county, or in such district proposed to be annexed, the said clerk or other officer performing the duties of clerk of such body so canvassing such returns shall also, promptly, and within said ten days, make and certify, under the seal thereof, and transmit to the secretary of state of the state of California, a like copy of the record of the canvass of said returns, together with a like statement showing the date of such election, and the time and the result of the canvass of the returns of such election, and containing a like description of such district. Said document shall be filed by the secretary of state immediately upon receipt thereof.

Proposal submitted in city and county of San Francisco.

§ 13. If it shall appear from a canvass of the returns of such elections that a majority of the qualified electors of such district, and also a majority of the qualified electors of such county of San Mateo voting on the question of such annexation are in favor of such annexation, the said proposal of annexation shall be, by the board of supervisors of said city and county of San Francisco submitted to the electors of said city and county. The said board of supervisors of the said city and county of San Francisco shall submit a proposal to the voters of the said city and county substantially in the following form: "Shall the territory (herein designate in general terms the territory to be annexed) consolidate with the city and county of San Francisco in a consolidated city the county government, said consolidation to take effect (herein insert date when such consolidation shall take effect) and shall the said annexed territory become subject to taxation, as an integral part of the city and county so formed, in accordance with the assessable valuation of the property of said territory for the following indebtedness of said city and county of San Francisco, to wit: (herein insert in general terms, reference to any debts to be assumed, and if none, insert 'None')—"Yes," " and "shall the territory (herein designate in general terms the territory to be annexed) consolidate with the city and county of San Francisco in a consolidated city and county government, said consolidation to take effect (herein insert date when such consolidation shall take effect) and shall the said annexed territory become subject to taxation, as an integral part of the city and county so formed, in accordance with the assessable valuation of the property of said territory for the following indebtedness of said city and county of San Francisco, (herein insert in general terms, reference to any debts to be assumed, and if none, insert 'None')—"No." " There shall be a voting square to the right of and opposite each such proposition. If an elector shall stamp a cross (X) in the voting square after the printed word "Yes" the vote of such elector shall be counted in favor of the said proposal, and if an elector shall stamp a cross (X) in the voting square after the printed word "No" the vote of such elector shall be counted against such proposal.

Manner of submitting question. Description of territory and debts.

§ 14. The manner to be followed by the board of supervisors of the said city and county of San Francisco in the submission of said question and the holding of said election, their establishment of election precincts, and their appointment of election officers, and the publication in said city and county of notice of such election shall be substantially the same as that set forth in sections two and eight of this act for the submission of an annexation proposal to any incorporated city or town and to any dis-

trict as provided for in this act. The notice required to be published shall include a particular description of any district so proposed to be annexed, together with a particular description of any debts to be assumed by such district, the same as provided for in section eight of this act for the notice to be given to the district referred to in said section eight. Said election in said city and county of San Francisco may, in the discretion of the board of supervisors thereof, be held at the same time as the elections held in said district and in said county of San Mateo.

Use of general election laws.

§ 15. The ballots used in any elections provided for in this act, the opening and closing of the polls, and the holding and conducting of such elections, shall be in conformity, as nearly as may be, with the laws of this state concerning general elections, except as herein otherwise provided.

Annexation completed. Indebtedness assumed.

§ 16. Upon the approval of any such annexation proposal by the electors of said city and county of San Francisco as shown by a canvass of the returns thereof, and the certification of said returns to the secretary of state, said certification being made in the same manner as provided in section twelve of this act, the secretary of state shall file the document certified to him by the clerk of the canvassing body of the city and county of San Francisco, in his office immediately upon the receipt thereof. The secretary of state having so filed said document in his office, then, from and after the date prescribed in the proposal so submitted at said elections, the annexation of such district so proposed to be annexed, as described therein, shall be deemed to be and shall be complete and thenceforth such annexed district shall be to all intents and purposes a part of such city and county of San Francisco. And from and after said date the indebtedness so referred to in said proposal shall be deemed to have been assumed and upon the said date stated in said annexation proposal such district and such city and county of San Francisco shall be and become one consolidated city and county to be governed by the charter of the city and county of San Francisco and any amendment or amendments thereto.

Submission of new charter or amendments. Borough government.

§ 17. In any such submission of any proposal to the electors of any incorporated city or town, or of any district proposed to be annexed to the city and county of San Francisco, or to the electors of said city and county of San Francisco, as provided for in this act, there may be included a condition that any such proposed annexation shall be effected only upon the ratification by the electors of said incorporated city or town, and of said district, and of said city and county of San Francisco, at the same election at which such annexation proposal is submitted to such electors of said incorporated city or town, or district, or city and county of San Francisco, of any proposed new charter for said city and county of San Francisco, or of any proposed amendment or amendments to an existing charter of said city and county of San Francisco, which new charter or amendment or amendments to an existing charter may include provisions for borough government for all or any portion or portions of any territory proposed to be annexed; and also that such proposed annexation shall be effected only upon the final approval by the legislature of such new charter or such amendment or amendments to an existing charter of the city and county of San Francisco.

Separate propositions. Controlling proposition.

In submitting any such proposed new charter or such amendment or amendments to an existing charter, at the elections in the incorporated cities or towns, for the ratification of the electors of any of such cities or towns, separate propositions, whether alternative or conflicting, or one included within the other, may be submitted at the

same time to be voted on by the electors separately in any one or more of such cities or towns. As between those so related, if more than one receive a majority of the votes of any such city or town, the proposition receiving the larger number of votes shall control as to all matters in conflict.

Vote on assumption of indebtedness.

§ 18. No property in any territory annexed to said city and county of San Francisco as provided for in this act, shall be taxed for the payment of any indebtedness of such city and county outstanding at the date of such annexation and for the payment of which the property in such territory was not, prior to such annexation, subject to such taxation, unless there shall have been submitted to the qualified electors of such territory the proposition regarding the assumption of indebtedness, as provided for in this act, and the same shall have been approved by a majority of such electors voting thereon, as provided for in this act.

Description of debts.

§ 19. The particular description of any debts to be assumed by any such annexed territory and which particular description shall be published, as in this act provided for, shall distinctly state that the property of such annexed territory shall, after such annexation, be subject to taxation as an integral part of the city and county formed under this act, along with the entire territory of the proposed city and county, in accordance with the assessable valuation of the property of said annexed territory and equally with property within such annexing city and county, to pay any bonded indebtedness of any such annexing city and county outstanding at the date of said annexation or any indebtedness theretofore authorized and to be represented by bonds of such annexing city and county thereafter to be issued, or any other indebtedness of said annexing city and county, which indebtedness it is proposed shall be so borne by the said property so annexed. The said notice shall, in addition, distinctly specify the improvement or improvements, or other purpose for which the indebtedness was so incurred or authorized and state the amount or amounts of such indebtedness already incurred outstanding at the date of the first publication of said notice and the amount or amounts of such indebtedness theretofore authorized and to be represented by bonds thereafter to be issued and the maximum rate of interest payable or to be payable on such indebtedness.

Government of unannexed territory. Duty of legislature.

§ 20. In the event of any election as in this act provided for at which there shall be submitted a proposal for the annexation of any territory to the city and county of San Francisco, which annexation will result in the leaving of a portion or portions of the county of San Mateo unannexed to said city and county of San Francisco, then any notice of election or election ballot as provided for in this act shall state that the said annexation and consolidation shall not take effect until the legislature of the state shall have, according to law, provided for the government of any such portion or portions of any such county of San Mateo so remaining and not annexed to said city and county of San Francisco. It shall be the mandatory duty of the legislature, at the first session following any such final election, in the event of the approval of such annexation proposal at such election, or if the legislature be then in session, then at such session, to so provide for the government of any such portion or portions of such county of San Mateo so remaining and not annexed to such city and county of San Francisco. Upon such provision being made by the legislature, and upon its finally becoming effective, and upon the said annexation otherwise becoming effective, then the said annexation to such city and county of San Francisco shall be deemed complete and in full force and effect.

Legislature to determine proportion of debts and liabilities. Commission to advise legislature. Expenses charged to city and county of San Francisco.

§ 21. At the session of the legislature next after the final consummation of such annexation as herein provided for, or if the legislature is in session at the time of such final consummation then at such session of the legislature, the legislature shall determine the just proportion of the debts and liabilities of the county of San Mateo for which the city and county of San Francisco shall be liable, and the just proportion of the property and assets of such county of San Mateo to which such city and county of San Francisco shall be entitled, as existing at the time that any territory less than the whole of said San Mateo county is taken from such county of San Mateo as a result of any annexation as in this act provided for. The governor of the state shall appoint a commission of three persons; one, a qualified elector of the city and county of San Francisco; one, a qualified elector of the unannexed territory, and one, a qualified elector of some territory other than said annexing city and county and other than such unannexed territory, for the purpose of rendering a report to the legislature in order to advise the legislature; first, upon the proper provision for the government of any portion or portions of such unannexed territory; and, second, upon the proper determination of the just proportion of the debts and liabilities of the county of San Mateo for which such city and county shall be liable, and of the just proportion of the property and assets of such county of San Mateo to which such city and county shall be entitled, as so existing at the time that any territory is so taken from such county of San Mateo as a result of any such annexation as in this act provided. The actual necessary expenses of said commission, and compensation for their services at the rate of ten dollars per day for each day of actual service by each of said commissioners, shall upon a demand therefor being sworn to and presented to the legislative body of the city and county of San Francisco be a proper and legal charge against the treasury of said city and county. The final annexation and incorporation of said additional territory as a part of said consolidated city and county shall be deemed completed upon following of the procedure hereinabove in this act set forth, and it shall not be deemed necessary to await the said action of the legislature with reference to the adjustment of debts and liabilities and property and assets in this section provided for prior to said consolidation being final and complete.

County, cities, and governmental agencies dissolved. Charters annulled. Offices surrendered. Superior court. Property, debts and liabilities.

§ 22. Upon the completion of the annexation of any such territory to the city and county of San Francisco as provided for under the provisions of this act, the county of San Mateo, if the whole of said county be annexed, and each and every incorporated city or town, or governmental agency of any character, so annexed, shall ipso facto be deemed to be and shall be dissolved and disincorporated, and any freeholders' charter thereof shall be deemed to be and shall be surrendered and annulled and such county of San Mateo and any such incorporated cities or towns or governmental agencies, shall be deemed to be and shall be merged in said city and county of San Francisco and shall be thereafter governed in the name of and under the freeholders' charter of and as part of such city and county of San Francisco or under any amendment or amendments to such charter. Upon the final completion of any annexation as provided for in this act all persons then occupying or possessing the several offices of or under the government of such county of San Mateo or of such incorporated cities or towns, or such governmental agencies, or unincorporated territory so annexed, shall immediately quit and surrender the occupancy or possession of said offices, which shall thereupon cease and terminate and they shall severally forthwith deliver all moneys, funds, books, papers, archives and records in their custody and all other property of such county, incorporated city or town, governmental agency, or unincorporated territory in their

hands or under their control, to the proper officers of the city and county of San Francisco; provided, however, that if any portion of said county of San Mateo shall be left unannexed to said city and county of San Francisco that the disposition of such moneys, funds, books, papers, archives and records so in the custody of such officers of said county of San Mateo, or of unincorporated territory so annexed, shall be determined by the legislature in its final action on the government of such unannexed territory as in this act provided for. Any regularly constituted superior court of this state existing at the time of such annexation, within such county of San Mateo or within such incorporated city or town, or unincorporated territory, so annexed, shall upon the consolidation of said territory as a part of said city and county of San Francisco under the terms of this act, become a regularly constituted superior court of the state in and for said city and county of San Francisco, and any person or persons so occupying the position of superior judge in any such annexed territory shall continue to occupy said position, as judge or judges of the superior court of the state in and for said city and county of San Francisco to the end of the term of office for which he or they may have been elected or appointed, with the same salary as theretofore attached to said position, and thereafter such position shall continue to be filled as provided by law, and at the same salary as fixed by law for the judges of the superior court in and for said city and county of San Francisco.

Upon completion of any annexation, as provided for in this act, of the county of San Mateo or of any incorporated city or town, or of any unincorporated territory, or governmental agency, the property, debts and liabilities of every description of said county, or incorporated city or town, or of any unincorporated territory, or governmental agency, shall be and become the property, debts and liabilities of such newly consolidated city and county of San Francisco.

Debts, etc., in San Mateo county, cities, etc., not affected. Ordinances repealed. Pending cases transferred. Street proceedings continued.

§ 23. Any annexation provided for under the provisions of this act shall not affect any debts, demands, liabilities or obligations of any kind existing in favor of or against such county of San Mateo or such incorporated cities or towns, or such governmental agencies, so annexed, at the time of such annexation, or any action or proceeding then pending in any court in which any such debt, demand, liability or obligation of any kind may be involved, or any action or proceeding brought by or against such county, incorporated cities or towns or such governmental agencies, prior to such annexation, but all of such actions and proceedings shall be continued and concluded to final judgment or otherwise in all respects the same as if such annexation had not been affected; provided, however, that any such debt, demand, liability or obligation, in favor of or against such county, incorporated cities or towns, or such governmental agencies, so annexed shall, upon such annexation, be and become such a debt, demand, liability or obligation in favor of or against such newly consolidated city and county of San Francisco. All ordinances or resolutions of such county of San Mateo or of any such incorporated cities or towns, or such governmental agencies, so annexed under the provisions of this act, shall immediately upon such annexation becoming effective, be deemed to be repealed and of no further force and effect; provided, however, that such repeal shall not operate to discharge any person from any liability, civil or criminal, then existing, nor affect any prosecution then pending for any violation of any such ordinances, or resolutions, and all cases then pending in any justice's court, police court or court of any recorder or other judicial municipal magistrate or officer of such county, incorporated cities or towns, or such governmental agencies, so annexed shall, upon such annexation becoming effective, ipso facto, be deemed to be and be transferred to the justices' court, police court or other judicial municipal magistrate or officer of such city and county of San Francisco which has jurisdiction of proceedings

or misdemeanors or of other actions civil or criminal of the character so transferred; provided, further, that such repeal shall not apply to ordinances or resolutions, under which vested rights have accrued or to ordinances or resolutions relating to proceedings for street or other public improvements, or to proceedings for improving, opening, extending, widening or straightening of streets or other public places, or to proceedings for changing the grade thereof, all of which proceedings shall be continued and conducted by and under the authority of the newly consolidated city and county of San Francisco with the same force and effect as if continued and conducted by and under the authority of the county of San Mateo or of any incorporated city or town by which they were commenced, and all ordinances and resolutions of said city and county of San Francisco shall, upon the completion of such annexation, ipso facto, have full force and effect in and throughout the said annexed territory.

Taxes levied but not collected property of San Francisco. Condition.

§ 24. In the event that a tax for county purposes has been levied by the board of supervisors of the county of San Mateo or has been so levied for the purposes of any political subdivision, either by such board of supervisors or by any legislative body of any incorporated city or town, or other governmental agency, against property situated in territory which, subsequent to such levy, is annexed to said city and county of San Francisco under the provisions of this act, but which at the time of such annexation has not been collected, then all such taxes so uncollected shall be and become the property of the city and county of San Francisco; provided, however, that any such taxes which have been levied against the property of any district, for the purposes of such district, must be expended for the benefit of any territory so annexed and included in such a district, in accordance with the purposes of the levy of said tax. This section shall also apply to all such taxes not paid into the county treasury or any treasury of any incorporated city or town, or other political subdivision or governmental agency, prior to the taking effect of this act.

Districts unchanged.

§ 25. Nothing in this act shall alter or affect the boundaries of any senatorial or assembly district, or of any congressional district.

Expenses paid by city and county of San Francisco.

§ 26. All proper expenses of proceedings for annexation of territory to the city and county of San Francisco under this act shall, in the first instance, be paid by such city and county; provided, that if such annexation be not finally completed, then the expenses for such election incurred in any city or town or district which shall have voted in favor of said annexation, or in the county of San Mateo if said county shall have so voted, shall be returned to the said city and county of San Francisco by such city, town, or county holding such election.

Duties performed by other than prescribed officials.

§ 27. With reference to any duties prescribed in this act to be performed by the legislative body or any other board, officer or department of the county of San Mateo or any incorporated city or town so proposed to be annexed under the terms of this act, or of said city and county of San Francisco, if the charter of any such incorporated city or town or of said city and county of San Francisco, or any law, imposes such duties upon any other board, officer or department of said county of San Mateo or of said incorporated city or town or of said city and county of San Francisco, as, upon a board of election commissioners or registrar of voters of said county of San Mateo, or of such incorporated city or town, or of said city and county of San Francisco, then such duties shall be so performed by such other board, officer or department upon which such duties are so imposed.

Time for elections.

§ 28. Any election provided for in this act may be held at a special election or at any general election.

“Governmental agency” defined.

§ 29. The term “governmental agency” as used in this act shall be construed to include school districts, lighting districts, sanitary districts, or any other districts organized or authorized by law, of a special or quasi-municipal character.

Constitutionality.

§ 30. If any section of this act other than section thirty-one thereof, or if any subsection, sentence, clause or phrase other than in said section thirty-one contained, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. If, however, said section thirty-one, or any subsection, sentence, clause or phrase in said section thirty-one contained, is for any reason held to be unconstitutional or inoperative, then in that event the validity of all of the remaining portions of this act shall be deemed affected and invalidated thereby. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections other than said section thirty-one or any one or more subsections, sentences, clauses, or phrases other than in said section thirty-one contained, are declared unconstitutional. Furthermore, this legislature declares that it would not have passed this act, either in whole or in part, unless said section thirty-one was included and incorporated therein and made a part thereof, and it hereby further declares said section thirty-one, and every subsection, sentence, clause and phrase in said section thirty-one contained, to be a substantial and integral part of said act.

Approval of constitutional amendment necessary.

§ 31. This act shall take effect upon, and only in event of, the ratification and approval by the people of the state of assembly constitutional amendment number two, being a resolution to propose to the people of the state of California to amend section eight and one-half of article eleven of the constitution of the state, relating to city charters and to provisions therein for municipal courts, submitted by the forty-second session of the legislature; and not otherwise.

The constitutional amendment was adopted at the general election of November 5, 1918.

Title.

§ 32. This act may be designated and referred to as the “San Francisco-San Mateo Consolidation Act.”

PASSENGER TRANSPORTATION ON THE EMBARCADERO.

ACT 4307—An act to provide for the establishment of passenger transportation facilities upon The Embarcadero, in the city and county of San Francisco.

History: Approved May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 585.

Harbor commissioners may maintain passenger service on state railroad.

§ 1. The board of state harbor commissioners may when in its judgment the wants of commerce of the port of San Francisco requires, maintain passenger service upon the state railroad located upon The Embarcadero in the city and county of San Francisco; provided, that said board may make such further extensions of said service through, over, under and above lands within its jurisdiction, and through, over, under and above the water front as defined by section two thousand five hundred twenty-four of the Political Code, as said board may determine are demanded by public convenience and

necessity; and provided, further, that if the establishment and maintenance of said passenger service upon such railroad shall, after careful investigation, be found by said board of state harbor commissioners to be impracticable, or not feasible, such board may establish or maintain such other passenger service or the means, facilities, or modern street improvement by which or over which such other passenger service can be operated and maintained by said board, or by other persons, firms, associations, or corporations thereunto authorized by said board.

§ 2. Said board of state harbor commissioners shall have power to acquire and furnish such facilities as are reasonable and necessary for the accommodation of passenger traffic upon said Embarcadero.

Charges.

§ 3. Charges for carriage by said passenger service shall be made, fixed or determined by the state board of harbor commissioners; provided, however, that such charges shall not be greater than shall be necessary for the obtaining of sufficient revenue which, in connection with the other revenues of the port of San Francisco, shall be necessary for the maintenance of the commerce of the port including the maintenance of said passenger service.

Added powers.

§ 4. The state board of harbor commissioners may obtain such added powers under existing licenses, grounds, permits or easements, or such future licenses, grounds, permits or easements, as may be necessary to secure the fulfillment of the object of this act.

CHAPTER 322.

SANITARY DISTRICTS.

CONTENTS OF CHAPTER.

ACT 4309. VALIDATION ACT OF 1915.

4310. SANITARY DISTRICT ACT OF 1919.

VALIDATION ACT OF 1915.

ACT 4309—An act to validate the organization of sanitary districts and their proceedings whereby the boundaries thereof were altered, and outlying contiguous territory in the same county as such sanitary district annexed thereto.

History: Approved May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 908.

Sanitary districts validated.

§ 1. All sanitary districts formed under the provisions of an act entitled, "An act to provide for the formation, government, operation and dissolution of sanitary districts in any part of the state for the constructing of sewers and other sanitary purposes, the acquisition of property thereby, the calling and conducting of elections in such districts, the assessment, levying, collection, custody and disbursement of taxes therein; the issuance and disposal of the bonds thereof, and the determination of their validity, and making provision for the payment of such bonds and the disposal of their proceeds," approved March 31, 1891, and the acts amendatory and supplementary thereto, and which sanitary districts have acted in the form and manner of sanitary districts under the provisions of said act, are hereby declared to be and have been sanitary districts from the date of the entry in the minutes of the board of supervisors of an order that the sanitary district has been duly established and all proceedings of the sanitary districts, whereby the boundaries thereof have been altered, and outlying

contiguous territory in the same county as such sanitary district, annexed thereto, and all other acts of said sanitary districts heretofore performed according to the act aforesaid, are hereby validated and declared to be legal.

SANITARY DISTRICT ACT OF 1919.

ACT 4310—An act to provide for the formation, government, operation, reorganization, dissolution and alteration of boundaries of sanitary districts in any part of the state, for the construction of sewers, septic tanks, and other sanitary disposal of sewerage matter; the acquisition of property thereby, the calling and conducting of elections in such districts; the assessment, levying, collection, custody, and disbursement of taxes therein; the issuance, disposal and retirement of the bonds thereof, and the determination of their validity and making provision for the payment of such bonds, and the disposal of their proceeds.

History: Approved May 25, 1919. In effect July 25, 1919. Stats. 1919, p. 942. Prior act of March 31, 1891, Stats. 1891, p. 223; amended (1) March 9, 1893, Stats. 1893, p. 88; (2) March 26, 1895, Stats. 1895, p. 85; (3) March 23, 1901, Stats. 1901, p. 633; (4) March 10, 1903, Stats. 1903, p. 121; (5) March 10, 1905, Stats. 1905, p. 94; (6) March 1, 1907, Stats. 1907, p. 83; (7) March 9, 1909, Stats. 1909, p. 233; (8) March 20, 1909, Stats. 1909, p. 583; (9) March 25, 1911, Stats. 1911, p. 501; (10) April 7, 1911, Stats. 1911, p. 706; (11) May 29, 1913; in effect August 10, 1913; Stats. 1913, p. 344; (12) May 8, 1919; in effect July 22, 1919; Stats. 1919, p. 403; was probably superseded by the present act. See note.

Petition to organize sanitary district.

§ 1. Whenever twenty-five persons in any county of the state shall desire the formation of a sanitary district within the county, they may present to the board of supervisors of such county a petition, in writing, signed by them, stating the name of the proposed district, and setting forth the boundaries thereof, and praying that an election be held as provided by this act. Each of the petitioners must be a resident and freeholder within the proposed district.

Order calling election.

§ 2. When such petition is presented as above provided, the board of supervisors must, within thirty days thereafter, order that an election be held as provided by this act. The order must fix the day of such election, which must be within sixty days from the date of the order, and must show the boundaries of the proposed district, and must state that at such elections persons to fill the offices provided by this act, viz.: a sanitary assessor, and five members of the sanitary board, will be voted for. This order shall be entered in the minutes of the board, and shall be conclusive evidence of the due presentation of a proper petition, and of the fact that each of the petitioners was, at the time of the signature and presentation of such petition, a resident and freeholder within the limits of the proposed district.

Posting and publishing of order.

§ 3. A copy of such order shall be posted for four successive weeks prior to the election, in three public places within the proposed district, and shall be published for four successive weeks prior to the election in some newspaper published in the proposed district, if there be one, and if not, in some newspaper published in the county. It shall be sufficient if the order be published once a week.

Conduct of election. If majority vote in favor. If majority vote against.

§ 4. The board of supervisors, at least fifteen days prior to the election, shall select one, and may select two, polling places within the proposed district, and make all suitable arrangements for the holding of such election. They must appoint one inspector and two judges of election in each polling place, who shall constitute the officers of said

election; if none are so appointed or if those appointed are not present at the time of the opening of the polls, the electors present may appoint them and they shall conduct the election. The ballots shall contain the words, "for a sanitary district," or "against a sanitary district," as the case may be, and also the names of the persons to be voted for at said election. At such election there shall be elected a sanitary assessor and five persons for members of the sanitary board. Such election, and all subsequent elections in said district, shall be conducted as nearly as practicable in accordance with the general election laws of the state, except that the provisions of said laws as to the form of ballots and the making of nominations shall not apply. Every qualified elector, resident within the proposed district for the period requisite to enable him to vote at a general election, shall be entitled to vote at the election above provided for. If a majority of the votes cast at such election shall be in favor of a sanitary district, the board of supervisors shall make and cause to be entered in the minutes of said board an order that a sanitary district of the name and with the boundaries stated in the petition (setting forth such boundaries) has been duly established, and said order shall be conclusive evidence of the fact and regularity of all prior proceedings of every kind and nature provided for by this act or by law, and of the existence and validity of the sanitary district. If a majority of the votes cast shall be against a sanitary district, the board shall by order entered in its minutes, so declare; no other proceeding shall be taken in relation thereto until the expiration of one year from the date of the presentation of the petition to said board.

Powers of sanitary district.

§ 5. Every sanitary district formed under the provisions of this act shall have power to have and use a common seal, alterable at the pleasure of the sanitary board; to sue and be sued by its name; to construct, reconstruct, alter, enlarge, lay, renew, replace and maintain such sewers, drains, septic tanks and other drainage and sewer disposal system as in the judgment of the sanitary board shall be necessary or proper, and for this purpose to acquire by purchase, gift, devise, condemnation proceedings, or otherwise, such real and personal property and rights of way, either within or without the limits of the district, as in the judgment of the sanitary board shall be necessary or proper, and to pay for and hold the same; to make and accept any and all contracts, deeds, releases, and documents of any kind which, in the judgment of the sanitary board, shall be necessary or proper to the exercise of any of the powers of the district, and to direct the payment of all lawful claims and demands against it; to issue bonds as hereinafter provided, and to assess, levy, and collect taxes to pay the principal and interest of the same, and the cost of laying and the expense of maintaining any sewer or sewers that may be constructed subsequent to the issuance of said bonds or any lawful claims against said district, and the running expenses of the district; in all work for the construction and repairs upon such sewers, septic tanks, drains and other drainage and sewer disposal system when the expenditure required for the same exceeds the sum of two hundred dollars, the same shall be done by contract, and shall be let to the lowest responsible bidder, after notice by publication in a newspaper of general circulation, printed and published in such district, for at least two weeks, or by printing and posting the same in at least four public places therein for the same period, as the sanitary board may direct; such notice shall distinctly and specifically state the work contemplated to be done; provided, that the sanitary board may reject any and all bids presented and readvertise in their discretion; provided, however, that in cases of emergency said notice may be dispensed with and the contract let for said repairs, or said work may be done by day's labor and the material therefor purchased in the open market; to employ all necessary agents and assistants, and pay the same; to lay its sewers, and drains in any public street or road of the county, and for this purpose enter upon the same and make all necessary and proper excavations, restoring

the same to proper condition; but in case such street or road shall be in an incorporated city or town the consent of the lawful authorities thereof shall first be obtained; to make and enforce all necessary and proper regulations for the removal of garbage, and the cleanliness of the roads and streets of the district, and all other sanitary regulations not in conflict with the constitution or laws of the state; any violation of any such regulations or ordinances is hereby declared to be a misdemeanor punishable by fine or imprisonment, or both; but no such fine shall exceed the sum of one hundred dollars; and no such imprisonment shall exceed one month; to call, hold and conduct all elections necessary or proper after the formation of the district; to prescribe, by order, the time, mode and manner of assessing, levying, and collecting taxes for sanitary purposes, except as otherwise provided herein; to compel all residents and property owners within the district to connect their houses and habitations with the street sewers, drains or other sewerage disposal system; and generally to do and perform any and all acts necessary or proper to the complete exercise and effect of any of its powers, or the purposes for which it was formed.

Officers.

§ 6. The officers of the district shall be a sanitary assessor and five members of the sanitary board.

Sanitary assessor.

§ 7. There shall be an election for sanitary assessor on every even-numbered year in which members of the sanitary board are elected, and at the same time, place and manner; and the person then elected shall hold office for two years next thereafter, and until the election and qualification of his successor. The person elected assessor at the election at which the district was formed shall hold office until the election and qualification of his successor; provided, that if at any time a vacancy occur in the office of assessor, the sanitary board shall appoint a suitable person to fill such vacancy until the next election at which an assessor may be elected under the provisions of this act.

List of property in district.

§ 8. It shall be the duty of the sanitary assessor to make out, before the first Monday in July of each year, a list of all the tangible real and personal property within the district; he shall list the tangible real and personal property in any annexed district separately. Such list shall contain a general description of the property; said description shall be identical with said descriptions of the same properties as contained on the county assessment list for the current year, an assessment of the value thereof, the name or names of the owner or owners, and such other matters as may be ordered by the sanitary board and such matters as shall be necessary to make such list conform to the provisions of the general laws of the state of California. The land shall be assessed separately from the improvements thereon. No mistake in the name of the owner of any of the real or personal property assessed, or any informality in the description, or in other parts of the assessment, shall invalidate the same. The sanitary assessor shall verify said list by his oath, before some officer authorized to administer oaths, and shall deposit the same with the sanitary board on the first Monday of July of each year, or as soon thereafter as is practicable. He shall have power to administer all oaths and affirmations necessary or proper in the performance of his duty as assessor, and shall receive such compensation as shall be fixed by the order of the board. He shall also perform such further duties and do such further acts as may be ordered or required by the sanitary board.

Election and term of sanitary board. Compensation. Canvass of vote.

§ 9. There shall be an election for two members of the sanitary board in every even-numbered year, beginning with the second even-numbered year after the election at

which the district was organized, and the two members then to be elected shall hold office until the election and qualification of their successors in the next even-numbered year; and there shall be an election for three members of the sanitary board in every odd-numbered year, beginning with the second odd-numbered year, after the election at which the district was organized, and the three members then to be elected shall hold office until the election and qualification of their successors in the next odd-numbered year. The five members elected at the election at which the district was organized shall, at their first meeting, or as soon thereafter as may be practicable, so classify themselves, by lot, that two of them shall go out of office in the second even-numbered year after the election at which the district was organized, and upon the election and qualification of their successors, as provided by this act each of the members of the sanitary board shall receive for each attendance of the meeting of the sanitary board, \$5.00, and shall receive no other compensation, no member of the sanitary board, however, shall receive pay for more than one meeting in any calendar month. All elections for officers, after the formation of the district shall be held on the first Monday after the first Tuesday in the month of March. Not less than twenty days before the day of such election the sanitary board must give notice of said election by posting notices thereof in three public places in the sanitary district, which notices must specify the time and place of election, the hours during which the polls will be kept open, and the officers to be elected. They shall select one, and may select two, polling places within the district; shall appoint one inspector and two judges of election in each polling place, and make all necessary and proper arrangements for holding the election. Said election officers shall constitute the election board. If no election officers are so appointed, or if those appointed are not present at the time of the opening of the polls, the electors present may appoint them and they shall conduct the election. Such election shall be conducted as nearly as practicable in accordance with the general election laws of the state, except that the requirements of said laws as to the form of ballots and the making of nominations of candidates shall not apply. Every qualified elector resident within the district for the period requisite to enable him to vote at a general election, shall be entitled to vote at the election. At such election the last great register of the county shall be used, and any elector whose name is not upon such great register shall be entitled to vote upon producing and filing with the board of election a certificate, under the hand and seal of the county clerk, showing that his name is registered and uncanceled upon the great register of such county, provided that he is otherwise entitled to vote.

The officers of the election must publicly canvass the votes immediately after the closing of the polls, and must certify the result within twenty-four hours after the closing of the polls to the sanitary board. Said board shall within five days after the election canvass said returns, and shall make, sign and deliver certificates of election to the person or persons elected.

Powers of sanitary board. Officers.

§ 10. The sanitary board shall be the governing power of the district, and shall exercise all the powers thereof, except the making of an assessment list in the first instance as herein provided. At its first meeting, or as soon thereafter as may be practicable, the board shall choose one of its members as president, and another of its members as secretary. And all contracts, deeds, warrants, releases, receipts, and documents of every kind shall be signed in the name of the district by its president, and shall be countersigned by its secretary. The board shall hold such meetings, either in the day or in the evening, as may be convenient. In case of the absence or inability to act of the president or secretary, the board shall, by order entered upon the minutes, choose a president pro tem., or secretary pro tem., or both as the case may be.

Equalization of assessments. Fixing tax rate. Tax a lien on property assessed. Limit on amount of bonds.

§ 11. On the first Monday of July each year, at the hour of 7:30 o'clock p. m., the sanitary board shall meet at its usual place of meeting within said district, and proceed to organize itself into a board of equalization, and if the sanitary assessor has returned the assessment list for said year said board shall proceed to equalize the property so assessed and returned by said sanitary assessor. If said assessment list has not been returned by said sanitary assessor said board must adjourn from day to day until said assessment list has been returned, and for the purpose of adjournment one or more of the members of said board present may make said adjournment and announce the same. Upon the assessment list having been returned by the assessor, said board of equalization shall proceed to equalize the property listed on said assessment list, and said board shall continue in session as a board of equalization until the property upon the entire list returned by the assessor shall have been examined, rectified and equalized, with such reasonable intermissions during the day and from day to day as may be expedient. The board shall have power to hear complaints as to the proceedings of the assessor, and to adjudicate and determine the controversy thereon, and may of its own motion raise an assessment, after such reasonable notice to the party whose assessment is to be raised, as may be ordered by the board. After the examination and rectification of the assessor's list shall have been completed, the board shall, by resolution, fix the rate of taxation for sanitary purposes, designating the number of cents on each one hundred dollars to be levied for each fund and shall designate the fund into which the same shall be paid; but no more than fifteen cents on each one hundred dollars shall be levied for all the sanitary purposes of any one year, besides what shall be required for the payment of the principal and interest of such year upon outstanding bonds. After the entry in the minutes of the resolution fixing the rate of taxation the sanitary board shall cause the assessor to compute the amount of the tax upon each piece of real and personal property, and enter the same upon the assessment list in a suitable place. The list, when so completed, shall be verified by the assessor and signed by the president and secretary; and the amount of the tax shall thereupon become a lien upon the property upon which it is assessed, and shall have the effect of a judgment against the person of the owner thereof, and every such lien shall have the force and effect of an execution duly levied against all the property of the delinquent; and the judgment shall not be deemed satisfied or the lien extinguished until the taxes are paid or the property sold to satisfy the same, and no statute of limitations shall apply. No bonds shall be voted for or issued at any one time, which in the aggregate shall exceed fifteen per cent of the assessed value of all the real and personal property of such district; whether it be made up of one issue of bonds or of several issues.

Duty of county tax collector. Duty of district attorney. Redemption of property sold for delinquent taxes.

§ 12. As soon as practicable, but not later than the third Monday in July, after the taxes have been computed and extended on the assessment list, verified by the assessor and signed by the president and secretary of said board, the board shall transmit, or cause the assessor to transmit, a duplicate of the list so made, to the tax collector of the county, who shall collect the taxes shown by said list to be due, in the same manner as he collects the county taxes, and all the provisions of the laws of the state as to the collection of taxes and delinquent taxes, and the enforcement of the payment thereof, so far as applicable, shall apply to the collection of taxes for sanitary purposes; and said tax collector, and the sureties on his official bond, shall be responsible for the due performance of the duties imposed upon him by this act; provided, that the sanitary board may, in its discretion, direct the district attorney of the county to

commence and prosecute suits for the collection of the whole, or any portion of the delinquent taxes; and it shall be the duty of the district attorney to carry out such directions of the sanitary board, and he, and the sureties upon his official bond, shall be responsible for the due performance of the duty imposed upon him by this act.

All money collected for sanitary purposes by the district attorney under this act shall be at once paid to the county treasurer; provided, further, that the sanitary board may, at any time, by order entered in its minutes, provide a system for the collection of delinquent taxes, or make any change in the manner of their collection, which as to such taxes shall have the force of law. Whenever any property is sold for delinquent sanitary taxes, under the provisions of this act, the tax collector shall file with the county recorder, at the expense of the purchaser, a copy of the certificate of such sale; and when at any time redemption is made of any property which has been sold for delinquent sanitary taxes the redemption officer of the sanitary district shall immediately forward a copy of the redemption certificate to the county recorder and the county recorder shall inscribe or stamp upon the margin of the certificate of sale of said property then on file in his office, the word "redeemed," together with the date, the amount paid, and the name of the party redeeming said property; and further provided, that whenever the tax collector issues a deed to the purchaser of any property sold for delinquent sanitary taxes, the said tax collector shall forward a copy of the deed to the county recorder, and the county recorder shall then inscribe or stamp upon the margin of the certificate of sale of said property then on file in his office, the words "deeded to," together with the date, and the name of the party to whom said deed was issued. In the event that property upon which sanitary district taxes have become delinquent is, on account of such delinquency, sold by the tax collector, and a deed therefor is issued to any person other than the state of California, the party who was of record as the owner of such property at the time of such sale and of such issuance of such deed, is hereby granted the right to redeem said property from the tax title purchaser thereof, at any time within a period of five years from and after the issuance of such deed, by the payment to the said tax title purchaser of the amount for which the said property was to him sold by the tax collector and an additional premium which shall not be greater than one hundred per cent of the said purchase price. It is hereby declared to be unlawful for any person or persons who have purchased at a delinquent tax sale any property which is sold for delinquent sanitary taxes, to demand for its redemption any sum greater than the amount which is by this act specified; or to refuse to redeem any such property to the party who was the owner thereof at the time of such delinquent tax sale, when proper tender is made, within five years after date of such sale, of an amount which is not greater than the amount which is by this act permitted.

Funds kept by county treasurer.

§ 13. The tax collector shall pay over to the county treasurer all moneys collected by him for sanitary purposes, as fast as the same shall be collected, and the said treasurer shall keep the same in the county treasury as follows: In a fund called the bond fund of sanitary district (naming it) he shall place and keep the moneys levied by the sanitary board for such fund; and no part of the money in this fund shall be transferred to any other fund, or be used for any other purpose than the payment of the principal and interest of the bonds of the sanitary district, and for the retirement of bonds which had been issued by a district which formerly formed a part of the sanitary district as hereinafter provided for, so long as any such bonds shall be unpaid; in a fund called the running expense of sanitary district (naming it) he shall place and keep the moneys levied by the sanitary board for such fund. The whole or any part of the money in the running expense fund may be transferred to the bond fund, or to the other fund hereinafter provided for, upon the order of the sanitary board, and it

shall be the duty of the treasurer to comply with such order. The treasurer shall pay out moneys from either of said funds, or from the fund hereinafter mentioned, only upon the written order of the sanitary board, signed by the president and countersigned by the secretary, which order shall specify the name of the person to whom the money is to be paid and the fund from which it is to be paid, and shall state generally the purpose for which the payment is made, and such order shall be entered in the minutes of the sanitary board. The treasurer shall keep the order as his voucher, and shall keep a specific account of his receipts and disbursements of money for sanitary purposes. The treasurer and sureties upon his official bond shall be liable for the due performance of the duties imposed upon him by this act. The treasurer shall keep the money arising from the sale of bonds in the fund hereinbefore mentioned.

Bond election.

§ 14. At any time after the district is organized the sanitary board, by order entered in the minutes, may, when in its judgment it is advisable, and must, upon a petition of a majority of the qualified electors residing in the district, call an election and submit to the electors of the district the question whether the bonds of such district shall be issued and sold for the purpose of raising money for construction, reconstruction, alteration, laying, renewing, replacing or enlargement of sewers, drains or septic tanks or other drainage or sewer system, whether the same be for a system of the same nature as or of a different nature than the system already installed or constructed for the disposal of sewage.

The order calling such election shall be valid and effectual when signed by two-thirds of the members of said sanitary board, and may so submit to said electors as one proposal the question of issuing bonds to make all said outlays, or so many of them as may be selected, or said order may submit at said election as separate questions the issuance of bonds for any of said outlays singly or in such combinations as the order may direct.

Notice of election.

§ 15. Notice of such election shall be given by posting notices, signed by the board, or by a majority thereof, in three public places in the district, not less than twenty days before the election; and by publishing such notice not less than once a week for three successive weeks before the election in a newspaper printed and published in the district, if any newspaper is published therein, and if not, in a newspaper printed and published in the county.

Contents of notice.

§ 16. Such notice shall contain:

1. Time and place of holding such election.
2. The names of the officers of election appointed to conduct the same.
3. The hours during the day in which the polls will be open.
4. A statement of the purpose for which the election is held.
5. The amount and denomination of the proposed bonds, the rate of interest and the number of years, not exceeding forty, the whole or any part of said bonds are to run.

Conduct of election. Two-thirds vote.

§ 17. At any time prior to the day fixed for the election, the board shall select one, and may select two, polling places within the district, appoint one inspector and two judges of the election for each polling place, and make all necessary and proper arrangements for holding the election. If no election officers are appointed, or if those appointed are not present at the time for opening the polls, the electors present may appoint them and they shall conduct the election. The vote must be by ballot

(without references to the general election law in regard to form of ballot). The ballot shall contain the words "Bonds—Yes" and "Bonds—No," and the persons voting at said bond elections shall put a cross (X) upon their ballots with pencil or ink after the words "Bonds—Yes" or "Bonds—No" (as the case may be) to indicate whether they have voted for or against the issuance of bonds.

The elections shall be conducted in accordance with the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided.

Every qualified elector resident within the district for the length of time necessary to enable him to vote at a general election shall be entitled to vote at the elections above provided for. After the votes shall have been announced the ballots shall be sealed up and delivered to the secretary or president of the sanitary board, which board shall on the seventh day after the election, at eight o'clock p. m., meet and canvass the returns of the election, and if it appears that two-thirds of the votes cast at said election were in favor of issuing such bonds, then the board shall cause an entry of that fact to be made upon its minutes. Such entry shall be conclusive evidence of the fact and regularity of all prior proceedings of every kind and nature provided by this act or by law, and of the facts stated in such entry. If, at such election, two-thirds of the votes cast be in favor of the issuance of bonds as proposed by the sanitary board, the said board shall thenceforth have full power and authority to issue and dispose of bonds as proposed in the order calling the election; provided, that the total amount of bonds so issued shall not exceed ten per cent of the assessed value of all real and personal property of the district, as shown by the last equalized assessment book of the county.

Form of bonds.

§ 18. All bonds issued under the provisions of this act shall be of such denominations as the sanitary board may determine, except that no bonds shall be of a less denomination than one hundred dollars, nor of a greater denomination than one thousand dollars. Said bonds shall be payable in gold coin of the United States at the office of the county treasurer of the county wherein said district is situated, and shall bear interest at a rate not exceeding six per cent per annum, which interest shall be payable semiannually in like gold coin. Not less than one-fortieth part of the total issue of bonds shall be payable each year, on a day to be specified by the sanitary board, but no bonds shall be payable in installments, but each bond issued hereunder shall be payable in full on the date specified therein by said board. Each bond shall be signed by the president and countersigned by the secretary of the sanitary board, and said bonds shall be numbered consecutively, beginning with number one, and shall have coupons attached referring to the number of the bond to which they are attached, which coupons shall be signed by the president and countersigned by the secretary of said board. The bonds must be disposed of by the sanitary board in such manner and in such quantities as may be determined by said board in its discretion, but no bond must be disposed of for less than its face value. The proceeds of such sale shall be deposited with the county treasurer and shall be by him placed in the fund to be called the sewer construction fund of sanitary district (naming it); the money in such fund shall be used for the purpose indicated in the order calling the election upon the question of the issuance of the bonds, and for no other purpose; provided, that if after such purposes are entirely fulfilled any balance remain in such fund, such balance may, upon the order of the sanitary board, be transferred to either of the other funds provided by this act.

Exchange of bonds.

§ 19. If the result of the election be against the issuance of bonds, no other election upon the question shall be called or held for a period of one year. After a dis-

trict organized under the act of 1891, mentioned in section thirty-one hereof, shall have been reorganized under this act as provided in said section thirty-one hereof, the entire amount of unredeemed bonds issued by such districts under the provisions of said act of 1891 may be presented by the holder or holders thereof to the sanitary board organized under the provision of this act or to sanitary districts reorganized under the provision of section thirty-one of this act, and there shall be exchanged therefor and issued in lieu thereof to such holder or holders, by the sanitary board organized under the provision of this act or to sanitary districts reorganized under the provision of section thirty-one of this act, bonds issued in accordance herewith for the various amounts of the bonds so surrendered; it being the intention hereof to permit the surrender of sanitary district bonds heretofore issued payable in installments by the holder thereof, and the exchange therefor of a like amount of bonds of such sanitary district having a denomination equal to the installments payable under one or more of the bonds heretofore issued by any one sanitary district; said new bonds to be payable as nearly as practicable at the same time as said installments and in equal amounts; the amount of said new bonds issued in lieu of said old bonds to be payable in any one year to equal the amount of the installments on said old bonds payable in such year. All expenses of the exchange shall be borne by the holder of the bonds presented for exchange, and interest on the new bonds shall be paid at the same time and rate as on the old bonds. Upon such exchange being effected the old bonds shall be canceled by punching holes in the signatures thereto attached, and shall be retained by the treasurer of said county as evidence of such cancellation.

Tax to pay interest and principal. Payment within forty years.

§ 20. The sanitary board of each district shall annually levy a tax upon the taxable property in the district sufficient to pay the interest of said bonds for the year, and such portion of the principal as is due or is to become due during such year, and in any event the tax must be high enough to raise annually a proportion of the principal of said bonds equal to the sum produced by dividing the whole amount of said bonds outstanding by the number of years said bonds then have to run, so that the entire amount of principal and interest of said bonds shall be paid at or before maturity, and in any event within forty years of the date of issuance of the bonds; and it is hereby made the duty of the tax collector, or such other person as may be charged with the duty of collecting the sanitary taxes, to collect the said taxes so to be levied, and the duty of the sanitary board to order the same to be paid in manner and form as provided by this act, and the duty of the county treasurer to pay the same. If, for any reason, any portion of the tax for any year remains unpaid, and in consequence thereof any portion of the interest or principal due for any year remains unpaid, the same shall be added to the levy for the next year, and be collected and paid accordingly. The payment of the whole amount of the principal and interest of all of said bonds, within forty years from their issuance, is hereby made the imperative duty of the district; and, if necessary for that purpose, a special tax shall be levied; and it is hereby made the duty of every officer and board to do his or its respective part towards the levy, collection, and payment of such tax; and mandamus shall issue from the superior court of the county in which the district is situated, or from any other competent court, upon application of any party interested, for the purpose of compelling the performance of the duty imposed by this act upon any and all officers or boards.

Action to determine validity of bonds.

§ 21. If the result of any election upon the question of the issuance of bonds be in favor of such issuance, the sanitary board may, in their discretion, before such issuance, commence, in the superior court of the county, a special proceeding to determine their right to issue such bonds and the validity thereof, similar to the proceeding

in relation to irrigation bonds, provided for by an act entitled "An act to provide for the organization and government of Irrigation districts and to provide for the acquisition or construction thereby of works for the irrigation of the lands embraced within such districts, and, also, to provide for the distribution of water for irrigation purposes," approved March 31, 1897; and all acts amendatory thereof and supplementary thereto and all the provisions of said act shall apply to and govern the proceedings so to be commenced by the sanitary board, so far as the same are applicable; and said proceedings shall be in accordance with the provisions of said act, so far as the same are applicable, and the judgment in such proceedings shall have the same effect as a judgment in relation to irrigation bonds under the provisions of said act.

Publication of orders.

§ 22. Any general regulation of the sanitary board shall be by order entered in the minutes, but such order shall be published once a week for one week in some newspaper published within the district, if there be one, and if there be no such newspaper then such order shall be posted for one week in three public places within the district. A subsequent order of the board that such publication or posting has been duly made shall be conclusive evidence that such publication or posting has been properly made. Orders not establishing a general regulation need not be published or posted (unless otherwise provided by this act), but shall be entered in the minutes, and the entry shall be signed by the secretary of the board. A general regulation shall take effect immediately upon the expiration of the week of publication or posting thereof. An ordinary order shall take effect upon the entry in the minutes.

Duty of district attorney.

§ 23. The board may instruct the district attorney of the county to commence and prosecute any and all actions and proceedings necessary or proper to enforce any of its regulations or orders, and may call upon said district attorney for advice as to any sanitary subject; and it shall be the duty of the district attorney to obey such instructions and to give advice when called on by the board therefor. The board may at any time employ special counsel for any purpose. All fines for the violation of any regulation or order of the sanitary board shall, after the expenses of the prosecution are paid therefrom, be paid to the secretary of the board, who shall forthwith deposit the same with the county treasurer, who shall place the same in the running expense fund of the district.

Dissolution of district.

§ 24. The district may at any time be dissolved upon the vote of two-thirds of the qualified electors thereof, upon an election called by the sanitary board upon the question of dissolution. Such election shall be called and conducted in the same manner as other elections of the district. Upon such or any other dissolution the property of the district lying within the corporate limits of any city or town shall vest absolutely in the incorporated city or town; and if the whole or a portion of the property of the district is without the corporate limits of an incorporated city or town the whole or the portion of the property of the district that lies without the corporate limits of the city or town shall vest in the board of supervisors of the county until the formation of a city or town; embracing the territory lying without such incorporated city or town; provided, however, that if at the time of such election to dissolve such district there be any outstanding bonded indebtedness of such district, then, in such event, the vote to dissolve the district shall dissolve the same for all purposes, excepting only the levy and collection of taxes for the payment of such indebtedness and for the payment of the expenses of assessing, levying and collecting the same, and the expense of maintenance of said sewer system, and from the time such district is thus or otherwise dissolved, until such bonded indebtedness, with the interest thereon, is fully paid, satisfied

and discharged, the legislative authority of said incorporated city or town, where the property of the district lies wholly within the corporate limits of an incorporate city or town, and in all other cases the board of supervisors are hereby constituted, ex officio, the sanitary board of such district. And it is hereby made obligatory upon such board or legislative authority to levy such taxes and perform such other acts as may be necessary in order to raise money for the payment of such indebtedness and the interest thereon, and for the purpose of maintenance of the sewer system as herein provided, and said board or legislative authority shall maintain the sewer system installed in proper condition and shall fulfill and compel fulfillment of any and all contracts made by the sanitary district for the right of connections made with property lying outside of the boundaries of said district; and shall maintain and protect all other rights acquired by the district; and shall not permit connection to be made with the system installed by any property outside of the boundaries of said sanitary district existing at the time of dissolution.

Construction of sewers. Street improvement act of 1911 to apply.

§ 25. The sanitary board shall have power, except in incorporated cities or towns, at any time after main sewers, or other sewers are laid, to order and contract for the construction of a sewer in any street, highway or upon property and rights of way owned by the sanitary district or part of any street, highway or property or rights of way owned by sanitary districts where a sewer is not already constructed, and to provide by such order that the cost thereof shall be borne by the property fronting along the line of the sewer, or to be borne by a district as ordered. The provisions of that certain act entitled, "An act to provide for work in and upon streets, avenues, lanes, alleys, courts, places and sidewalks within municipalities, and upon property and rights of way owned by municipalities, and for establishing and changing the grades of any such streets, avenues, lanes, alleys, courts, places and sidewalks, and providing for the issuance and payment of street improvement bonds to represent certain assessments for the cost thereof and providing a method for the payment of such bonds" [approved April 7, 1911], and the amendatory acts thereto, is hereby made applicable to sanitary districts. All proceedings shall be had in accordance with the provisions of said act and the amendments thereto; provided, however, that the words "city council," and "council" used in said act shall be understood to mean sanitary boards. The words "city" and "municipality" shall be understood to mean sanitary districts. The words "clerk" and "city clerk" shall be understood to mean "secretary" of the sanitary board. The words "superintendent of streets" and "street superintendent" and "city engineer" shall be understood to mean the engineer of such "sanitary district" and the terms "treasurer" and "city treasurer" shall be understood to mean any person or official who shall have charge of and make payment of the funds of such sanitary district. The term "right of way" shall mean any parcel of land through which a right of way has been granted to the sanitary district for the purpose of constructing and maintaining a sewer therein; and provided, further, that all the powers and duties conferred by the said provisions of said act and acts amendatory and supplementary thereto upon city councils, superintendents of streets, clerk and city clerks, and treasurers and engineers, are hereby conferred and imposed upon the respective officers and board above specified.

Annexation of territory. Order for election.

§ 26. The boundaries of any sanitary district may be altered, and outlying contiguous territory in the same county as such sanitary district annexed thereto in the manner following: A petition signed by twenty-five per cent of the qualified electors of such contiguous territory proposed to be annexed as shown by the last equalized assessment book of the county in which said sanitary district is situated, designating

specifically the boundaries of such contiguous territory proposed to be annexed, and the assessed valuation thereof as shown by said last equalized assessment book, and stating that such territory is not within the limits of any other sanitary district, and asking that such territory be annexed to said sanitary district, shall be presented to the sanitary board thereof, together with a duly executed bond for the sum of not less than one hundred dollars, to be approved by said sanitary board and filed with the secretary of the sanitary board as security for the payment by said petitioners of the reasonable costs of the election hereinafter provided for, in the event that at said election less than a majority of the votes cast are in favor of the annexation of the proposed territory to the sanitary district. When such petition is presented and a bond approved and filed as above provided for, the sanitary board must within thirty days thereafter order that an election be held for the purpose of determining whether or not such proposed territory shall be annexed. The order must fix the day of such election, which must be within sixty days from the date of the order, and must show the boundaries of the proposed district. This order shall be entered in the minutes of the sanitary board and shall be conclusive evidence of the due presentation of a proper petition, and of the fact that each of the petitioners was at the time of the signing of the petition and the presentation thereof a resident and freeholder within the limits of the proposed district to be annexed.

Posting and publishing of order. Conduct of election. Canvass of votes. Majority vote. Payment of costs, where less than majority favors.

A copy of such order shall be posted for four successive weeks prior to the election, in three public places within the district and the district proposed to be annexed, and shall be published for four successive weeks prior to the election in some newspaper published in the district, if there be one, and if not, in some newspaper published in the county. It shall be sufficient if the order be published once a week. At any time prior to the day fixed for the election, the board shall select one and may select two polling places within the sanitary district, and shall select one and may select two polling places within the district proposed to be annexed, appoint officers of election, and make all necessary and proper arrangement for holding the election. Upon the ballots to be used at such election there shall be printed the words, "For annexation to the sanitary district," and "Against annexation to the sanitary district," and there shall be a voting square to the right of and opposite each such proposition. The election shall be conducted in accordance with the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided. Every qualified elector resident within the district and the district proposed to be annexed for the length of time necessary to enable him to vote at a general election shall be entitled to vote at the election above provided for. After the votes shall have been announced the ballots shall be sealed up and delivered to the secretary or president of the sanitary board which shall, as soon as practicable proceed to canvass the same. Immediately upon the completion of such canvass said sanitary board shall cause a record thereof to be made and entered upon its minutes showing the whole number of votes cast in such sanitary district, the whole number of votes cast in the district proposed to be annexed, the whole number of votes cast in each in favor of annexation, and the number thereof cast in each against annexation; and if it shall appear from such canvass that a majority of all the votes cast in such sanitary district and a majority of all the votes cast in the district proposed to be annexed, are in favor of annexation the secretary, or other officer performing the duties of secretary of the sanitary board of such sanitary district shall make and cause to be entered in the minutes of said board and endorsed on said petition an order approving said petition, and said petition shall thereupon be transmitted and filed with the board of supervisors of the county in which such sanitary district is situated. Such entry shall be

conclusive evidence of the fact and regularity of all prior proceedings of every kind and nature provided by this act or by law, and the facts stated in such entry. Said board of supervisors, at its next regular meeting after filing of said petition, shall by an order alter the boundaries of said sanitary district and annex thereto the contiguous territory described in said petition. Such order shall be conclusive evidence of the validity of all prior proceedings leading up to such annexation and recited in said order, and from and after the same such territory shall become and be a part of such sanitary district. If at said election less than a majority of the votes cast in either the sanitary district or the district proposed to be annexed be in favor of annexation of the proposed territory to the sanitary district, the signers of said petition shall, within ten days after the canvassing of the votes of said election, pay to the sanitary board a sum of money covering the reasonable cost of said election, and if said sum of money is not so paid within ten days, as aforesaid, the sanitary board shall have the right of action under said bond to recover the reasonable cost of said election, and the sanitary board shall, by order, disapprove said petition and enter the same in the minutes of said board, and no other proceedings shall be taken in relation thereto until the expiration of one year from the presentation of said petition, except to collect the costs of said election as herein provided.

Issue of bonds after annexation.

At any time after the annexation of such contiguous territory, the sanitary board may issue bonds for the construction of sewers therein in the manner and for the purposes prescribed and specified in sections fourteen to twenty-one, inclusive, of this act; provided, however, that only qualified electors resident within said annexed territory shall be entitled to petition or vote in said proceedings; and provided, further, that taxes for the payment of the principal and interest of such bonds shall be limited to the taxable property situate within such annexed contiguous territory; provided, further, that nothing in this section shall be construed to limit the powers or alter the procedure elsewhere in this act provided for the issuance of bonds by an entire district and payable out of taxes levied upon all the taxable property therein, whether the boundaries of the district remain as originally established or have been altered by the annexation of contiguous territory.

Lateral sewer maintained by city.

§ 27. At any time after the sewer or other sanitary system is constructed the board of trustees or other governing body of any municipal corporation lying within the limits of any sanitary district may elect to keep and maintain the lateral sewer lying within said municipality in order and repair and may enter into an agreement with the sanitary board so to do. From and after the date of such agreement said board of trustees shall keep said lateral in repair and the sanitary board shall not be required to keep the same in order or repair. After a municipality elects to keep the lateral sewers within its corporate limits in order and repair the property within the corporate limits of such municipality shall not be taxed for running expenses except for the inspection and repairs of the main sewers lying within such municipality.

Payment of bonds by sale of additional bonds.

§ 28. Whenever any sanitary district has an outstanding indebtedness evidenced by the bonds thereof, the sanitary board or other governing body thereof shall have the power at any election calling for the issuance of additional bonds for the construction of a larger or more comprehensive sewer or other sanitary system in the original district or in a sanitary district whose boundaries have been altered by the annexation of outlying contiguous territory thereto as provided for in this act, to submit to the qualified electors of such sanitary district the question of declaring all or any of such

bonds to be at once due and payable, and provide for the payment or retirement thereof out of moneys to be realized from the sale of such additional bonds.

Construction of larger main sewer or different systems.

§ 29. Whenever the sanitary board of an original sanitary district, or of a sanitary district the boundaries of which have been altered by the annexation of outlying contiguous territory, as provided for in this act, shall by order passed by a vote of two-thirds of all its members and approved by the president of the board, which order shall be entered in the minutes, determine that the public interest or necessity of the original district or of a district whose boundaries have been altered by the annexation of outlying contiguous territory, demands the construction of a larger main sewer or a different system, the board may call an election for the purpose of determining whether bonds shall be issued for the construction of a larger main sewer or for a system different from that already constructed for the disposal of sewage.

The proceedings in respect to the issuance of bonds for such purposes shall in every respect, except as in this section otherwise provided, conform to the requirements of sections fourteen to twenty-one inclusive of this act.

Nomination of elective officers. Petition of nomination.

§ 30. The mode of nomination of election of all elective officers of such sanitary district, to be voted upon at any sanitary election, shall be as follows and not otherwise. The name of the candidate shall be printed upon the ballot, when a petition of nomination shall have been filed with the secretary of the board, when the district is already formed, or with the clerk of the board of supervisors when the election is for the purpose of forming a sanitary district, in his behalf in the manner and form as follows: The petition of nomination shall consist of not less than five nor more than twenty signatures which shall read substantially as follows:

PETITION OF NOMINATION.

State of California, }
County of..... } ss.

I, (or we) the undersigned certify that I do hereby join in a petition for the nomination of for the office of of the sanitary board of sanitary district No. to be voted for at the sanitary election to be held in sanitary district No. of the county of on the day of, 191., and I further certify, that I am a qualified elector, residing within said district, and am not at this time a signer of any other petition nominating any other candidate for the above office, or in case there are several places to be filled in the above named office that I have not signed more petitions than there are places to be filled in the above office.

(Signed).....

State of California, }
County of..... } ss.

..... being first duly sworn deposes and says: That he is one of the persons who signed the foregoing petition and that the signatures thereto are the genuine signatures of the persons whose names are signed thereto.

Petition of nomination.

The certificate of nomination may be upon one or more papers, which certificate must contain the name of one candidate and no more.

Each signer must be a qualified elector, residing within said district, and must not at the time of the signing a certificate have his name signed to any other certificate for

any other candidate for the same office, nor in case there are several places to be filled in the same office signed to more certificates for that office than there are places to be filled for that office. The certificate or certificates shall be verified under oath of one of the signers thereto, that the signature or signatures is, or are, the true and genuine signatures of the persons whose names are signed thereto.

A petition or petitions of nomination, as aforesaid, may be presented to the secretary of the sanitary board, where a sanitary district is already formed or to the county clerk, where a sanitary district has not been formed; not earlier than thirty days nor less than twenty days before the election. The secretary of the sanitary board, where a sanitary district is already formed or the county clerk, where a sanitary district has not been already formed shall endorse thereon the date upon which the petition was presented to him. When a petition of nomination is presented for filing the secretary of the sanitary board, where a sanitary district is already formed or the county clerk, where a sanitary district has not been formed shall forthwith examine the same and ascertain whether or not it conforms with the provisions of this section. If found not sufficient it shall be returned to the person who presented the same. The secretary of the sanitary board, or the county clerk, shall cause the ballots to be printed and shall contain the name of the candidates whose nomination petition or petitions have been filed as provided for herein.

Election for reorganization of district formed under act of 1891. Two-thirds vote.

§ 31. The sanitary board of any district heretofore organized under that certain act entitled, "An act to provide for the formation, government, operation and dissolution of sanitary districts in any part of the state for the construction of sewers and other sanitary purposes; the acquisition of property thereby; the calling and conducting elections in such districts; the assessments, levy, collection, custody and disbursement of taxes therein; the issuance and disposal of the bonds thereof, and the determination of their validity, and making provision for the payment of such bonds and the disposal of their proceeds," approved March 31, 1891, may submit to the electors thereof the question whether such district shall become organized under the provisions of this act. Notice that such question will be so submitted shall be given by posting for four successive weeks prior to the election in three public places within the district, and shall be published for four successive weeks prior to the election in a newspaper printed and published in the district if there be one, and if not, in a newspaper printed and published in the county. It shall be sufficient if the notice be published once a week. Such notice shall distinctly state the proposition to be so submitted and shall invite the electors thereof to vote upon such proposition by placing upon their ballots the words "for reorganization," or "against reorganization," or words equivalent thereto, and there shall be a voting square to the right of, and opposite each such proposition. At any time prior to the day fixed for the election the board shall select one and may select two polling places within the district and make all necessary and proper arrangements for holding the election. The election shall be conducted in accordance with the general election laws of the state, so far as the same shall be applicable except as herein otherwise provided. The votes so cast shall be canvassed by the sanitary board as soon as convenient after the election. If two-thirds of the votes cast at such election are in favor of reorganization then the board shall cause an entry of that vote to be made in its minutes. From and after the date of such entry the district shall be deemed to be organized under this act, with all the powers conferred herein; the persons in office at the time of such reorganization shall be entitled immediately to enter upon the duties of the like offices of the district as reorganized, and shall continue therein until the expiration of the term for which they have been elected or appointed.

Effect of reorganization.

§ 32. Any sanitary district organized under the provisions of section thirty-one of this act shall, for all purposes, be deemed and taken to be in law the identical district theretofore formed and existing; and such reorganization shall in no wise affect or impair the title to any property owned or held by such district, or in trust therefor, or any debts, demands, liabilities, or obligations existing in favor of or against such district or any proceedings then pending; nor shall the same operate to repeal or affect in any manner any ordinance theretofore passed or adopted and remaining unrepealed, or, to discharge any person from any liability, civil or criminal, then existing, for any violation of such ordinance; but such ordinances, so far as the same are in any conflict with general laws, shall be and remain in force until repealed or amended by competent authority; provided, that proceedings theretofore commenced shall, after such reorganization, be conducted in accordance with the provisions of this act.

1. Constitutionality—Police power.—The act of 1891 is a proper exercise of the police power.—*Woodward v. Fruitvale, etc., Dist.*, 99 Cal. 554, 34 Pac. 239.

2. Same—Interference with municipal functions.—The act of 1891 is not void on the ground that it necessarily interferes with the exercise of municipal functions.—*Woodward v. Fruitvale, etc., Dist.*, 99 Cal. 554, 34 Pac. 239.

3. Same—Amendment of 1895 not covered by title.—The amendment of 1895 was an attempt to introduce into the act legislation not embraced in its title, even as amended, and was unconstitutional.—*In re Werner*, 129 Cal. 567, 62 Pac. 97.

4. Sanitation by drainage not a "municipal affair"—Annexation to municipality of part of sanitary district.—The subject of drainage for sanitary purposes is not a "municipal affair," and the annexation of a portion of the territory of a sanitary district to a municipality did not withdraw the property annexed from the jurisdiction of the sanitary board of the district for purposes of assessment for district purposes.—*Pixley v. Saunders*, 168 Cal. 152, 141 Pac. 815.

5. Petition—Sufficiency of—Signatures of persons not having statutory qualifications.—Where the petition gives the name and boundaries of the proposed district, and describes petitioners as residents and freeholders thereof, and is signed by twenty-five persons who are found to be such, it is sufficient, and the fact that it is signed by others who do not possess the statutory qualifications does not vitiate.—*Woodward v. Fruitvale, etc., Dist.*, 99 Cal. 554, 34 Pac. 239.

6. Notice of election—Publication for "four successive weeks" "prior to election."—The act does not provide in terms for publication of the notice for four successive weeks next preceding the election, and publication for four successive weeks

beginning October 4, 1892, for an election November 8, 1892, is sufficient.—*Woodward v. Fruitvale, etc., Dist.*, 99 Cal. 554, 34 Pac. 239.

7. Issue of bonds—Collateral attack—Premature organization of board.—The issue of bonds of a sanitary district can not be collaterally attacked, at the suit of a tax payer, on the ground that the board organized and elected its president and secretary after election and before the count of the vote by the board of supervisors.—*Woodward v. Fruitvale, etc., Dist.*, 99 Cal. 554, 34 Pac. 239.

8. Collection of taxes.—The manner of collecting sanitary district taxes by the tax collector is set out in the act, but the sanitary board may collect the taxes by its own agent, pursuant to regulations, not in conflict with general law, adopted by it.—*Guptill v. Kelsey*, 6 Cal. App. 35, 91 Pac. 409.

9. Sale for delinquent taxes.—The failure of the tax collector to comply with the code provisions relating to the collection of delinquent sanitary district taxes, is fatal to the validity of a sale made thereunder, and his deed is void.—*Guptill v. Kelsey*, 6 Cal. App. 35, 91 Pac. 409.

10. A sanitary district may be annexed to a municipality.—A sanitary district organized under the act of 1891, or any part of such district, may be annexed to an incorporated town or city under the annexation act of 1889.—*People ex rel. Cuff v. Oakland*, 123 Cal. 598, 56 Pac. 445.

11. Annexation of territory to municipality dissolves district.—Where the territory of a sanitary district is annexed to a municipality, itself possessing all of the powers and functions possessed by the district, such annexation operates to extinguish and dissolve the district.—*In re East Fruitvale, etc., Dist.*, 158 Cal. 453, 111 Pac. 368.

SAN FERNANDO.

See Act 3094, note.

SAN GABRIEL.

See Act 3094, note.

SANGER.

See Act 3094, note.

SAN JACINTO.

See Act 3094, note.

CHAPTER 323.**SAN JOAQUIN COUNTY.**

References: Boundary, see Kerr's Cyc. Political Code, § 3947.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

- ACT 4314. CONSTRUCTION OF LEVEES ON MOKELUMNE RIVER.
- 4315. PROTECTION OF LANDS FROM OVERFLOW.
- 4317. LEGALIZING CERTAIN RECORDS.
- 4326. ADDITIONAL JUDGE OF THE SUPERIOR COURT.

CONSTRUCTION OF LEVEES ON MOKELUMNE RIVER.

ACT 4314—An act authorizing the construction of certain levees by certain parties.

History: Approved January 24, 1878, Stats. 1877-78, p. 48.

1. **This act authorized** John Parrott, Samuel Clark, J. L. Keagle, Rufus Franklin, William Heart, Robert Boyce, D. B. McNeal, their associates and assigns, to construct, maintain, complete and repair certain levees on the south bank of Mokelumne river.

PROTECTION OF LANDS FROM OVERFLOW.

ACT 4315—An act to provide for the better protection of certain lands in San Joaquin county from overflow.

History: Approved April 1, 1872, Stats. 1871-72, p. 861.

LEGALIZING CERTAIN RECORDS.

ACT 4317—An act concerning certain records in the county of San Joaquin.

History: Approved April 21, 1857, Stats. 1857, p. 228.

ADDITIONAL JUDGE OF THE SUPERIOR COURT.

ACT 4326—An act to provide one (1) additional judge of the superior court of the county of San Joaquin, state of California; for the manner of his election and for his compensation.

History: Approved March 18, 1905, Stats. 1905, p. 100.

This act increased the number of judges from two to three.

CHAPTER 324.**SAN JOAQUIN RIVER.**

References: Navigable, see Kerr's Cyc. Political Code, § 2349.

Drainage district, see tit. "Sacramento and San Joaquin Drainage District."

CONTENTS OF CHAPTER.

- ACT 4331. PUBLIC WHARVES.
- 4332. RIGHT OF WAY FOR CUT-OFFS.
- 4333. CONSTRUCTION OF CUT-OFF.

PUBLIC WHARVES.

ACT 4331—An act concerning public wharves.

History: Approved March 28, 1872, Stats. 1871-72, p. 657.

This act authorized the owners of certain uplands bordering on the river to rent and maintain wharves.

RIGHT OF WAY FOR CUT-OFFS.

ACT 4332—An act providing for the acquisition by the state of California for the United States of America of the right of way for cut-offs in rectification and improvement of the San Joaquin river, and appropriating fifteen thousand dollars for said purpose.

History: Approved April 25, 1911, Stats. 1911, p. 1109.

Appropriation: right of way for cut-offs of San Joaquin river.

§ 1. From any funds in the state treasury not otherwise appropriated, the sum of fifteen thousand dollars or so much thereof as may be necessary, there is hereby appropriated for the purpose of effectuating the conveyance by the present owners directly to the United States of America of the right of way for cut-offs or channels in rectification and improvement of the channel and navigation of the San Joaquin river, such cut-offs or channels being shown in and on house document No. 1124, sixtieth congress, second session.

Governor to purchase.

§ 2. The governor of the state of California is hereby authorized to take and make such purchases, sales and conveyances of land as shall be necessary or convenient to the end of effectuating the aforesaid direct conveyance of such right of way to the United States of America, and the immediate return to the treasury of the state of California of the proceeds of the sale of any lands by him necessarily bought and thereafter sold on behalf of the state of California in the effectuation of the aforesaid purpose of acquiring said right of way for the United States of America; provided, that all and singular the said purchases and sales and all expenditures on account thereof be approved or audited by the state board of examiners.

Controller authorized to draw warrants.

§ 3. The controller of state is hereby authorized and directed to draw his warrant in favor of the governor of the state of California for the amount herein made payable as provided herein and for the purposes hereof and the state treasurer is hereby directed to pay the same.

CONSTRUCTION OF CUT-OFF.

ACT 4333—An act granting state authority for the construction of a cut-off in the San Joaquin river to meet a public necessity.

History: Approved April 15, 1919. In effect July 22, 1919. Stats. 1919, p. 101.

Cut-off in San Joaquin river authorized.

§ 1. The state board of control is by this act given authority to proceed with the securing of necessary rights of way and with co-operating agencies to procure the construction of a proper navigable cut-off in the San Joaquin river from a point below the mouth of Stockton channel to a point above the junction of the Calaveras river for the purpose of meeting a public necessity which is hereby declared to exist at this place.

CHAPTER 325.

SAN JOSE.

CONTENTS OF CHAPTER.

ACT 4337. FREEHOLDERS' CHARTER.

4338. LAW LIBRARY.

4339. CONFIRMING OPENING OF MARKET STREET.

4340. SANTA CLARA AVENUE AND PENITENCIA RESERVATION.

4341. ERECTION OF HIGH SCHOOL BUILDING.

FREEHOLDERS' CHARTER.

ACT 4337—Freeholders' charter of the city of San Jose.

History: Voted for and ratified at a special municipal election April 19, 1915; filed with the secretary of state May 12, 1915, Stats. 1915, p. 1869. It was originally incorporated March 27, 1850, Stats. 1850, p. 124. The act of incorporation was amended in 1850 (Stats. 1850, p. 261), in 1851 (Stats. 1851, p. 329), in 1853 (Stats. 1853, p. 150), and in 1854 (Stats. 1854, p. 229). It was repealed and the city was reincorporated March 27, 1857, Stats. 1857, p. 113. The act of 1850 was also repealed March 17, 1866, Stats. 1865-66, p. 246. The act of 1857 was amended April 15, 1858, Stats. 1858, p. 156, and was repealed March 16, 1859, Stats. 1859, p. 117, and again repealed March 17, 1866, Stats. 1865-66, p. 246. The city was again incorporated March 16, 1859, Stats. 1859, p. 109. This last act was amended (1) April 30, 1860, Stats. 1860, p. 340; (2) April 8, 1862, Stats. 1862, p. 117; (3) March 16, 1863, Stats. 1863, p. 61; and was repealed March 17, 1866, Stats. 1865-66, p. 269. The city was again reincorporated by the act of March 17, 1866, Stats. 1865-66, p. 246, and this act was repealed and the city reincorporated March 13, 1872, Stats. 1871-72, p. 333. The act of 1872 was repealed and the city reincorporated March 17, 1874, Stats. 1873-74, p. 395. This last act was amended (1) March 31, 1876, Stats. 1875-76, p. 627; (2) March 16, 1878, Stats. 1877-78, p. 289; (3) March 30, 1878, Stats. 1877-78, p. 846; (4) March 11, 1891, Stats. 1891, p. 97. The act of 1874 was superseded by the freeholders' charter voted for and ratified February 23, 1897; approved by resolution adopted March 5, 1897, Stats. 1897, p. 592. This charter was amended (1) February 18, 1903, Stats. 1903, p. 684; (2) August 1, 1906, Stats. 1907, p. 1272. This charter was superseded by the present charter.

1. Adoption of street law in charter—Amendment not amendment of charter.—

The amendment of a general street law, which had been adopted by the San Jose charter as a part thereof, is not an amendment of the charter.—*Ransome-Crummy Co. v. Bennett*, 177 Cal. 560, 171 Pac. 304.

2. Street improvements—Vrooman act, section 2, chapter I, article VIII, charter.—

The provision of section 2, chapter I, article VIII, of the charter, as to deposit of copy of part I of the Vrooman act on the doorstep of houses fronting on proposed improvement, in cases where the cost exceeds \$2 per front foot, does not apply to assessments under the district plan.—*Smith v. Lightston*, 182 Cal. 41, 186 Pac. 769.

3. Same—Failure to appeal to council, waiver of irregularity.—Failure of property owner to appeal from assessment to the city council, on the ground of the failure of the contractor to file the affidavit required by section 8, chapter I, article VIII, of the charter, is a waiver of the defect, in view of section 11 of the Vrooman act,

adopted into the charter.—*Smith v. Lightston*, 182 Cal. 41, 186 Pac. 769.

4. Same—Does not relate to private contracts with property owners, but contracts with city.—The affidavit required by section 8, chapter I, article VIII, of the charter, to be filed by the contractor, refers only to a private agreement in relation to street improvement by the city, and not to a private contract with property owners.—*Ransome-Crummy Co. v. Coulter*, 177 Cal. 574, 171 Pac. 308.

5. Street bond act of 1893—Applies to San Jose.—The street bond act of 1893 applies to San Jose, in view of the fact that the charter contains no provisions relating to such bonds, and none inconsistent with the act.—*Smith v. Lightston*, 182 Cal. 41, 186 Pac. 769.

Citations.—The charter of 1897 was cited in the following authorities: *Harter v. San Jose*, 141 Cal. 659, 660, 663, 75 Pac. 344; *Stockton v. Bd. of Educ. of San Jose*, 145 Cal. 246, 247, 78 Pac. 730; *Barthel v. Bd. of Educ. of San Jose*, 153 Cal. 376, 379, 380,

95 Pac. 892; Grieb v. Zemansky, 157 Cal. 316, 319, 107 Pac. 605; Galindo v. Walter, 8 Cal. App. 234, 235, 236, 96 Pac. 505; Griggs v. Hartzoke, 13 Cal. App. 430, 431, 109 Pac. 1104.

The act of 1871 was cited in Harter v. San Jose, 141 Cal. 659, 662, 663, 75 Pac. 344.

The act of 1874 was cited in the following authorities: San Jose v. Welch, 65 Cal. 358, 359, 4 Pac. 207; In re Carrillo, 66

Cal. 3, 5, 4 Pac. 695; McGee v. San Jose, 38 Cal. 91, 92, 8 Pac. 94; Schmidt v. Market St., etc., Ry. Co., 90 Cal. 37, 39, 27 Pac. 61; Taylor v. Reynolds, 92 Cal. 573, 574, 28 Pac. 688; Malloy v. Bd. of Educ. of San Jose, 102 Cal. 642, 644, 36 Pac. 948; Sinnott v. Columbet, 107 Cal. 187, 188, 191, 193, 40 Pac. 329; Harter v. San Jose, 141 Cal. 659, 663, 75 Pac. 344.

LAW LIBRARY.

ACT 4338—An act establishing a law library.

History: Approved March 27, 1874, Stats. 1873-74, p. 727. Not repealed by the act of March 31, 1891, Stats. 1891, p. 430, if a library was established under this act prior to the approval of the act of 1891. The latter act was superseded by the code provisions and the same reservation was there made. See Kerr's Cyc. Political Code, §§ 4190, et seq., and § 4203.

CONFIRMING OPENING OF MARKET STREET.

ACT 4339—An act to ratify and confirm the acts of the mayor and common council of the city of San Jose.

History: Approved March 4, 1878, Stats. 1877-78, p. 163.

1. Act permissive only.—The act was permissive merely, as to sale of lots on the new street, and left the mayor and common council free to exercise their discretion as to whether the sale was for the best interests of the city.—Coopers v. San Jose, 55 Cal. 599.

SANTA CLARA AVENUE AND PENETENCIA RESERVATION.

ACT 4340—An act concerning the Santa Clara avenue and certain public lands of the city of San Jose, in the county of Santa Clara.

History: Approved March 16, 1878, Stats. 1877-78, p. 290.

1. The subject of this act and its history and the legislation in relation thereto is considered in Harter v. San Jose, 141 Cal. 659, 75 Pac. 344.

ERECTION OF HIGH SCHOOL BUILDING.

ACT 4341—An act authorizing and empowering the school trustees to erect a high school building.

History: Approved March 17, 1897, Stats. 1897, p. 167.

SAN JUAN.

See Act 3094, note.

SAN LEANDRO.

See Act 3094, note.

CHAPTER 326.

SAN LUIS OBISPO CITY.

CONTENTS OF CHAPTER.

ACT 4360. FREEHOLDERS' CHARTER.

4361. BONDS.

4362. SUBSTITUTION OF BONDS.

4366. SETTLEMENT OF TITLE TO TOWNSITE LANDS.

FREEHOLDERS' CHARTER.

ACT 4360—Freeholders' charter of the city of San Luis Obispo.

History: Voted for and ratified at a special municipal election held September 12, 1910; filed with the secretary of state February 23, 1911, Stats. 1911, p. 1698. Amended (1) March 18, 1913; filed with the secretary of state April 9, 1913, Stats. 1913, p. 1667; (2) April 2, 1917; filed with the secretary of state May 4, 1917, Stats. 1917, p. 1944. Originally incorporated February 19, 1856, Stats. 1856, p. 30. This act was repealed April 26, 1858, Stats. 1858, p. 315. The city was reincorporated April 14, 1863, Stats. 1863, p. 293. This act was amended and supplemented March 24, 1870, Stats. 1869-70, p. 369, and was repealed and the city reincorporated by the act of March 4, 1872, Stats. 1871-72, p. 220. This act was amended March 20, 1872, Stats. 1871-72, p. 434, and March 20, 1874, Stats. 1873-74, p. 328. It was repealed and the city reincorporated by the act of March 20, 1876, Stats. 1875-76, p. 361. This latter act was amended March 29, 1878, Stats. 1877-78, p. 683, and was superseded in 1884 by incorporation under the general law. The latter incorporation was superseded by the present charter.

• BONDS.

ACT 4361—An act to provide for the issuance of bonds of the town of San Luis Obispo.

History: Approved March 20, 1876, Stats. 1875-76, p. 382.

SUBSTITUTION OF BONDS.

ACT 4362—An act to provide for the substitution of bonds of city of San Luis Obispo in lieu of bonds of the town of San Luis Obispo.

History: Approved March 14, 1878, Stats. 1877-78, p. 237.

SETTLEMENT OF TITLE TO TOWNSITE LANDS.

ACT 4366—An act to settle the title to lands in the town of San Luis Obispo.

History: Approved March 23, 1868, Stats. 1867-68, p. 245.

Citations. *Cerf v. Pflëging*, 94 Cal. 131, 132, 29 Pac. 417; *Koshland v. Cherry*, 13 Cal. App. 440, 443, 110 Pac. 143.

CHAPTER 327.

SAN LUIS OBISPO COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3948.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

- ACT 4375. TRANSCRIBING RECORDS.
- 4378. BOND ISSUE FOR ROAD PURPOSES.
- 4381. SQUIRREL NUISANCE ACT APPLIED.
- 4382. ADDITIONAL JUDGE OF THE SUPERIOR COURT.
- 4383. REDUCING NUMBER OF SUPERIOR JUDGES.

TRANSCRIBING RECORDS.

ACT 4375—An act concerning the county records of San Luis Obispo county.

History: Approved January 27, 1860, Stats. 1860, p. 11. A similar act of later date, March 16, 1872, Stats. 1871-72, p. 402, provided for transcribing into records "Homesteads," "Abandonment of Homesteads," and "Sole Traders' Licenses" in the custody of the recorder.

BOND ISSUE FOR ROAD PURPOSES.

ACT 4378—An act to provide funds for road purposes in the county of San Luis Obispo.

History: Approved April 3, 1876, Stats. 1875-76, p. 907.

SQUIRREL NUISANCE ACT APPLIED.

ACT 4381—An act to make applicable a certain act to San Luis Obispo county.

History: Approved March 3, 1876, Stats. 1875-76, p. 637.

ADDITIONAL JUDGE OF THE SUPERIOR COURT.

ACT 4382—An act providing for an additional superior judge for the county of San Luis Obispo.

History: Approved February 8, 1889, Stats. 1889, p. 6.

This act increased the number of judges from one to two.

REDUCING NUMBER OF SUPERIOR JUDGES.

ACT 4383—An act providing that the office of the judge of the superior court of the county of San Luis Obispo, state of California, now held by Judge D. S. Gregory, shall cease upon a vacancy occurring therein.

History: Approved March 19, 1889, Stats. 1889, p. 333.

The act in effect reduced the number of judges from two to one.

SAN MARINO.

See Act 3094, note.

CHAPTER 328.

SAN MATEO CITY.

Reference: Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.

ACT 4387. TIDE LAND GRANT.

TIDE LAND GRANT.

ACT 4387—An act granting to the city of San Mateo the salt marsh, tide and submerged lands of the state of California, including the right to wharf out therefrom, and regulating the management, use and control thereof.

History: Approved May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 906.

Tide lands granted to San Mateo. Conditions of grant. Franchises for wharves, etc.

Persons in possession to have first right. Right to use wharves, etc., reserved to state. No discrimination in rates. Right to fish reserved.

§ 1. There is hereby granted to the city of San Mateo, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty, in and to all the salt marsh, tide and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific ocean, or of any harbor, estuary, bay or inlet within said boundaries, to be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit: That said lands shall be used by said city and its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatever; provided, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the state of California and with the requirements of commerce or navigation at said harbor, for a term not exceeding twenty-five years, and on such other terms and conditions as said city may determine, including a right to renew such

lease or leases for a further term not exceeding twenty-five years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases, and said lease or leases may be for any and all purposes which shall not interfere with navigation or commerce, with reversion to the said city on the termination of such lease or leases of any and all improvements thereon, and on such other terms and conditions as the said city may determine, but for no purpose which will interfere with navigation or commerce; subject also to a reservation in all such leases or such wharfing out privileges of a street, or of such other reservation as the said city may determine for sewer outlets, and for gas and oil mains, and for hydrants, and for electric cables and wires, and for such other conduits for municipal purposes, and for such public and municipal purposes and uses as may be deemed necessary by the said city; provided, however, that each person, firm or corporation or their heirs, successors or assigns now in possession of land or lands abutting on said lands, within the boundaries of the city of San Mateo, shall have a right to obtain a lease for a term of twenty-five years from said city of said land and wharfing out privileges therefrom with a right of renewal for a further term of twenty-five years pursuant to the provisions of this act and on such terms and conditions as said city may determine and specify, subject to the right of said city to terminate said lease at the end of the first twenty-five years or refuse to renew the same, or to terminate the lease so renewed during the term of such renewed lease on such just and reasonable terms for compensation for improvements at the then value of said improvements as said city may determine and specify. Upon obtaining such lease and wharfing out privileges such person, firm or corporation, their heirs or assigns, shall quitclaim to said city any right they or any of them may claim or have to the said lands hereby granted. This grant shall carry the right to such city of the rents, issues and profits in any manner hereafter arising from the lands or wharfing out privileges hereby granted. The state of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California. No discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors in the management, conduct or operation of any of the utilities, structures or appliances mentioned in this section. There is hereby reserved in the people of the state of California the right to fish in the waters on which said lands may front with the right of convenient access to said waters over said lands for said purpose.

Must issue \$100,000 bonds within five years. Lands may revert to state.

§ 2. The foregoing conveyance is made upon the condition that the city of San Mateo, shall, within five years from the time this act shall go into effect, exclusive of such time as said city may be restrained from so doing by injunction issued out of any court of this state or of the United States, and exclusive of such further delay as may be caused by unavoidable misfortune or great public or municipal calamity, issue its bonds for harbor improvement purposes, in an amount of money of not less than one hundred thousand dollars, and shall within five years after this act shall go into effect, exclusive of the time in this section hereinbefore mentioned, commence the work of such harbor improvement, and the said work and improvement shall be prosecuted with such diligence, that not less than one hundred thousand dollars shall be expended thereon, within five years from the time this act shall go into effect, exclusive of the time in this section hereinbefore mentioned. If said bonds be not issued, or said work be not prosecuted and completed as, and in the manner herein provided, then the lands by this act conveyed to the city of San Mateo, shall revert to the state of California.

CHAPTER 329.

SAN MATEO COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3949.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 4389. BOUNDARY FENCES AND TRESPASSING ANIMALS.

4399. DECLARING CERTAIN TIDE LANDS PUBLIC GROUNDS.

BOUNDARY FENCES AND TRESPASSING ANIMALS.

ACT 4389—An act in relation to boundary fences and the trespass of animals in the county of San Mateo.

History: Approved March 9, 1876, Stats. 1875-76, p. 173.

The code commissioners treat this act as repealed by the general estray law of 1897; but see editor's note to chapter on Estrays.

DECLARING CERTAIN TIDE LANDS PUBLIC GROUNDS.

ACT 4399—An act to declare certain tide lands public grounds and granting the same to San Mateo county in trust for the use of the public.

History: Approved February 27, 1893, Stats. 1893, p. 42.

1. Constitutionality—Descriptive words—Pebble Beach.—The act is constitutional and valid, and the words "Pebble Beach" were used as words of description subordinate to the phrase, "all the tide lands between the line of high and low tide."—Coburn v. San Mateo Co., 75 Fed. 520.

CHAPTER 330.

SAN PASQUAL BATTLEFIELD.

CONTENTS OF CHAPTER.

ACT 4402. GIFT OF BATTLEFIELD ACCEPTED.

GIFT OF BATTLEFIELD ACCEPTED.

ACT 4402—An act to accept the gift to the state of San Pasqual battlefield in San Diego county, to provide for collecting and systemizing the history of said battle, for determining the exact location thereof, and to report a suitable method of marking said battlefield and commemorating the heroism of those Americans who fought and died there.

History: Approved May 11, 1919. In effect July 22, 1919. Stats. 1919, p. 444.

Gift of San Pasqual battlefield accepted.

§ 1. The state of California hereby accepts from William G. Henshaw and Ed. Fletcher the gift of the tract of land in San Diego county, described in the deed dated January 16, 1918, and recorded in the county recorder's office of San Diego county, January 21, 1918, in book seven hundred fifty of deeds, at page two hundred fifty-three, being a part of the scene of the actions fought at San Pasqual between the Americans and Mexicans on December 6 and 7, 1846, and in which actions the Americans lost eighteen men killed and thirteen wounded.

Duty of historical survey commission.

§ 2. The California historical survey commission is hereby authorized and directed to collect all obtainable history of the engagements fought between the Americans and Mexicans in San Diego county, at or near San Pasqual, in December, 1846, and inci-

dents related thereto, and to systematize and arrange same so that it may be made available for the use of students of history and for public reading. Said California historical survey commission shall also determine the exact location of said battles and shall recommend a suitable and proper means of marking said battlefield and commemorating the heroism of those Americans who fought and died there.

Report.

§ 3. Said California historical survey commission shall report the result of their investigations and labors to the forty-fourth session of the legislature on or before January 15, 1921.

CHAPTER 331.

SAN RAFAEL.

CONTENTS OF CHAPTER.

ACT 4405. FREEHOLDERS' CHARTER.

FREEHOLDERS' CHARTER.

ACT 4405—Freeholders' charter of the city of San Rafael.

History: Voted for and ratified at a special municipal election November 30, 1912; filed with the secretary of state March 31, 1913, Stats. 1913, p. 1549. Amended April 12, 1915; filed with the secretary of state April 19, 1917, Stats. 1917, p. 1905; April 9, 1917; filed with the secretary of state May 4, 1917, Stats. 1917, p. 1967. Originally incorporated February 18, 1874, Stats. 1873-74, p. 111. This act was amended March 30, 1878, Stats. 1877-78, p. 767, and was superseded by incorporating in 1889 under the general law, which latter incorporation was superseded by the present charter.

SANTA ANA.

See Act 3094, note.

CHAPTER 332.

SANTA BARBARA CITY.

CONTENTS OF CHAPTER.

ACT 4410. FREEHOLDERS' CHARTER.

4413. LEGALIZING CERTAIN GRANTS.

4414. LEGALIZING AND CONFIRMING CERTAIN GRANTS.

4415. CONFIRMING CONVEYANCES TO SANTA BARBARA CEMETERY ASSOCIATION.

FREEHOLDERS' CHARTER.

ACT 4410—Freeholders' charter of the city of Santa Barbara.

History: Voted for and ratified at a special municipal election held for that purpose September 21, 1915; filed with the secretary of state January 27, 1917. Originally incorporated April 9, 1850, Stats. 1850, p. 172. This act was supplemented March 22, 1852, Stats. 1852, p. 220, and April 15, 1858, Stats. 1858, p. 171, and was repealed and the city reincorporated by the act of April 18, 1860, Stats. 1860, p. 197. This latter act was amended April 23, 1860, Stats. 1860, p. 250, and was repealed and the city reincorporated by the act of May 18, 1861, Stats. 1861, p. 502. This latter act was repealed and the city reincorporated by the act of February 10, 1864, Stats. 1863-64, p. 68. This latter act was amended (1) April 4, 1870, Stats. 1869-70, p. 854; (2) February 6, 1872, Stats. 1871-72, p. 78. This act was superseded by the act of reincorporation of March 10, 1874, Stats. 1873-74, p. 330, which was amended (1) March 15, 1876, Stats. 1875-76, p. 285; (2) March 30, 1878, Stats. 1877-78, p. 776; (3) March 11, 1887, Stats. 1887, p. 108. The last named amendment was merely a repeal of the one immediately preceding it. The act of 1874 was superseded by the freeholders' charter voted for and ratified at a special election September 20, 1898; resolution of approval adopted February 20, 1899, Stats. 1899, p. 448. This charter was amended (1) December 1, 1903; approval resolution adopted February 8, 1905, Stats. 1905, p. 929; (2) December 3, 1907; approval resolution adopted February 3, 1909, Stats. 1909, p. 1149; (3) December 7, 1909; filed with the secretary of state February 3, 1911, Stats. 1911, p. 1478. This charter was superseded by the present charter.

1. Public works—Charter provides exclusive method.—Section 40 of the Santa Barbara charter provides the exclusive method for the construction of public works, and applies to municipal water-works, and neither section 116 nor any other section authorizes the water commissioners to have the work done by day labor, or otherwise than by contract let to the lowest bidder, as provided in section 40.—*Foxen v. Santa Barbara*, 166 Cal. 77, 81, 134 Pac. 1142.

2. Judgment creditor—Filing of papers—Auditor proper official.—The auditor of Santa Barbara is, under the charter, the proper official with whom a judgment

creditor of the city should file the papers required by section 710, Code of Civil Procedure, and not the mayor.—*Ott Hardware Co. v. Davis*, 165 Cal. 795, 799, 134 Pac. 973.

Citations.—The former charter was cited in the following authorities: *Hancock v. Board of Educ. of Santa Barbara*, 140 Cal. 554, 558, 559, 44 Pac. 44; *Santa Barbara v. Davis*, 142 Cal. 669, 670, 76 Pac. 495; *McCaleb v. Dreyfus*, 156 Cal. 204, 209, 103 Pac. 924; *Santa Barbara v. Davis*, 6 Cal. App. 342, 344, 92 Pac. 308.

The act of 1873-4, p. 330, was cited in *City of Santa Barbara v. Eldred*, 95 Cal. 378, 383, 30 Pac. 562.

LEGALIZING CERTAIN GRANTS.

ACT 4413—An act to legalize certain grants and sales made by the ayuntamiento of the pueblo, and by the mayor and common council of the city of Santa Barbara, of lands belonging to the said pueblo and city.

History: Approved May 14, 1861, Stats. 1861, p. 371. Amended March 6, 1863, Stats. 1863, p. 47. Supplemented May 6, 1862, Stats. 1862, p. 495.

LEGALIZING AND CONFIRMING CERTAIN GRANTS.

ACT 4414—An act to legalize and confirm certain grants and sales of town lands by the board of trustees and the mayor and common council of the city of Santa Barbara, made since the passage of the act of March 31, 1866.

History: Approved April 2, 1870, Stats. 1869-70, p. 666. The act of March 31, 1866, Stats. 1865-66, p. 638, in general terms legalized the acts of the board of trustees with specifically referring to grants of lands. A later act of March 14, 1876, Stats. 1875-76, p. 282, ratified and confirmed a number of ordinances conveying certain lands.

CONFIRMING CONVEYANCES TO SANTA BARBARA CEMETERY ASSOCIATION.

ACT 4415—An act confirming to the "Santa Barbara Cemetery Association" a deed of conveyance made by the town of Santa Barbara.

History: Approved March 30, 1876, Stats. 1875-76, p. 572.

CHAPTER 333.

SANTA BARBARA COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3950.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 4423. VALIDATING CERTAIN CONVEYANCES.

VALIDATING CERTAIN CONVEYANCES.

ACT 4423—An act concerning conveyances in the county of Santa Barbara.

History: Approved February 4, 1874, Stats. 1873-74, p. 61.

CHAPTER 334.

SANTA CLARA, TOWN OF.

CONTENTS OF CHAPTER.

ACT 4434. REINCORPORATION ACT OF 1872.
4435. TRUSTEE OF TOWNSITE LANDS.

REINCORPORATION ACT OF 1872.

ACT 4434—An act to reincorporate the town of Santa Clara.

History: Approved March 6, 1872, Stats. 1871-72, p. 251. Amended and supplemented March 24, 1874, Stats. 1873-74, p. 591. Originally incorporated by a decree of the county court in 1850, under authority of the act of March 11, 1850, Stats. 1850, p. 87. This incorporation was legalized by the act of April 3, 1856, Stats. 1856, p. 79. The city was reincorporated by the act of March 31, 1866, Stats. 1865-66, p. 493. This act was repealed by the present act of reincorporation.

1. Not subject to general laws in "municipal affairs."—The town of Santa Clara, operating under a special charter passed prior to the adoption of the constitution, is not subject to general laws in "municipal affairs."—Ex parte Helm, 143 Cal. 553, 77 Pac. 453.

2. Repeal of section 13 of the charter.—Section 13 of the charter was repealed by implication by section 19, article XI, and section 1, article XXII, of the constitution.

II Gen. Laws—73

—Ransome-Crummy Co. v. Woodhams, 29 Cal. App. 356, 156 Pac. 62.

3. Same—Not revived by constitutional amendment.—In view of section 1, article XXII, section 13 of the charter, repealed by implication by the adoption of section 19, article XI, of the constitution, was not revived by the 1884 amendment of the latter section.—Ransome-Crummy Co. v. Woodhams, 29 Cal. App. 356, 156 Pac. 62.

TRUSTEE OF TOWNSITE LANDS.

ACT 4435—An act authorizing corporate authorities to take and hold in trust certain lands.

History: Approved March 8, 1872, Stats. 1871-72, p. 306.

CHAPTER 335.

SANTA CLARA COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3951.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

- ACT 4440. ALAMEDA ROAD.
- 4443. AUDITOR'S SEAL OF OFFICE.
- 4448. ADDITIONAL JUDGE.
- 4452. LEGALIZING CERTAIN RECORDS.
- 4453. TRANSLATION OF SPANISH RECORDS.
- 4454. TRANSCRIBING RECORDS.

ALAMEDA ROAD.

ACT 4440—An act to provide for the construction and protection of the Alameda road.

History: Approved March 14, 1872, Stats. 1871-72, p. 367.

AUDITOR'S SEAL OF OFFICE.

ACT 4443—An act authorizing the county auditor of Santa Clara to provide himself with a seal of office.

History: Approved March 25, 1874, Stats. 1873-74, p. 600.

ADDITIONAL JUDGE.

ACT 4448—An act to increase the number of judges of the superior court, and to provide for the appointment of an additional judge.

History: Approved February 16, 1897, Stats. 1897, p. 7.

This act increased the number of judges from two to three.

LEGALIZING CERTAIN RECORDS.

ACT 4452—An act to legalize certain records in the recorder's office of the county of Santa Clara.

History: Approved May 18, 1861, Stats. 1861, p. 507.

1. Evidence.—An entry of a grant of land in a book, shown to have been one of the books in the alcalde's office in which alcalde grants were entered, now belonging to the recorder's office, signed and attested by persons shown to have been the alcalde and clerk of the county at the date of the entry, and whose signatures were shown to be genuine, is entitled to admission in evidence, under the act.—Donner v. Smith, 24 Cal. 114.

TRANSLATION OF SPANISH RECORDS.

ACT 4453—An act to authorize the board of supervisors of Santa Clara county to have certain Spanish records translated into English.

History: Approved February 9, 1863, Stats. 1863, p. 11.

This act authorized the translation into English of the Spanish records.

TRANSCRIBING RECORDS.

ACT 4454—An act concerning the county records of Santa Clara county.

History: Approved April 4, 1870, Stats. 1869-70, p. 779.

This act provided for transcribing records.

CHAPTER 336.

SANTA CRUZ CITY.

CONTENTS OF CHAPTER.

ACT 4465. FREEHOLDERS' CHARTER.

4466. AUTHORITY TO LAY WATER PIPES.

FREEHOLDERS' CHARTER.

ACT 4465—Freeholders' charter of the city of Santa Cruz.

History: Voted for and ratified January 31, 1911, filed with the secretary of state March 10, 1911, Stats. 1911, p. 1861. Originally incorporated March 31, 1866, Stats. 1865-66, p. 547. The incorporation act was amended and supplemented January 31, 1870, Stats. 1869-70, p. 32; and March 21, 1872, Stats. 1871-72, p. 471. It was supplemented April 1, 1870, Stats. 1869-70, p. 578. It was superseded by the reincorporation act of March 11, 1876, Stats. 1875-76, p. 189. This latter act was supplemented March 30, 1878, Stats. 1877-78, p. 870, and was superseded by the present charter.

1. Initiative—Alternative ordinances not authorized.—The charter contains no provision authorizing the submission by initiative petition of more than one ordinance, and a petition which submits three alternative ordinances is void, imposing no duty on the city council or the clerk.—Bennett v. Drullard, 27 Cal. App. 180, 149 Pac. 368.

2. Vrooman act a part of charter—Measure of authority to make street improvements.—The charter having conferred the power of street improvement without making provision for the method of doing the work, and having expressly adopted the Vrooman act as a part thereof, the general street law provides the mode and measure of the power of the municipal authorities in the matter dealt with.—Osburn v. Stone, 170 Cal. 480, 150 Pac. 367.

3. Sewer construction and street improvement—Provisions of charter, general powers.—The provision of the charter as to the construction and maintenance of sewers, drains, etc., and to deal with street improvements, is no more than a general grant of power.—Osburn v. Stone, 170 Cal. 480, 150 Pac. 367.

4. Street lighting — General welfare clause—Power to expend city funds.—Under the general welfare provision of the charter the city authorities were empowered to expend city funds for street lighting, although express authority was not conferred.—Osburn v. Stone, 170 Cal. 480, 150 Pac. 367.

5. Same—Manner of making expenditures—Act of 1905.—The charter makes the street lighting act of 1905 a part of the city's organic law, and expenditures for street lighting can be made only in the manner there prescribed.—Osburn v. Stone, 170 Cal. 480, 150 Pac. 367.

6. Humane officer—Payment for services.—The fact that the charter makes no provision for a humane officer does not render illegal payment for services of such an officer.—Osburn v. Stone, 170 Cal. 480, 150 Pac. 367.

Citations.—The act of 1876 was cited in Martin v. Ashton, 60 Cal. 63, 68, 69. The act of 1866 was cited in Santa Cruz v. So. Pac. R. R. Co., 163 Cal. 538, 542, 126 Pac. 362. The act of 1871-2 was cited in Santa Cruz v. So. Pac. R. R. Co., 163 Cal. 538, 543, 544, 548, 549, 126 Pac. 362.

AUTHORITY TO LAY WATER PIPES.

ACT 4466—An act to authorize Isaac E. Davis and Henry Cowell and others to lay down and maintain water pipes in the town of Santa Cruz.

History: Approved March 3, 1874, Stats. 1873-74, p. 229.

CHAPTER 337.

SANTA CRUZ COUNTY.

References: Boundary, see Kerr's Cyc Political Code, § 3952.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 4479. CHANGE OF LINE OF SANTA CRUZ RAILROAD COMPANY.

CHANGE OF LINE OF SANTA CRUZ RAILROAD COMPANY.

ACT 4479—An act to authorize the board of supervisors of the county of Santa Cruz to arrange with the Santa Cruz Railroad Company to change its railroad so as to pass through the town of Watsonville.

History: Approved April 1, 1876, Stats. 1875-76, p. 725.

SANTA MARIA.

See Act 3094, note.

CHAPTER 338.

SANTA MONICA.

CONTENTS OF CHAPTER.

ACT 4485. FREEHOLDERS' CHARTER.

4487. TIDELAND GRANT.

FREEHOLDERS' CHARTER.

ACT 4485—Freeholders' charter of the city of Santa Monica.

History: Voted for ratified at a special election held for that purpose March 28, 1906; resolution of approval adopted February 1, 1907; Stats. 1907, p. 1007. Amended (1) December 1, 1914; filed with the secretary of state January 28, 1915, Stats. 1915, p. 1714; (2) January 3, 1919; filed with the secretary of state January 21, 1919, Stats. 1919, p. 1393. Originally incorporated in 1886 under the general law, as a city of the sixth class. Reincorporated in 1902 as a city of the fifth class. The last incorporation was superseded by the present charter.

1. Commission form of government—

When in effect.—The commission form of government adopted by the electors of the city of Santa Monica, by amendments to their charter adopted December 1, 1914, and approved by the legislature in January, 1915, went into effect January 1, 1916, prior to which date the old provisions of the charter were in full effect.—Snyder v. Murray, 170 Cal. 654, 655, 151 Pac. 128.

2. Same — Postponement of operative effect.—Although a charter amendment be-

comes a part of a municipal charter when adopted by the legislature, its operative effect may be postponed to a later date.—Snyder v. Murray, 170 Cal. 654, 655, 151 Pac. 128.

3. Election contests—Governed by general law.—The charter contains no provision as to election contests, and such matters are governed by the general law.—Dudley v. Superior Court, 13 Cal. App. 271, 110 Pac. 146.

TIDELAND GRANT.

ACT 4487—An act granting certain tidelands and submerged lands of the state of California to the city of Santa Monica upon certain trusts and conditions.

History: Approved April 10, 1917. In effect July 27, 1917, Stats. 1917 p. 90.

Tideland granted to Santa Monica.

§ 1. There is hereby granted to the city of Santa Monica, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the

state of California, held by said state by virtue of its sovereignty, in and to all the tidelands and submerged lands, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific ocean, to be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit:

Purposes for which land may be used. Term of franchises and leases.

(a) Said lands shall be used by said city and by its successors, solely for the establishment, improvement and conduct of a harbor and for the establishment and construction of bulkheads, or breakwaters for the protection of lands within its boundaries, or for the protection of its harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion or accommodation of commerce and navigation, and the protection of the lands within said city, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatsoever; provided, that said city, or its successors, may grant franchises thereon, for a period not exceeding twenty-five years, for wharves and other public uses and purposes, and may lease said lands, or any part thereof for a period not exceeding twenty-five years, for purposes consistent with the trusts upon which said lands are held by the state of California and with the requirements of commerce or navigation at said harbor;

Harbor improved without expense to state.

(b) Said harbor shall be improved by said city without expense to the state, and shall always remain a public harbor for all purposes of commerce and navigation, and the state of California, shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California;

No discrimination in rates. Right to fish reserved to people.

(c) In the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph (a), no discrimination in rates, tolls, or charges, or in facilities, for any use or service in connection therewith shall ever be made, authorized or permitted by said city or by its successors. The absolute right to fish in the waters of said harbor, with the right of convenient access to said waters over said lands for said purpose, is hereby reserved to the people of the state of California.

SANTA PAULA.
See Act 3094, note.

CHAPTER 339.

SANTA ROSA.

CONTENTS OF CHAPTER.

ACT 4491. FREEHOLDERS' CHARTER.

FREEHOLDERS' CHARTER.

ACT 4491—Freeholders' charter of the city of Santa Rosa.

History: Voted for and ratified at a special election held for that purpose September 13, 1904; resolution of approval adopted February 3, 1905; Stats. 1905 p. 867. Amended April 4, 1816; filed with the secretary of state January 27, 1917, Stats. 1917, p. 1811. Originally incorporated by the supervisors under authority of the act of March 11, 1850, Stats. 1850, p. 87. This incorporation was legalized March 16, 1868, Stats. 1867-68, p. 170. It was reincorporated by the act of March 28, 1872, Stats. 1871-72, p. 628. This act was amended March 16, 1874, Stats. 1873-74, p. 378. The act of March 13, 1876, Stats. 1875-76, p. 251, purported to be also an amendment of the act of 1872, and also to be an act of incorporation. The city was incorporated under a freeholders' charter voted for and ratified April 2, 1902; resolution of approval adopted March 6, 1903, Stats. 1903, p. 702. This was superseded by the present charter.

Citations.—The act of 1871 was cited in *Carter v. Superior Court*, 138 Cal. 150, 152, 70 Pac. 1067.

The act of 1876 was cited in *Sonoma County v. Santa Rosa*, 102 Cal. 426, 427, 36 Pac. 810; *Berka v. Woodward*, 125 Cal. 119, 121, 57 Pac. 777 73 Am. St. Rep. 31, 45

L. R. A. 420; *Mock v. Santa Rosa*, 126 Cal. 330, 349, 58 Pac. 826.

The charter of 1903 was cited in *Santa Rosa v. Bower*, 142 Cal. 299, 301, 75 Pac. 829.

The charter of 1905 was cited in *Farmer v. Behmer*, 9 Cal. App. 773, 780, 100 Pac. 901.

SAUSALITO.

See Act 3094, note.

SCHOOL LANDS.

See tit. "Public Lands."

SCHOOL OF INDUSTRY.

See tit. "Preston School of Industry."

SCHOOL OF REFORM.

See tit. "Whittier State School."

CHAPTER 340.

SCHOOLS.

References: Public schools, see Kerr's Cyc. Political Code, §§ 1517, et seq.
 State normal school, see Kerr's Cyc. Political Code, §§ 1487, et seq.
 See, generally, tit. "University of California."

CONTENTS OF CHAPTER.

- ACT 4498. ACTING DISTRICTS DECLARED INCORPORATED.
 4499. CONFIRMING AND VALIDATING ORGANIZATION OF DISTRICTS.
 4500. CALIFORNIA POLYTECHNIC SCHOOL.
 4513. HIGH SCHOOL BUILDING ON STATE NORMAL GROUNDS AT SAN JOSE.
 4517. UNION HIGH SCHOOL DISTRICT LIBRARIES.
 4518. HIGH SCHOOL CADET COMPANIES.
 4520. "HUMBOLDT STATE NORMAL SCHOOL."
 4521. "FRESNO STATE NORMAL SCHOOL."
 4522. "LOS ANGELES STATE NORMAL SCHOOL."
 4523. LOS ANGELES STATE NORMAL SCHOOL ABOLISHED.
 4526. BRANCH STATE NORMAL SCHOOL IN NORTHERN CALIFORNIA.
 4527. STATE NORMAL SCHOOL IN SAN DIEGO COUNTY.
 4528. "SAN FRANCISCO STATE NORMAL SCHOOL."
 4531. "SAN JOSE STATE NORMAL SCHOOL."
 4535. "SANTA BARBARA STATE NORMAL SCHOOL."
 4536. PHYSICAL EDUCATION IN SCHOOLS.
 4539. COMPILING CERTAIN TEXT BOOKS OF THE STATE SERIES.
 4540. COMPILING A CERTAIN TEXT BOOK OF THE STATE SERIES.
 4541. COMPILING THE STATE SERIES OF SCHOOL TEXT BOOKS.
 4542. REVISION OF SERIES AND COMPILATION OF ADDITIONAL TEXT BOOK.
 4542a. FREE TEXT BOOK ACT OF 1917.
 4543. PURCHASE OF CALIFORNIA TEXT BOOKS.
 4545. LEVY AND COLLECTION OF SCHOOL TAXES.
 4546. CHANGE OF NAME OF SCHOOL DISTRICT.
 4547. CHANGE OF NAME OF HIGH SCHOOL DISTRICT.
 4548. CLERK IN OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION.
 4550. TEACHERS' RETIREMENT SALARY FUND.
 4550a. DATA CONCERNING TEACHERS.
 4550b. CERTAIN TEACHERS SUBJECT TO RETIREMENT FUND ACT.
 4551. WITHDRAWAL OF CONTRIBUTORS TO TEACHERS' RETIREMENT FUND.
 4552. DISPOSAL OF MONEY REMAINING IN SCHOOL BUILDING FUNDS.
 4552a. TRANSFER OF EXCESS BUILDING FUNDS.
 4554. COMPULSORY SCHOOL ATTENDANCE ACT.
 4555. COMPULSORY SCHOOL ATTENDANCE—ENFORCEMENT AID ACT.
 4556. INSTRUCTION OF BLIND STUDENTS.
 4557. DISCRIMINATION AGAINST FEMALE TEACHERS.
 4558. ELIGIBILITY OF WOMEN FOR EDUCATIONAL OFFICES.
 4559. TEACHERS' DIPLOMAS VALIDATED.
 4562. SCHOOL FRATERNITIES.
 4563. REGISTRATION OF MINORS.
 4564. VALIDATION OF SCHOOL DISTRICT BONDS.
 4570. REGISTRATION OF SCHOOL BONDS.
 4571. ISSUE OF SCHOOL BONDS IN CITIES OF THE FIFTH CLASS.
 4574. PUBLIC SCHOOL HOUSES MADE CIVIC CENTERS.
 4575. JANITORS AND EMPLOYEES IN CERTAIN DISTRICTS.
 4576. CLOSING SCHOOLS DURING WAR.
 4577. VOCATIONAL EDUCATION.
 4578. TRADE SCHOOLS—EMPLOYMENT AGENCIES.
 4579. CIVIC AND VOCATIONAL EDUCATION IN HIGH SCHOOLS.

ACTING DISTRICTS DECLARED INCORPORATED.

ACT 4498—An act confirming the organization of school districts.

History: Approved March 18, 1905, Stats. 1905, p. 243. See Kerr's Cyc. Political Code, § 1724.

School districts, incorporation of.

§ 1. All school districts in this state that for a period of five (5) years have been acting as school districts under the laws of this state, are hereby declared to be duly incorporated and to be bodies politic under the laws of this state, and as such school districts, under their appropriate names, shall have all the rights and privileges and be subjected to all of the duties and obligations of duly incorporated school districts.

§ 2. This act shall take effect immediately.

Effect of act.—The effect of the act of 1905 (243) is such that after five years acting as a school district such district becomes an incorporated district, and is not affected by the creation of a county, whereby a part of its territory is incorporated in such new county.—*Las Animas, etc., Co. v. Preciado*, 167 Cal. 580, 582, 140 Pac. 239.

2. Act applied.—Where a school district exercised its authority over a certain territory in a county for many years after the creation of the county, the act serves to confirm the authority thus exercised.—*Las Animas, etc., Co. v. Preciado*, 167 Cal. 580, 140 Pac. 239.

CONFIRMING AND VALIDATING ORGANIZATION OF DISTRICTS.

ACT 4499—An act confirming and validating the organization of school districts.

History: Approved April 24, 1917. In effect July 27, 1917. Stats. 1917, p. 192. Prior acts having the same purpose and effect: Act of June 1, 1913, in effect August 10, 1913, Stats. 1913, p. 361; and act of April 21, 1915, in effect August 8, 1915, Stats. 1915, p. 106.

Organization of school districts validated.

§ 1. Where the board of supervisors of any county have purported to establish a school district of any kind or class situated within such county and such district has acted as a school district for a period of one year previous to the taking effect of this act, all acts and proceedings taken for the purpose of creating such district are hereby legalized, validated and declared to be sufficient, and such school district is hereby declared to be duly incorporated and as such school district under its appropriate name shall have all the rights and privileges and be subject to all of the duties and obligations of a duly incorporated school district.

CALIFORNIA POLYTECHNIC SCHOOL.

ACT 4500—An act to establish the California polytechnic school in the county of San Luis Obispo, and making an appropriation therefor.

History: Approved March 8, 1901, Stats. 1901, p. 115.

Purposes.

§ 1. There is hereby established in the county of San Luis Obispo, at or near the city of San Luis Obispo, a school to be known as the California polytechnic school. The purpose of this school is to furnish to young people of both sexes mental and manual training in the arts and sciences, including agriculture, mechanics, engineering, business methods, domestic economy, and such other branches as will fit the students for the nonprofessional walks of life. This act shall be liberally construed, to the end that the school established hereby may at all times contribute to the industrial welfare of the state of California.

Board of trustees.

§ 2. Within thirty days after this act goes into effect the governor shall appoint five persons, who, with the governor, and superintendent of public instruction, shall constitute the board of trustees of said school.

Site for school.

§ 3. The said trustees, as provided for in section 2 of this act, are hereby appointed and created trustees of said California polytechnic school, with full power and author-

ity to select a site for the permanent location of said school. Said trustees shall, within ninety days after the passage of this act, examine the different sites offered by the people of San Luis Obispo county for the location of said school; and the site selected by them shall be and remain the permanent site for said school. But no money shall be expended for or on said site, until a deed in fee simple has been made for land so selected to the state of California.

Term of trustees.

§ 4. The term of office of the trustees shall be four years, except that, in appointing the first board of trustees, the governor shall appoint two members for one year, one for two years, one for three years, and one for four years. They shall be governed and regulated by the laws governing and regulating the normal schools of this state; in so far as the same are applicable to an institution of this kind.

Appropriation.

§ 5. The sum of fifty thousand dollars is hereby appropriated out of any moneys belonging to the state not otherwise appropriated, for the purchase of a site, the construction and furnishing of the necessary buildings, and the maintenance of said school.

Controller authorized to pay warrants.

§ 6. The controller of the state is hereby authorized to draw warrants from time to time, as the work shall progress, in favor of said board of trustees, upon their requisition for the same, and the state treasurer is directed to pay the same.

Expenditure to be under direction of trustees.

§ 7. The moneys hereby appropriated shall be expended under the direction of the said board of trustees.

Time of taking effect.

§ 8. This act shall take effect and be in force from and after January first, nineteen hundred and two.

HIGH SCHOOL BUILDING ON STATE NORMAL GROUNDS AT SAN JOSE.

ACT 4513—An act authorizing and empowering the board of school trustees of the city of San Jose, county of Santa Clara, state of California, to erect, construct, and build, and maintain, at the expense of the said city of San Jose a high school building on the north side of the state normal school grounds at San Jose between Fifth and Seventh streets in said city.

History: Approved March 17, 1897, Stats. 1897, p. 167.

UNION HIGH SCHOOL DISTRICT LIBRARIES.

ACT 4517—An act to allow union high school districts to establish, equip and maintain public libraries; to provide for the formation, government and operation of such library districts; the acquisition of property thereby; the calling and holding of elections in such districts; the assessment, collection, custody and disbursement of taxes therein.

History: Became a law under constitutional provision, without governor's approval, March 24, 1911, Stats. 1911, p. 467.

Union high school district may establish public library.

§ 1. Any union high school district of this state may establish, equip and maintain a public library for the dissemination of a knowledge of the arts, sciences and general literature, in accordance with the provisions of this act.

Petition to supervisors.

§ 2. Upon the application, by petition, of fifty or more taxpayers and residents of any union high school district to the board of supervisors in the county in which said union high school district is located, praying for the formation of a library district, and setting forth the boundaries of the said proposed district; the said board of supervisors must, within ten days after receiving said petition, by resolution, order that an election be held in the said proposed district for the determination of the question and shall appoint three qualified electors thereof to conduct said election.

Notice of election. Polls open.

§ 3. Said election shall be called by posting notice thereof in three of the most public places in said proposed library district, and, by publication in a daily or weekly paper therein, if there be one, at least once a week for not less than fifteen days. Said notices must specify the time, place and the purposes of said election, and the hours during which the polls will be kept open; provided, that in districts with a population of ten thousand or over, the polls must be opened at eight o'clock a. m., and kept open until seven o'clock p. m., and in districts where the population is less than ten thousand, the polls must not be opened before one o'clock p. m., and must be kept open not less than six hours.

Election, how conducted.

§ 4. Said election shall be conducted in accordance with the general election laws of this state, where applicable, without reference to form of ballot or manner of voting, except that the ballots shall contain the words, "For union high school library district," and the voter shall write or print after said words on his ballot the word "Yes," or the word "No."

Who may vote.

§ 5. Every qualified elector, resident within the proposed district for the period requisite to enable him to vote at a general election, shall be entitled to vote at the election above provided for.

Report of result.

§ 6. It shall be the duty of the election officers to report the result of said election to the board of supervisors within five days subsequent to the holding thereof.

Two-thirds vote for.

§ 7. If two-thirds of the votes at said election shall be in favor of a union high school library district, the said board of supervisors must, by resolution, establish said library district, and place the said district in the control of the trustees of said union high school district. Said trustees shall severally hold office during the term for which they shall have been elected as trustees of such union high school district.

One-third vote against.

§ 8. If one-third of the votes cast shall be against a library district, the board of supervisors shall, by order, so declare; no other proceedings shall be taken in relation thereto until the expiration of one year from the date of presentation of the petition.

Record on minutes of supervisors.

§ 9. The fact of the presentation of the petition, and the order establishing the library district shall be entered in the minutes of the board of supervisors and shall be conclusive evidence of the due presentation of a proper petition, and that each of the petitioners was, at the time of signature and presentation of the petition, a taxpayer and resident of the proposed district, and of the fact and regularity of all prior proceedings of every kind and nature provided for by this act, and of the existence and validity of the district.

Library trustees, meetings, etc.

§ 10. Boards of library trustees shall meet at least once a month, at such time and place as they may fix by resolution. Special meetings may be called at any time by two trustees, by written notices served upon each member at least twelve hours before the time specified for the meeting. Three members shall constitute a quorum for the transaction of business. At its first meeting held after the first day of July the board shall organize by electing one of its number president, and another one of its number secretary, they shall serve as such for one year or until their successors are elected and qualified. Such board shall cause a proper record of its proceedings to be kept, and at the first meeting of the board of trustees of any library formed under the provisions of this act, it must immediately cause to be made out and filed with the state librarian at Sacramento a certificate showing that such library has been established, with the date thereof, the names of the trustees, and the officers of the board chosen for the current fiscal year.

Powers.

§ 11. The board of library trustees, as herein provided for, and their successors, shall be authorized and they are hereby empowered, and it shall be their duty:

First—To make and enforce all rules, regulations and by-laws necessary for the administration, government and protection of the libraries under their management, and all property belonging thereto.

Second—To administer any trust declared or created for such libraries, and receive by gift, devise, or bequest, and hold in trust or otherwise, property situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of such libraries.

Third—To prescribe the duties and powers of the librarian, secretary, and other officers and employees of any such libraries; to determine the number of and appoint all such officers and employees, and fix their compensation, which said officers and employees shall hold their offices and positions at the pleasure of said boards.

Fourth—To purchase necessary books, journals, publications and other personal property.

Fifth—To purchase such real property, and erect or rent and equip, such building or buildings, room or rooms, as in their judgment may be necessary to properly carry out the provisions of this act.

Sixth—To require the secretary of state and other state officials to furnish such libraries with copies of any and all reports, laws, and other publications of the state not otherwise disposed of by law.

Seventh—To borrow books from, lend books to and exchange the same with other libraries, and to allow nonresidents to borrow books upon such conditions as the board may prescribe.

Eighth—To do and perform any and all other acts and things necessary or proper to carry out the provisions of this act.

Ninth—To file, through their secretary, on or before the last day in the month of July of each year, a report with the state librarian at Sacramento giving the condition of their library and the number of volumes contained therein on the thirtieth day of June preceding.

Tenth—To designate the hours during which the library shall be open for the use of the public; provided, however, that all public libraries established under the provisions of this act, shall be open for the use of the public at all reasonable times.

Yearly estimate of expenses. Bond election.

§ 12. In any library district formed under the provisions of this act which is now maintaining a public library, or which shall have petitioned for and has been granted

permission to establish, and intends to maintain, a public library in accordance with this act; it shall be the duty of the board of library trustees therein, to furnish to the board of supervisors of the county wherein said library district is situated, each and every year, on or before the first day of September; an estimate of the cost of leasing temporary quarters; purchasing a suitable lot; of procuring plans and specifications and erecting a suitable building; of furnishing and equipping the same, and of fencing and ornamenting the grounds, for the accommodation of the public library, and of conducting and maintaining the same for the ensuing fiscal year, or for any or all of said purposes; provided, however, that the board of library trustees, may when in its judgment it is deemed advisable, and upon the petition of fifty or more taxpayers residing within said library district; must, call an election and submit to the electors of the said library district whether the bonds of said library district shall be issued and sold for any or all of the purposes of this act.

Tax levy.

§ 13. When such estimate shall have been submitted to the board of supervisors of any county in which a public library district has been established, the said board of supervisors, must, at the time of levying county taxes, levy a special tax upon all the taxable property within the limits of the said library district, sufficient in amount to maintain the said union high school library, or to purchase the site, erect and equip the building, improve the grounds or building, or for any or all of the purposes of this act. The taxes so levied shall be computed, entered upon the tax-roll, and collected in the same manner as other taxes are computed, entered and collected.

Library fund.

§ 14. The revenue derived from said tax, together with all money acquired by gift, devise, bequest, or otherwise, for the purposes of the library, shall be paid into the county treasury to the credit of the library fund of the district wherein said tax was collected, subject only to the order of the library trustees of said district. If such payment into the treasury should be inconsistent with the terms of conditions of any such gift, devise, or bequest, the board of library trustees shall provide for the safety and preservation of the same, and the application thereof to the use of the library, in accordance with the terms and conditions of such gift, devise or bequest.

Library free to inhabitants.

§ 15. Every union high school library established under the provisions of this act shall be forever free to the inhabitants and nonresident taxpayers of the library district, subject always to such rules, regulations, and by-laws as may be made by the board of library trustees; also provided, that for violations of the same a person may be fined or excluded from the privileges of the library.

Contracts with neighboring districts.

§ 16. Boards of library trustees and the boards of trustees of neighboring library districts, or the legislative bodies of neighboring municipalities, or boards of supervisors of the counties in which public libraries are situated, may contract to lend the books of such libraries to residents of such counties or neighboring municipalities, or library districts; upon a reasonable compensation to be paid by such counties, neighboring municipalities, or library districts.

Title to property. Name of district.

§ 17. The title to all property acquired for the purposes of such libraries, when not inconsistent with the terms of its acquisition, or not otherwise designated, shall vest in the district in which such libraries are, or are to be situated. Every library district must be designated by the name and style of — library district, (using the name of

the district), of — county, (using the name of the county in which said district is situated); and in that name the trustees may sue and be sued, and may hold and convey property for the use and benefit of such district. A number must not be used as a part of the designation of any library district.

Bond election.

§ 18. The board of trustees of any library district may, when in their judgment it is deemed advisable, and must, upon a petition of fifty or more taxpayers and residents of said library district, call an election and submit to the electors of the district, whether the bonds of such district shall be issued and sold for the purpose of raising money for the purchase of suitable lots, of procuring plans and specifications and of erecting a suitable building, of furnishing and equipping the same, and of fencing and ornamenting the grounds, for the accommodation of the union high school library, or for any or all of the said purposes, or for any or all of the purposes of this act; for liquidating any indebtedness incurred for said purposes, and for refunding any outstanding valid indebtedness, evidenced by bonds or warrants of the district.

Ballot and voting.

§ 19. Voting must be by ballot (without reference to the general election law in regard to form of ballot, or manner of voting), except that the words to appear on the ballot shall be "Bonds—Yes," and "Bonds—No," and except further, that persons voting at such bond election shall put a cross (X) upon their ballots with pencil or ink, after the words, "Bonds—Yes," or "Bonds—No," (as the case may be) to indicate whether they have voted for or against the issuance of the bonds; which said ballot shall be handed by the elector voting to the inspector, who shall then, in his presence, deposit the same in the ballot-box, and the judges shall enter the elector's name on the poll list. The polls must be open during said election from eight a. m. to five p. m.

Canvass of votes. Maximum bonds.

§ 20. On the seventh day after said election, at eight o'clock p. m., the returns having been made to the board of trustees, the board must meet and canvass said returns, and if it appears that a two-thirds of the votes cast at said election was in favor of issuing such bonds, then the board shall cause an entry of such fact to be made upon its minutes and shall certify to the board of supervisors of the county, all the proceedings had in the premises, and thereupon said board of supervisors shall be and they are hereby authorized and directed to issue the bonds of said district, to the number and amount provided in such proceedings, payable out of the building fund of such district, naming the same, and that the money shall be raised by taxation upon the taxable property of said district, for the redemption of said bonds and the payment of the interest thereon; provided, that the total amount of bonds so issued shall not exceed five per cent of the taxable property of said district, as shown by the last equalized assessment-book of the county.

Bonds, form, interest, etc.

§ 21. The board of supervisors by an order entered upon its minutes shall prescribe the form of said bonds and of the interest coupons attached thereto, and must fix the time when the whole or any part of the principal of said bonds shall be payable, which shall not be more than forty years from the date thereof.

Maximum interest.

§ 22. Said bonds must not bear a greater amount of interest than six per cent, said interest to be payable annually or semi-annually; and said bonds must be sold in the manner prescribed by the board of supervisors, for not less than par, and the proceeds

of the sale thereof must be deposited in the county treasury to the credit of the building fund of said library district, and be drawn out for the purposes aforesaid as other library moneys are drawn out.

Tax levy for interest, etc., on bonds.

§ 23. The board of supervisors, at the time of making the levy of taxes for county purposes, must levy a tax for that year upon the taxable property in such district, at the equalized assessed value thereof for that year, for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest of said bonds for that year, and such portion of the principal as is to become due during such year, and in any event must be high enough to raise, annually, for the first half of the term said bonds have to run, a sufficient sum to pay the interest thereon; and during the balance of the term, high enough to pay such annual interest, and to pay, annually, a proportion of the principal of said bonds equal to a sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds then have to run, and all moneys so levied, when collected, shall be paid into the county treasury to the credit of the said library district, and be used for the payment of principal and interest on said bonds, and for no other purpose. The principal and interest on said bonds shall be paid by the county treasurer, upon the warrant of the county auditor, out of the fund provided therefor; and it shall be the duty of the county auditor to cancel and file with the county treasurer the bonds and coupons as rapidly as they are paid.

Unsold bonds.

§ 24. Whenever any bonds issued under the provisions of this act shall remain unsold for the period of six months after having been offered for sale in the manner prescribed by the board of supervisors; the board of trustees of the library district for or on account of which said bonds were issued; or of any library district composed wholly or partly of territory which, at the time of holding the election authorizing the issuance of such bonds, was embraced within the district for or on account of which such bonds were issued; may petition the board of supervisors to cause such unsold bonds to be withdrawn from market and canceled. Upon receiving such petition, signed by a majority of the members of said board of trustees, the supervisors shall fix a time for hearing the same, which shall be not more than thirty days thereafter, and shall cause a notice, stating the time and place of hearing, and the object of the petition in general terms, to be published for ten days prior to the day of hearing, in some newspaper published in said library district, if there is one, and if there is no newspaper published in said library district, then in a newspaper published at the county seat of the county in which said library district or part thereof is situated. At the time and place designated in the notice for hearing said petition, or at any subsequent time to which said hearing may be postponed, the supervisors shall hear any reasons that may be submitted for or against the granting of the petition, and if they shall deem it for the best interests of the library district named in the petition that such unsold bonds be canceled, they shall make and enter an order in the minutes of their proceedings that said unsold bonds be canceled, and thereupon said bonds, and the vote by which they were authorized to be issued, shall cease to be of any validity whatever.

Dissolution of district.

§ 25. The district may at any time be dissolved upon the vote of two-thirds of the qualified electors thereof, upon an election called by the library trustees of such district, upon the question of dissolution. Such election shall be called and conducted in the same manner as other elections of the district. Upon such dissolution, the property of the district shall vest in any union high school district in which said

library is situated; provided, however, that if, at the time of such election to dissolve such district, there be any outstanding bonded indebtedness of such district, the vote to dissolve such district shall dissolve the same for all purposes excepting only the levy and collection of taxes for the payment of such indebtedness; and from the time such district is thus dissolved until such bonded indebtedness, with the interest thereon, is fully paid, satisfied and discharged, and the board of supervisors is hereby constituted ex officio the library board of such district. And it is hereby made obligatory upon such board to levy such taxes and perform such other acts as may be necessary in order to raise money for the payment of such indebtedness and the interest thereon, as herein provided.

Repeal of prior conflicting acts.

§ 26. All acts or parts of acts conflicting with the provisions of this act are hereby repealed.

Definitions.

§ 27. Where the words "trustees" or "library trustees" appear in this act the same shall be construed to mean the regularly elected union high school trustees, and where the words "library," "library district," or "library districts" appear in this act, the same shall be construed to mean "union high school library districts."

§ 28. This act shall take effect immediately.

HIGH SCHOOL CADET COMPANIES.

ACT 4518—An act to provide for the organization, control and equipment of high school cadet companies, and for the promotion of rifle practice therein, and appropriating the sum of five thousand dollars therefor.

History: Approved April 5, 1911, Stats. 1911, p. 635. Amended May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 681. The act of June 14, 1913, Stats. 1913, p. 887, appropriated \$10,000 for the purposes of this act. The act of May 27, 1919, in effect July 27, 1919, Stats. 1919, p. 1281, made a further appropriation of \$75,000, for the purposes of the act.

High school cadet company.

§ 1. The male students of any high school in this state, having forty or more such students, fourteen years of age or over, may be organized into a high school cadet company, or companies, of not less than forty members each, under such rules and regulations as the governing body of said school may prescribe. Said cadet company, or companies, shall at all times be under the guidance and control of the principal of the said school, whose duty it shall be to make regulations regarding the moral, educational, and physical welfare of said cadets.

Officers of cadet companies.

§ 2. Said companies shall each have one captain, one first lieutenant, one second lieutenant appointed and commissioned by the adjutant general, state of California, upon the recommendation of the commandant of cadets, herein provided for, and with the approval of the principal, and such noncommissioned officers and privates as correspond to the noncommissioned officers and privates of the infantry companies of the national guard of California, the noncommissioned officers to be appointed and warranted by the commandant of cadets, with the approval of the principal. [Amendment of May 20, 1915. In effect August 8, 1915, Stats. 1915, p. 681.]

In case school has more than one company. Organization into regiments.

§ 3. In case any high school has more than one company it shall have one cadet major, one cadet adjutant and one battalion quartermaster and commissary, the last

two mentioned officers to have the rank of first lieutenant, who shall be appointed and commissioned by the adjutant general, state of California, upon the recommendation of the commandant of cadets, and with the approval of the principal, and one sergeant major and one color sergeant, who shall be appointed and warranted by the commandant of cadets, with the approval of the principal. The adjutant general may, in his discretion, organize the companies of the high school cadets into one or more regiments and may commission the necessary officers and warrant the necessary noncommissioned officers of the same grades and number provided for similar organizations of the national guard of California. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 681.]

Cancellation of commission.

§ 4. Any commissioned officer, or noncommissioned officer, may have his commission or warrant canceled, and be reduced to the ranks, upon the recommendation of the principal of the high school, for falling back in his studies, or for misbehavior, either in school or in the cadet company, or for other good cause appearing in the judgment of the principal. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 682.]

Officers from senior and junior classes.

§ 5. All cadet officers shall be appointed from the senior and junior classes of high schools. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 682.]

Drill.

§ 6. Said high school cadets shall have drill in accordance with the infantry drill regulations prescribed by the United States army. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 682.]

Uniforms.

§ 7. Said high school cadet shall wear a uniform similar to that prescribed for the infantry of the national guard of California, except that instead of shoulder straps, cadet chevrons indicating rank, and distinctive collar ornaments shall be worn. The adjutant general, state of California, is authorized to issue to the high school cadets the required cap and collar ornaments, and chevrons. A regulation uniform for cadets shall be kept in the adjutant general's office to be used as sample from which the uniforms for the high school cadets shall be made. [Amendment of May 20, 1915. In effect August 8, 1915. Stats. 1915, p. 682.]

Rifles.

§ 8. A sufficient number of obsolete rifles for drill purposes may be purchased by the board of high school trustees, board of education, county superintendent of schools, the state superintendent of public instruction, or the adjutant general, state of California, out of any funds available and not otherwise appropriated. [Amendment of May 20, 1915. In effect August 8, 1915, Stats. 1915, p. 682.]

Target practice.

§ 9. Target practice shall constitute a part of the instruction to be given to said cadets, and the adjutant general, state of California, shall purchase and supply to each of said high schools a sufficient number of Springfield, or other efficient rifles for field target work and for gallery practice, and ammunition and equipment therefor, as in his judgment shall be necessary for efficient rifle practice. All target practice shall be under the supervision of the commandants of cadets or competent members of the national guard or naval militia detailed by the adjutant general, state of California.

The expenditures therefor may be paid out of the moneys appropriated for the maintenance of the California high school cadets. [Amendment of May 20, 1915. In effect August 8, 1915, Stats. 1915, p. 682.]

Drill and rifle practice instructor.

§ 10. When necessary, the adjutant general, state of California, may detail from the organizations of the national guard or naval militia, some competent member thereof who may act as drill and rifle practice instructor for said high school cadets. The adjutant general may provide for compensating the person detailed by him to instruct said cadets in drill and target practice. [Amendment of May 20, 1915. In effect August 8, 1915, Stats. 1915, p. 683.]

Target practice on national guard ranges.

§ 11. Whenever practicable said high school cadets shall be permitted to shoot at target practice upon national guard rifle ranges, when not needed by the national guard, under the supervision of the commandant of cadets. [Amendment of May 20, 1915. In effect August 8, 1915, Stats. 1915, p. 683.]

Inspection. Reports.

§ 12. Said high school cadet companies shall be inspected once each year by officers of the national guard or naval militia detailed by the adjutant general, state of California, for that purpose. Such inspectors shall report to the adjutant general the result of such inspections, relating to the drill, target practice, attendance, discipline, and condition of property of said high school cadet organizations. Such reports shall be made and forwarded, in duplicate, one copy to the state superintendent of public instruction, and one copy to the adjutant general's office, and shall bear the indorsement of the principal of said school, containing such remarks as the principal may deem pertinent. Such reports shall also contain an inventory of the state property on hand in the cadet companies at the time of said inspections. [Amendment of May 20, 1915. In effect August 8, 1915, Stats. 1915, p. 683.]

Principal of school responsible for supplies.

§ 13. The principal of the school shall be responsible for all public property supplied to said cadet companies, and shall supervise the proper care thereof. [Amendment of May 20, 1915. In effect August 8, 1915, Stats. 1915, p. 683.]

Drill, regulations, books of instructions.

§ 14. The adjutant general, state of California, shall provide suitable drill regulations, books of instruction, and the necessary blank forms for reports of each of said high school cadet companies. [Amendment of May 20, 1915. In effect August 8, 1915, Stats. 1915, p. 683.]

Commandant of cadets.

§ 15. Upon the recommendation of the adjutant general, state of California, and with the approval of the school board having jurisdiction over the high school, the governor may commission, in the same manner as national guard officers are commissioned, a commandant of cadets for duty in each high school having one or more cadet companies. This officer shall be commissioned major and commandant of cadets, state of California, and shall hold office at the pleasure of the governor, or until his successor has been appointed and qualified, or until his connection with the cadets is severed. Said major and commandant of cadets shall be entitled to the same privileges and exemptions accorded national guard officers, except that pay and expenses on special detail shall be taken from the high school cadet appropriation, instead of from national guard funds. Said major and commandant of cadets shall wear the

same uniform and shoulder straps as a major of infantry in the national guard of California, with cap and collar ornaments designating the California high school cadets. [Amendment of May 20, 1915. In effect August 8, 1915, Stats. 1915, p. 683.]

School boards, etc., to co-operate with adjutant general.

§ 16. Each and every board of high school trustees, board of education, county superintendent of schools, and the state superintendent of public instruction, are, and each is hereby authorized, empowered and directed to facilitate the purposes of this act, by co-operating with the adjutant general, state of California. [Amendment of May 20, 1915. In effect August 8, 1915, Stats. 1915, p. 684.]

§ 17. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

HUMBOLDT STATE NORMAL SCHOOL.

ACT 4520—An act establishing a state normal school in Humboldt county, state of California, to be known as "Humboldt state normal school," and making an appropriation for the maintenance of said school.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1133.

Humboldt normal school established.

§ 1. There shall be established in Humboldt county, state of California, a state normal school to be called the "Humboldt state normal school," for the training and education of teachers and others in the art of instructing and governing the public schools of this state, the course of study prescribed for use in said school to include agriculture and manual training; said school to be located at such place in said county as the board of trustees hereinafter provided for shall select.

Board of trustees.

§ 2. The governor shall within thirty days after this act becomes effective, appoint five persons, one for one year, one for two years, one for three years and two for four years, the successors of each to be appointed for four years thereafter, and the persons so appointed, with the governor and state superintendent of public instruction, shall constitute the board of trustees of said normal school.

Duties.

§ 3. The said trustees shall after their appointment and within sixty days after a building therefor shall have been provided as hereinafter required, establish and cause to be opened and carried on said normal school at said place so selected by said board of trustees, and shall provide suitable furniture and equipment for the same, and may accept from the county of Humboldt, or from the board of education thereof, or from any incorporated city, town or municipality in said county, or any board of education of any such city, town or municipality, or from any person or persons a lease of suitable building or buildings and grounds free of charge, for the use of said school.

Appropriation.

§ 4. The sum of ten thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated for establishing and maintaining said state normal school, and providing suitable accommodations therefor.

When available.

§ 5. The money hereby appropriated shall be made available and payable according to law out of the state treasury as follows: No portion thereof shall be available until a two-year lease, free of charge, and acceptable to said board of trustees, of a suitable building or buildings and grounds for the use of said school, shall have been executed

and delivered by some of those from whom, under section three, said board of trustees is authorized to accept such lease, to said board of trustees. After the execution and delivery of such lease, not more than five thousand dollars of said amount shall be available in the sixty-fifth fiscal year and the remainder thereof shall be available the following fiscal year.

FRESNO STATE NORMAL SCHOOL.

ACT 4521—An act establishing a state normal school at Fresno, county of Fresno, state of California, and making an appropriation for the maintenance of said school.

History: Approved April 10, 1911, Stats. 1911, p. 838. The act of June 7, 1913, Stats. 1913, p. 909, appropriated \$10,000 for equipment and furnishing, and the act of June 14, 1913, Stats. 1913, p. 909, appropriated \$370,000 for the construction and equipment of buildings, for the Fresno state normal school.

“LOS ANGELES STATE NORMAL SCHOOL.”

ACT 4522—An act to establish a branch state normal school.

History: Approved March 14, 1881, Stats. 1881, p. 89 (Ban. ed., p. 91). §§ 1, 2, 3, were repealed May 23, 1919. In effect July 23, 1919. Stats. 1919, p. 820. See Act 5390. By the act of March 4, 1907, Stats. 1907, p. 101, amended April 10, 1911, Stats. 1911, p. 840, the board of trustees were authorized to sell and convey the site and buildings and acquire another site and erect other buildings. The amendment appropriated an additional \$100,000 for the purposes of the new site and buildings. The act of June 13, 1913, Stats. 1913, p. 804, ratified and confirmed the sale made, and the act of June 6, 1913, Stats. 1913, p. 905, appropriated \$10,000 for additional land.

LOS ANGELES STATE NORMAL SCHOOL ABOLISHED. BRANCH OF UNIVERSITY OF CALIFORNIA ESTABLISHED.

ACT 4523—An act repealing sections one, two, and three of an act entitled “An act to establish a branch state normal school,” approved March 14, 1881, abolishing the branch of the state normal school at Los Angeles, transferring its properties to the regents of the University of California, providing for the establishment of a branch of the University of California at Los Angeles, continuing regular normal school training courses and providing an appropriation for the support and maintenance thereof.

History: Approved May 23, 1919. In effect July 23, 1919. Stats. 1919, p. 820.

Stats. 1881, p. 89.

§ 1. Sections one, two, and three of an act entitled “An act to establish a branch state normal school,” approved March 14, 1881, and acts amendatory thereto are hereby repealed and the existence of the branch state normal school at Los Angeles, hereinafter referred to as the Los Angeles state normal school, is hereby terminated, to be effective upon the taking effect of this act.

Properties transferred to regents of University of California.

§ 2. All properties of the Los Angeles state normal school including all moneys heretofore appropriated and unexpended, or which may hereafter be appropriated and remain unexpended, are hereby transferred to and vested in the regents of the University of California, subject to the conditions specified in section six of this act.

The regents of the University of California shall be subject to no debts or liabilities which may heretofore have accrued or which may hereafter accrue against the said Los Angeles state normal school beyond the amount of said unexpended appropriations.

Branch of University of California to be maintained at Los Angeles.

§ 3. In the place and stead and on the site of the Los Angeles state normal school the regents of the University of California shall, during the year commencing July 1,

1919, and thereafter, maintain and conduct at Los Angeles a branch of the University of California under such designation as shall be fixed by the regents for the purpose of providing, and at which the regents shall provide such freshman and sophomore courses of university grade as they may from time to time deem proper; and at which there shall also be given courses designed to prepare students for the profession of public instruction in the kindergartens, elementary and intermediate schools of the state of California. Persons worthily completing said last-named courses, if said courses comply with the minimum requirements fixed by the state board of education of California, shall receive credentials to that effect, which said credentials shall entitle the holders thereof to equal rights and privileges with the holders of diplomas of graduation from the normal schools in securing certificates to teach in the schools of this state.

Courses leading to special high school certificates shall also be given and when such courses are duly accredited by the state board of education persons worthily completing the same shall receive credentials therefor from the regents which shall be of equal value in securing special certificates to teach in the secondary schools of this state with credentials given for the completion of such general courses in any of the normal schools.

Measures by board of trustees.

§ 4. The board of trustees of the Los Angeles state normal school are hereby authorized and directed to take such measures as shall be directed or approved by the regents of the University of California for the accomplishment of the purposes of this act.

Appropriation.

§ 5. There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, to be expended under the direction of the regents of the University of California, the sum of forty-one thousand dollars for the conduct and maintenance of the said institution during the fiscal year beginning July 1, 1919, and the fiscal year next succeeding, providing the regents of the University of California shall be empowered to limit the total enrollment of students in said branch of the university during the said fiscal years in order that the financial provisions of this act may be sufficient to supply the usual university grade of education.

Failure to comply with provisions of act.

§ 6. Upon the failure to maintain the courses and give the instruction as provided in section three of this act, the properties granted by section two of this act shall immediately revert to the state of California and the control of the same by the regents of the state university shall close.

BRANCH STATE NORMAL SCHOOL IN NORTHERN CALIFORNIA.

ACT 4526—An act to establish a branch state normal school in northern California.

History: Approved March 9, 1887, Stats. 1887, p. 60.

STATE NORMAL SCHOOL IN SAN DIEGO COUNTY.

ACT 4527—An act establishing a state normal school in San Diego county.

History: Approved March 13, 1897, Stats. 1897, p. 114.

SAN FRANCISCO STATE NORMAL SCHOOL.

ACT 4528—An act to authorize and empower the board of trustees of the San Francisco state normal school to sell or exchange and convey the lands and buildings of said school; to acquire by purchase, gift, condemnation or otherwise a new site for said school and to erect thereon buildings suitable and appropriate therefor, or to remodel or reconstruct any building already erected on the site so purchased or acquired, and to purchase therefor necessary and appropriate furniture and equipment; to create a fund into which shall be paid the proceeds of the sale of the present school property and making an appropriation to carry out the purposes of this act.

History: Approved January 11, 1916. Stats. 1916 (ex. sess.), p. 41. Amended May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 573. The school was established by the act of March 22, 1899, Stats. 1899, which appropriated \$20,000. The purchase of a site and the erection of buildings, was authorized by the act of March 3, 1905, Stats. 1905, p. 38, which act appropriated \$150,000 for the purpose. The act of April 21, 1911, Stats. 1911, p. 1060, appropriated \$60,000 for the purchase of an additional lot.

San Francisco normal trustees authorized to sell grounds.

§ 1. The board of trustees of the state normal school at San Francisco is hereby authorized and empowered to sell or exchange on such terms as may be determined by said board of trustees, with the written approval of the state board of control and of the governor, all lands and the buildings thereon of the said state normal school at San Francisco situated in the block bounded by Waller, Hermann, Buchanan and Laguna streets in the city of San Francisco. Notice of the time and place of said sale or exchange and the terms and conditions thereof, which the said board of trustees is hereby authorized to make, shall be published in one daily newspaper printed and published in the city of San Francisco for at least two weeks prior to the appointed day of sale or exchange. The said board of trustees is hereby authorized and empowered to reject any and all bids and offers therefor, to continue the day of sale from time to time as may be necessary, and to appoint another day of sale or exchange, public notice of which shall be given for two weeks in one daily newspaper published in the city and county of San Francisco. The said board of trustees is hereby authorized and empowered, subject to the approval of the state board of control, to order and have made all necessary deeds and conveyances, papers and searches, abstracts and certificates of title and surveys of said lands and to take all necessary and proper proceedings and bring the necessary suits to cure all defects in said title, the cost and expense thereof shall be paid out of the fund in this act created.

Execution of deed.

§ 2. The president and secretary of the board of trustees of said school, or any one or more of said trustees to be designated by said board, are hereby authorized and directed to execute to the purchaser for or on behalf and in the name of the state of California, a deed of said lands and buildings in the usual form and to deliver the same upon the payment of the full amount of the purchase price or of the full consideration exchange therefor, and the said deed shall effectually pass and convey to the said purchaser all the right, title and interest of the state of California in and to the said lands and buildings.

Disposition of moneys received.

§ 3. Moneys received from the sale of said lands shall be paid into the general fund in the state treasury. The board of trustees of the state normal school at San Francisco is hereby authorized and empowered to examine the lands heretofore and now occupied or owned by the Panama-Pacific international exposition or any corporation

or individual representing or acting for or in conjunction with said exposition, and to select therefrom a new and suitable site for said school and to acquire by purchase, gift, condemnation or otherwise for and on behalf of the state of California the necessary lands and structures; and the lands so selected and purchased shall be and remain the site of the state normal school at San Francisco until otherwise provided by law. [Amendment of May 17, 1917. In effect July 27, 1917, Stats. 1917, p. 573.]

Site selected.

§ 4. The site to be selected and purchased by said board of trustees shall consist of not less than ten acres, and shall include the ground upon which now stands the building known as the "California building," and such other land as in the judgment of the said board may be necessary or proper in connection with the conduct and management of said school. The title to all property acquired by said board of trustees in pursuance of the provisions of this act shall be taken in the name of the state of California.

Condemnation proceedings authorized.

§ 5. Upon written notice to the attorney general of the state of California from said board of trustees, that certain real property within the proposed site can not be obtained from the owner or owners thereof for a reasonable consideration, the attorney general shall commence in the name of the state of California, and prosecute to final judgment, condemnation proceedings for the acquisition of such property.

Improvement and buildings.

§ 6. The said board is hereby authorized and empowered to improve the new site in a manner suitable for its intended uses, to erect and construct thereon new and modern normal school buildings and improvements necessary and proper for said normal school. The said board is also authorized and empowered to provide and purchase such furniture, fixtures, apparatus and other things as may be required for the proper equipment of said buildings and grounds for conducting said normal school. [Amendment of May 17, 1917. In effect July 27, 1917, Stats. 1917, p. 574.]

San Francisco state normal school-exposition preservation fund.

§ 7. A fund in the state treasury is hereby created and shall be known as "The San Francisco state normal school-exposition preservation fund." After the conveyance of said site to the state of California the state controller and the state treasurer shall transfer and make the proper entries upon their records, transferring the money paid into the San Francisco state normal school-exposition preservation fund and into the general fund under the provisions of an act entitled "An act to provide for the disposition of any money or other property accruing to or to be received by the state of California as its proportionate share of the returns from the holding of the Panama-Pacific international exposition," approved January 11, 1916, to the general fund in the state treasury and placed to the credit of the appropriation herein made from the general fund of the state treasury. The money so transferred shall be used for the purposes of this act. [Amendment of May 17, 1917. In effect July 27, 1917, Stats. 1917, p. 574.]

Appropriation. Condition.

§ 8. Out of any money in the state treasury not otherwise appropriated, the sum of four hundred fifty thousand dollars, together with the sum of money herein ordered credited to this appropriation, is hereby appropriated to be expended in accordance with law for the purposes of this act; provided, that no part of the money appropriated herein from the general fund of the state treasury shall be used for the erection of buildings or the making of improvements until any existing structures on said site

shall have been removed. Any moneys received from the sale of structures existing on said site at the time of its purchase shall be paid into the general fund of the state treasury and placed to the credit of the appropriation herein made. [New section added May 17, 1917. In effect July 27, 1917, Stats. 1917, p. 574.]

“SAN JOSE STATE NORMAL SCHOOL.”

ACT 4531—An act to establish a state normal school at San Jose.

History: Approved April 4, 1870, Stats. 1869-70, p. 787. The act of March 23, 1901, Stats. 1901, p. 575, authorized the conveyance of a parcel of land to the city of San Jose for a site for a free public library. The act of June 14, 1906, Stats. 1906, p. 28, appropriated \$29,000 for repairs to the building damaged by the earthquake. The act of March 15, 1911, Stats. 1911, p. 363, appropriated \$60,000 for a training department. The act of May 5, 1917, in effect July 27, 1917, Stats. 1917, p. 260, authorized an exchange of land with the San Jose high school.

“SANTA BARBARA STATE NORMAL SCHOOL.”

ACT 4535—An act to provide that the Santa Barbara state normal school of manual arts and home economics shall hereafter be known as the Santa Barbara state normal school, and to provide that it shall hereafter fulfill the functions of and be governed by the laws relating to the normal schools of this state.

History: Approved May 25, 1919, in effect July 25, 1919. Stats. 1919, p. 1208. The Santa Barbara state normal school of manual arts and home economics was established by the act of March 27, 1909, Stats. 1909, p. 795. The act of April 21, 1911, Stats. 1911, p. 1069, appropriated \$9,000 for a reception and lunchroom building.

Name and purpose of Santa Barbara state normal school.

§ 1. The Santa Barbara state normal school of manual arts and home economics shall be known hereafter as the Santa Barbara state normal school, and shall perform the functions of and shall be governed by the laws of this state relating to other state normal schools. The purpose of the Santa Barbara state normal school, is the education of teachers for the public schools of the state, and it shall furnish to students of both sexes such courses of professional training and such courses in manual arts, home economics and physical education as shall fit them to teach in the public schools of the state.

PHYSICAL EDUCATION IN SCHOOLS.

ACT 4536—An act to provide for the organization and supervision of courses in physical education in the elementary, secondary and normal schools of the state, and appropriating ten thousand dollars therefor.

History: Approved May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 1176. See Kerr's Cyc. Political Code, § 1519a, as amended in 1919.

Courses of physical education.

§ 1. The board of education of each county, city and county, and city, whose duty it is to prescribe the course of study for the elementary schools of such county, city and county or city, shall prescribe suitable courses of physical education in accordance with the provisions of this act for all pupils enrolled in the day elementary schools, except pupils who may be excused from such training on account of physical disability; and the high school board of each high school district shall prescribe suitable courses of physical education in accordance with the provisions of this act for all pupils enrolled in the day high schools of such district, except pupils regularly enrolled in high school cadet companies and pupils who may be excused from such courses on account of physical disability.

Purposes of courses.

§ 2. The aims and purposes of the courses of physical education established under the provisions of this act shall be as follows: (1) To develop organic vigor, provide neuro-muscular training, promote bodily and mental poise, correct postural defects, secure the more advanced forms of co-ordination, strength and endurance, and to promote such desirable moral and social qualities as appreciation of the value of co-operation, self-subordination and obedience to authority, and higher ideals, courage and wholesome interest in truly recreational activities; (2) To promote a hygienic school and home life, secure scientific supervision of the sanitation of school buildings, playgrounds and athletic fields, and the equipment thereof.

Enforcement of courses.

§ 3. It shall be the duty of the superintendent of schools of every county, city and county, or city, and of every board of education, board of school trustees, or high school board, to enforce the courses of physical education prescribed by the proper authority, and to require that such physical education be given in the schools under their jurisdiction or control. All pupils enrolled in the elementary schools, except pupils excused therefrom in accordance with the provisions of this act, shall be required to attend upon such courses of physical education during periods which shall average twenty minutes in each school day, and all pupils enrolled in the secondary schools, except pupils excused therefrom in accordance with the provisions of this act, shall be required to attend upon such courses of physical education for at least two hours each week that school is in session.

Supervisor and special teachers.

§ 4. When the number of pupils in any city or city and county or school district is sufficient, such city or city and county or school district shall employ a competent supervisor and such special teachers of physical education as may be necessary. The trustees of two or more contiguous elementary school districts, or the trustees of one or more elementary school districts and the high school board of the high school district in which such elementary school district or districts are situated, may by written agreement join in the employment of a competent teacher of physical education for such districts, and the salary of such teacher and the expenses incurred on account of such instruction shall be apportioned as the school board concerned may agree.

Courses in normal schools.

§ 5. The state board of education, in standardizing the courses of instruction offered in the several normal schools of the state, shall prescribe a course in physical education and shall make the completion of such course a requirement for graduation.

Duty of state board of education.

§ 6. It shall be the duty of the state board of education: (1) to adopt such rules and regulations as it may deem necessary and proper to secure the establishment of courses in physical education in the elementary and secondary schools in accordance with the provisions of this act; (2) to appoint a state supervisor of physical education whose duties are hereinafter defined; (3) to compile or cause to be compiled and printed, a manual in physical education for distribution to teachers in the public schools of the state.

State supervisor of physical education. Salary. Expenses.

§ 7. The supervisor of physical education appointed under the provisions of this act, shall be experienced in the supervision of physical education in public schools. He shall not be subject to the provisions of any civil service law of the state. He shall exercise general supervision over the courses of physical education in elementary and

secondary schools of the state; shall exercise general control over all athletic activities of the public schools; shall advise school officials, school boards and teachers in matters of physical education; shall visit and investigate the work in physical education in the public schools and shall perform such other duties as may be assigned to him by the state board of education. He shall receive a salary not exceeding three thousand six hundred dollars per annum, as fixed by the state board of education, payable at the same time and in the same manner as the salaries of other state officers are payable. He shall also receive his actual and necessary traveling expenses while on official business. The state board of education may within the limits of the appropriation herein after provided, employ such expert and clerical assistance as may be necessary to carry out the provisions of this act.

Appropriation.

§ 8. The sum of ten thousand dollars is hereby appropriated out of any moneys belonging to the state not otherwise appropriated to defray the expenses of the state board of education in carrying out the provisions of this act, during the sixty-ninth and seventieth fiscal years.

COMPILING CERTAIN TEXT BOOKS OF THE STATE SERIES.

ACT 4539—An act to provide for compiling, illustrating, electrotyping, printing, binding, copyrighting, and distributing certain books of a state series of school text-books, and appropriating money therefor.

History: Approved March 15, 1887, Stats. 1887, p. 139. An act of the same date (Stats. 1887, p. 131) appropriated \$10,000 for a fire-proof warehouse for state text books.

Defining additional books for compilation.

§ 1. In addition to the books directed to be compiled for use in the common schools of the state by section 1 of the act entitled An act to provide for compiling, illustrating, electrotyping, printing, binding, copyrighting, and distributing a state series of school text-books, and appropriating money therefor, approved February twenty-six, eighteen hundred and eighty-five, the state board of education shall compile, or cause to be compiled the following described text-books, viz.: One (1) elementary arithmetic; one (1) elementary grammar, or language lessons; one (1) elementary geography; one (1) physiology and hygiene, including a system of gymnastic exercises; and special instructions as to the nature of alcoholic drinks and narcotics, and their effects upon the human system; and the sum of fifteen thousand dollars, in addition to the unexpended balance of the sum appropriated by section 8 of said act aforesaid, is hereby appropriated out of any money in the state treasury not otherwise appropriated, for the purpose of compiling, or causing to be compiled, the text-books hereinbefore enumerated, together with those enumerated in section 1 of said act aforesaid, and still remaining to be compiled. The appropriation provided for in this section shall be subject to the order of the state board of education; provided, that all demands against said appropriation shall first be approved by said state board of education, and presented to the state board of examiners, in itemized form, for their approval; authorized to draw his warrant upon the state treasurer for the payment of said demands, and the state treasurer is authorized to pay the same.

Remuneration for compiling books.

§ 2. The state board of education shall employ well-qualified persons to compile the books mentioned in section 1 of this act, and shall fix the remuneration for the services thus rendered; provided, that if competent authors shall compile any one or more works of the first order of excellence, and shall offer the same as a free gift to the people of the state, together with the copyright of the same, and the exclusive right

to manufacture and sell such works within the state of California, it shall be the duty of the state board of education to accept such gift, and to expend no money for the purpose of compiling works relating to the subjects treated of in the books thus donated. The state board of education shall furnish to the superintendent of state printing designs for all cuts and engravings to be used in the said series of text books.

Supervision of superintendent of state printing.

§ 3. The printing of all the text-books provided for in section 1 of this act, and all the mechanical work connected therewith, shall be done by and under the supervision of the superintendent of state printing, at the state printing office; provided, that the purchase of paper for the school books, and the cardboards, cloth, and leather for covers, shall be procured by advertising for proposals to furnish the same in the manner now provided for by section 532 of the Political Code, relating to paper supplies for the state printing office; and provided, further, that all folding, stitching, binding, and ruling shall be done in the state bindery; but the accounts of the school book binding shall be kept separate from those of all other binding. The sum of one hundred and sixty-five thousand dollars, in addition to the unexpended balance of the sum appropriated by section 9 of said act aforesaid, approved February twenty-sixth, eighteen hundred and eighty-five, seven thousand five hundred dollars of which shall be available during the present fiscal year, is hereby appropriated out of any money in the state treasury not otherwise appropriated, to purchase the necessary machinery, and to properly maintain the same, and to purchase such type and other materials as may be required in the manufacture of the text-books provided for in section 1 of this act, together with those enumerated in section 1 of said act aforesaid, approved February twenty-sixth, eighteen hundred and eighty-five, and remaining to be manufactured, as well as to pay the salaries or wages of the compositors, binders, and other persons to be employed in such manufacture; provided, that the state board of education shall first approve the style of printing, engravings, and illustrations, kind of paper, size, and binding of volumes; said sum to be drawn by the superintendent of state printing in the same manner as provided in subdivision 4 of section 526 of the Political Code.

Secure copyrights.

§ 4. The state board of education shall secure copyrights to all the books that shall be compiled under the provisions of this act, and shall protect said copyrights from all infringement.

Moneys received kept in state treasury.

§ 5. All moneys that have been received or may hereafter be received from the state series of school text-books shall be kept by the state treasurer as a separate and distinct fund, to be known as the "state school book fund," which said fund shall be subject to the following drafts, viz.: By the superintendent of state printing for all moneys needed for manufacturing any editions of any book of the state series, over and above the first fifty thousand copies manufactured of such book, the same to be drawn as provided in subdivision 4 of section 526 of the Political Code; provided, that all demands on the state school book fund shall be presented to the state board of examiners in itemized form, for their approval; and upon the approval of the state board of examiners, the controller is hereby authorized to draw his warrant upon the state treasurer for the payment of said demands, and the state treasurer is authorized to pay the same.

§ 6. This act shall take effect from and after its passage.

COMPILING A CERTAIN TEXT-BOOK OF THE STATE SERIES.

ACT 4540—An act to provide for compiling, illustrating, electrotyping, printing, binding, copyrighting, and distributing an elementary book on civil government, for the state series of school text-books.

History: Approved March 19, 1889, Stats. 1889, p. 327. The act of March 15, 1887, Stats. 1887, p. 131, appropriated \$10,000 for a state warehouse for the state series of text-books.

Compiling, etc., books on civil government of the United States.

§ 1. The state board of education shall compile, or cause to be compiled, the following described text-book for use in the common schools of the state, viz.: One (1) elementary book on the civil government of the United States, with a special analysis of the government of the state of California.

Printing of.

§ 2. The printing of said elementary book on civil government, provided for in section 1 of this act, shall be done by and under the supervision of the superintendent of state printing, subject to the provisions of section 3 of an act entitled An act to provide for compiling, illustrating, electrotyping, printing, binding, copyrighting, and distributing certain books of a state series of school text-books, and appropriating money therefor, approved March fifteenth, eighteen hundred and eighty-seven.

§ 3. This act shall take effect from and after its passage.

COMPILING THE STATE SERIES OF SCHOOL TEXT-BOOKS.

ACT 4541—An act to provide for compiling, illustrating, electrotyping, printing, binding, copyrighting, and distributing a state series of school text-books, and appropriating money therefor.

History: Approved February 26, 1885, Stats. 1885, p. 6. Amended March 15, 1887, p. 145, and March 31, 1891, Stats. 1891, p. 453. By the acts of March 15, 1887, Stats. 1887, p. 139, and March 19, 1889, Stats. 1889, p. 327, certain text books were added to the state series and their compilation authorized (see Acts 4539, 4540). By the act of March 15, 1887, Stats. 1887, p. 131, \$10,000 was appropriated for a fireproof warehouse for state text books. Appropriations were made February 4, 1913, Stats. 1913, p. 11, and May 17, 1915, Stats. 1915, p. 456, for printing, publishing, and distributing state school text-books.

Series of school books.

§ 1. The state board of education shall compile, or cause to be compiled, for use in the common schools of the state, a series of school text-books of the following description, viz.: Three (3) readers, one (1) speller, one (1) arithmetic, one (1) grammar, one (1) history of the United States, and one (1) geography. The matter contained in the readers shall consist of lessons commencing with the simplest expressions of the language, and, by a regular gradation, advancing to and including the highest styles of composition, both in prose and poetry.

Compilers of same.

§ 2. The state board of education shall employ well-qualified persons to compile the books mentioned in section 1 of this act, and shall fix the remuneration for the services thus rendered; provided, that if competent authors shall compile any one or more works of the first order of excellence, and shall offer the same as a free gift to the people of the state, together with the copyright of the same, and the exclusive right to manufacture and sell such works within the state of California, it shall be the duty of the state board of education to accept such gift, and to expend no money for the purpose of compiling works relating to the subjects treated of in the books thus donated. The state board of education shall furnish to the superintendent of state printing designs for all cuts and engravings to be used in the said series of text-books.

Printing and binding.

§ 3. The printing of all the text-books provided for in section 1 of this act, and all the mechanical work connected therewith, shall be done by and under the supervision of the superintendent of state printing at the state printing office; provided, that the purchase of paper for the school books, and the cardboards, cloth, and leather for covers, shall be procured by advertising for proposals to furnish the same, in the manner now provided by section 532 of the Political Code, relating to paper supplies for the state printing office; and provided further, that when the state has its bindery in operation, all folding, stitching, binding, and ruling of the state shall be done in the state bindery; but the accounts of the school book binding shall be kept separate from those of all other binding.

Copyrights.

§ 4. The state board of education shall secure copyrights to all the books that shall be compiled under the provisions of this act, and shall protect said copyrights from all infringement.

Order of uniform use.

§ 5. Whenever any one or more of the state series of school text-books shall have been compiled and adopted, the state board of education shall issue an order requiring the uniform use of said book or books in the common schools of the state; but said order for the uniform use of said book or books shall not take effect till the expiration of at least one year from the time of the completion of the electrotype plates of said book or books, and thereafter such book or books shall be used in all the common schools of this state; and no school board or other school authority in this state shall have the power to authorize the use of, nor shall any common school in this state use any books as text-books for pupils other than those directed to be used by the order aforesaid of such state board, except books on such subjects as are not provided for by text-books published by the state. Nothing in this act shall be construed to prevent any county or school district from adopting any one or more of the state series of school text-books whenever said book or books shall have been published. The superintendent of public instruction must withhold from any city, city and county, county, or from any school district in this state using school books in violation of the provisions of this act and section all state school moneys to which it may be entitled, until it comply with the requirements of this section; and any moneys so withheld must be apportioned by the superintendent at the next annual apportionment in the same manner as other school moneys in the treasury. [Amendment approved March 31, 1891, Stats. 1891, p. 453.]

Text-books, how obtained.

§ 6. All orders for text-books shall be made on the superintendent of public instruction, and shall be accompanied by cash, in payment for the same, at the price fixed by the state board of education as the cost price at Sacramento; provided, that if the books are to be shipped by mail, the cost of postage shall also accompany the order. The following persons shall be entitled to order books:

1. County superintendents of schools, for the use of teachers, parents, and pupils in their counties only.

2. Principals of state normal schools, for their own and for the use of the pupils in their respective schools only.

3. The secretary or clerk of any school district in the state, whether incorporated or operating under the general law of the state, for the use of the pupils in such district only; but no books ordered by the county superintendents, or clerks of district boards of trustees, or principals of state normal schools, shall be sold at a price exceeding the cost price at Sacramento, with the actual cost of freight and cartage added.

4. Any retail dealer who shall first transmit to the state superintendent of public instruction an affidavit, duly subscribed by him, in substance as follows, to wit:

"In consideration of receiving for sale, upon the inclosed or upon any further order, the series of school text-books, or any part thereof, published by the state of California, I hereby agree that I will not sell the same to any person or persons for the purpose of being sold again, or to any person or persons beyond the limits of the state of California; and that I will not sell said series of text-books or any part or portion thereof, at a price exceeding the price to the pupil fixed by the state board of education."

Said affidavit shall be indorsed by the county superintendent in the following words, viz.:

"I hereby certify that (A B) is a regular retail dealer in school books in . . . county. C D, county superintendent."

It shall be the duty of the state superintendent of public instruction to furnish, at once to each county superintendent, for the use of any dealer in his county who may apply for permission to sell the books of the state series, printed copies of the above affidavit, together with the list of prices of such books fixed as the cost price at Sacramento, and the price to the pupil; and any dealer who shall fail to comply with the conditions of such affidavit shall forfeit his right to any further purchase of said books from the state. And it shall be the duty of the superintendent of public instruction to report to the state controller, on or before the fifth day of every month, the number of books sold by him during the preceding month, and pay the moneys received for the same into the state treasury. It shall also be the duty of the superintendent of state printing, on or before the fifth day of every month, to report to the state controller the number and value of the books shipped by him on the order of the state superintendent of public instruction, and the number and value of the finished books on hand. [Amendment approved March 15, 1887, Stats. 1887, p. 145. In effect immediately.]

Duties of board of supervisors.

§ 7. It shall be the duty of the boards of supervisors of the counties or cities and counties in this state to provide a revolving fund, for the purpose of enabling the county school superintendents to purchase the state text-books; all moneys to be taken therefrom to be replaced by the moneys received from the sale of said books to the scholars of the public schools of his county, either by himself or by the teachers of the public schools, or the clerks of boards of district trustees. [Amendment approved March 15, 1887, Stats. 1887, p. 146. In effect immediately.]

Appropriation for compilations.

§ 8. The sum of twenty thousand dollars is hereby appropriated, out of the money in the state treasury not otherwise appropriated, for the purpose of compiling, or causing to be compiled, the series of text-books for the common schools, as set forth in section 1 of this act. The appropriation provided for in this section shall be subject to the order of the state board of education; provided, that all demands against said appropriation shall first be approved by said state board of education and presented to the state board of examiners in itemized form for their approval, and upon the approval of the state board of examiners, the controller is hereby authorized to draw his warrant upon the state treasurer for the payment of said demands, and the state treasurer is authorized to pay the same.

Appropriation for presses, type, etc.

§ 9. The sum of one hundred and fifty thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated, to purchase the necessary machinery, presses, types, bindery, electrotyping apparatus, and such other mate-

rial as may be required in the manufacture of the text-books provided for in section 1 of this act, as well as to pay the salaries or wages of the compositors, binders, and other persons to be employed in such manufacture; provided, that the state board of education shall first approve the style of printing, engravings, and illustrations, kind of paper, size, and binding of volumes; said sum to be drawn by the superintendent of state printing in the same manner as provided in subdivision 4 of section 526 of the Political Code.

Furnished at cost of printing.

§ 10. All school books compiled by the state shall be furnished to the public school children of the state at the cost of printing, publishing, and distributing the same; said cost to be ascertained and fixed by the state board of education, on or before the fifteenth day of June of each school year; and it is further enacted, that the cost of distribution shall be taken to be the cost of postage required for mailing each book. [Amendment approved March 15, 1887, Stats. 1887, p. 146. In effect immediately.]

§ 11. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

§ 12. This act shall take effect immediately.

The amendatory act added the following new section at the end, but did not give it a new number. This number is the amendment section number.

Superintendent of public instruction to employ assistance.

§ 4. The superintendent of public instruction is hereby authorized to employ assistance necessary to the carrying out of the provisions of this act. And the controller is hereby directed and authorized to draw his warrants for a sum not exceeding two thousand dollars annually, on the general fund of the state, for the payment of such assistance. [Amendment approved March 15, 1887, Stats. 1887, p. 146. In effect immediately.]

REVISION OF SERIES AND COMPILING ADDITIONAL TEXT-BOOK.

ACT 4542—An act to provide for the revision of certain books of the state series of school text-books, for the compilation of an additional book of said series, and for the continued publication of the same; and to authorize and direct the use, for these purposes, of the money accumulated in the state school book fund.

History: Approved March 9, 1893, Stats. 1893, p. 85.

State board of education authorized to revise text-books.

§ 1. The state board of education is hereby authorized and directed to revise the following books of the state series of school text-books, viz.: The first, second, and third readers, the English grammar, the United States history, and the advanced arithmetic, and to compile a primary history of the United States; and in such revision and compilation may employ well-qualified persons to assist them; provided, that in revising said readers the board may cause them to be issued in a series of five books or less, in their discretion; and the board shall furnish to the superintendent of state printing designs for all cuts and engravings to be used in the books revised and compiled under the provisions of this section.

Expenses paid out of state school book fund. How demands are paid. Limit of expenditure.

§ 2. All indebtedness incurred by said board in carrying out the provisions of section 1 of this act shall be paid out of the money accumulated in the state school book fund from the sale of the state series of school text-books; provided, that all demands on account of such indebtedness shall first be approved by said state board of education, and presented to the state board of examiners, in itemized form, for their approval, and

upon the approval thereof by the state board of examiners the controller is hereby authorized to draw his warrant upon the state treasurer for the payment of said demands, and the state treasurer is authorized to pay the same; provided further, that the indebtedness incurred by said board in carrying out the provisions of section 1 of this act shall not exceed the sum of twenty-five thousand dollars (\$25,000), which sum is hereby appropriated from the state school book fund for the use of the said board in the premises.

Copyrights.

§ 3. The state board of education shall secure copyrights to all the books that shall be revised or compiled, as the case may be, under the provisions of this act, and shall protect said copyrights from all infringement.

Uniform use to be required.

§ 4. Whenever any one or more of the state series of school text-books shall have been revised or compiled, the state board of education shall issue an order requiring the uniform use of said book or books in the common schools of the state; but said order for the uniform use of said book or books shall not take effect till the expiration of at least one year from the time of the completion of the electrotype plates of said book or books. Nothing in this act shall be construed to prevent any county, city, city and county, or school district from using any one or more of the state series of school text-books provided for in this act, whenever said book or books shall have been published.

Work to be performed in state printing office. How supplies to be purchased.

§ 5. The printing and binding of all text-books, specified in section 1 of this act, and all the mechanical work connected therewith, shall be done by and under the supervision of the superintendent of state printing, at the state printing office; provided, that the purchase of paper for the school books, and the binder's boards, cloths, and leather for covers, shall be procured by advertising for proposals to furnish the same, in the manner now provided for by section 532 of the Political Code, relating to paper supplies for the state printing office.

Further manufacture to be paid for from state school book fund. How claims to be paid.

§ 6. Whenever the appropriations heretofore made from the general fund to the use of the superintendent of state printing for the manufacture of books of the state series of school text-books is exhausted, all indebtedness incurred for the further manufacture of said books shall be paid from the state school book fund, together with all indebtedness incurred for the purchase and proper maintenance of such necessary machinery as may be required in the manufacture of said books, and to purchase such type and other materials as may be required for the same; provided, that all demands on the state school book fund, for the purposes enumerated in this section, shall be presented to the state board of examiners, in itemized form, for their approval; and upon the approval of the state board of examiners, the controller is hereby authorized to draw his warrant upon the state treasurer for the payment of said demands, and the state treasurer is authorized to pay the same.

§ 7. This act shall take effect immediately.

FREE TEXT-BOOK ACT OF 1917.

ACT 4542a—An act to provide for the adoption of text-books for use in the public high schools of the state and for furnishing text-books for the use of pupils of such schools.

History: Approved May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 729. Amended May 9, 1919. In effect July 22, 1919. Stats. 1919, p. 443.

Text-books for use in high schools. Furnished free. Payment.

§ 1. The high school board of each and every high school district shall adopt text-books for use in such district from a list prescribed by the state board of education. Such list shall include text-books in such high school subjects as in the judgment of the state board of education require the use of text-books; provided, that separate classics in English and modern languages need not be listed. The high school board of each and every high school district may purchase text-books for the use of pupils enrolled in the high schools of such district, which text-books shall at all times be and remain the property of such district, to be supplied to the pupils thereof for use without charge, or at an annual rental, payable in advance, which shall not exceed three dollars for all text-books required by any pupil during any school year; provided, that after July 1, 1920, text-books shall be so supplied to pupils of the high schools without charge. Whenever a majority of the heads of families or a majority of the electors in any high school district shall petition in writing the high school board to furnish text-books free for the use of the pupils enrolled in such high school district, it shall thereafter be the duty of the high school board to furnish such text-books free for the use of such pupils. The high school board may pay for text-books furnished in accordance with the provisions of this act, out of the special fund of such high school district. All moneys collected for rental of text-books shall be deposited in the county treasury to the credit of such high school district within thirty days after collection.

Text-books furnished free to pupils outside district.

§ 2. Whenever the high school board of any high school district purchases text-books for the use of pupils residing in portions of the county not included in any high school district and attending the high school of such district, and furnishes text-books free for the use of such pupils, the board may on or before August first of each year file with the county superintendent of schools of the county in which such pupils reside, a list of such pupils and an itemized statement of the amount expended for text-books for their use during the preceding school year. The county superintendent of schools shall include such amount in his estimate of the county high school fund required, and the board of supervisors shall include the amount in levying the county high school fund. Before the county superintendent of schools shall apportion any of the county high school fund on average daily attendance, he shall transfer from said fund to the fund of each of the several high school districts of the county, or draw a warrant in favor of the board of trustees of such high school district, for the amount claimed by each on account of text-books furnished free for the use of pupils residing in portions of the county not included in any high school district, and attending such high school.

Publisher's application for listing of books. Sworn statement.

§ 3. All publishers desiring to offer school books for the use of pupils enrolled in the high schools of the state shall file with the state board of education at Sacramento a written application for the listing of such book or books accompanied by a fee of ten dollars for each book for which listing is applied, such sum to be deposited in the state treasury to the credit of the state board of education; also three copies of each book, together with a statement of the list price of said book as shown by the publisher's catalog, a statement of all discounts allowed thereon when new copies of such book are purchased by or on behalf of a high school board directly from the publisher, and a statement of the lowest exchange price that will be given when old books in the same subject and of like kind and grade, but of a different series, are received in exchange; provided, that no fee shall be required to accompany the application for the listing of a book in a subject studied by less than one hundred pupils in the high schools of the state. They shall also submit a sworn statement giving the lowest net wholesale price at which such book is sold anywhere in the United States and the maximum total dis-

count allowed thereon to any public school board anywhere in the United States. Such sworn statements shall give the lowest exchange price given anywhere in the United States where old books in the same subject and of like kind and grade, but of a different series, are received in exchange. Such sworn statement shall also include a statement that said publisher is not directly or indirectly associated or connected with any combination in restraint of trade in textbooks, and that he is not and will not become a party in any way to any understanding, agreement or combination to control prices or restrict competition in the sale of textbooks for use in the state of California. [Amendment of May 9, 1919. In effect July 22, 1919, Stats. 1919, p. 443.]

Bond of publisher. Price at which book furnished. Uniform price. Reduction of price. Quality. Not to control prices.

§ 4. Each publisher offering one or more books for use in the high schools of the state must, after notification by the state board of education of its intention to place on the list any book or books submitted by him, and as a prerequisite for such listing, file with the state board of education a bond payable to the state of California in a sum to be determined by the state board of education, said sum for any publisher offering one or more books to be not less than one thousand dollars nor more than ten thousand dollars, the bond to be conditioned as follows: first, that the publisher will furnish said book or books offered by him and listed by the state board of education, to the high school board of any high school district in the state at the lowest net wholesale price contained in the statement filed at the time said book or books were offered, less the maximum total discount allowed thereon to any public school board according to such statement, and at the lowest exchange price given according to such statement, when old books in the same subject and of like kind and grade, but of a different series, are given in exchange, which price shall not exceed the lowest price the publisher has made for such book or books anywhere in the United States; provided, that the cost of transporting all textbooks to the high school from the publisher's office or depository in California shall be paid by the high school district, or prepaid by the publisher and then charged to the district, as the high school board may determine; second, that he will maintain said price uniformly throughout the state of California, on his book or books, listed under the provisions of this act; third, that the publisher will reduce such price automatically to purchasers within the state of California whenever reductions are made elsewhere in the United States, so that at no time shall any book so filed and listed be sold to school authorities in California at a higher net price than is received for such book elsewhere in the United States; and that upon failure or refusal of the publisher to make such reduction all contracts for such book or books shall become null and void; fourth, that all such books offered for sale, adoption, or exchange in the state of California shall be equal in quality to those filed in the office of the state board of education, as regards paper, binding, print, illustration, subject matter, and all other particulars that may affect the value of such school books; fifth, that the publisher will not in any way, directly or indirectly, become associated or connected with any combination in restraint of trade in textbooks, and that he will not enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of school books for use in the state of California; sixth, that the publisher will maintain an office in California or designate an agent or arrange with a depository in California, to receive and handle orders for said book or books.

Approval. Term.

§ 5. Such bond shall be approved by the attorney general, and shall continue in force for a period of eight years after its filing, at or before the expiration of which period a new bond shall be given, or the right to continue selling such textbooks in the state of California shall be forfeited.

List sent to principals, county superintendents, and clerks. Annual publication.

§ 6. The state board of education shall, within six months after the approval of such bond, send a list of such books to the principal of each high school, county superintendent of schools and the clerk of each high school board, with a statement of the list price, discounts and the exchange price of each; provided, that such lists shall not be issued oftener than twice each year; provided, further, that whenever a book is dropped from the list, such action shall not affect existing contracts for such book. The state board of education shall, on or before January 1, 1918, and on or before the first day of January of each following year, publish and send to the principal of each high school, county superintendent of schools and the clerk of each high school board, a printed copy of all such lists then in force.

Failure of publisher to furnish books. Forfeit.

§ 7. If any publishers shall comply with the provisions of the foregoing sections and then fail or refuse to furnish such books to any high school board upon the terms herein provided within a reasonable time after an order therefor is filed, said board shall at once notify the state commissioner of secondary schools of such failure or refusal, and he shall at once cause an investigation of such charge to be made. If the state commissioner of secondary schools find such charge to be true, he shall at once report his finding to the state board of education, which shall notify such publisher and notify the principal of each high school and the clerk of each high school board in the state of California that such book or books shall not thereafter be adopted or purchased by any of the public school authorities in the state. Said publishers shall forfeit and pay to the state of California the sum of one hundred dollars for each failure or refusal to furnish said book or books, to be recovered in the name of the state of California in an action to be brought by the attorney general in any proper court, the amount when collected to be paid into the treasury to the credit of the high school fund of the state of California.

Adoption of textbooks by school boards. No change for period of four years.

§ 8. The high school board of each high school district in the state of California shall adopt textbooks for use in the schools under its control, until a complete list of textbooks covering the entire course of study has been adopted. The books so adopted shall be put in actual use in such district not later than the beginning of the school year next following such adoption. A majority vote of the membership of any board shall determine which of said books prescribed by the state board of education shall be used in the schools under its control, and after such books have been selected and adopted by said board, no book shall be changed, nor any other book substituted therefor, except as otherwise provided in this act, for a period of four years after the date of its adoption, as shown by the official records of the board; provided, that any such school textbooks as may be in use in the public schools of California when this act goes into effect may be continued until textbooks are purchased and distributed by the high school board in accordance with the provisions of this act, but when said books are changed or other books substituted, the books adopted shall be from the list prescribed by the state board of education in pursuance of this act and shall be used for a full period of four years. [Amendment of May 9, 1919. In effect July 22, 1919, Stats. 1919, p. 444.]

Textbooks purchased direct from publishers.

§ 9. All textbooks adopted as provided for in this act may be brought by the various school authorities direct from the publishers at the lowest net wholesale price less the maximum total discount thereon, as listed by the state board of education. The high school board of each and every high school district shall at a regular meeting, cause to be ascertained the number of each of such books adopted as the schools under its

charge require. The clerk or secretary of each high school board may order the book so agreed upon direct from the publisher, agent, or depository in California, who, on receipt of such order, shall ship the books as directed without delay. It shall be the duty of the clerk or secretary, or other person named by the board for such purpose, to examine the books when received, and if found to be correct and in accordance with the order, a warrant payable out of the county or district high school fund for the proper amount, shall be issued and remitted to the publisher within thirty days. It shall be the duty of each high school board to make all necessary provisions and arrangements to place the books so purchased within easy reach and accessible for the use of all the pupils in the schools under its control. All orders for books under this act shall be made by a duly authorized agent of the high school board and billed by the publisher or the depository in California designated by him to the high school board.

No emolument to be given or accepted. Sample copies. Penalty.

§ 10. No publisher of school textbooks, nor agent of such publisher, shall offer or give any emolument, money, or other valuable thing, or any inducement, to any member of any high school board or school official or teacher connected with any of the high schools of California, for his vote, or promise to vote, or for the use of his influence for the adoption of any school textbook to be used in any of the high schools of this state, nor shall any member of any high school board or school official connected with any of the public schools of California, accept emolument, money or other valuable thing, or any other inducement, from any publisher, or agent of any publisher, for his vote or promise to vote, or for the use of his influence for the adoption of any school textbooks; provided, that nothing in this section shall be construed to prevent any person, publisher, or publisher's agent from lending one sample copy of any school textbook to any member of a high school board or school official for examination of such book or books before the adoption of books, as provided for in this act, and nothing shall be construed to prevent such a member of a high school board or school official from receiving such sample copies; provided, that all copies of textbooks so received shall be returned within thirty days after the adoption of textbooks in the subject or subjects by the high school board.

§ 11. Any publisher of school textbooks, or agent of such publisher, or any member of any high school board or public school official in the state of California, who violates any of the provisions of this act, on conviction thereof, shall be punished as for a misdemeanor; and any member of a high school board or public school official shall, in addition, be removed from his official position.

1. Constitutionality—Invalidity of section 2.—The act contains a complete scheme in section 1 and the invalidity of section 2, as to the reimbursement for textbooks furnished pupils outside the state, does not carry with it the entire act.—*Macmillan v. Clarke* (Cal.), 194 Pac. 1030.

2. Same—Not violation of section 12, article XI, constitution.—The act is not invalid on the ground that it imposes additional taxes on school districts in violation of section 12, article XI, of the constitution.—*Macmillan v. Clarke* (Cal.), 194 Pac. 1030.

PURCHASE OF CALIFORNIA TEXT-BOOKS.

ACT 4543—An act to provide for the purchase of certain California state text-books now in the hands of the dealers and providing for the proper distribution of such books.

History: Approved June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 951.

Superintendent of public instruction authorized to purchase text-books in hands of dealers.

§ 1. The superintendent of public instruction is hereby authorized and empowered to purchase unsold state text-books now in the hands of the dealers on the passage of

this act at prices not exceeding those heretofore fixed by the state board of education according to law. Only books now under contract and those on the list of state text-books by the state may be so purchased, and they may be so purchased when delivered free at such point and to such agent as may be designated by the superintendent of public instruction. The claim for such text-books shall be presented on blanks furnished by the superintendent of public instruction by the dealer in itemized form. Such claim must be signed by the dealer and by the agent of the superintendent of public instruction to whom such dealer delivered the books. On being properly made out and signed it shall be forwarded to the superintendent of public instruction who if he approve it shall forward it with his approval to the state board of control. On the approval of the state board of control the claim shall be transmitted to the controller, who shall draw his warrant against the state school book fund in the name of such dealer. The state treasurer is hereby directed to pay such claim.

LEVY AND COLLECTION OF SCHOOL TAXES.

ACT 4545—An act to provide for the levy and collection of taxes by and for school districts, except in municipal corporations of the first class.

History: Approved February 14, 1891, Stats. 1891, p. 4.

Manner in which school boards may raise money. When meeting to be held.

§ 1. In all cases where the board of school trustees, board of school directors, board of education, or other governing board of any school district in this state, except in [a] municipal corporation of the first class, has or may hereafter have power to raise money by taxation without a vote of the people of the school district, in addition to the funds provided by state and county for school or educational purposes, such money shall be raised and such taxes shall be levied and collected in the manner following, to wit: The board of trustees, directors, or board of education shall, within the limits fixed by law, estimate the amount of money to be so raised by taxation, and required by their respective districts for school purposes during the year next ensuing, which year shall begin on the first Monday of January, at 12 o'clock M. Said meeting for such purpose shall be held between the first and twentieth day of September in each year; said estimate, showing the amount and for what purpose the same is to be used, shall be entered upon the records of the board making the same, and signed by a majority of said board, and attested by the clerk or secretary of said board. Said clerk or secretary shall immediately furnish to the board of supervisors of the county in which such district is situated a copy of said record containing such estimate, which shall show the name of the district, the amount of money to be raised, and the purposes for which it is to be used.

Duty of boards of supervisors. Duty of county auditor.

§ 2. The board of supervisors, upon receipt of such estimate, must, at the time of levying the county taxes, levy a tax upon all the taxable property in the school district requiring such money sufficient to raise the amount; the rate of taxation shall be ascertained by deducting fifteen per cent for anticipated delinquencies from the aggregate assessed value of the property in the district as it appears on the assessment-roll of the county, and then divide the amount to be raised by the remainder of said aggregate assessed value. The taxes so levied shall be computed and entered on the assessment-roll by the county auditor, and collected at the same time and in the same manner as state and county taxes; and when collected, shall be paid into the county treasury for the use of the district for which said money was collected. The county treasurer shall, upon demand, pay out such moneys to the district entitled thereto, in the same manner as other school moneys are paid out by such treasurer.

Repeal of conflicting acts.

§ 3. All acts and parts of acts in conflict with this act are hereby repealed.

CHANGE OF NAME OF SCHOOL DISTRICT.

ACT 4546—An act to provide for the change of name of school districts and the manner of making such change.

History: Approved March 16, 1903, Stats. 1903, p. 163.

Procedure.

§ 1. Whenever a petition shall be presented to the board of supervisors, signed by at least fifteen qualified electors of said district, asking that the name of any school district be changed, the said board of supervisors shall designate a day upon which they will act upon such petition, which day must not be less than ten days nor more than forty days after the receipt thereof. The clerk of said board of supervisors must give notice to all parties interested, by sending by registered mail to each of the trustees of such school district, a notice of the time set for the hearing of said petition, which notice must be mailed at least ten days before the day set for hearing, whereupon the board shall by resolution either grant or deny the petition, and if granted, the clerk shall notify the county superintendent of the change of the name of said district.

§ 2. This act shall take effect immediately.

CHANGE OF NAME OF HIGH SCHOOL DISTRICT.

ACT 4547—An act to provide for the change of name of school districts and union high school districts and the manner of making such change.

History: Approved March 23, 1907, Stats. 1907, p. 950.

Change of name of high school district, proceedings for.

§ 1. Whenever a petition shall be presented to the board of supervisors, signed by at least two thirds of the members of the board of trustees of a high school district or of a union high school district, asking that the name of such high school district or such union high school district be changed, the board of supervisors shall designate a day upon which they will act upon such petition, which must not be less than ten nor more than forty days after the receipt thereof. The clerk of the board of supervisors must give notice to all parties interested, by publication in a newspaper published within said high school district, or within said union high school district, or if no newspaper is published therein, then in any newspaper published in the county, of the time set for the hearing of said petition, which notice must be published at least twice before the day set for hearing, whereupon the board shall, by resolution, either grant or deny the petition; and if granted, the clerk of the board of supervisors shall notify the county superintendent of the change of the name of said district.

§ 2. This act shall take effect immediately.

CLERK IN OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION.

ACT 4548—An act to provide for the appointment and salary of a clerk in the office of the superintendent of public instruction, and to make an appropriation therefor.

History: Approved March 27, 1895, Stats. 1895, p. 238. See Kerr's Cyc. Political Code, § 515.

Superintendent to appoint clerk. Salary.

§ 1. The superintendent of public instruction may appoint an additional clerk, who shall be a stenographer, at a salary of twelve hundred dollars per year, payable in the same manner as the salaries of other civil officers of the state are paid.

Appropriation for salary.

§ 2. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of twenty-four hundred dollars, for the payment of said

clerk's salary for the forty-seventh and forty-eighth fiscal years, commencing July first, eighteen hundred and ninety-five.

§ 3. This act shall take effect immediately.

TEACHERS' RETIREMENT SALARY FUND.

ACT 4550—An act to provide for the payment of retirement salaries to public school teachers of this state; creating a public school teachers' retirement salary fund, and also a public school teachers' permanent fund, providing for the administration of such funds, and making an appropriation for the uses of said funds.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1423. Amended May 9, 1919. In effect July 22, 1919, Stats. 1919, p. 500. Prior act of March 26, 1895, Stats. 1895, p. 170; amended (1) March 29, 1897, Stats. 1897, p. 225; (2) March 23, 1901, Stats. 1901, p. 676; (3) March 20, 1903, Stats. 1903, p. 271; (4) March 11, 1909, Stats. 1909, p. 296; (5) May 1, 1911, Stats. 1911, p. 1303; was repealed by the present act.

School teachers' permanent fund.

§ 1. There are hereby established two funds in the state treasury to be known, respectively, as the public school teachers' retirement salary fund and the public school teachers' permanent fund. The public school teachers' permanent fund shall be made up of all moneys received from the following sources, or derived in the following manner:

- (1) All contributions made by teachers, as hereinafter provided;
- (2) The income and interest derived from the investment of the moneys contained in such fund;
- (3) Five per cent of the taxes collected during the fiscal year ending July 1, 1913, and each fiscal year thereafter under the inheritance or transfer tax laws of this state, which said amount shall be and is hereby appropriated and set aside to constitute part of the public school teachers' permanent fund. It is hereby made the duty of the state controller, at the beginning of each fiscal year, including the fiscal year ending July 1, 1914, to transfer from the general fund to the public school teachers' permanent fund an amount equal to five per cent of the total sum paid into the state treasury during the preceding fiscal year on account of inheritance taxes;
- (4) All donations, legacies, gifts and bequests which shall be made to such fund, and all moneys which shall be obtained or contributed for the same purposes from other sources;

(5) Appropriations made by the state legislature from time to time to carry into effect the purposes of this act.

School teachers' retirement fund.

§ 2. The public school teachers' retirement salary fund shall be made up of such moneys as shall be transferred from time to time under authority of this act from the public school teachers' permanent fund.

Transfers to meet claims.

§ 3. It shall be the duty of the state controller and of the state treasurer to make, when notified by the public school teachers' retirement salary fund board, or by the state superintendent of public instruction, under authority of this act, transfers of such amounts from the public school teachers' permanent fund to the public school teachers' retirement salary fund as will be sufficient to meet the claims which may be legally drawn against said public school teachers' retirement salary fund; provided, that no part of any sums derived from any public school teachers' annuity fund existing in any city, county, or consolidated city and county, at the time of the adoption of this act

shall ever be transferred from the public school teachers' permanent fund, but the income and interest derived from the investment of these or any other moneys which have been paid into the public school teachers' permanent fund may be transferred under authority of this section.

Annual accumulation.

§ 4. It is hereby declared to be the intention of this act that there shall be an annual accumulation of funds amounting to ten thousand dollars per year in the public school teachers' permanent fund and no transfer of moneys derived from any source shall be made which shall interfere with or prevent the annual accumulation of moneys in the public school teachers' permanent fund to that extent.

Monthly deductions from teachers' salaries.

§ 5. There shall be deducted monthly from the salary of every teacher subject to the burdens of this act, one dollar, and every official whose duty it is to pay said teacher's salary shall make said deduction at the time of payment and shall, at the end of each quarter, draw a warrant in favor of the state treasurer for the amounts deducted. The amounts thus deducted shall be deposited in the state treasury to the credit of the public school teachers' permanent fund, and shall constitute part thereof.

Eligibility to receive benefits.

§ 6. No person shall, except as hereinafter otherwise provided, be eligible to receive the benefits of this act who shall not have paid into said public school teachers' permanent fund, or partly into said fund and partly into the public school teachers' annuity and retirement fund, maintained under the act of the legislature of the state of California, approved March 26, 1895, and acts amendatory thereof, an amount equal to twelve dollars for each year of service up to and including thirty years; provided, however, that the difference between the amount actually paid by such teacher of thirty years' service, and three hundred and sixty dollars, may be paid into said fund by such teacher at the time of retirement, with the same effect as if the full sum of three hundred and sixty dollars had been paid at the rate of twelve dollars per year before retirement; or, the sum of twenty dollars per month may be withheld from such teachers' retirement salary until the amount so withheld shall equal the difference between said sum of three hundred and sixty dollars and the amount theretofore paid into said permanent fund, or partly into said last mentioned fund and partly into said public school teachers' annuity and retirement fund.

Board.

§ 7. The state board of education shall constitute the public school teachers' retirement salary fund board. The president and secretary of the state board of education shall be the president and secretary, respectively, of said public school teachers' retirement salary fund board.

Powers and duties.

§ 8. The public school teachers' retirement salary fund board, subject to the provisions of this act, shall have power, and it shall be its duty:

(1) To approve and allow retirement salaries of public school teachers entitled to the same under the provisions of this act;

(2) Through its president or other officer designated by it for that purpose, to audit all claims and demands for money expended or authorized to be expended by it, and certify all claims and demands against the public school teachers' permanent fund and the public school teachers' retirement salary fund, including all retirement salary demands, to the state controller, who shall draw his warrant therefor upon the state treasurer, payable out of said fund; provided, that no demand shall be allowed except

after resolution duly passed at a meeting of the board by a majority of its members, which adoptions shall be attested by the secretary;

(3) To require the boards of education, school trustees and other public authorities, and all officers having duties to perform in respect to the contributions by teachers to said permanent fund, to report to the board from time to time as to such matters pertaining to the payment of such contributions, as it may deem advisable;

(4) To invest the moneys in the permanent fund in securities and to collect the income therefrom and interest and dividends thereon; to deposit such securities with the state treasurer, and to make sale of such securities when, in its judgment such sale will be advisable; provided, that none of the moneys in the public school teachers' permanent fund shall be invested in any securities except such securities as those in which the funds of savings banks may be legally invested. The state controller is authorized to draw his warrant upon the public school teachers' permanent fund in payment of duly audited claims arising out of the investment of the moneys in said fund;

(5) To prescribe the duties of the secretary and other officers of the board;

(6) To conduct investigations in all matters relating to the operation of this act, and to subpoena witnesses and compel their attendance to testify before it in respect to such matters.

Meetings.

§ 9. Said public school teachers' retirement salary fund board shall meet at least once every three months and at each quarterly meeting shall make a list of all persons entitled to payment out of the fund established by this act, and enter said list in a book to be kept by the board for that purpose, to be known as the "public school teachers' retirement salary fund record." Said list shall be certified as correct by the president and secretary of the board, and shall always be open to public inspection. In the performance of the duties of the board, each member and the secretary thereof may administer oaths and affirmations to witnesses and others transacting business with the board.

Rules and regulations.

§ 10. The board shall make rules and regulations not inconsistent with the provisions of this act, which shall have the force and effect of law. Such rules and regulations shall:

(1) Provide for the conduct and regulation of the meetings of the board and the operation of the business thereof;

(2) Provide for the enforcement and carrying into effect of the provisions of this act;

(3) Establish a system of accounts showing the condition of the public school teachers' permanent fund and the public school teachers' retirement salary fund, and receipts and disbursements for and on account of said funds;

(4) Prescribe the form of warrants, vouchers, receipts, reports and accounts to be used in respect to said funds;

(5) Regulate the duties of boards of education, school trustees and other school authorities, imposed upon them by this act, in respect to the contributions by teachers to the public school teachers' permanent fund, and the deduction of such contributions from the teachers' salaries.

Rules governing application for retirement salaries.

§ 11. In addition to the powers hereinabove enumerated said board shall make and enforce all necessary and proper rules and regulations for the method or methods of applying for and obtaining retirement salaries provided for in this act, and for the method or methods of determining the right of each applicant to such retirement

salary; provided, however, that in all cases legal proof of all necessary facts shall be required and kept on file.

Report of amounts required in each city, etc.

§ 12. The superintendent of public schools of each city, county, and consolidated city and county, shall report to the superintendent of public instruction, before the fifteenth day of July of each year, the amount that will be required during the current fiscal year to pay the retirement salaries to be paid in such city, county, or consolidated city and county, and said superintendent of public instruction shall determine from said reports the entire amount required to pay said retirement salaries during said current fiscal year. He shall report the amount required to make such payments to the public school teachers' retirement salary fund board, and thereupon said board shall notify the state controller and by resolution, duly adopted, shall direct him to make transfer of the needed amount from the public school teachers' permanent fund to the public school teachers' retirement salary fund. It shall be the duty of the state controller thereupon to make such transfer and to notify the state treasurer in order that he may make corresponding entry in the records of his office. When claims for payment of retirement salaries have been duly audited under the provisions of this act the controller shall draw his warrant therefor upon the said public school teachers' retirement salary fund.

Who is entitled to retirement salary. Amount. Teachers heretofore retired.

§ 13. Every public school teacher who shall have complied with all the requirements of this act, and who shall have served as a legally qualified teacher in public day or evening schools, or partly as such teacher and partly as superintendent or supervising executive or educational administrator, for at least thirty school years, at least fifteen of which shall have been in the public schools of this state, including the last ten years of service immediately preceding retirement, under a legal certificate shall be entitled to retire; or if physically or mentally incapacitated for the proper performance of the duties of teacher, may be compelled to retire by the board of education, school trustees or other school authorities employing such teacher. Upon retirement, voluntary or involuntary, such teacher shall be entitled to receive, during life, an annual retirement salary of five hundred dollars, payable in installments quarterly by warrant drawn as provided in section eight of this act; provided, that application for such salary be made within two years after the last month of service, except in cases where at the time the right to the retirement salary accrues such teacher has been absent two years or more from service, on leave duly granted by the board of education, board of trustees or other public school authorities employing such teacher. In such cases, the application may be made at any time during the said leave of absence. All teachers heretofore retired after thirty years of service, under the provisions of the act of the legislature of the state of California, approved March 26, 1895, entitled "An act to create and administer a public school teachers' annuity and retirement fund in the several counties and cities and counties in the state," and acts amendatory thereof, shall be entitled to an annual retirement salary of five hundred dollars, payable in installments quarterly by warrants drawn as provided in section eight of this act.

Teachers incapacitated may receive retirement salary.

§ 14. Any public school teacher who shall have complied with all the requirements of this act and who shall have served as a legally qualified teacher for at least fifteen years in the public schools of this state, and who shall have by reason of bodily or mental infirmity become physically or mentally incapacitated for further school service, under a legal certificate shall be entitled to retire, or may, by the board of education, school trustees or other school authorities employing such teacher, be compelled to

retire. Upon retirement, voluntary or involuntary, such teacher shall be entitled to receive during the period of such disability, an annual retirement salary, payable in installments quarterly, which shall be the same fraction of the maximum retirement salary of five hundred dollars as said teacher's time of service is of thirty years; provided, that application for such retirement salary shall be made within two years of the last month of service. Each teacher who, by reason of incapacity due to bodily or mental infirmity, shall have retired under the aforesaid act, approved March 26, 1895, and acts amendatory thereof, after fifteen years' service, shall receive upon the taking effect of this act and during the period of disability, an annual retirement salary which shall be the same fraction of the maximum retirement salary of five hundred dollars, as said teacher's time of service is of thirty years.

Service in California polytechnic and normal schools.

§ 15. Service of a teacher in the California polytechnic school with a valid certificate or a teacher with or without a certificate in a state normal school, shall be equivalent to service under legal certificate in a day or evening school, and the time of said service in the California polytechnic school, or in a state normal school, shall be reckoned in determining the right of retirement salaries under provisions of sections thirteen and fourteen of this act. [Amendment of May 9, 1919. In effect July 22, 1919, Stats. 1919, p. 500.]

School year.

§ 16. In counting actual experience for the purposes of this act, the state board of education shall determine what constitutes a school year; provided, that in no case shall leaves of absence amounting to school years, or half school years, be counted as service; and provided, further, that in reckoning the time of service for the purposes of this act, the night school term shall be considered the same as and equivalent to the day school term.

Teachers bound by act.

§ 17. This act shall be binding upon all such teachers employed in the public schools of this state at the time of the approval of this act, as shall, on or before January 1st, 1914, sign and deliver to the superintendent of public instruction and the superintendent of public schools of the city, county, or consolidated city and county in which said teachers are in service, a notification that said teachers agree to be bound by and to avail themselves of the benefits of this act.

Same.

§ 18. This act shall be binding upon all teachers elected or appointed to teach in the public schools of this state after the approval of this act, who, not being in the service of the public schools at the time of the approval of said act, were not competent to sign or deliver the notification specified in section seventeen.

Salary to cease on re-employment.

§ 19. If any teacher retired under the provisions of this act shall be re-employed in the public schools of this state, such teacher's retirement salary shall cease; and if any teacher having qualified under section fourteen hereof returns to service in the public schools of the state and thereafter qualifies under section thirteen hereof, there shall be deducted from the retirement salary payable to such teacher under the provisions of section thirteen hereof the amount of retirement salary, theretofore actually received by such teacher under the provisions of section fourteen hereof, such amount to be so deducted in equal quarterly installments until the whole amount so received under said section fourteen shall have been deducted: provided, however, that the amount of such deduction to be made quarterly shall not exceed thirty-five dollars.

Only one salary.

§ 20. No one shall be permitted to draw from the state, directly or indirectly, more than one retirement salary. Nothing in this act shall be so construed, however, as to prevent local communities or bodies of teachers from supplementing the retirement salary received from the state.

City, etc., fund to be delivered to state treasurer.

§ 21. Every public school teacher's annuity fund existing in any city, county, or consolidated city and county, established under the aforesaid act, approved March 26, 1895, shall within six months after this act goes into effect, be delivered to the state treasurer and by him turned into the public school teachers' permanent fund created by this act, and shall be added to and become part of the permanent fund provided for in section one of this act.

Repealed.

§ 22. Said act of the legislature of the state of California, approved March 26, 1895, and all acts amendatory thereof, are hereby repealed.

DATA CONCERNING TEACHERS.

ACT 4550a—An act to provide for the gathering of data concerning teachers of California who are bound by the provisions of "An act to provide for the payment of retirement salaries to the public school teachers of this state; creating a public school teachers' retirement salary fund and also a public school teachers' permanent fund, providing for the administration of such funds and making an appropriation for the uses of said funds," approved June 16, 1913.

History: Approved May 5, 1919. In effect July 22, 1919. Stats. 1919, p. 312.

Teachers bound by retirement plan to file data.

§ 1. During the month of November, 1919, each teacher in the public schools of California, each teacher in a state normal school and each school administrator or other person who is bound by the provisions of "An act to provide for the payment of retirement salaries to the public school teachers of this state; creating a public school teachers' retirement salary fund and also a public school teachers' permanent fund, providing for the administration of such funds and making an appropriation for the uses of said funds," approved June 16, 1913, shall file with the state board of education at its offices in Sacramento, in person or by registered mail, a statement made under oath, of his age at his nearest birthday, his teaching experience in the public schools of California, his teaching experience in the public schools of other states of the United States of America, and any other experience he may have had in public schools or in the service of the state that may be counted as service under the provisions of said act, and such other information as may be required by said state board of education for the purpose of making an investigation and estimate of probable future expenditures from such fund.

Records confidential.

§ 2. All such statements shall be considered confidential and no individual records shall be divulged by any official who has access to them and shall be used by the state board of education solely for the purpose of making such investigation and estimate, and such statements shall not be open to inspection by anyone except the state board of education, and its officers, or any person authorized to make such inspection by the legislature.

List to be filed with county superintendent.

§ 3. On or before January 1, 1920, the state board of education shall file with the county superintendent of schools of each county, a list of the names of all teachers of

such county who have filed the statement hereinbefore referred to. Upon receipt of such list, it shall be the duty of the county superintendent of schools to withhold payment of the first warrant for the payment of the salary of each teacher bound by the provisions of said act, who, being employed during the month of November, 1919, shall have failed to file such statement, and shall not issue a warrant for such payment until such statement has been filed with the state board of education and a receipt therefor presented.

CERTAIN TEACHERS SUBJECT TO RETIREMENT FUND ACT.

ACT 4550b—An act to provide for teachers employed by the California polytechnic, the Whittier state school, the California school for girls, the Preston school of industry, and the California school for the deaf and blind holding valid certificates in this state being made subject to the burdens and entitling them to all the benefits of an act entitled "An act to provide for the payment of retirement salaries to public school teachers; creating a public school teachers' retirement salary fund, and also a public school teachers' permanent fund; providing for the administration of such funds, and making an appropriation for the uses of said funds," approved June 16, 1913.

History: Approved May 3, 1919. In effect July 22, 1919. Stats. 1919, p. 151.

Teachers in state schools entitled to pension benefits.

§ 1. All teachers employed by the Whittier state school, the California school for girls, the Preston school of industry, the California polytechnic school in the county of San Luis Obispo, and the California school for the deaf and the blind holding valid certificates in this state shall be subject to the burdens and entitled to all the benefits of an act entitled "An act to provide for the payment of retirement salaries to public school teachers; creating a public school teachers' retirement salary fund, and also a public school teachers' permanent fund; providing for the administration of such funds, and making an appropriation for the uses of said funds," approved June 16, 1913; and the contributions of said teachers shall be collected and paid into the treasury of the state in the same manner as in the several state normal schools.

WITHDRAWAL OF CONTRIBUTORS TO TEACHERS' RETIREMENT FUND.

ACT 4551—An act authorizing any teacher or public officer who is now a contributor to a public school teachers' annuity and retirement fund in any county, or consolidated city and county, of this state, where there are no annuitants drawing annuities from the said fund of such county, or consolidated city and county, to cease to be a contributor to such fund within sixty days from the taking effect of this act, and to have returned to him the amount contributed by him thereto, or such part thereof as may be available for that purpose.

History: Approved March 13, 1903, Stats. 1903, p. 131. In view of the repeal of the law upon which it was based, and to which it was supplementary, it is doubtful if this act is now in force. See Act 4550.

Contributors to teachers' annuity fund may withdraw.

§ 1. Within sixty days after the taking effect of this act, any teacher or public officer who is now a contributor to a public school teachers' annuity and retirement fund in any county or consolidated city and county in this state, created under the provisions of an act approved March 29, 1897, entitled "An act to amend an act approved March 26, 1895, entitled 'An act to create and administer a public school teachers' annuity and retirement fund in the several counties, and cities and counties in the state,'" as amended, may withdraw from such organization by complying with the provisions of this act; provided, however, that the provisions of this act shall not apply

to any county or consolidated city and county, where there are, at the time of the taking effect of this act, any annuitants drawing annuities from the said fund of such county, or consolidated city and county.

Notice to be filed.

§ 2. Any such teacher, or public officer, desiring to avail himself of the provisions of this act, shall within sixty (60) days after the taking effect of this act, sign and file with the board of public school teachers' retirement fund commissioners of the county, or consolidated city and county, where such teacher or public officer is then a contributor, a notice in writing to the effect that such teacher or public officer, thereby withdraws from the said organization, and shall at the same time sign and file with the clerk, secretary, officer, or board, whose duty it is to issue the salary warrants of such teacher or public officer, a notice similar in substance to the said notice filed with the said board of commissioners.

Commissioners shall order return of money. Proceedings in case of deficiency.

§ 3. The said board of commissioners, shall, at its next regular meeting after the expiration of said sixty (60) days, pass a resolution directing that all money contributed to said public school teachers' annuity and retirement fund by such teachers or public officers so withdrawing, shall be immediately returned to such teachers or public officers. If the amount in the fund of said organization, after the payment of all legal demands, shall be insufficient to pay each withdrawal the full amount contributed by him, then the said board shall commute the pro rata amount that shall be paid to each, the same to be in proportion to their respective contributions, and shall specify in said resolution the amount to be returned to each.

Warrants.

§ 4. The president and secretary of said board shall thereupon issue warrants to the persons entitled thereto, in such amounts as shall have been so computed and specified by said board, and the treasurer of said fund shall pay the same to the person named in each respective warrant, or to his heirs or assigns.

Relief from liability.

§ 5. From and after filing notices, specified in section 2 hereof, each teacher or public officer giving such notices shall be relieved from all burdens and liabilities imposed by the said act designated in section 1 hereof.

Duty of warrant officers.

§ 6. The clerk, secretary, officer, or board, whose duty it is to issue the salary warrants of such teachers or public officers, shall, from and after the filing of the said notice with him or it, cease to note on the salary warrant of such teacher or public officer any amount to be deducted therefrom by the treasurer on account of said fund.

§ 7. This act shall take effect immediately.

DISPOSAL OF MONEY REMAINING IN SCHOOL BUILDING FUNDS.

ACT 4552—An act to provide for the disposal of moneys remaining in the building fund of any school district, after all bonds and indebtedness shall have been paid and liquidated, arising from the construction of school buildings.

History: Approved March 13, 1883, Stats. 1883, p. 298.

Surplus moneys to be placed in county school fund.

§ 1. All moneys that have been or shall be raised by special tax, for the purpose of erecting school buildings, that shall remain in the hands of the county treasurer, after all bonds that have been or may be issued on account of such buildings shall have been

redeemed, and all other indebtedness arising on account of such building shall have been liquidated, shall be placed in the county school fund of the school district for which such moneys were raised, subject to the order of the trustees of said district.

TRANSFER OF EXCESS BUILDING FUNDS.

ACT 4552a—An act to authorize the transfer and expenditure of the excess of school building funds in certain cases.

History: Approved May 3, 1919. In effect immediately. Stats. 1919, p. 235.

Transfer of school building fund to general fund authorized.

§ 1. Whenever the average daily attendance of pupils for the first half of the fiscal year 1918-19, in any school district in this state, shows an increase of more than one hundred per cent over the increase in average daily attendance of the fiscal year 1917-18, and it appears that the income and revenue provided for such district for the fiscal year ending June 30, 1919, will be insufficient to defray the usual current expenses of such district until such date, and there remains in the building fund of such district, created and existing under the provisions of section one thousand eight hundred thirty-eight of the Political Code, any moneys which, by reason of war-time building restrictions imposed by federal authority, or by reason of the present excessive cost of building construction resulting from war conditions, have not been expended, and which in the judgment of two-thirds or more of the board of trustees or board of education of such school district can not be expended to the economic advantage of such school district during the school year beginning July 1, 1919, such board may, by resolution endorsed upon its minutes and adopted by the affirmative votes of not less than two-thirds of all its members, declare such moneys, or any part thereof, to be surplus moneys of such fund, and may, by a like vote, transfer such moneys or any part thereof, from such building fund to the general fund of the district, and may, thereafter, expend the amount so transferred, or so much thereof as may be necessary, in payment of the usual current expenses of such district incurred during the school year, ending with the said thirtieth day of June, 1919.

§ 2. This act, being an act to provide for the payment of the usual current expenses of the state, shall take effect immediately.

COMPULSORY SCHOOL ATTENDANCE ACT.

ACT 4554—An act to enforce the educational rights of children and providing penalties for violation of the act.

History: Approved March 24, 1903, Stats. 1903, p. 388. Amended (1) March 20, 1905, Stats. 1905, p. 388; (2) March 4, 1907, Stats. 1907, p. 95; (3) April 21, 1911, Stats. 1911, p. 949; (4) May 22, 1915, in effect August 8, 1915, Stats. 1915, p. 762; (5) May 10, 1919, in effect July 22, 1919, Stats. 1919, p. 406. Prior act of March 28, 1874, Stats. 1873-74, p. 751, repealed by the present act.

Compulsory school attendance. Exemptions.

§ 1. Each parent, guardian or other person having control or charge of any child between the ages of eight and sixteen years, not exempted under the provisions of this act shall be required to send such child to a public full-time day school for the full time for which the public schools of the city, city and county or school district in which the child resides shall be in session; provided, that the following classes of children shall be exempted from the requirements of attendance upon a public day school;

Physical or mental disability.

1. Children whose physical or mental condition is such as to prevent or render inadvisable attendance at school or application to study; provided, that a certificate to this

effect by a regularly licensed physician, shall be filed with the clerk of the board of trustees or board of education of the school district.

Distance from school house.

2. Children residing more than two miles from the school house by the nearest traveled road; provided, that such children shall be exempted only upon a written approval of the superintendent of schools of the county, notice whereof shall be filed with the clerk of the board of trustees or board of education of the school district.

Instruction in private schools.

3. Children who are being instructed in a private full-time day school by persons capable of teaching; provided, that such school shall be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of this state; and provided, further, that the attendance of of such pupils shall be kept by private school authorities in a register, such record of attendance to indicate clearly every absence of the pupil from school for a half day or more, during each day that school is maintained during the year.

Instruction by private tutor.

4. Children who are being instructed, in study and recitation, for at least three hours a day for one hundred sixty days each calendar year by private tutor or other person, in the several branches of study required to be taught in the public schools of this state, and in the English language; provided, that such tutor or other person shall be capable of teaching; and provided, further, that such instruction shall be offered between the hours of eight o'clock a. m. and four o'clock p. m.

Age and schooling certificate.

5. Children who hold a permit to work or an age and schooling certificate granted by the proper judicial or educational officers in accordance with law. [Amendment of May 10, 1919. In effect July 22, 1919, Stats. 1919, p. 407.]

This section was also amended March 20, 1905, Stats. 1905, p. 388; April 23, 1911, Stats. 1911, p. 950.

Penalty for failure to comply with act.

§ 2. Any parent, guardian, or other person having control or charge of any such child, who shall fail to comply with the provisions of this act, shall, unless excused or exempted therefrom as hereinbefore provided, be deemed guilty of a misdemeanor, and upon conviction, shall be liable for the first offense, to a fine of not more than ten dollars or to imprisonment for not more than five days, and for each subsequent offense he shall be liable to a fine of not less than ten nor more than fifty dollars, or to imprisonment for not less than five days nor more than twenty-five days, or to both such fine and imprisonment.

This section is mentioned in the title of the act of May 10, 1919 (Stats. 1919, p. 406), but the section is not itself amended.

Investigation of charges against parents. Criminal complaint.

§ 3. The board of education of any city or city and county, or the board of trustees of any school district, shall, on the complaint of any person, make full and impartial investigation of all charges against any parent or guardian or other person having control or charge of any such child, for violation of any of the provisions of this act. If it shall appear upon such investigation that any such parent or guardian or other person has violated any of the provisions of section one of this act, it is hereby made the duty of the secretary of such board of education, except as hereinafter provided, or the clerk of such board of trustees, to make and file in the proper court a criminal complaint against such parent, guardian or other person, charging such violation, and

to see that such charge is prosecuted by the proper authorities; provided, that in cities, and in cities and counties, and in school districts having an attendance officer or officers, such officer or officers shall have power and it shall be their duty to make and file such complaint, and see that such charge is prosecuted by the proper authorities. [Amendment of May 10, 1919. In effect July 22, 1919, Stats. 1919, p. 407.]

This section was also amended March 4, 1907, Stats. 1907, p. 95; but was not mentioned in the title of the amending act.

Permit to employ minor over fourteen.

§ 3a. First—The superintendent of schools of any city, or of any city and county or of any county (over such portions of any such county as are not within the jurisdiction of any superintendent of city schools) shall have authority to issue to any employer a permit to employ any minor of the age of fourteen years who holds a diploma of graduation from the prescribed elementary school course; provided, that such permit shall be issued only when the prospective employer, or the parent or guardian of the minor, shall present to the superintendent asked to issue such permit, (1) a physician's certificate or other evidence acceptable to such authority, that such minor is physically fitted for the labor contemplated; and (2) a sworn statement by the parent, foster-parent or guardian of such minor that such minor is past the age of fourteen years, and that the parent or parents, or foster-parent or foster-parents, or guardian of such minor is incapacitated for labor through illness or injury, or that through the death or desertion of the father of such minor, the family is in need of the earnings of such minor, and that sufficient aid can not be secured in any other manner. The person authorized to issue such permit in granting the same shall make a signed statement that he, or a competent person designated by him for this purpose, has carefully investigated the conditions under which the application for such permit has been asked, and has found that in his judgment the earnings of such minor are necessary for such family to support such minor, and that in his judgment sufficient aid can not be secured in any other manner.

Second—No permit as specified in this section shall be issued except upon a written statement from a prospective employer that work is waiting for such minor and describing the nature of such work. Such permit shall specify the name and address of the employer, the name, address and age of the minor, the kind of work for which the permit is issued and the date on which the permit shall expire, which in no case shall be longer than six months from the date of issuance of the permit. Such permit shall be kept on file by the employer during the term of such employment and all unexpired permits shall be returned by the employer to the authority issuing the same within five days after the termination of such employment. Such permit shall be issued on forms prepared and provided in accordance with the provisions of this act by the superintendent of public instruction. Such permit shall be subject to cancellation at any time by the superintendent of public instruction, or by the commissioner of the bureau of labor statistics or by the person issuing the same, whenever any such officer or person shall find that the conditions for the legal issuance of such permit do not exist. Such permit shall be always open to inspection by attendance and probation officers, by the officers of the state bureau of labor statistics and by officers of the superintendent of public instruction, and of the state board of education.

Duplicate copy of permit.

Third—A duplicate copy of each permit to employ a minor granted under provisions of this act shall be kept by the person issuing such permit, and a report of all such permits issued during the year shall be included in the annual report of the city superintendent of schools to the county superintendent of schools. The superintendent of schools of each county and of each city and county shall include in his annual report

to the superintendent of public instruction, a summary of all such reports, which shall include a summary of all such permits to employ minors issued by him during the year. [New section added May 10, 1919. In effect July 22, 1919, Stats. 1919, p. 409.]

Vacation permits for minors between twelve and fifteen.

§ 3b. Any minor over the age of twelve years and under the age of fifteen years who holds a vacation permit issued as hereinafter provided may be employed in any of the establishments or occupations mentioned in section one of "An act regulating the employment and hours of labor of children; prohibiting the employment of minors under certain ages; prohibiting the employment of certain illiterate minors; providing for the enforcement hereof by the commissioner of the bureau of labor statistics and providing penalties for the violation hereof," approved February 20, 1905, as amended, and in section one of an act entitled "An act to be known as the child labor law, and regulating the employment, hours, kinds and conditions of labor of children; providing for the administration and enforcement of the provisions of this act by the commissioner of the bureau of labor statistics, providing penalties for the violation hereof and repealing all acts and parts of acts inconsistent herewith," on the regular weekly school holidays and during the regular vacation of the public schools of the school district, city, or city and county, in which the place of employment is situated. Vacation permits shall be signed by the principal of the school, or secretary of the board of school trustees or board of education having control of the school which such minor is attending, or has attended during the term next preceding any such vacation. Such permit shall contain the name and age of the minor to whom it is issued, and when issued for the regular vacation, the date of the termination of the vacation for which it is issued, and in any case shall be kept on file by the employer during the period of employment, and at the termination of such employment shall be returned to the minor to whom it was issued. [New section added May 10, 1919. In effect July 22, 1919, Stats. 1919, p. 410.]

Age and schooling certificate for minors over fifteen.

§ 3c. First—No minor of the age of fifteen years shall be employed, permitted or suffered to work during the hours the public schools are in session, unless such minor is provided with an age and schooling certificate as herein provided.

Second—An age and schooling certificate shall be approved only by the superintendent of schools of the county, city or city and county, or by a person authorized by him in writing and each application for an age and schooling certificate must be acted upon within three days after such application has been duly filed with the person legally authorized to issue such age and schooling certificate; provided, that any person authorized in writing to issue age and school certificates as herein provided shall on or before the thirtieth day of June of each year, file with the superintendent so authorizing him, all duplicate copies of such certificates issued by him during the school year. The person authorized to issue age and schooling certificates shall have the authority to administer the oaths necessary for carrying out the provisions of this act, but no fees shall be charged for administering such oaths or issuing such certificates. The person authorized to issue age and schooling certificates shall not issue such certificates until the minor in question, accompanied by its parent or guardian, has personally made application to him therefor, and until he has received, examined, approved and filed the following papers duly executed: (1) The school record of such minor, giving age, grade and attendance for the current term, duly signed by the principal or teacher. (2) Evidence of age such as the school enrollment record, or a certificate of birth, or a certificate of baptism duly attested, or a passport, or affidavit of the parent, guardian or custodian of such minor, such as shall convince such officer that the minor is fifteen years of age or upwards. (3) The written statement of the

person, firm or corporation in whose service the minor is about to enter, that he intends to employ the minor, which statement shall give the nature of the occupation for which the child is to be employed. (4) A certificate signed by a physician appointed by the school board, or other public medical officer, stating that such minor has been examined by him, and, in his opinion, has reached the normal development of a minor of its age and is in sufficiently sound health and physically able to be employed in the work which it intends to do; provided, however, that no fee shall be charged the minor for such physician's certificate.

Form.

Third—Age and schooling certificates shall be issued on forms which shall be prepared and provided by the superintendent of public instruction, and shall be substantially in the following form, to wit:

Age and schooling certificate. This certifies that I am the (father, mother or guardian) of (name of the minor) and that (he or she) was born at (name of the city or town), in the county of (name of county, if known), and state or country of (name of state or country), on the (day and year of birth), and is now (number of years and months) old.

Signature as provided in this act.

Town or city, and date.

There personally appeared before me the above named (name of person signing) and made oath that the foregoing certificate by (him or her) signed is true to the best of (his or her) knowledge and belief.

I hereby approve the foregoing certificate of (name of child), height (feet and inches), complexion (fair or dark), hair (color), having no sufficient reason to doubt that (he or she) is of the age therein certified, and I hereby certify that (he or she) has completed the prescribed grammar school course or that (he or she) has completed the equivalent of the seventh grade of the grammar school course and is a regular attendant for the then current term, upon a regularly conducted evening school or upon a part-time continuation school or class.

Signature of the person authorized to sign, with his official character and authority.

Town or city, and date.

This certificate belongs to the person in whose behalf it is drawn, and it shall be presented to (him or her) whenever (he or she) leaves the services of the person, firm, or corporation holding the same.

The certificate as to the birthplace and age of the minor under sixteen and over fifteen years of age shall be signed by his father, his mother, or his guardian, or other person having control or charge of such minor.

Penalty for false statements.

Fourth—Every person authorized to sign the certificate prescribed by this act, who knowingly certifies to any false statement therein, is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than five nor more than fifty dollars, or imprisonment for not more than thirty days, or by both such fine and imprisonment.

Duplicates. Report.

Fifth—A duplicate copy of each age and schooling certificate issued under the provisions of this act shall be kept by the county, city, or city and county superintendent issuing or authorizing the issuance of such certificates, and a report of all such certificates issued during the year shall be included in the annual report of each city superintendent of schools to the county superintendent of schools. The superintendent of

schools of each county and of each city and county, shall include in his annual report to the superintendent of public instruction, a summary of all such reports and a statement of the number of all such age and schooling certificates issued by him during the year.

Notice when employment ceases.

Sixth—No minor having an age and schooling certificate, as hereinbefore described, and no other minor under sixteen years of age, who would by law be required to attend school, shall be and remain idle and unemployed for a period longer than two weeks while the public schools are in session, but must enroll and attend school; provided, that within five days after any minor having such age and schooling certificate shall have ceased to be employed by any employer, such employer shall, in writing, notify the issuing officer that such minor is no longer employed by such employer, giving the latest correct address of such minor known to such employer; and such issuing officer shall thereupon immediately notify the attendance officer having jurisdiction in the place of such minor's residence, giving the said latest known correct address of such minor and stating that such minor is not at work.

Seventh—No minor of the age of fifteen years shall be permitted to cease school attendance, without securing an age and schooling certificate as provided in this act.

Child labor laws not affected.

Eighth—Nothing in this act shall be construed to repeal or in any way modify the provisions of sections fourteen and sixteen of "An act regulating the employment and hours of labor of children; prohibiting the employment of minors under certain ages; prohibiting the employment of certain illiterate minors; providing for the enforcement hereof by the commissioner of the bureau of labor statistics and providing penalties for the violation hereof," approved February 20, 1905, as amended, or the provisions of sections three and one-half and five of an act entitled "An act to be known as the child labor law, and regulating the employment, hours, kinds and conditions of labor of children; providing for the administration and enforcement of the provisions of this act by the commissioner of the bureau of labor statistics, providing penalties for the violation hereof and repealing all acts and parts of acts inconsistent herewith." [New section added May 10, 1919. In effect July 22, 1919, Stats. 1919, p. 411.]

Register of employees under sixteen.

§ 3d. First—Every person, firm, corporation or agent, or officer of a firm or corporation, employing minors under the age of sixteen years shall keep a register containing the names and addresses of such minor employees and shall post and keep posted in a conspicuous place, in every room where such minors are employed, a written or printed notice stating the working hours per day for each day of the week required of such minors, and shall keep on file all permits and certificates required by this act for minors under the age of sixteen years. Such records and files shall be open at all times to the inspection of the school attendance and probation officers and the officers of the state bureau of labor statistics, of the superintendent of public instruction and of the state board of education.

Cancellation of permits and certificates.

Except as otherwise provided in this act, all certificates and permits shall be given up to such minor upon his quitting such employment. Any age or schooling certificate or permit granted under this act, shall be subject to cancellation at any time by the commissioner of the bureau of labor statistics, or by the superintendent of public instruction, or by the authority issuing such certificate, whenever such commissioner, superintendent, or the authority issuing such certificate shall find that conditions for the legal issuance of such certificate no longer exist or have never existed.

Penalty for violation.

Second—Any person, firm, corporation, agent or officer of a firm or corporation that violates or omits to comply with any of the provisions of this act, or that employs or suffers or permits any minor to be employed in violation thereof, is guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars or more than two hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment, for each and every offense. A failure to produce any age and schooling certificate or vacation permit to work or other permit issued under the provisions of this act or to post any notice required by this act shall be prima facie evidence of the illegal employment of any minor for whom an age and schooling certificate or permit is not produced. [New section added May 10, 1919. In effect July 22, 1919, Stats. 1919, p. 413.]

Attendance officers. Compensation. Certification of attendance officers. County attendance officers.

§ 4. The board of education of any city, or city and county shall appoint and remove at pleasure, an attendance officer and such assistant attendance officers as may be necessary for such city or city and county and the board of school trustees of any school district having an average daily attendance of at least three hundred children, according to the official school record of the preceding school year, may appoint and remove at pleasure one attendance officer, and assistant attendance officers, and shall fix his or their compensation payable from the county or special school fund of such city, or city and county, or school district, and shall prescribe their duties not inconsistent with law, and make rules and regulations for the performance thereof; provided, that in all school districts with a daily average attendance of one thousand or more school children according to the annual school report of the last preceding school year, such attendance officer, assistant attendance officers, or deputy attendance officers, shall have been duly certificated by the county board of education for such work, such certification to be in accordance with and subject to general regulations established by the state board of education. The authority appointing such attendance officer* and assistant attendance officers in such city, city and county, or school district may also appoint and remove at pleasure one or more deputy attendance officers, to serve without compensation. The board of supervisors of any county, unless provision be made otherwise by statute for paid attendance officers, upon the petition of a majority of the boards of trustees of the school districts of the county which are not provided with paid school attendance officer, shall, upon the nomination of the county superintendent of schools, appoint and remove at pleasure an attendance officer and assistant attendance officers, and shall fix his or their compensation payable from the general fund of the county, and shall, upon the recommendation of the county superintendent of schools, prescribe their duties not inconsistent with law, and make rules and regulations for the performance thereof. Such officers shall serve in such portions of the county as are not otherwise provided with paid attendance officers. The board of supervisors, upon the recommendation of the county superintendent of schools, may, in its discretion, appoint and remove at pleasure one or more persons to act as deputy attendance officer or officers, to serve without compensation. The actual, necessary, incidental traveling expenses of such attendance officer, and assistant attendance officers, and deputy attendance officers of such county, incurred in the performance of their duties under the direction of the county superintendent of schools, when sworn to and when approved by such superintendent, shall be ordered paid by such board of supervisors, out of the general fund of the county. [Amendment of May 10, 1919. In effect July 22, 1919, Stats. 1919, p. 408.]

This section was also amended March 4, 1907, Stats. 1907, p. 95; and May 22, 1915, Stats. 1915, p. 762.

Arrest of truants. Delivered to parents or teacher. When deemed habitual truant.

§ 5. It shall be the duty of the attendance officer, or of any peace officer or any school officer, to arrest during school hours, without warrant, any child between eight and fifteen years of age, found away from his home, and who has been reported to him by the teacher, the superintendent of schools, or other person connected with the school department or schools as a truant from instruction upon which he is lawfully required to attend within the county, city, or city and county, or school district. Such arresting officer shall forthwith deliver the child so arrested either to the parent, guardian or other person having control or charge of such child, or to the teacher from whom said child is then a truant, or if such child shall have been declared an habitual truant, he shall bring such child before a magistrate for commitment by him to a parental school as provided in this act. The attendance officer or other arresting officer shall report promptly such arrest, and the disposition made by him of such child to the school authorities of such city, or city and county, or school district. Any child may be reported as a truant, in the meaning of this act, who shall have been absent from school without valid excuse more than three days or tardy on more than three days, any absence for a part of a day being regarded as a tardiness. Any child who has once been reported as a truant and who is again absent from school, without valid excuse, one or more days, or tardy on one or more days, may again be reported as a truant. Any child may be deemed an habitual truant who shall have been reported as a truant three or more times. Any child who has once been declared an habitual truant and who, in a succeeding year, is reported as a truant from school one or more days or tardy on one or more days without valid excuse, may be again declared an habitual truant. [Amendment of May 22, 1915. In effect August 8, 1915, Stats. 1915, p. 763.]

This section was also amended March 4, 1907, Stats. 1907, p. 96.

Parental schools for truants, etc. Location. For children between 8 and 15. Regulations. Child committed to parental school by court. If there be no parental school. Parents may execute bond for attendance. Forfeiture of bond. Object of parental school. Parole. Expenses. Salaries.

§ 6. The board of education of any city, or of any city and county, or the board of trustees of any school district having at least three hundred children, according to the official school record of the preceding school term, may establish schools in a manner hereinafter prescribed, or set apart in public school buildings a room or rooms for children between eight and fifteen years of age, who are habitual truants from instruction upon which they are lawfully required to attend, or who are insubordinate or disorderly during their attendance upon such instruction, or irregular in such attendance. Such school or room shall be known as a parental school. A parental school, as herein designated and provided for, shall be one of the primary or grammar schools of the city, or city and county, or school district and the teachers therein shall have the same qualifications and be employed and paid in the same manner as in other primary and grammar schools; but such parental school shall be established and maintained specially for the instruction therein of such pupils, between the ages of eight and fifteen years, as shall be committed thereto as provided in this act, and no pupil shall be committed to, or required to attend, such school, except as in this act provided. Said board of education or board of trustees may make such special rules and regulations for the government of a parental school as shall be consistent with the provisions and purposes of this act, and not contrary to law. Such board may provide for the detention, maintenance and instruction of such children in such schools; and the county superintendent of schools, or such board, or the city superintendent of schools in any city, or city and county, or board of trustees, may, after reasonable notice to any such child, and an opportunity for the child to be heard, and with the consent of the parent, guardian or other person having control or charge of such child,

order such child to attend such school, or to be detained and maintained therein for such period and under such rules and regulations as such board may prescribe, not exceeding the remainder of the school year. If such parent, guardian, or person having control or charge of such child shall not consent to such order, such child may be proceeded against under this act. If any child in any city, or city and county or school district in which a parental school shall be established, shall be an habitual truant, or be irregular in attendance at school, within the meaning of these terms, as defined in this act, or shall be insubordinate or disorderly during attendance at school; it shall be the duty of the attendance officer, or of the secretary of the board of education or clerk of the board of trustees, if there be no attendance officer, to make and file a complaint against such child in the proper court, charging the fact, and to see that such charge is prosecuted by the proper authority; and if the court, upon the hearing of such complaint, shall find that such charge is sustained, the court shall render judgment that such child be committed to, and be detained and maintained in, a parental school in such city, or city and county, or school district for a term not to exceed the remainder of the current school year; provided, that if any child in any district of a county where there is not a parental school shall be an habitual truant, or be irregular in attendance at school, within the meaning of those terms as defined in this act, or shall be insubordinate or disorderly during attendance at school, it shall be the duty of the county superintendent of schools to make and file a complaint against such child in the superior court of such county, charging the facts; and if the court, upon the hearing of said complaint, shall find that such charge is sustained by the evidence, the court shall render judgment that such child shall be detained and maintained in a parental school, if there be one in such county, during the remainder of the school term, and if there be no parental school in such county, the court shall render judgment that the parent, guardian or person having the control or charge of such child shall deliver such child at the beginning of each school day for the remainder of the school term, at the school from which such child is then a truant; provided, that if the parent, guardian, or other person having control or charge of such child shall, within three days after the rendition of such judgment, execute a good and sufficient bond to the board of education of the city, or city and county, or board of trustees of the district, with sufficient sureties, in the sum of two hundred dollars, conditioned that such child will, during the remainder of such current school year, regularly attend some public or private school in such city, or city and county, or school district and not be insubordinate or disorderly during such attendance, such bond to be approved by the judge of said court, and be filed with the secretary of the board of education or clerk of the board of trustees, then such court shall make an order suspending the execution of such judgment so long as the condition of such bond shall be complied with. If the condition of such bond be violated, such court, upon receiving satisfactory evidence of the fact in any action brought therefor shall make an order declaring such bond forfeited and directing such judgment to be thenceforth enforced. Such board of education or board of trustees, may, at any time within one year after any such bond shall be declared forfeited, have execution issued against any or all the parties to such bond to collect the amount thereof; and all moneys paid or collected on such bond shall be paid over to the parental school fund of such city, or city and county, or school district. No fees shall be charged or received by any court or officer in any proceeding under this section. The confinement of any child in a parental school shall be conducted with a view to the improvement of the child and to its restoration, as soon as practicable, to the school which he would, if not so confined, be required to attend. The city superintendent of schools, or, if there be no city superintendent, the board of education of any city, or city and county, or county superintendent of schools, shall have authority, in their discretion, to parole at any time any

child committed to, or ordered to attend, a parental school, except when such commitment shall be by judgment or order of a court; and when such commitment of any child shall be by judgment or order of a court, such court may, on the recommendation of the city superintendent of schools or the board of education or county superintendent of schools, make an order paroling such child, upon such terms and conditions as shall be specified in the order. The expense incurred by any city, or city and county, or school district in purchasing or renting a school site, erecting or renting a building and equipping the same, for the maintenance of a parental school, shall be paid out of funds other than those collected for the maintenance of schools. The salaries of teachers and the expense for all school supplies in a parental school shall be paid out of the same funds from which similar salaries and expense are paid for primary and grammar schools, but all other expense incurred in the maintenance of such parental schools shall be paid out of the parental school fund. [Amendment of May 22, 1915. In effect August 8, 1915, Stats. 1915, p. 764.]

This section was also amended March 4, 1907, Stats. 1907, p. 97.

Estimate of cost of conducting parental school. Special tax levy. Parental school fund.

§ 7. Whenever any board of education shall determine that it is necessary or expedient for the city or city and county to establish and maintain a parental school, said board shall furnish to the city council, or other governing body of such city or city and county, all necessary and required information and statistics, and if, after consideration, such city council or other governing body grants its consents for the establishment of such parental school, then the board of education shall furnish to the authorities whose duty it is to levy taxes in such city, or city and county, thirty days before the time specified by law for fixing the annual tax rate, an estimate of the cost of purchasing or renting a suitable site, and also an estimate of the cost of renting or erecting a suitable building and equipping the same for occupancy as a parental school, and the cost to the city or city and county, other than for salaries of teachers and for school supplies, of conducting the school for the remainder of the current school year. When, pursuant to such consent by such governing body, such estimates shall have been so made and furnished by the board of education of any city, or city and county, it is hereby made the duty of the authorities whose duty it shall be to levy in such city, or city and county, at the time of levying taxes, to levy a special tax upon all taxable property of said city, or city and county, sufficient in its judgment to provide the facilities requested by the board of education, and for which such estimates shall have been so furnished. It shall be the duty of the board of education, yearly, thereafter, to present to the authorities of the city, or city and county, whose duty it is to levy taxes, on or before the first Monday in July, an estimate of the moneys required for conducting the parental school for the school year, other than for the salaries of teachers and for school supplies. When such estimate shall have been so presented, it shall be the duty of the said authorities to levy a special tax upon the taxable property of said city, or city and county, sufficient to maintain such school for the year, exclusive of salaries of teachers and expense of school supplies. All taxes in this act provided for shall be computed, entered upon the tax roll and collected, in the same manner as other taxes are computed, entered and collected, and when collected shall be placed in a separate fund, to be known as the "parental school fund," and shall be paid out on the order of the board of education for the purposes set forth in this act; provided, that all moneys so collected for the purchase of sites or buildings, or the erection or equipment of buildings for parental school purposes, shall be placed in a separate fund, to be known as the "parental school building fund," and shall be used solely for the purpose or purposes for which collected, except

that after such purpose or purposes shall have been fully accomplished, the residue of such fund, if any, may be transferred to said parental school fund.

District tax for parental school, how raised.

§ 7½. The board of trustees of any school district wherein a parental school may be established under the provisions of this act, and whenever such board deems it proper, may, for the purpose of raising money for the establishment and maintenance of a parental school for said district, proceed under the provisions of article XIX, chapter III, title III, of part III, of the Political Code of this state, to raise moneys for such purpose, and the moneys so raised shall be paid into the county treasury, and shall constitute a "parental school fund," for such district. The moneys of such fund shall be used for no other purpose than herein indicated. Money shall be drawn from said fund by the trustees of the district in the same manner as money is drawn from other school funds. [New section approved March 4, 1907, Stats. 1907, p. 99. In effect immediately.]

Formation of joint parental schools. Duty of supervisors. Trustees. Representation. Vacancies. Transportation of pupils. Expenses. Tax. Funds.

§ 8. Two or more school districts or cities may unite in the following manner, to form a joint district for the maintenance of a joint parental school. When any board of education or board of school trustees has secured, in the manner so set forth in section 7 of this act, the consent of the legislative body of the city or school district, in which said board of education or board of school trustees holds office, for the union of two or more districts to form a joint parental school district, said board of education or board of trustees shall transmit such information to the board of supervisors of the county of which said city or school district or districts forms a part, setting forth at the same time the cities or districts with which said city or district to unite for the maintenance of a joint parental school. When such information has been received by the board of supervisors from all the cities or school districts seeking to be united, it is hereby made the duty of the board of supervisors, by resolution, to declare such cities or school districts united for the maintenance of a joint parental school, to be known as the joint parental school district of (give the names of the school districts uniting). When the districts have been so united, the boards of education or boards of trustees of the cities or school districts so uniting shall appoint a board of trustees for the joint parental school district, to consist of five members (unless the number of cities or school districts uniting exceeds five), who shall be appointed from the membership of the boards of the several districts or cities uniting, by the respective boards in approximate proportion to the census children between five and seventeen years of age, in the districts uniting; provided, however, that each district shall be represented by at least one member on the board of trustees of the joint parental school district. The members so appointed, to serve for the remainder of the term of office for which they were elected on their respective boards of education or boards of trustees, and when vacancies occur on said board of trustees of joint parental school districts, they shall be filled by the board making the original appointment. The superintendent of schools of each of the cities or school districts uniting, shall be ex officio members of the board of trustees of the joint parental school district, without the right to vote. In the management of a parental school within a school district, city, or city and county, the right to transport pupils to and from school at public expense, when, in the judgment of the board of education, or board of school trustees, the interest of the pupil demands it, is hereby conferred upon such boards. All the powers and duties by any section of this act conferred or imposed upon the boards of school trustees or boards of education of any city, or city and county, in the management of, and the securing of, funds for a parental school within a city or school

district, are hereby conferred upon and imposed upon the board of trustees of any joint parental school district in the management of and the securing of funds for the support of a joint parental school; provided, however, that in estimating the expense of maintenance of a joint parental school the amount of money needed for the payment of teachers' salaries and for the furnishing of school supplies, shall be included in the estimate of expenses; and provided further, that the estimates shall be transmitted to the board of supervisors of the county of which the joint parental school district forms a part. When such estimates shall have been so transmitted, it is hereby made the duty of the board of supervisors to levy a special tax upon the taxable property within the boundaries of the joint parental school district, sufficient to provide the facilities requested by the board of trustees of the joint parental school district, and for which such estimate shall have been furnished, and yearly thereafter when the estimates of the total expense of the maintenance of the joint parental school and increased facilities shall have been furnished the board of supervisors, it shall be the duty of said board to levy a special tax sufficient to maintain the school for the year. All taxes in this act provided shall be computed and entered upon the tax-roll and collected in the manner prescribed for the collection of taxes in section 7 of this act; provided, that all moneys so collected shall be collected by the county tax collector and apportioned to the credit of the joint parental school district, and placed in the fund for which they were specially collected. If for sites or buildings, to be placed in a fund known as the joint parental school building fund, to be used exclusively for the purposes for which they were collected, the same as set forth in section 7 of this act. The board of trustees of joint parental school districts shall organize, by the election of one of their number as chairman, and by the election of a secretary who shall be the city superintendent of schools, or the secretary of a board of education or the clerk of one of the boards of education or boards of trustees of the cities, or school districts united, and such secretary shall serve without additional salary. All moneys in a joint parental school fund shall be paid out on the order of the board of trustees of the joint parental school district for the purposes herein set forth, and in the same manner that funds are paid from the ordinary school funds of a school district.

Disposition of fines collected.

§ 9. All fines paid as penalties for the violation of any of the provisions of this act shall, when collected or received, be paid over by the justice or officer receiving the same to the treasurer of the city, or city and county in which the offense was committed, to be placed to the credit of the parental school fund of such city, or city and county, if there be such a fund, otherwise to the credit of the general school fund of such city, or city and county, or to the county treasurer, to be placed to the credit of the school fund of the school district in which the offense was committed.

Compulsory attendance of deaf, etc., children.

§ 10. Any parent or guardian of any deaf, dumb, or blind child, legally entitled to admission to said institution, shall send such child to said institution until such child shall have been therein for five years, or shall have reached the age of majority, unless such child shall be excused from such attendance by the board of education or board of trustees of the city, city and county, or school district in which such child resides, for the reason that the child's bodily or mental condition is such as to prevent or render inadvisable attendance at said institution, or for the reason that such child is receiving proper instruction at home or in some public or private school. Any parent or guardian failing to comply with the requirements of this section shall be guilty of a misdemeanor, and be punishable as provided in section 2 of this act.

Justices' courts have jurisdiction.

§ 11. Any justice of the peace, or recorder of the city or city and county or any justice of the peace of the township in which the school district is located, or in which the offense is committed, shall have jurisdiction of all offenses committed under the provisions of this act.

Authority to enter place of employment.

§ 11a. The attendance officer of any county, city and county, or school district in which any place of employment, in this act named, is situated, or the probation officer of such county, shall have the right and authority, at all times, to enter into any such place of employment for the purpose of investigating violations of the provisions of this act; provided, however, that if such attendance or probation officer is denied entrance to such place of employment, any magistrate may, upon the filing of an affidavit by such attendance or probation officer setting forth the fact that he has a good cause to believe that the provisions of this act are being violated in such place of employment, issue an order directing such attendance or probation officer to enter said place of employment for the purpose of making such investigations. [New section added May 10, 1919. In effect July 22, 1919, Stats. 1919, p. 414.]

Time of taking effect.

§ 12. This act shall take effect and be in force from and after July first, nineteen hundred and three.

Repeal of act of 1874.

§ 13. An act entitled an act to enforce the educational rights of children, approved March twenty-eight, eighteen hundred and seventy-four, and all acts and parts of acts in conflict with any of the provisions of this act are hereby repealed.

Hours of labor and permits to labor, of school children, see tit. "Infants," Acts 2113, 2113a.

COMPULSORY SCHOOL ATTENDANCE—ENFORCEMENT AID ACT.

ACT 4555—An act to aid the enforcement of an act entitled, "An act to enforce the educational rights of children and providing penalties for violation of the act," approved March 24, 1903.

History: Approved March 8, 1909, Stats. 1909, p. 209.

Children placed in custody of school district authorities.

§ 1. All minors coming within the provisions of an act entitled, "An act regulating the employment and hours of labor of children, prohibiting the employment of minors under certain ages, prohibiting the employment of certain illiterate minors, providing for the enforcement hereof by the commissioner of the bureau of labor and statistics and providing penalties for the violation hereof," (approved February 20, 1905) and found employed and at work without the necessary legal authorization as provided for and required in said act, and whose ages are between the maximum and minimum age limits as described in an act entitled, "An act to enforce the educational rights of children and providing penalties for violation of the act," shall be placed or delivered into the custody of the school district authorities of the county, city, or city and county in which they are found illegally at work.

Duty of labor bureau.

§ 2. The commissioner of the bureau of labor statistics is hereby authorized, directed and empowered to enforce the provisions of this act.

§ 3. This act shall take effect immediately.

INSTRUCTION OF BLIND STUDENTS.

ACT 4556—An act to provide for the instruction of blind students in certain state institutions.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 806.

Instruction of blind students in university and normal schools.

§ 1. Whenever one or more blind persons with the proper educational and moral qualifications shall regularly matriculate, enter and work for a degree in the University of California or for a diploma of graduation in any one of the state normal schools the trustees or governing authorities of said institutions shall out of the funds appropriated for the maintenance of such institution, provide a reader to instruct such student from the text-books and other printed matter provided or required for the course taken by such student; provided, however, that no more than three hundred dollars per annum shall be expended by any such institution for the instruction of any one student and not more than a total of nine hundred dollars shall be expended in any one school year by any such institution, except the University of California, for the purpose of so instructing blind students.

DISCRIMINATION AGAINST FEMALE TEACHERS.

ACT 4557—An act to prevent discrimination against female teachers.

History: Approved March 30, 1874, Stats. 1873-74, p. 938.

Female teachers to receive same compensation as males.

§ 1. Females employed as teachers in the public schools of this state shall in all cases receive the same compensation as is allowed male teachers for like services when holding the same grade certificates.

§ 2. This act shall take effect and be in force from and after its passage.

ELIGIBILITY OF WOMEN FOR EDUCATIONAL OFFICES.

ACT 4558—An act to make women eligible to educational offices.

History: Approved March 12, 1874, Stats. 1873-74, p. 356.

Eligibility.

§ 1. Women over the age of twenty-one years, who are citizens of the United States and of this state, shall be eligible to all educational offices within this state except those from which they are excluded by the constitution.

Repeal of conflicting acts.

§ 2. All acts and parts of acts in conflict with this act are hereby repealed. This act shall take effect from and after its passage.

TEACHERS' DIPLOMAS VALIDATED.

ACT 4559—An act to continue in force school teachers' certificates, state educational diplomas, and life diplomas.

History: Approved February 5, 1880, Stats. 1880, p. 4. (Ban. ed., p. 4.) Amended March 11, 1909, Stats. 1909, p. 290.

Teachers' diplomas validated.

§ 1. All teachers' life diplomas, university documents, normal documents, city, city and county, and county certificates of all grades granted previous to the first day of February, A. D. 1909, shall be continued in full force and effect for the full time for which they were granted, and shall be deemed valid for all purposes and to the full extent of time that the same were and were intended respectively to be, under the

laws in force at the time they were issued. [Amendment approved March 11, 1909, Stats. 1909, p. 290. In effect immediately.]

§ 2. This act shall take effect from and after its passage.

SCHOOL FRATERNITIES.

ACT 4562—An act to prevent the formation and prohibit the existence of secret, oath-bound fraternities in the public schools.

History: Approved March 13, 1909, Stats. 1909, p. 332.

Joining of secret societies prohibited.

§ 1. From and after the passage of this act, it shall be unlawful for any pupil, enrolled as such in any elementary or secondary school of this state, to join or become a member of any secret fraternity, sorority or club, wholly or partly formed from the membership of pupils attending such public schools, or to take part in the organization or formation of any such fraternity, sorority or secret club; provided, that nothing in this section shall be construed to prevent any one subject to the provisions of the section from joining the order of the Native Sons of the Golden West, Native Daughters of the Golden West, Foresters of America or other kindred organizations not directly associated with the public schools of the state.

Duty of school trustees.

§ 2. Boards of school trustees, and boards of education shall have full power and authority to enforce the provisions of this act to make and enforce all rules and regulations needful for the government and discipline of the schools under their charge. They are hereby required to enforce the provisions of this act by suspending, or, if necessary, expelling a pupil in any elementary or secondary school who refuses or neglects to obey any or all such rules or regulations.

1. Constitutionality — Not violative of section 21, article I, or section 25, article IV of the constitution.—The act does not violate section 21, article I, or section 25, article IV, of the constitution, because it is not extended to normal schools, and excludes from the inhibition certain secret organizations not directly associated with the public schools.—Bradford v. Board of Education, 18 Cal. App. 19, 121 Pac. 929.

2. Same—Title covers subject.—The title of the act sufficiently expresses the subject.—Bradford v. Board of Education, 18 Cal. App. 19, 121 Pac. 929.

3. Same — Fourteenth amendment federal constitution.—The act does not, by depriving a citizen of the right to attend a public school, violate the privileges and immunities provision of the fourteenth amendment of the federal constitution.—

Bradford v. Board of Education, 18 Cal. App. 19, 121 Pac. 929.

4. Same—Same—Privileges dependent on state law.—Rights and privileges dependent solely on state law are not within the cognizance of the privileges and immunities provision of the fourteenth amendment of the federal constitution.—Bradford v. Board of Education, 18 Cal. App. 19, 121 Pac. 929.

5. Words and phrases defined—"Oath-bound" — "Secret," — The words "oath-bound" and "secret," as used in the act, are synonymous.—Bradford v. Board of Education, 18 Cal. App. 19, 121 Pac. 929.

6. Same — "Fraternities," — The word "fraternities" as used in the act includes organizations of both sexes.—Bradford v. Board of Education, 18 Cal. App. 19, 121 Pac. 929.

REGISTRATION OF MINORS.

ACT 4563—An act to provide for the registration of minors.

History: Approved May 9, 1919. In effect July 22, 1919. Stats. 1919, p. 437.

Appointment of registrar of minors by school board.

§ 1. It shall be the duty of the governing board of every school district, except high school districts, to appoint a registrar of minors, and such assistant registrars as may be necessary, such appointments to be made on or before the fifteenth day of October, 1919. Such registrar of minors and assistants shall be residents of the school district and at least twenty-one years of age, and may be allowed such compensation as the

governing board shall fix, not exceeding four dollars a day for the time actually and necessarily employed. Before entering upon the discharge of his duties, each registrar and assistant registrar must qualify and file his oath of office with the superintendent of schools of the county.

Appointment by county superintendent.

§ 2. If the governing board of any school district shall fail to appoint a registrar of minors as herein provided, it shall be the duty of the county superintendent of the schools having jurisdiction over such district to appoint a registrar of minors and such assistant registrars as may be necessary for such district and to fix their compensation, not exceeding four dollars a day for the time actually and necessarily employed. He shall also draw a warrant on the funds of such district in payment of the services of such registrar and assistants.

Registration of minors.

§ 3. It shall be the duty of the registrar of minors during the month of November, 1919, to visit each habitation, residence, domicile or place of abode in his school district and make a complete registration of minors residing in the school district on the first day of November, 1919, on blanks provided by the superintendent of public instruction.

Such registration shall show the name and residence of each head of a family in the school district, the names of all minor children in each family, the nativity, sex, race, date of birth of each minor child, the school attended by each minor child if he is attending school, the grade in which he is placed in school, the occupation of each minor child if he is employed in a gainful occupation and the name and address of the employer. Wherever a district is formed lying partly in two or more adjoining counties, the registrar must report to each county superintendent the data concerning the families and children residing in the county under the jurisdiction of such superintendent. Minors who are absent attending institutions of learning shall be registered in the districts where their parents or guardians reside. Orphans, half orphans and children living in orphanages shall be registered in the district in which the orphanage is situated. Minors under guardianship shall be registered in the district in which the guardian resides.

Report of registrar.

§ 4. The registrar shall on or before the first day of January, 1920, file a complete report of such registration, attested by oath, with the county superintendent of schools and a duplicate report with the clerk of the governing board of the district. Such report shall include a statistical abstract showing the number of families enumerated; the total number of boys; the total number of girls; the total number of native-born and foreign-born children, segregated according to sex; the total number of boys and girls of each race, segregated according to sex; the total number of minors under six years of age, segregated according to sex; the total number of minors six and seven years of age, segregated according to sex; the number of minors between the ages of eight and fifteen years inclusive, segregated according to sex; the total number of minors between the ages of sixteen and twenty, inclusive, segregated according to sex; the total number of minors between the ages of sixteen and twenty inclusive, attending school, segregated according to sex; the total number of minors under sixteen years of age employed in gainful occupations; and the total number of minors over sixteen years of age employed in gainful occupations; and the total number of (1) crippled children, (2) blind children, (3) dumb children and (4) deaf children, segregated according to age and sex.

Report to superintendent of public instruction.

§ 5. It shall be the duty of the county superintendent of each county to make a report of the registration of his county to the superintendent of public instruction on or before the first day of March, 1920. Such report shall be compiled from the statistical abstracts filed by registrars of minors of his county and shall be on forms prescribed by the superintendent of public instruction.

Expenses.

§ 6. The actual and necessary expenses for making such registration shall be paid, subject to provisions of law, out of the county or special fund of the school district. In carrying out the provisions of this act, any board of school trustees may appoint any teacher or attendance officer employed by them to serve as registrar of minors, and pay such teachers for such additional service, subject to the provisions of this act. In districts employing an attendance officer, such attendance officer shall serve as registrar of minors without additional compensation.

VALIDATION OF SCHOOL DISTRICT BONDS.

ACT 4564—An act to validate bonds of school districts and high school districts and to provide for the levy and collection of taxes to pay the principal and interest on such bonds.

History: Approved May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 228. Prior acts: (1) Act of March 13, 1909, stats 1909, p. 352, relating to bonds of joint union high school districts; (2) act of the same date (Stats. 1909, p. 356), relating to all districts, and validating bonds voted by two-thirds of the electors; (3) act of March 1, 1911, Stats. 1911, p. 260, validating consolidation of certain districts and their bonds; (4) act of the same date (Stats. 1911, p. 263), of same character and effect; (5) act of April 7, 1911, Stats. 1911, p. 711, establishing the legality of certain districts and validating their bonds; (6) act of June 1, 1913, Stats. 1913, p. 361, validating bonds of school districts and high school districts and providing for the levy and collection of taxes to pay principal and interest thereof; (7) act of April 21, 1915, Stats. 1915, p. 105, of the same tenor and effect.

School district bonds validated.

§ 1. Where in any school district of any kind or class, including union school districts and joint union school districts, or high school district of any kind or class, including union high school districts and joint union high school districts, proceedings have been taken for the purpose of issuing and selling bonds of such district, for any purpose or purposes, all the acts and proceedings of the board of trustees, board of education or other governing body of such district and all the acts and proceedings of the board of supervisors of the county within which such district is situated, leading up to and including the issuance of such bonds if they have heretofore been sold, and all such acts and proceedings heretofore had although the bonds are not yet sold, are hereby legalized, ratified, confirmed and validated to all intents and purposes, and the power of such district and of the board of supervisors of the county in which such district is situated, to issue such bonds, is hereby ratified, confirmed and declared, and the bonds heretofore sold are declared to be, and the bonds hereafter sold shall be, the legal and binding obligations of and against the district having heretofore issued, or hereafter issuing, such bonds, and the faith and credit of such district is hereby pledged for the prompt payment and redemption of the principal and interest of said bonds.

Levy of taxes to pay interest and principal.

§ 2. For the purpose of paying the interest on such bonds as it becomes due and the principal thereof at maturity, the assessors, treasurers, boards of supervisors, and

other officers of the respective counties, shall have the same powers and shall perform the same duties as are provided by law relative to the assessment, levy, and collection of taxes, and custody of funds, for the payment of the principal and interest of bonds of school districts and high school districts of every kind or class, respectively.

Bonds excepted.

§ 3. This act shall not operate to legalize any bonds which have been sold for less than par, nor to legalize any bonds the issuance of which has not received the assent of two-thirds of the qualified electors of such district, voting at an election held for the purpose of determining whether such indebtedness should be incurred, nor to legalize any bonds which mature at a date more than forty years from the time of their issuance.

REGISTRATION OF SCHOOL BONDS.

ACT 4570—An act to provide for the registration of bonds issued by common school, high school, or union high school districts.

History: Approved March 18, 1905, Stats. 1905, p. 123.

Bonds may be registered. Registered bonds may be transferred. Form of registration. Principal and interest payable to registered owner.

§ 1. Whenever the owner of any coupon bond, or if any bond payable to bearer, already issued or hereafter issued by any common school, high school, or union high school districts now or hereafter existing in this state, shall present any such bond to the treasurer or other officer of the county in which said district is located, who by law performs the duties of treasurer, with a request for the conversion of such bond into a registered bond, such treasurer, or such other officer, shall cut off and cancel the coupons of any such coupon bond so presented, and shall stamp, print or write, upon such coupon bond, or such other bond payable to bearer, so presented, either upon the back or upon the face thereof, as may be convenient, a statement to the effect that the said bond is registered in the name of the owner, and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter, and from time to time any such bond may be transferred by such registered owner in person, or by attorney duly authorized on presentation of such bond to such treasurer, or such other officer, and the bond be again registered as before, a similar statement being stamped, printed, or written thereon. Such statement stamped, printed, or written upon such bond may be in substantially the following form:

(Date, giving month, year, and day.)

This bond is registered pursuant to the statute in such cases made and provided in the name (here insert name of owner) and the interest and principal thereof are hereafter payable to such owner.

.....
Treasurer (or such other officer).

After any bond shall have been registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. Such treasurer or such other officer, shall keep in his office a book or books which shall at all times show what bonds are registered and in whose names respectively.

Bonds may be coupon or registered.

§ 2. Whenever under any statute or law of this state any bonds are issued, whether the proceedings for the issuance of such bonds have been had in whole or in part prior to the enactment of this statute, or whether the same have been had in whole or in part after the enactment of this statute, such bonds may be issued either in the form of coupon bonds, or in the form of registered bonds, or some in the form of coupon bonds, and some in the form of registered bonds, as has been or hereafter may be

provided in the proceedings for the issuance of such bonds, and notwithstanding any language or provision to the contrary contained in any such statute authorizing the issuance of the bonds, or in any other law of the state. The provisions of section 1 of this act shall apply to coupon bonds, so issued, as well as to other coupon bonds, or other bonds payable to bearer.

ISSUE OF SCHOOL BONDS IN CITIES OF THE FIFTH CLASS.

ACT 4571—An act to regulate the issue of bonds of school districts in cities of the fifth class, and school districts partly within and partly without such cities of the fifth class.

History: Approved March 20, 1909, Stats. 1909, p. 528. Prior act of March 23, 1893, Stats. 1893, p. 292; amended March 11, 1897, p. 103, which repealed the act of March 31, 1891, Stats. 1891, p. 264, was itself superseded by the present act.

School bonds, in cities of fifth class.

§ 1. The board of education of any school district in a city of the fifth class, or of any school district which embraces territory, a portion of which is within and a portion of which is without such city of the fifth class, may, when in their judgment it is advisable, and must when requested by the board of trustees of such city, call an election and submit to the electors of the district whether the bonds of such district shall be issued and sold for the purpose of raising money to purchase school lots, and for building or purchasing or repairing one or more schoolhouses, and supplying the same with furniture, necessary apparatus, and improving the grounds, and for liquidating any indebtedness already incurred for such purposes.

Election, how called.

§ 2. Such election must be called by posting notices, signed by the board of education, in three of the most public places in the district, for not less than twenty days before the election, and by publishing such notices in some newspaper published in such city, not less than once a week for three successive weeks.

Notice to contain, what.

§ 3. Such notices must contain:

1. The time and place of holding such election.
2. The names of one inspector and two judges in each voting precinct in said district, to conduct the same.

3. The hours during the day, not less than six hours, in which the polls will be open.

The amount and denomination of the bonds, the rate of interest, and the number of years, not exceeding forty, the whole or any part of said bonds are to run.

General election law to govern.

§ 4. Such election shall be held, in all respects as nearly as practicable, in conformity with the general election law; provided, that no particular form of ballot shall be required, excepting that the words to appear on the ballots, which shall be "Bonds—Yes," or "Bonds—No"; nor shall any informalities, not amounting to fraud in conducting such election, invalidate the same.

Canvass of returns.

§ 5. On the seventh day after said election, at 1 o'clock p. m., the returns having been made to the board of education, the board must meet and canvass said returns, and if it appears that two-thirds of the votes cast at said election were in favor of issuing such bonds, then the board shall cause an entry of that fact to be made upon its minutes, and shall certify to the board of supervisors of the county in which said district is located, the proceedings had in the premises; and thereupon said board of

supervisors shall be and they are hereby authorized and directed to issue the bonds of such district to the number and amount provided in such proceedings, payable out of the bond fund of such district (naming the same), and that the money shall be raised by taxation upon the taxable property in said district for the redemption of said bonds, and the payment of the interest thereon; provided, that the total amount of bonds so issued shall not exceed five per cent of the taxable property of the district, as shown by the last equalized assessment of the property in such school district.

Form of bonds.

§ 6. The board of supervisors, by an order entered upon its minutes, shall prescribe the form of said bonds, and of the interest coupons attached thereto, and must fix the time when the whole or any part of the principal of said bonds shall be payable, which shall not be more than forty years from the date thereof.

How sold; interest rate.

§ 7. Said bonds must be payable in gold coin of the United States, must be signed by the president of the board of supervisors, and countersigned by the clerk of the county, who must affix the county seal thereto; must not bear a greater rate of interest than eight per cent, said interest to be payable semi-annually in like gold coin; and said bonds must be sold in the manner prescribed by the board of supervisors, but for not less than par, in gold coin of the United States, and the proceeds of the sale thereof must be deposited in the county treasury to the credit of the building fund of said school district, and be drawn out for the purpose aforesaid, as other school moneys are drawn out.

Tax levy.

§ 8. The county board of supervisors shall annually, at the time of levying taxes for county purposes, levy a tax upon the taxable property within such district, sufficient to pay the annual interest on such bonds and to pay the principal in equal annual installments; but the order directing the issue of bonds may prescribe that the payment of the principal may be deferred for not more than five years. All moneys so collected shall be paid into the county treasury and used for the payment of interest and principal of such bonds, and for no other purpose. The county auditor shall issue his warrant for the payment of interest and installments, and cancel all coupons and bonds redeemed and file them with the county treasurer. The provisions of this section shall, so far as applicable, govern any bonds that may have been heretofore issued by such school districts.

Guarantee to bond-holder.

§ 9. If payment of any coupon or bond lawfully issued by any such school district should, after presentation and demand of payment at the office of the county treasurer, be refused, the owner may file such bond, together with all unpaid interest coupons, with the state controller, taking his receipt therefor, and the same shall be registered in the state controller's office; and the state board of equalization shall, at their next session, and at each annual equalization thereafter, add to the state tax to [be] levied in said district a sufficient rate to raise the amount of the principal and interest past due prior to the next levy, and the same shall be levied and collected as a part of the state tax, and paid into the state treasury, and passed to the special credit of such district bond tax, and shall be paid by warrants, as the payments mature, to the holder [of] such registered obligations, as shown by the register in the office of the state controller, until the same shall be fully satisfied and discharged; any balance then remaining shall be transmitted to the treasurer of the county in which is situated the district by which such bonds were issued, and shall be placed by the county treasurer to the credit of the general school fund of said district.

1. Revision and repeal of earlier statutes.—The act is a complete revision of the subject to which earlier statutes related, and is manifestly intended as a substitute for the former legislation, and prior acts must be considered as repealed.—*Santa Ana, etc., District v. Talbert*, 19 Cal. App. 104, 124 Pac. 872.

2. Authority to issue bonds derived from act.—The authority of the board of education in a city of the fifth class to issue bonds is derived from this act.—*Santa Ana, etc., District v. Talbert*, 19 Cal. App. 104, 124 Pac. 872.

3. Bonds must be issued for the purposes contemplated by the statute.—If bonds are issued and sold to raise money

for purposes not contemplated by the statute, the invalidity of the bonds are conceded.—*Santa Ana, etc., District v. Talbert*, 19 Cal. App. 104, 124 Pac. 872.

4. Same—Additional words not expression of additional purpose.—In a resolution expressing the purpose of the issue of bonds to build school houses, the recital "and afford better facilities for educating the school children within said district" is not the expression of an additional purpose for the issuance of the bonds, but an expression of a conclusion as to the effect of building additional school houses for that end, and does not invalidate the bond issue.—*Santa Ana, etc., District v. Talbert*, 19 Cal. App. 104, 124 Pac. 872.

CIVIC CENTER ACT.

ACT 4574—An act providing for the free use of all public schoolhouses and property and to establish a civic center at each and every public schoolhouse in the state of California, and to provide for the maintenance, conduct and management of the same.

History: Approved June 6, 1913. In effect August 10, 1913, Stats. 1913, p. 853.

Public schoolhouse created civic center.

§ 1. There is hereby established a civic center at each and every public schoolhouse within the state of California, where the citizens of the respective public school districts within the said state of California may engage in supervised recreational activities, and where they may meet and discuss, from time to time, as they may desire, any and all subjects and questions which in their judgment, may appertain to the educational, political, economic, artistic and moral interests of the citizens of the respective communities in which they may reside; provided, that such use of said public schoolhouse and grounds for said meetings shall in no wise interfere with such use and occupancy of said public schoolhouse and grounds as is now, or hereafter may be required for the purposes of said public schools of the state of California.

Lighting, heating, janitor service, etc.

§ 2. Lighting, heating, janitor service and the services of a special supervising officer when needed, in connection with such use of public school buildings and grounds as set forth in section one of this act, shall be provided for out of the county or special school funds of the respective school districts in the same manner and by the same authority as such similar services are now provided for. Such use of the said schoolhouses, property and grounds shall be granted free; provided, that in case of entertainments where an admission fee is charged, a charge may be made for the use of said schoolhouses, property and grounds.

Control of civic center.

§ 3. The management, direction and control of said civic center shall be vested in the board of trustees or board of education of the school district. Said board of trustees or board of education shall make all needful rules and regulations for conducting said civic center meetings and for such recreational activities as are provided for in section one of this act; and said board of trustees or board of education may appoint a special supervising officer who shall have charge of the grounds, preserve order, protect the school property and do all things necessary in the capacity of a peace officer to carry out the provisions and the intents and purposes of this act.

1. "Recreational activity"—Dancing.—Dancing would seem to be a form of "recreational activity" within the recog-

nized meaning of that phrase.—*McClure v. Board of Education*, 38 Cal. App. 500, 176 Pac. 711.

2. **Same — Defined.**—The term "recreation" means "refreshment of strength and spirits after toil; relief from toil or pain, diversion, amusement in sorrow or distress," and it is so used in the civic center act.—*McClure v. Board of Education*, 38 Cal. App. 500, 176 Pac. 711.

3. **"Activity" — Defined — Dancing.**—The word "activity" as used in the civic center act, means "an exercise of energy or force, an active movement or operation, a physical or gymnastic exercise, an agile performance," and, so used, it includes dancing.—*McClure v. Board of Education*, 38 Cal. App. 500, 176 Pac. 711.

4. **Discretion of the board of education to permit dancing.**—The act constitutes the last expression of the legislative will on the subject, and it is not a strained construction to hold that thereby the board of education was clothed with discretion to permit, under proper supervision, the form of "recreational activity" known as dancing.—*McClure v. Board of Education*, 38 Cal. App. 500, 176 Pac. 711.

5. **Exclusive use of building—Grant not authorized.**—This act gives the board of education no authority to grant to any citizen the exclusive use of the school building.—*McClure v. Board of Education*, 38 Cal. App. 500, 176 Pac. 711.

JANITORS AND EMPLOYEES IN CERTAIN DISTRICTS.

ACT 4575—An act relating to the employment of janitors and employees of certain school districts.

History: Approved May 17, 1917. In effect July 27, 1917. Stats. 1917, p. 645.

Employment of janitors and employees.

§ 1. In any school district situated wholly within the boundaries of a city of the first class the janitors and other employees of such school district shall be employed in the same manner and under the same conditions as teachers are employed by such district and when so employed shall be removed only for cause and after charges have been filed and heard by the board of education. All such employees who have been in the service of any such school district continuously for a period of one year prior to the effective date of this act shall be deemed to have been so employed. The board of education shall have full power to make and enforce all necessary rules and regulations to carry out these provisions.

CLOSING SCHOOLS DURING WAR.

ACT 4576—An act empowering the state board of education to order the closing from time to time of educational institutions during the continuance of a state of war.

History: Approved May 5, 1917. In effect immediately. Stats. 1917, p. 282.

State board of education may close educational institutions. Salary of teacher.

§ 1. During the continuance of a state of war between the United States of America and any foreign power, the state board of education, with the approval of the governor, shall have power, whenever in the opinion of a majority of its members such step is necessary for the planting or harvesting of crops or for other agricultural or horticultural purposes and is for the welfare of the state, to make an order closing, for such time as may be specified therein, any or all educational institutions supported wholly or in part by the state, or any grade or class thereof, and may, in like manner, by similar order, postpone the opening of any or all such educational institutions, or any grade or class thereof, during the continuance of a state of war; provided, however, that the annual school term shall not be reduced to less than six school months under the provisions of this act; and provided, further, that whenever any such educational institution is closed, or the opening thereof is delayed, under the provisions of this act, the salary of any teacher regularly employed shall be paid according to any written contract between the governing board of such educational institution and such teacher, or in case there is no written contract, according to any salary schedule adopted by such board. In case there is neither such contract nor salary schedule, the total salary paid for any school year in which such order is made shall not be less

than the salary paid by the governing board of such institution for similar service during the preceding school year. It is further provided that nothing herein contained shall in any manner affect the amount of money apportioned to any school district during any school year.

Application of order. Urgency measure.

§ 2. Such an order issued under the provisions of section one hereof may be made applicable to such district, city, city and county, county or group of any thereof as the state board of education may determine and specify therein, and may be altered, amended or rescinded from time to time.

§ 3. Inasmuch as the United States is now involved in war, this act is hereby determined and declared to be an urgency measure necessary for the immediate preservation of the public peace and safety, within the meaning of section one of article IV of the constitution and shall take effect immediately.

VOCATIONAL EDUCATION.

ACT 4577—An act to accept the provisions and benefits of an act passed by the senate and house of representatives of the United States of America in congress assembled and approved February twenty-third, nineteen hundred seventeen, to provide for the promotion of vocational education; to create a vocational education fund and making an appropriation therefor.

History: Approved May 31, 1917. In effect July 30, 1917. Stats. 1917, p. 1387.

Provisions of federal vocational education act accepted. Acceptance of benefits of federal vocational education act.

§ 1. The people of the state of California do hereby accept the provisions of, and each and all of the funds provided by, an act passed by the senate and house of representatives of the United States of America in congress assembled, entitled, "An act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and the trades and industries; to provide for co-operation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure," and approved by the president February twenty-third, nineteen hundred seventeen. In accepting the benefits of said act the people of the state of California agree to comply with all of its provisions and to observe all of its requirements.

Powers of state board of education.

§ 2. The state board of education is hereby designated as the state board to carry out the purposes and the provisions of said act, and is hereby given all necessary power and authority to co-operate with the federal board for vocational education in the administration of the provisions of the federal act and of this act.

Duty of state treasurer. Vocational education fund.

§ 3. The state treasurer, as required by said federal act, is hereby made custodian of all federal funds received by the state of California under the provisions of that act. He is also hereby made custodian of all state funds appropriated in this act for the purpose of co-operating with the federal government in the promotion of vocational education. He is hereby authorized to receive and provide for the proper custody of all moneys provided under the provisions of this act and the above mentioned federal act. It shall be the duty of the state treasurer, upon receiving any apportionment of funds from the federal government on account of the vocational education fund, to report the same immediately, with the amount thereof, to the state controller and the state board of education and deposit the same to the credit of the "vocational education fund," which fund is hereby created. Thereupon the state controller

and the state treasurer shall transfer from the general fund of the state to the vocational education fund an amount which shall equal the amount apportioned to the state of California under the provisions of the federal act mentioned in this act. The moneys so transferred into the vocational education fund are hereby appropriated without reference to fiscal years for the purpose of co-operating with the federal government in promoting vocational education in this state and are exempt from the provisions of part three, title one, chapter three, article XVIII, of the Political Code, relating to the state board of control. The moneys constituting the vocational education fund shall be paid out by the state treasurer on warrants drawn by the controller as requisitioned by the state board of education in carrying out the provisions of this act, the federal act and the rules and regulations of said state board established as required by said acts.

TRADE SCHOOLS—EMPLOYMENT AGENCIES.

ACT 4578—An act to regulate certain trade schools, and to include within the term "employment agency" certain trade schools or classes of instruction for the teaching of the whole or part of any trade, art, science, or occupation requiring special skill, and making such agencies subject to the laws and regulations relating to private employment agencies.

History: Approved May 23, 1919. In effect July 23, 1919. Stats. 1919, p. 825.

Regulation of trade schools.

§ 1. Any person, firm, association, or corporation who conducts for gain any trade school or classes of instruction for the teaching in whole or in part of any trade, art, science, or occupation requiring special skill, and who, for gain or hire furnishes or agrees to furnish in connection therewith facilities or information to pupils and employers of labor whereby the labor or services of any such pupils are engaged to be employed in the trade, art, science or occupation thus taught at stipulated wages or other valuable consideration, shall be held to conduct a private employment agency and be subject to all the laws and regulations governing such agencies.

Application of act.

§ 2. Nothing contained in this act shall apply to trade schools or classes of instruction conducted by or in connection with any public school, public institution, parochial school, charitable school or institution, private business schools teaching shorthand, typewriting, bookkeeping, mechanical and other usual business subjects or trades schools connected therewith or any school employing teachers having certificates issued by the public school authorities to teach any particular trade, art, science or occupation.

CIVIC AND VOCATIONAL EDUCATION IN HIGH SCHOOLS.

ACT 4579—An act to require certain high school districts to provide part-time educational opportunities in civic and vocational subjects for persons under eighteen years of age, who are not in attendance upon full-time day schools, and part-time educational opportunities in citizenship for persons under twenty-one years of age who cannot adequately speak, read or write the English language; to enforce attendance upon such part-time classes where established, and providing penalties for violation of the provisions of this act.

History: Approved May 27, 1919. In effect—see section 15. Stats. 1919, p. 1047.

High school board to maintain day part-time classes.

§ 1. The high school board of each high school district wherein there were enrolled, in the regular day classes of the high schools of said district during the school year

next preceding, fifty or more persons living within a radius of three miles of a high school located in said district, must establish and maintain, under the provisions of section one thousand seven hundred fifty c of the Political Code, special day part-time classes which shall provide at least four sixty-minute hours of instruction per week for all persons within the district who are over fourteen and under eighteen years of age who are not in attendance upon full-time public or private day schools for four or more sixty-minute hours per week, and who are not subject to the provisions of an act entitled "An act to enforce the educational rights of children and providing penalties for the violation of the act," approved March 24, 1903, as amended. Said classes must be maintained between the hours of eight a. m. and five p. m. and must provide suitable instruction for the various individuals for whose benefit they are established.

Special evening classes for persons not speaking English.

§ 2. The high school board of each high school district wherein there are living, within a radius of three miles of any high school located in said district, twenty or more persons over eighteen and under twenty-one years of age who expect to remain in the district for a period of two or more months, who are not in attendance for at least four sixty-minute hours per week upon regular full-time public or private day schools, or suitable part-time day classes such as those specified under section one of this act, and who can not speak, read or write the English language, to a degree of proficiency equal to that required for the completion of the sixth grade of the elementary schools of this state, must establish and maintain special classes in evening schools or special evening classes under the administration of day schools, as authorized by section one thousand seven hundred fifty c of the Political Code. Said classes shall provide instruction in citizenship for such persons for at least four sixty-minute hours per week for at least thirty-six weeks of the school year.

Compulsory attendance upon part-time classes. Exceptions.

§ 3. First—All persons under eighteen years of age who are too old to be subject to the provisions of an act entitled, "An act to enforce the educational rights of children, and providing penalties for the violation of the act," approved March 24, 1903, as amended, who have not graduated from a high school maintaining a four-year course above the eighth grade of the elementary school, or who have not had an equal amount of education in a private school or by private tuition, who are not disqualified for attendance upon these classes because of their physical or mental condition, or because of personal service that must be rendered to their dependents, who reside within three miles of a suitable class maintained, either voluntarily or under the provisions of this act by a high school district, and who are not in attendance upon a public or a private full-time day school or satisfactory part-time classes maintained by other agencies, shall be, and hereby are, required to attend upon a special part-time class maintained by the high school board of the district wherein they reside, or by the high school board of an adjoining district, for not less than four sixty-minute hours per week for the regularly established annual school term; provided, that the local school authorities may accept in lieu thereof not less than one hundred forty-four hours of attendance which, beginning with the opening of the high schools of the district for the year, shall be accumulated at the rate of not less than four sixty-minute hours per week; and provided, further, that the local school authorities may, in their discretion, arrange with the parents, guardian or other person responsible for any minor for his full-time attendance upon a special class maintained for such minor at a convenient season, wherein he may secure the one hundred forty-four hours of attendance required of him under the provisions of this act. When any such parent, guardian or other person responsible for such minor agrees with the local school

authorities that said minor shall attend full-time classes for any given period, such parent, guardian or other person becomes responsible for said minor's compulsory attendance upon these classes for said period.

Compulsory attendance upon classes for persons unable to speak English.

Second—All persons over eighteen and under twenty-one years of age who can not speak, read or write the English language to a degree of proficiency equal to that required for the completion of the sixth grade of the elementary schools of this state; who live within a radius of three miles of an evening class maintained by a high school district, either voluntarily or under the provisions of this act, for the instruction of such persons; who expect to remain in the district for a period of two or more months; who are not disqualified for attendance upon these classes because of their physical or mental condition, or because of personal service that must be rendered to their dependents; and who are not in attendance upon a public or private full-time day school or upon a class established under the provisions of section one of this act for such persons under eighteen years of age, shall be, and hereby are, required to attend, for at least four sixty-minute hours per week, upon a special day or evening class maintained by a high school district for persons who can not speak, read or write the English language.

Conduct of classes.

§ 4. First—It shall be the duty of the local school authorities to provide, in so far as possible through the classes established under section one of this act, educational opportunities which shall be suitable for the different needs of the various persons attending them. In carrying out the provisions of this act:

(a) They shall establish and maintain short unit courses and give instruction in civic and vocational subjects and subjects supplementing home, farm, commercial, trade, industrial or other occupations; and they may give instruction in any elementary, secondary or other school subject.

(b) They shall provide for individual counsel and guidance in social and vocational matters for each pupil enrolled in these classes.

(c) They shall give all persons who are engaged in skilled occupations and who are enrolled in these classes opportunity to better qualify themselves for said occupations.

(d) They shall give all persons who are engaged in unskilled occupations or in occupations that do not offer educational opportunities and who are in attendance upon these classes opportunity to prepare themselves for skilled occupations or for occupations that offer opportunities for promotion or further education.

(e) They shall provide instruction in home economics subjects for those who desire and need work of this character.

(f) They shall provide instruction in oral and written English and in the duties and responsibilities of citizenship for persons enrolled in these classes who can not speak, read or write the English language to a degree of proficiency equal to that required for the completion of the sixth grade of the elementary schools of this state.

(g) They shall not require of pupils a minimum uniform standard of proficiency in any subjects maintained in these classes, except in those subjects designed to prepare for other classes or other schools.

Combined school enrollment certificate and permit to work.

(h) They shall require the principal of the school to issue in his name a combined school enrollment certificate and permit to work to each person enrolled in these classes, and a duplicate of said certificate for his parents, guardian or other person having control or charge of him, and from time to time such duplicates of said certificate as are necessary for filing with his employers, together with such other blanks as

may be necessary for the use of employers in reporting to the principal information concerning the employment of said person. Said certificate shall give the name, age and residence of the pupil, the name and residence of his parents, guardian or other person having control or charge of him, the time of day during which and the days on which he is in attendance upon the classes, and the character of work that he is pursuing. Said certificate shall also state any physical or other condition that should limit the employment of said pupil and shall state the date of issuance and the date of expiration. Said certificate shall be issued to persons enrolling in these classes within five days after their enrollment. Certificates issued during the first school term shall expire five days after the opening of the next succeeding school term of the year, and certificates issued during the last term of the school year shall remain valid until five days after the opening of the first school term of the succeeding year.

Instruction in citizenship.

Second—It shall be the duty of local school authorities that maintain classes under the provisions of section two of this act to provide, for persons who can not speak, read or write the English language, to a degree of proficiency equal to that required for the completion of the sixth grade of the elementary schools of this state, instruction in such subjects and in the duties and responsibilities of citizenship.

Parent, etc., to compel attendance of minor. Penalty.

§ 5. Each parent, guardian or other person having control or charge of any minor required under the provisions of section three of this act to attend special part-time classes, must compel the attendance of such minor upon the same. He must retain a copy of the certificate of school enrollment and permit to work provided for under section four of this act, and must present the same upon request of any officer of the law or other person authorized to enforce the provisions of this act.

Should any such parent, guardian or other person having control or charge of any such minor fail to perform any of the above duties, he shall be deemed guilty of a misdemeanor and, upon conviction, shall be liable, for the first offense, to a fine of not more than ten dollars or to imprisonment for not more than five days, and for each subsequent offense he shall be liable to a fine of not less than ten dollars nor more than fifty dollars, or to imprisonment for not less than five days nor more than twenty-five days, or to both such fine and imprisonment.

Complaint against parents, etc., violating act.

§ 6. The high school board of any high school district wherein a minor resides who has violated section three of this act shall, on the complaint of any person, make full and impartial investigation of all charges against any parent, guardian or other person having control or charge of any such minor for violation of section five of this act.

If it shall appear upon such investigation that any such parent, guardian or other person having control or charge of any such minor has violated the provisions of section five of this act, it is hereby made the duty of the clerk of said board, or other person authorized by said board to bring such actions, to make and file in the proper court a criminal complaint against such parent, guardian or other person having control or charge of any such minor, charging such violation and to see that such charge is prosecuted by the proper authorities; provided, that in cities, and in cities and counties, and in school districts having an attendance officer or officers, such officer or officers shall have power, and it shall be their duty, to make and file such complaint and see that said charge is presented by the proper authorities.

Employer of minor to require certificate. Notice to principal of employment. Time at school and at work not to exceed eight hours.

§ 7. The employer of any minor under eighteen years of age who is too old to be subject to compulsory full-time school attendance under the provisions of an act

entitled "An act to enforce the educational rights of children and providing penalties for the violation of the act," approved March 24, 1903, as amended, and who resides in a high school district wherein section three of this act has become operative, shall require of said minor a school enrollment certificate and permit to work issued by a high school or elementary school principal of a school in the district. Said certificate shall be the authorization of the employer to employ said minor for the period between the date of the issuance of the certificate and the date of its expiration. Under no conditions shall any person employ a minor under eighteen years of age who is too old to be subject to compulsory full-time school attendance under the provisions of an act entitled "An act to enforce the educational rights of children and providing penalties for the violation of the act," approved March 24, 1903, as amended, and who does not present such a school enrollment certificate and permit to work. The employer shall file and retain permanently said school enrollment certificate and permit to work. Within five days after the beginning of employment he shall send to the principal of the school issuing said enrollment card and permit to work a written notification of such employment. In said notification he shall briefly describe the character of the work performed by the minor and the time of day during which and the days of the week on which he is employed. Said employer shall retain and file, with the enrollment certificate and permit to work mentioned above, a copy of this notification; provided, that, except in agricultural and home-making occupations, it shall be illegal for any one or more employers to employ a minor under eighteen years of age for a greater number of hours each day than will, if added to the number of hours that he is compelled to attend school under the provisions of this act, equal eight hours. It is hereby made the duty of the principal of the school which any pupil subject to the provisions of this act attends, to add his hours of compulsory daily school attendance and employment, and should the sum of such school attendance and employment exceed eight hours for any day of the week, said principal shall give notification to this effect to any employer who may be employing any such pupil after he has already served eight hours in compulsory school attendance and at employment for any such day. Except in agricultural or home-making occupations, it shall be illegal for any employer knowingly to employ on any day a minor under eighteen years of age who is subject to the provisions of this act, and who has already served during said day eight hours of time in compulsory school attendance and at employment combined.

Penalty for illegal employment of minor.

§ 8. Any person, firm, corporation, agent or officer of a firm or corporation that violates or omits to comply with any of the provisions of this act, or that employs or suffers any minor under eighteen years of age who is too old to be subject to compulsory full-time school attendance under the provisions of an act entitled "An act to enforce the educational rights of children and providing penalties for the violation of the act," approved March 24, 1903, as amended, to be employed in violation thereof, is guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment for each and every offense. Failure to produce an enrollment certificate and permit to work, such as that provided for in section four of this act, and a duplicate of the written notification of employment sent to the high school board, as provided for in section seven of this act, shall be prima facie evidence of the illegal employment of any minor whose enrollment certificate and permit to work is not produced.

Action by school board.

§ 9. It shall be the duty of the clerk of the high school board, a truant officer or other person authorized by said board to bring such actions, to bring an action against

any person, firm, corporation, agent or officer of a firm or corporation that employs a minor in violation of the provisions of this act.

Settlement of controversies by school superintendent.

§ 10. Should any controversy arise in any high school district in this state over the question as to whether any person is exempt from the compulsory attendance features of this act, or over the question as to whether attendance on part-time classes maintained by other agencies may be accepted in lieu of attendance upon the classes contemplated by this act, the school superintendent having jurisdiction over said district shall provide for an investigation and he shall render a decision; provided, that should any of the parties to any such controversy not be satisfied with the decision of the superintendent of schools they may appeal from his decision to the superintendent of public instruction who shall provide for a further investigation, upon the findings of which he shall decide the matter; and provided, further, that no such instruction by other agencies shall be accepted in lieu of the instruction provided by part-time classes under the provisions of this act unless the necessary instruction is given in citizenship and in addition thereto such elementary and secondary school subjects as may be desired by the persons attending these classes or by their parents or guardians.

Certificates to pupils in full-time day schools.

§ 11. All principals of high schools and elementary schools located in high school districts, wherein the provisions of section three of this act have become operative, shall issue to all pupils enrolled in their respective schools, who are not otherwise subject to the provisions of this act, who are too old to be subject to compulsory full-time school attendance under the provisions of an act entitled "An act to enforce the educational rights of children and providing penalties for the violation of the act," approved March 24, 1903, as amended, and who are under the age of eighteen years, a combined school enrollment certificate and permit to work, similar to that provided in subdivision first of section four of this act, but modified to meet the needs of full-time day schools; and the principals of all high schools wherein reside persons under eighteen years of age who are exempt under the provisions of section three of this act shall, upon request, register such persons and shall issue to them enrollment certificates and permits to work, which shall state the causes of exemption.

Provisions of earlier acts to prevail.

§ 12. Should any of the provisions of this act be in conflict with any of the provisions of an act entitled "An act to enforce the educational rights of children and providing penalties for the violation of the act," approved March 24, 1903, as amended, or with any of the provisions of an act entitled "An act relating to the employment and hours of labor of children; prohibiting the employment of minors under certain ages; prohibiting the employment of certain illiterate minors; providing for the enforcement hereof by the commissioner of the bureau of labor statistics, and providing penalties for the violation hereof," approved February 20, 1905, as amended, said conflicting provisions of this act shall be null and void.

Disposition of fines.

§ 13. Any fine collected under the provisions of this act shall be paid into the high school fund of the high school district wherein the minor resides.

Saturday classes.

§ 14. Any high school board may maintain special part-time classes on Saturdays, and should it appear that five or more minors residing in any high school district which maintains such classes are unable to arrange with their employers for attendance upon such classes maintained on other days and other hours, the high school board of said district must provide instruction for them on Saturday afternoons.

Exemption from attendance.

Should it appear that the interest of any minor would suffer if he were compelled to attend a special part-time class under the provisions of this act, the high school board of the high school district in which said minor resides may exempt him from compulsory attendance upon any such class; provided, that any such high school board may not exempt, by authority of this section, a number of minors greater than three and in addition thereto a number which shall exceed five per cent of the total number of minors subject to compulsory attendance upon part-time classes in its district under the provisions of this act.

Said board shall cause to be issued to any such exempted minor a combined school enrollment certificate and permit to work which shall contain a statement of the cause of, and the time covered by, such exemption.

Time in effect.

§ 15. The compulsory attendance features of this act, the restrictions relating to the employment of minors under eighteen years of age, and all penalties relating thereto, shall become operative as follows: During the school year 1919-20 and thereafter they shall apply to all persons under twenty-one years of age who are subject to the provisions of this act and who can not speak, read or write the English language to a degree of proficiency equal to that required for the completion of the sixth grade of the elementary schools of this state, and they shall apply also to all other persons subject to the provisions of this act who are less than sixteen years of age. During the school year 1920-21 they shall apply also to all persons subject to the provisions of this act who are less than seventeen years of age, and during the school year 1921-22 and thereafter they shall apply also to all persons subject to the provisions of this act who are less than eighteen years of age.

Minimum attendance.

No high school board may be required to establish special part-time classes under the provisions of this act unless there are in the district twelve or more minors under eighteen years of age who reside within three miles of a high school in the district and who would become subject, under the provisions of this act, to compulsory attendance upon said classes.

SEAL BEACH.

See Act 3094, note.

SEBASTOPOL.

See Act 3094, note.

SECRETARY OF STATE.

See Kerr's Cyc. Political Code, §§ 412, 413.

SEDUCTION.

See Kerr's Cyc. Penal Code, § 266.

SELMA.

See Act 3094, note.

CHAPTER 341.

SEWERS.

References: See tits. "Municipal Corporations"; "Sanitary Districts."

CONTENTS OF CHAPTER.

- ACT 4601. SEWER DISTRICTS ADJACENT TO MUNICIPALITIES.
- 4602. SEPARATE SEWER DISTRICTS IN MUNICIPALITIES.
- 4604. SEWER DISTRICTS IN MUNICIPALITIES—ACT OF 1911—No. 1.
- 4605. SEWER DISTRICTS IN MUNICIPALITIES—ACT OF 1911—No. 2.
- 4606. VALIDATING SEWER DISTRICT No. 2, TOWN OF WILLOWS.

SEWER DISTRICTS ADJACENT TO MUNICIPALITIES.

ACT 4601—An act providing for the establishment and maintenance of sewer districts adjacent to municipal corporations.

History: Became a law under constitutional provision without governor's approval, March 8, 1899, Stats. 1899, p. 81.

Petition for formation of district. Duty of supervisors. Protest.

§ 1. It shall be the mandatory duty of the board of supervisors of any county of the state of California, whenever a petition of one-third of the resident electors of any district describing the exterior boundaries of the said district shall be presented to them, praying for the formation of a sewerage district thereof, to publish for ten days in some daily paper in the nearest municipal corporation, or if there is no daily paper, then to publish weekly for two successive weeks in a weekly paper published in the nearest municipality, a notice of such petition and a description of the exterior boundaries of the district so proposed. If within twenty days after the last such publication a protest containing the signatures of the owners of a majority of the assessed valuation of the property within such district shall be filed with said board of supervisors, then said petition shall be denied, and no part of such district shall be included within any sewer district formed within six months thereafter. If no such protest be filed as herein provided, then at the expiration of the twenty days allowed for such protest it shall be the duty of the said board of supervisors to declare such district a sewer district.

Tax levy.

§ 2. At the time of making each tax levy subsequent to the formation of said district, said board of supervisors must levy such an amount of taxes upon the taxable property of said district as shall by said board be deemed necessary for carrying out the provisions of this act and of the formation of said sewerage district, and said taxes shall be collected in the same manner as state and county taxes are collected; and said board of supervisors must provide in said levy for assessing and collecting a sufficient amount of money thereby to pay to any municipality whose sewers shall be connected with, as hereinafter provided, the amount fixed by the legislative body of said municipality, as charges for said privilege of connecting with sewerage system, and said amount must be fixed by said legislative body before the first day of March of each year, and notice thereof must be given said board of supervisors.

Powers of supervisors.

§ 3. Said board of supervisors shall have power, after the formation of said sewerage district, to lay out and construct sewers therein, and to provide for making connections with said sewer by property holders and other persons resident within said district, and for the maintenance and extension of said sewerage district as may be in their judgment required, and must compel property holders to connect all buildings therewith.

Outlet. Connection. Payment for privilege.

§ 4. Whenever a sewerage district shall be formed, as provided in this act, of territory adjacent to any municipality having a sewerage system, the sewerage system of said sewerage district must be connected with and have its outlet through the sewerage system of said municipality; provided, that no connection can be made or maintained with the sewerage system of any municipality without the consent first obtained from and expressed by the legislative body of said municipality; and when connection is made with the sewers of the municipality said board of supervisors, from the funds collected from the taxes above provided for, shall pay to said municipality annually the sum of money that shall be fixed as charges by the said board of supervisors and said legislative body of said municipality for the privilege of so connecting and maintaining connection with the sewer system thereof, and this amount may vary from year to year as the said board of supervisors and said legislative body of said municipality shall deem reasonable.

§ 5. This act shall take effect and be in force from and after its passage and approval.

SEPARATE SEWER DISTRICTS IN MUNICIPALITIES.

ACT 4602—An act to provide for separate sewer districts within municipalities.

History: Approved April 21, 1909, Stats. 1909, p. 1011.

Municipal sewer districts.

§ 1. The legislative body of any incorporated city or town may divide the territory of such municipality into two or more sewer districts, as may be made expedient by the configuration of the ground, and establish a separate sewer system for every such district.

Special sewer tax.

§ 2. The proper municipal officers may levy a special sewer tax on all the taxable property in such sewer district, and the proceeds of such tax shall be expended exclusively for the building and maintenance of the sewer system in such district.

Election for bond issue.

§ 3. After a city or incorporated town has been divided into sewer districts, an election may be held, in the manner provided for the issue of city bonds, to determine whether bonds for the building or extension of a sewer system in any such district shall be issued. At such election, only electors residing within such district shall be entitled to vote. If a majority of the electors voting at such election shall vote in the affirmative, the proper municipal officers shall issue and sell such bonds, substantially in the manner provided for the issue of city bonds. But the interest and sinking fund for the payment of such bonds shall be derived exclusively from taxes levied upon property within such district. All provisions of law relating to the payment of interest and sinking fund for city bonds shall govern, so far as applicable, the issue of sewer district bonds.

1. Act fully provides for separate sewer districts in cities.—If it be desirable to create a separate district which shall, apart from the city, bear the expense of constructing the necessary sewer, the means of so doing are fully provided by this act.—In re East Fruitvale, etc., Dist., 158 Cal. 453, 111 Pac. 368.

SEWER DISTRICTS IN MUNICIPALITIES—ACT OF 1911—NO. 1.

ACT 4604—An act to provide for the division of municipalities into sewer districts, and for the construction of, or acquisition and maintenance of sewers therein, providing a system of district sewer bonds to pay the cost of such construction of, or acquisition and also for the payment of such bonds.

History: Approved April 14, 1911, Stats. 1911, p. 904; amended May 29, 1915, in effect August 8, 1915, Stats. 1915, p. 983.

Municipalities may create sewer districts.

§ 1. The legislative body of any city, town or municipal corporation, incorporated under the laws of this state may create from time to time, as hereinafter provided, within such city, town or municipal corporation separate sewer districts whenever in the judgment of such legislative body it may be necessary or convenient for the proper sanitation and drainage of such districts to construct or acquire any sewer or sewers therein, and may designate such districts by distinctive names and numbers and may as hereinafter provided, provide for the incurring of indebtedness to pay for the cost of the construction or acquisition of sewers in such districts.

Resolution describing sewer district in city. Hearing. Plans and specifications. Election. Rate of interest.

§ 2. Whenever the legislative body of such city, town or municipal corporation shall, by resolution passed by a vote of two-thirds of all its members and approved by the executive of such municipality, determine that the public interest or convenience requires the construction of, or acquisition by purchase or otherwise of a sewer or any sewers in any part of the territory of such municipality, said legislative body shall describe in said resolution a district describing the boundaries thereof, naming and numbering the same as hereinabove provided, and declare said district to be the district benefited by said work or improvement or acquisition of such sewer, which said resolution shall name a day for the hearing of any and all objections by all or any persons interested in the formation of such sewer district or in the including of any of the lots, pieces or parcels of land within the boundaries so described in said resolution, within such sewer district, which said resolution, together with the names of the members of said legislative body, voting for and against said resolution and the name of the executive approving said resolution shall be published for at least two weeks successively next before the day fixed for said hearing in some newspaper of general circulation printed and published in such municipality. On the day fixed for said hearing, or any day to which said hearing may have been adjourned, said legislative body shall hear and consider any and all objections presented either to the formation of said sewer district or to the including of any lands in the boundaries of said sewer district, and, if, after the hearing of said objections, it shall be determined by a vote of two-thirds of all the members of said legislative body that the public interest requires the formation of such sewer district, then said legislative body shall proceed to fix and determine the boundaries thereof, making all necessary and proper changes in the boundaries as proposed and fixed in said resolution and shall, by a resolution passed by a vote of two-thirds of all its members, and approved by the executive of such municipality, establish such sewer district, permanently fix and determine the boundaries thereof, which said resolution, together with the names of the members of said legislative body voting for and against said resolution, together with the name of the executive approving said resolution, be spread upon the minutes of said legislative body. And at any subsequent meeting after the passage and recording of the said resolution, the said legislative body may, by ordinance passed by a vote of two-thirds of all of its members, and also approved by the said executive, adopt plans and specifications for the proposed sewer work, if to be constructed, and also describe the territorial district upon which the expense of such proposed sewer work or improvement, or acquisition, shall be chargeable, as hereinafter provided, and shall provide therein for a special election to be held in such city, town or municipal corporation. At such election there shall be submitted to the qualified electors of such city, town or municipal corporation the proposition of incurring indebtedness for the purposes set forth in said resolution, and no question other than the incurring of the indebtedness for such purposes shall be submitted at such special election. The ordinance calling such special election shall also recite the objects and purposes for which the proposed indebtedness is to be

incurred, the estimated cost of the proposed sewer work, improvement or sewer system to be acquired, the amount of the principal of the indebtedness to be incurred therefor, and the rate of interest to be paid on said indebtedness, and shall fix the date on which such special elections shall be held, the manner of holding such election, and the manner of voting for or against the incurring of such indebtedness. In all particulars not recited in such ordinance, such election shall be held as is provided by law for holding general municipal elections in such city, town or municipal corporation. The maximum rate of interest to be paid on such indebtedness shall be six (6%) per centum per annum, payable semi-annually. [Amendment of May 29, 1915. In effect August 8, 1915, Stats. 1915, p. 983.]

Publication of ordinance. Ordinance posted. Vote necessary to carry.

§ 3. Said ordinance shall be published once a day for five days prior to the date set for such election, in some newspaper of general circulation printed and published in such municipality, designated by the legislative body of said city, town or municipal corporation, which newspaper is published once a day for at least six days a week in such municipality, or such ordinance shall be published once a week for two weeks prior to the date set for such election, in some newspaper of general circulation, printed and published in such municipality, designated by said legislative body, and published less than six days a week in such municipality, and one insertion thereof in such last described newspaper each week for two successive weeks prior to the date set for such election by the legislative body of said city, town or municipal corporation, shall be a sufficient publication in such newspaper published less than six days a week. In municipalities where no newspaper is published, such ordinance shall be posted in three public places in the said sewer district for two successive weeks prior to the date set for such election by the legislative body of said city, town or municipal corporation. No other notice of such election need be given. It shall require the affirmative votes of two-thirds of all the aforesaid qualified electors of said city, town, or municipal corporation voting at such election, to authorize the incurring of said indebtedness and the issuance of bonds therefor as provided herein; provided, however, if the proposition so submitted at such election fail to receive the requisite number of votes of the aforesaid qualified electors of such city, town or municipal corporation, voting at such election to incur the indebtedness for the purpose specified, the legislative branch of such municipality shall have no power or authority within six months after such election to pass any ordinance calling another election for incurring any indebtedness for sewer work within any sewer district which has within its boundaries any of the territory of the district in which, at said election, the requisite number of votes for the issuance of said bonds has not been cast therefor. [Amendment of May 29, 1915. In effect August 8, 1915. Stats. 1915, p. 984.]

Bonds issued in name of city. How payable. Denominations. Coupons. Officers' signatures.

§ 4. All bonds issued under the provisions of this act shall be issued in the name of the city, town or municipal corporation in which such sewer district has been formed, and shall be payable in the following manner: A part to be determined by the legislative body of the municipality, which part shall not be less than one-fortieth part of the whole amount of such indebtedness, shall be payable each and every year on a day and date, and at a place within the United States, to be fixed by the legislative body of the city, town or municipal corporation issuing the said bonds, and designated in such bonds, together with the interest on all sums unpaid at such date, until the whole of said indebtedness shall have been paid.

The bonds shall be issued in such denominations as the legislative body of the municipality may determine, except that no bonds shall be of a less denomination than one

hundred dollars, nor of a greater denomination than one thousand dollars, and shall be payable on the day, and at the place fixed in such bonds, and with interest at the rate specified in such bonds, which rate shall not be in excess of six per cent per annum, and shall be payable semi-annually, and said bonds shall be signed by any officer of said city, town or municipal corporation designated for that purpose by the city council, board of trustees or other legislative body of such city, town or municipal corporation, by resolution adopted by a two-thirds vote of all of its members, and shall also be signed by the treasurer thereof, and shall be countersigned by the clerk of such city, town or municipal corporation. The coupons of said bonds shall be numbered consecutively and signed by the treasurer.

In case any of such officers whose signatures appear on the bonds or coupons shall cease to be such officer before the delivery of such bonds to the purchaser, such signatures or counter-signatures shall nevertheless be valid and sufficient for all purposes, the same as if such officers had remained in office until the delivery of the bonds.

Sale of bonds.

§ 5. The legislative body of the city, town or municipal corporation within whose territory such sewer district has been created as herein provided, may issue and sell said bonds at not less than their par value, and the proceeds of the sale of such bonds shall be placed in the municipal treasury to the credit of the proper sewer district fund and shall be applied exclusively to the purposes and objects mentioned in the said ordinance.

Notice of specifications; calling for bids. Certified check. Sureties. May reject bids.

May readvertise. Disposition of checks. Power to make contract. City may construct sewer. Cities under freeholder charters.

§ 6. Before the legislative body of such city, town or municipal corporation shall award the contract for doing any sewer work or improvement, the expense of which is to be paid out of the proceeds of sales of the bonds issued in accordance with the provisions of this act, said legislative body of said city, town or municipal corporation, shall cause notice with specifications to be posted conspicuously for five days on or near the chamber door of said legislative body, inviting sealed proposals or bids for doing said sewer work or improvement, and shall also cause notice of said work inviting said proposals and referring to the specifications posted or on file, to be published for two consecutive insertions in a daily, semi-weekly or weekly newspaper, published and circulated in said city, town or municipal corporation, designated by said legislative body for that purpose, and in case there is no newspaper published in said city, town or municipal corporation, then it shall only be posted as hereinbefore provided. All proposals or bids offered shall be accompanied by a check, payable to the order of the executive officer of said city, town or municipal corporation, certified by a responsible bank for an amount which shall be not less than ten per cent of the aggregate of the proposal, or by a bond for the said amount, and so payable, signed by the bidder and by two sureties who shall justify before an officer competent to administer an oath, in double such amount, and over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of said legislative body, and said legislative body shall in open session examine and publicly declare the same. Said legislative body may reject any or all proposals or bids should it deem this for the public good, and shall reject all proposals or bids other than the lowest proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the price named in his bid, which award shall be approved by the executive officer of said city, town or municipal corporation, or a three-fourths vote of the legislative body of said city, town or municipal corporation. If not approved by said executive officer or a three-fourths vote of said legislative body, with-

out further proceedings the said legislative body may readvertise for proposals or bids for the performance of the work as in the first instance, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the respective checks and bonds corresponding to the bids so rejected. But the checks accompanying such accepted proposals or bids shall be held by the clerk of said city, town or municipal corporation, until the contract for doing said work has been entered into by said lowest bidder, whose bid is accepted and approved. But if said bidder fails, neglects or refuses to enter into the contract to perform said work within ten days after said contract shall have been awarded, then the certified check accompanying his bid and the amount therein mentioned, shall be declared to be forfeited to said city, town or municipal corporation. The said legislative body shall have the right to require such bonds as they may deem adequate from the bidder to whom the contract for said work or improvement is awarded, to insure the faithful performance of said contract. Such officer of said city, town or municipal corporation as the legislative body thereof shall designate is authorized, in his official capacity, to make all written contracts and to receive all bonds authorized by this act, and is authorized to fix the time for the commencement, which shall not be more than fifteen days from the date of the contract, and for the completion of the work under all contracts entered into by him, which work shall be prosecuted with diligence from day to day until completion, and he may extend the time so fixed from time to time under the direction of said legislative body of said city, town or municipal corporation; provided, however, that nothing herein contained shall be construed as prohibiting such city, town or municipal corporation itself from constructing or completing such sewer or improvement, and buying the material, and employing the labor necessary therefor; provided, however, that this section shall not apply where sewer systems, or any part of a sewer system, already constructed has been, or is to be acquired under this act; and provided, further, that in cities, town and municipal corporations operating under a charter heretofore or hereafter framed, under section eight, article eleven of the constitution of the state of California, and providing for a board or department of public works, all the things required in this section to be done and performed by the legislative body of the municipality shall be done and performed by the board or department of public works of such city, town or municipal corporation, and in case such charter also prescribed the manner of letting and entering into contracts for the furnishing of labor, materials or supplies for the construction or completion of public works or improvements, all contracts for the construction or completion of sewer work or improvement shall be let and entered into in conformity with the provisions of such charter. [Amendment of May 29, 1915. In effect August 8, 1915, Stats. 1915, p. 985.]

Tax levy.

§ 7. The legislative body of said city, town or municipal corporation shall, at the time of fixing the general tax levy, and in the manner for such general tax levy provided, levy and collect each year upon the property situated within such sewer district formed as hereinbefore set forth, and upon such property only, and until such bonds are paid or until there shall be a sum in the treasury of such city, town or municipal corporation set apart for that purpose, sufficient to meet all sums coming due for the principal and interest on such bonds, a tax sufficient to pay the annual interest on such bonds, and also such part of the principal thereof as shall become due before the time for fixing the next general tax levy; provided, however, that if the maturity of the indebtedness created by the issue of said bonds or any part thereof be made to begin more than one year after the date of the issuance of such bonds, such tax shall be levied and collected at the time and in the manner aforesaid annually, each year, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, on or before the payments

herein provided for, shall become due. The taxes herein required to be levied and collected shall be in addition to all other taxes levied for municipal purposes, and shall be collected at the time, and in the manner, as other municipal taxes are collected, and shall be used for no other purpose than the payment of the sum or sums of money due on said bonds and the accruing interest thereon.

Duty of city legislative bodies to make regulations, etc.

§ 8. It shall be the duty of the legislative body of every city, town or municipal corporation, wherein sewer work or improvement is being made or acquired under the provisions of this act, to make all needful rules and regulations for carrying out and maintaining such sewer work or improvement, to appoint all needful agents, superintendents and engineers to properly look after the construction and operation of such sewers; provided, that in cities, towns and municipal corporations operating under a charter heretofore or hereafter framed under section 8, of article XI of the constitution of the state of California, and having a board or department of public works, all the matters and things required in this section to be done and performed by the legislative body of the municipality shall be done and performed by the board or department of public works of such city, town or municipal corporation.

This act provides alternate system. Sewer defined.

§ 9. This act shall in nowise affect any other act by the provisions of which sewer work or improvement may be done within or by any city, town or municipal corporation, but it is intended to and does provide an alternate system of proceedings for sewer work and improvements, and it shall be within the discretionary powers of the legislative body of any city, town or municipal corporation to proceed in making such improvements either under the provisions of this act, or under the provisions of any other act. But when any proceedings are commenced under this act the provisions of this act and such amendments thereto as may hereafter be adopted, shall thereafter apply to all work done under such proceedings until the completion thereof. If, after certain sewer work or improvement has been done or sewers acquired under provisions of this act, the legislative body of any city, town or municipal corporation shall deem it necessary or convenient to construct or acquire any additional sewer or sewers, it shall be within the discretionary powers of the legislative body of any city, town or municipal corporation to proceed in making such improvement either under the provisions of this act or under the provisions of any other act relative thereto. But any provisions contained in any other acts in conflict with the provisions hereof shall be void as to, and of no effect upon, proceedings commenced under the provisions of this act, except as herein provided.

The word "sewer," as used in this act, shall be deemed to, and is hereby declared to, include sewers for sanitary or drainage purposes, drains or conduits for surface or storm waters, and the outlets therefor.

§ 10. This act shall take effect immediately.

SEWER DISTRICTS IN MUNICIPALITIES—ACT OF 1911—NO. 2.

ACT 4605—An act to authorize the legislative body of a municipality to create sewer districts within its boundaries, provide a system of sewer bonds for the construction of sewers therein, and to provide for the payment of said bonds.

History: Approved February 13, 1911, Stats. 1911, p. 40.

1. Constitutionality—Violates due process.—The act is unconstitutional and void as in violation of the due process clause of the state and federal constitution, in that it makes no provision for a notice to property owners or a hearing.—*Brookes v. Oakland*, 160 Cal. 423, 117 Pac. 433.

VALIDATING SEWER DISTRICT NO. 2, TOWN OF WILLOWS.

ACT 4606—An act validating the formation and organization and fixing the boundaries of sewer district number two, organized under the provisions of an act of the legislature of the state of California, approved May 20, 1915 "An act to provide for the divisions of municipalities in the sewer districts and for the construction of, or acquisition and maintenance of sewers therein, providing a system of district sewer bonds to pay the cost of such construction of, or acquisition and also for the payments of such bonds."

History: Approved May 11, 1919. In effect July 22, 1919. Stats. 1919, p. 463.

Sewer district number two of Willows validated.

§ 1. Sewer district number two of the town of Willows, county of Glenn, state of California, organized, formed and established under the provisions of an act of the legislature of the state of California, approved April 14, 1911, amended May 29, 1915, and entitled as amended, "An act to provide for the divisions of municipalities into sewer districts and for the construction of, or acquisition and maintenance of sewers therein providing a system of district sewer bonds to pay the cost of such construction of, or acquisition and also for the payment of such bonds," and all proceedings in the matter of the organization, formation or establishment of such district, and the boundaries established by the trustees of the said town of Willows are hereby validated and said district in all respects declared valid; and the boundaries of said district are established as follows, to wit:

Boundaries.

Beginning at a point on the section line between sections four and nine, township nineteen north, range three west, M. D. M. nine hundred forty-seven and one-tenth feet more or less east of the corner common to sections four, five, eight and nine, this point also being the intersection of the center line of Wood street with the east line of Villa avenue, thence east along said section line to the quarter corner between sections four and nine, thence north on the half section line dividing section four to the south line of Green street, thence east along said south line to the west line of Eureka street, thence southerly along said west line of Eureka street and the west side of Tehama street to the south line of French street, thence west along said south line to the center line of Murdock avenue, thence south along said center line to the intersection with the section line between sections four and nine, thence west along said section line twenty-seven feet more or less to the intersection with the east line of Murdock avenue prolonged from the south, thence south along said east line of Murdock avenue to the south line of Laurel street, thence south along the same line prolonged to the intersection with the half section line running east and west through section nine, thence east along said half section line to the west right of way line of the Southern Pacific railroad, thence north along said west right of way line forty feet, thence east to the west line of Sacramento street, thence northeasterly parallel to the westerly right of way line of the Central canal to the east line of Sacramento street, thence north along said east line to the point of intersection with the section line between sections three and ten, thence east along said section line to the intersection with the east line of the alley running north and south through block forty-six, Pittsburgh Addition to the town of Willows, prolonged from the south, thence south along said east alley line to the north line of Willow street, thence east along the said north line to the east line of Ventura street, thence south along said east line to the north line of the alley running east and west through block forty-eight, thence east along said north alley to the west line of Alpine street, thence south along said west line to the north line of Walnut street, thence east along said north line to the west line of Sierra street, thence south

along said west line to the south line of Walnut street, thence east along said south line to the intersection with the westerly right of way line of the Central canal, thence meandering southwesterly along said right of way line to the intersection with the half section line running east and west through section ten, thence west along said half section line to the intersection with the east right of way line of the Southern Pacific railroad, thence south along said east right of way line ten feet, thence west one hundred feet more or less to a point on the west right of way line of said railroad, thence south along said west right of way line to the north line of Cedar street, thence west along said north line to the west line of Tehama street, thence south along said west line to the north line of Elm street, thence west along said north line of Elm street to the east line of Marshall avenue, thence north along said east line of Marshall avenue and the same prolonged north to the south line of Laurel street, thence west along said south line to the east line of Villa avenue, thence north along said east line of Villa avenue to the place of beginning.

CHAPTER 342.

SHASTA COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3953.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

- ACT 4613. TRANSCRIBING RECORDS.
- 4614. AUTHORITY TO SIGN CERTAIN RECORDS.
- 4619. COMPENSATION OF JURORS.
- 4620. INCORPORATION OF TRAMROAD COMPANIES.

TRANSCRIBING RECORDS.

ACT 4613—An act to transcribe certain records of the county of Shasta.

History: Approved March 13, 1862, Stats. 1862, p. 52. Amended February 21, 1863, Stats. 1863, p. 21.

AUTHORITY TO SIGN CERTAIN RECORDS.

ACT 4614—An act to authorize Grant I. Taggart, former county recorder of Shasta county, to certify and sign certain records.

History: Approved March 25, 1876, Stats. 1875-76, p. 487.

This act authorized Taggart to transcribe all records he may have omitted to sign.

COMPENSATION OF JURORS.

ACT 4619—An act fixing the compensation of grand and trial jurors in counties of the twenty-eighth class.

History: Approved May 28, 1917. In effect July 27, 1917. Stats. 1917, p. 1025.

Fees of jurors, counties of 28th class.

§ 1. Grand jurors or trial jurors in criminal cases in the superior court shall receive, as compensation for each day's attendance, per day three dollars, and for each mile actually traveled in attending court as a grand juror or juror at a criminal case, in the superior court in going only, per mile fifteen cents. The county clerk shall certify to the auditor the number of days' attendance and the number of miles traveled by each juror, and the auditor shall draw his warrant for the amount to which each juror is entitled, and the treasurer shall pay the same.

INCORPORATION OF TRAMROAD COMPANIES.

ACT 4620—An act providing for incorporation of tramroad companies in Shasta county.

History: Approved March 30, 1872, Stats. 1871-72, p. 800.

CHAPTER 343.

SHASTA, TOWN OF.

CONTENTS OF CHAPTER.

ACT 4623. HOGS RUNNING AT LARGE.

HOGS RUNNING AT LARGE.

ACT 4623—An act to prevent hogs from running at large.

History: Approved February 26, 1872, Stats. 1871-72, p. 157. Amended March 27, 1878, Stats. 1877-78, p. 585.

See tits. "Estrays"; "Trespassing Animals."

The amendment of 1878 extended the act to Redding in Shasta County, and Modesto in Stanislaus County.

CHAPTER 344.

SHEEP.

References: See tits. "Estrays"; "Licenses"; "Livestock"; "Trespassing Animals."

Editor's note.—The following résumé of the legislation on the subject of restricting the herding of sheep is given in lieu of the acts themselves, in view of the fact that little or none of it remains in force:

Stats. 1857, 227, restricting herding of in Sonoma and Marin counties.

Stats. 1858, 165.—§1 of above was amended so as to include the counties of Sonoma, Marin, San Mateo, Santa Clara, Sutter, Tulare, San Bernardino, Los Angeles, Contra Costa, Alameda, San Joaquin, Placer, Colusa, Stanislaus, Calaveras, Yolo, Sacramento, Humboldt, Monterey, Merced, and San Luis Obispo.

Stats. 1859, 119.—§1 was amended so as to further include the counties of Solano, Mariposa, and Napa.

Stats. 1860, 332.—§1 was amended by adding Mendocino County, and §5 was amended by providing that nothing in the act should be construed to prohibit the herding of sheep upon unoccupied government or state public lands, with a proviso relating to Mendocino, Calaveras, Yuba, and Merced counties.

Stats. 1861, 501, an act to protect sheep and lambs from dogs, and other animals. It was amended by Stats. 1869-70, p. 223, and now appears in the code. See Kerr's Cyc. Civil Code, § 3341.

Stats. 1869-70, 304.—§§ 1 and 5 were again amended relative to the particular counties to which the provisions of the statute should apply. As to Modoc County, see Stats. 1877-78, 241.

Stats. 1871-72, 890.—§§ 1 and 5, as amended in 1869-70, are amended by change in names of some of the counties to be affected.

Stats. 1877-78, 79.—The foregoing acts are

As to effect upon this class of legislation of general stray laws, see editor's note to chapter on "Estrays."

repealed as to the counties of Mendocino and Humboldt, and apparently leaving the act in force in the counties of Sonoma, Solano, Marin, San Mateo, Sutter, Santa Clara, San Bernardino, Los Angeles, Contra Costa, Alameda, San Joaquin, Placer, Colusa, Stanislaus, Calaveras, Yolo, Sacramento, Humboldt, Monterey, Merced, San Luis Obispo, Mariposa, Napa, Mendocino, and Shasta, with the proviso concerning public lands, as applicable to Mendocino, Calaveras, Merced, and Shasta counties.

There may be some special legislation, affecting particular counties, on the subject of herding sheep still in force, but the subject is sufficiently indefinite, and so peculiarly local, that these are omitted in this publication.

Stats. 1861, 523, a general act restricting the herding of sheep. It was amended by Stats. 1865-66, 56, so as to apply to Los Angeles County though the reason for such special application is not apparent, in view of its general application. A close study of all special acts of a later date would be necessary to determine whether any of it remains in force.

Stats. 1862, 490.—An act limited to Mendocino, Lake, Sonoma, and Marin counties, having for its object the restriction of sheep-herding.

Stats. 1865-66, 225.—An act to protect sheep and Cashmere and Angora goats from dogs. This act was superseded if not actually codified. See Kerr's Cyc. Civil Code, § 3341.

CONTENTS OF CHAPTER.
ACT 4635. ERADICATION OF SCABIES.

ERADICATION OF SCABIES.

ACT 4635—An act providing for the eradication of the disease known as scabies in sheep; providing for the duties of the state veterinarian in relation thereto; making certain acts in relation to sheep infected with such disease a misdemeanor; providing for a lien against such sheep for expenses and costs in the extermination of such disease; making certain persons liable for a violation of this act, and providing for the enforcement of said lien.

History: Approved February 23, 1909, Stats. 1909, p. 53.

Sale of infected sheep a misdemeanor.

§ 1. Any person who shall knowingly sell, offer for sale, or expose in such a manner as may infect other sheep not so infected any sheep infected with the disease known as scabies shall be guilty of a misdemeanor.

Sheep infected or exposed to infection to be dipped.

§ 2. Whenever, upon examination of any sheep located in any county of the state of California, the state veterinarian or his duly authorized deputy shall find such sheep or any portion of them to be infected with or to have been exposed to infection from the disease known as scabies he shall forthwith notify in writing the owner or person in control of said sheep to dip all of said sheep in a manner as directed by said officer for the purpose of eradicating said disease. Such owner or person in control of said sheep shall, within a period of ten days after receiving such notice, dip all of said sheep in a manner as directed by said officer.

Failure of owner to dip. Proceedings.

§ 3. If, upon the expiration of ten days from the date on which notice was given to dip sheep as provided for in section two of this act, the owner or person in control of said sheep has failed to dip such sheep in accordance with the directions of said state veterinarian or his duly authorized deputy as also provided for in section two of this act, then said officer shall immediately take possession of said sheep and proceed to eradicate said disease of scabies by dipping said sheep one or more times as may be necessary.

Examination of infected flock. Duty of owner.

§ 4. Whenever the state veterinarian or his duly authorized deputy has reason to believe that the disease known as scabies exists in a flock of sheep he shall notify the owner or person in control of such sheep to gather all of said sheep in a corral in order that such sheep may be examined and inspected by said officer for the purpose of ascertaining if any or all of said sheep are infected with scabies. And if such owner or person in control of said sheep refuses or neglects to gather all of said sheep in a corral for the purposes aforesaid, it shall be the duty of said officer to gather said sheep in a corral for the purposes aforesaid; and for this purpose he is hereby authorized and empowered to hire such necessary help as may be required to gather said sheep.

Cost of dipping.

§ 5. All expenses and costs of dipping sheep as provided for in section three of this act, and all expenses and costs incurred in gathering sheep as provided for in section four of this act, shall become and remain a lien on said sheep until such lien is paid or foreclosed by law.

Of actions for costs.

§ 6. If such lien is not paid within fifteen days after said expenses and costs have been incurred the state veterinarian shall, in the name of the people of the state of

California, commence an action to foreclose said lien. Such action shall be commenced, tried, and determined in all respects as provided in the Code of Civil Procedure for the foreclosure of mortgages on personal property.

Who liable.

§ 7. In any action or proceeding, civil or criminal, arising under this act, any and all persons having an interest in the sheep or in control or possession of the same, and concerning which sheep such action or proceeding is had, shall be liable severally and jointly for each violation of the provisions of this act.

§ 8. This act shall take effect and be in force immediately.

SHERIFFS.

See Kerr's Cyc. Political Code, §§ 4046, 4175, 4176.

SHERMAN ISLAND.

See Kerr's Cyc. Political Code, § 4041, subd. 34.

CHAPTER 345.

SIERRA COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3954.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CHAPTER 346.

SIERRA IRON COMPANY.

CONTENTS OF CHAPTER.

ACT 4666. CONSTRUCTION OF ROAD AUTHORIZED.

CONSTRUCTION OF ROAD AUTHORIZED.

ACT 4666—An act granting to the Sierra Iron Company the right to construct a road in Sierra and Plumas counties.

History: Approved March 11, 1874, Stats. 1873-74, p. 341.

SIERRA MADRE.

See Act 3094, note.

CHAPTER 347.

SILK CULTURE.

CONTENTS OF CHAPTER.

ACT 4672. STATE BOARD OF SILK CULTURE.

STATE BOARD OF SILK CULTURE.

ACT 4672—An act to establish a state board of silk culture, and to provide moneys for the expenses thereof.

History: Approved March 18, 1885, Stats. 1885, p. 216. Prior act of March 15, 1883, Stats. 1883, p. 369, superseded by the present act.

CHAPTER 348.

SISKIYOU COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3955.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

Marks and brands, see Kerr's Cyc. Political Code, §§ 3167, et seq.

CONTENTS OF CHAPTER.

ACT 4679. MARKS AND BRANDS.

MARKS AND BRANDS.

ACT 4679—An act concerning marks and brands in the county of Siskiyou.

History: Approved March 20, 1866, Stats. 1865-66, p. 332. Continued in force by the code, see Kerr's Cyc. Political Code, § 19; Kerr's Cyc. Penal Code, § 23.

SISSON.

See Act 3094, note.

SMITH RIVER.

See Kerr's Cyc. Political Code, § 2349.

CHAPTER 349.

SOLANO COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3956.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

County seat, see Kerr's Cyc. Political Code, § 3956.

CONTENTS OF CHAPTER.

ACT 4695. IRRIGATION AND NAVIGATION CANAL.

4698. BRANCH JAIL.

4704. LEGALIZING CERTAIN RECORDS.

4705. TRANSCRIBING CERTAIN RECORDS.

IRRIGATION AND NAVIGATION CANAL.

ACT 4695—An act to develop agricultural interests and aid the construction of a canal in Colusa, Solano, and Yolo counties.

History: Approved March 26, 1866, Stats. 1865-66, p. 451.

BRANCH JAIL.

ACT 4698—An act for the establishment and maintenance of a branch county jail, in the county of Solano.

History: Approved March 29, 1876, Stats. 1875-76, p. 530.

LEGALIZING CERTAIN RECORDS.

ACT 4704—An act to legalize certain records in the county of Solano.

History: Approved March 31, 1857, Stats. 1857, p. 159.

TRANSCRIBING CERTAIN RECORDS.

ACT 4705—An act authorizing and empowering the county recorder of Solano county to transcribe certain records, and to legalize the same.

History: Approved March 3, 1859, Stats. 1859, p. 66.

CHAPTER 350.

SOLDIERS AND SAILORS.

CONTENTS OF CHAPTER.

- ACT 4711. RIGHT TO PEDDLE WITHOUT LICENSE.
 4712. BURIAL OF INDIGENT SOLDIERS, SAILORS AND MARINES.
 4712a. CARE OF GRAVES OF SOLDIERS, SAILORS AND MARINES.
 4713. HOME FOR SOLDIERS' WIDOWS AND ORPHANS AND ARMY NURSES.
 4714. PREFERENCE IN PUBLIC SERVICE.
 4714a. AUDITING CLAIMS OF VETERANS OF INDIAN WARS.
 4716. SOLDIERS' EMPLOYMENT AND READJUSTMENT COMMITTEE.
 4717. COUNTY RELIEF FOR INDIGENT SOLDIERS, ETC.

RIGHT TO PEDDLE WITHOUT LICENSE.

ACT 4711—An act permitting all ex-Union soldiers and sailors of the Civil War, honorably discharged from the military or marine service of the United States, the right to vend, hawk and peddle goods, wares, fruits or merchandise not prohibited by law, in any county, town, village, incorporated city or municipality in the state of California, without paying a license.

History: Approved March 20, 1905, Stats. 1905, p. 307.

Ex-Union soldiers to peddle, etc., goods.

§ 1. That on and after the passage of this act all ex-Union soldiers and sailors, honorably discharged from the military or marine service of the United States, shall be permitted to vend, hawk, and peddle goods, wares, fruits or merchandise not prohibited by law, in any county, town, village, incorporated city or municipality within this state without a license: provided, said soldier or sailor is engaged in the vending, hawking and peddling of the goods, wares, fruits or merchandise for himself only.

To receive license without charge.

§ 2. Upon the presentation of his certificate of discharge to the license collector of any county, town, village, incorporated city or municipality in this state, and showing proofs of his identity as the person named in his certificate of honorable discharge, the license collector shall issue to said ex-Union soldier or sailor a license, but such license shall be free, and said license collector shall not collect or demand for the county, town, village, incorporated city or municipality any fee therefor; provided, that nothing in this act shall authorize said soldiers or sailors to sell intoxicating liquors.

§ 3. This act shall take effect and be in force from and after its passage.

BURIAL OF INDIGENT SOLDIERS, SAILORS AND MARINES.

ACT 4712—An act to provide for the burial of ex-Union soldiers, sailors and marines dying without leaving sufficient means to defray burial expenses.

History: Approved March 15, 1889, Stats. 1889, p. 198. Amended (1) March 23, 1901, Stats. 1901, p. 596; (2) March 24, 1911, Stats. 1911, p. 479; (3) May 28, 1913, in effect August 10, 1913, Stats. 1913, p. 330; (4) March 21, 1917, in effect July 27, 1917, Stats. 1917, p. 17; (5) May 19, 1917, in effect July 27, 1917, Stats. 1917, p. 749.

Soldiers, sailors and marines may be buried at county expense.

§ 1. It shall be the duty of the board of supervisors of each county in this state to designate a proper person in the county, who shall be an honorably discharged soldier, sailor or marine who shall have served in the army or navy of the United States, whose duty it shall be to cause to be decently interred the body of any honorably discharged soldier, sailor or marine who shall have served in the army or navy of the United States, or the widow of any such honorably discharged soldier, sailor or marine, who

may hereafter die without having sufficient means to defray funeral expenses. Such burial shall not be made in any cemetery or burial ground, or any portion of such cemetery or burial ground, used exclusively for the burial of the pauper dead. The expenses of each burial shall not exceed the sum of seventy-five dollars. [Amendment of May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 749.]

This section was also amended March 23, 1901, Stats. 1901, p. 596; March 24, 1911, Stats. 1911, p. 479; March 21, 1917, Stats. 1917, p. 17.

A county charge.

§ 2. The expenses of such burial shall be paid by the county in which said soldier, sailor or marine, or the widow of any such honorably discharged soldier, sailor or marine, dies; but if such deceased person has a residence in any other county in this state than the one paying the expenses, the county wherein said soldier, sailor or marine, or the widow of such soldier, sailor or marine shall have resided, shall refund the money advanced by the county where such person died. Expenses of such burial shall be audited and paid as other accounts are audited and paid by the county; provided, that this act shall not apply to such soldiers, sailors or marines who may hereafter die in the national or state soldiers' home in this state. [Amendment approved March 24, 1911, Stats. 1911, p. 479.]

This section was also amended March 23, 1901, Stats. 1901, p. 596.

Duty of person appointed.

§ 3. It shall be the duty of the person appointed, as provided in section 1 of this act, before he assumes the charge and expenses of any such burial, to first satisfy himself, by a careful inquiry into and examination of all the circumstances in the case, that the family of such deceased soldier, sailor or marine, if said person had any at the time of his decease residing in such county, is unable for want of means to defray the expenses of such burial or funeral; and if he finds such inability to exist he shall cause such deceased soldier, sailor or marine, or the widow of such soldier, sailor or marine, to be buried as provided in this act, and he shall immediately report his action to the clerk of the board of supervisors of the county, stating forthwith, all the facts, and that he found the family of such deceased person, if he had any, in indigent circumstances, and unable to pay the expenses of such funeral or burial, together with the name, rank, and command to which he belonged as such soldier, sailor or marine, the date of his death, place where buried, and his occupation while living, and also an itemized statement of the expenses incurred by reason of such burial. [Amendment approved March 24, 1911, Stats. 1911, p. 480.]

This section was also amended March 23, 1901, Stats. 1901, p. 596.

Record of deceased soldiers. Headstones.

§ 4. It shall be the duty of the clerk of the board of supervisors, upon receiving the report and statement of expenses provided for in this act, to transcribe in a book kept for that purpose, all the facts contained in such report respecting such deceased soldier, sailor or marine, or the widow of such soldier, sailor or marine. It shall also be the duty of said clerk, upon the death and burial of any such soldier, sailor or marine, to make application to the proper authorities under the government of the United States, for a suitable headstone, as provided by act of congress and to cause the same to be placed at the head of such soldier, sailor or marine's grave, the expenses of which shall not exceed the sum of five dollars for cartage and properly setting each stone, and it shall be the duty of the board of supervisors to perpetually maintain suitably and properly each grave of any such soldier, sailor or marine whether so marked by a headstone prior to the passage of this act or subsequent thereto. The expenses thus incurred

shall be audited and paid as provided in section two of this act for burial expenses. [Amendment of May 19, 1917. In effect July 27, 1917. Stats. 1917, p. 749.]

This section was also amended March 23, 1901, Stats. 1901, p. 596; March 24, 1911, Stats. 1911, p. 480; May 28, 1913, Stats. 1913, p. 330.

To receive no compensation.

§ 5. The person appointed as provided in section 1 of this act shall not receive any compensation for any duties he may perform in compliance with this act. [Amendment approved March 24, 1911, Stats. 1911, p. 480.]

This section was also amended March 23, 1901, Stats. 1901, p. 586.

CARE OF GRAVES OF SOLDIERS, SAILORS AND MARINES.

ACT 4712a—An act to provide for the care of the graves of soldiers, sailors and marines of the United States of America whose remains are buried in certain cemeteries.

History: Approved May 11, 1917. In effect July 27, 1917. Stats. 1917, p. 422.

Care of graves of soldiers, sailors and marines.

§ 1. Wherever in any place of burial of human remains, which is now or which may hereafter be established or organized by or under the authority of the board of supervisors of a county, or city and county, of this state, or by or under the authority of the board of trustees, city council or other governing body of a municipality in this state, as a cemetery or place of burial of human remains, there is or shall be any known grave of a former soldier, sailor or marine of the United States of America (who was not dishonorably discharged from the service of said United States), it is hereby made the duty of the trustees or other officers who are or may be hereafter vested by law with the power to manage such cemetery or place of burial, to keep such grave properly marked and identified, and free from weeds and rubbish, and to keep in decent order and repair and free from defacement, injury and unlawful markings any tomb, monument, gravestone, wall or other appurtenance appertaining to such grave.

Tax levy.

§ 2. It is hereby made the duty of such officers who are charged or who may hereafter be charged by law with the official power to raise money by taxation for maintaining any such cemetery or place of burial, to include in the tax levy for such purposes sufficient to raise the amount necessary to comply with the requirements of this act.

HOME FOR SOLDIERS' WIDOWS AND ORPHANS, AND ARMY NURSES.

ACT 4713—An act to provide for the building and furnishing of the home for soldiers' widows and orphans and army nurses, and for the state to inquire into the management of such institution by a uniform rule proportioned to the number of inmates in said institution, for the management of the same, and for the support of indigent persons residing in the said home.

History: Approved May 16, 1889, Stats. 1889, p. 206. Amended March 31, 1891, Stats. 1891, p. 428.

PREFERENCE IN PUBLIC SERVICE.

ACT 4714—An act to provide for, insure, and maintain preference in the appointment, employment, and retention in the public service, and upon public works of the state of California, of honorably discharged ex-Union soldiers, sailors and marines of the war of the rebellion.

History: Approved March 31, 1891, Stats. 1891, p. 289.

Honorably discharged Union soldiers and sailors preferred in employment.

§ 1. In every department, upon all public works, whether under contract or not, in all offices, employments, places and positions of trust or profit of this state, honorably discharged ex-Union soldiers, sailors and marines of the war of the rebellion must be preferred for appointment, employment and retention therein; and age, loss of limb or other physical impairment which does not in part incapacitate, shall not be deemed to disqualify them; provided, they possess the capacity necessary to fill the position; and persons thus preferred or appointed, unless appointed or employed for a definite statutory period, shall not be dismissed from such positions, offices or employments, except upon charges after a hearing and for just cause.

§ 2. This act shall take effect immediately.

1. **Requisite contents of petition for mandate to compel appointment.**—In a proceeding for writ of mandate to compel a school board to appoint to the position of janitor of a high school building an ex-Union soldier, the petition must show that such soldier was the only man within the provisions of the act desiring the appointment.—Allison v. Board of Education, 125 Cal. 72, 57 Pac. 673.

AUDITING CLAIMS OF VETERANS OF INDIAN WARS.

ACT 4714a—An act to provide for the auditing and examination of claims against the state of soldiers who served in the Indian wars in California.

History: Approved March 31, 1897, Stats. 1897, p. 250.

SOLDIERS' EMPLOYMENT AND READJUSTMENT COMMITTEE.

ACT 4716—An act to create a state committee on soldiers' employment and readjustment to assist in securing re-employment for soldiers, sailors, marines, and others, who have served with the armed forces of the United States during the European war; to provide a state agency to co-operate with all federal, state, county and municipal officials and agencies having a like object, and to authorize said committee to aid in the expeditious allowance and payment of all allotments and allowances provided for by law for the protection of said soldiers and the maintenance of their dependents, and to make appropriations for the purposes of this act.

History: Approved January 24, 1919. In effect immediately. Stats. 1919, p. 4.

State committee on soldiers' employment and readjustment created.

§ 1. There is hereby created a state committee on soldiers' employment and readjustment to consist of nine members who shall be appointed by the governor to serve at his pleasure.

Powers and duties of committee.

§ 2. The state committee on soldiers' employment and readjustment shall assist in securing employment for soldiers, sailors, marines, and others, who have served with the armed forces of the United States during the European war; and, shall likewise have power to co-operate with all federal, state, county and municipal officials and agencies having a like object in so dealing with such problems and in the securing of said employment for said soldiers, sailors, marines, and others, who have served with the armed forces of the United States during the European war; and to stimulate and co-ordinate public and private assistance and to encourage and develop federal, state, municipal and private industrial and constructive enterprises in the meeting of these problems; and said committee shall likewise be authorized and empowered to aid in the expeditious allowance and payment of all allotments and allowances provided for by law for the protection of said soldiers and the maintenance of their dependents.

Activities of state council of defense transferred.

§ 3. This committee shall succeed to all the activities of the state council of defense, and said state council of defense is hereby authorized and instructed to deliver all of its records, files and property to said committee.

Expenses.

§ 4. Members of the state committee on soldiers' employment and readjustment shall serve without pay, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duty hereunder.

Appropriation. Term.

§ 5. For the purposes of this act fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the state treasury not otherwise appropriated. Claims against such appropriation shall be approved by the chairman of the state committee on soldiers' employment and readjustment, and when so approved shall be audited and paid in the manner provided by law. The term of said state committee on soldiers' employment and readjustment shall expire not later than January 31, 1921, A. D.

Urgency measure.

§ 6. Inasmuch as the United States military and naval forces are being demobilized, and those entering from the state of California are suddenly returning in very great numbers to their homes, without provision for their re-employment or other readjustment to civil life, it is hereby declared that this act is an emergency measure, necessary for the immediate preservation of the public health, peace and safety, and that under the provisions of section one of article four of the state constitution an urgency exists, and this act shall take effect immediately.

COUNTY RELIEF FOR INDIGENT SOLDIERS, ETC.

ACT 4717—An act providing for the relief by counties or cities of indigent persons who have been honorably discharged from any branch of the United States army or navy or the American Red Cross, and their families, to be administered through certain organizations organized for that purpose.

History: Approved May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 275.

County relief to indigents discharged from United States service or Red Cross.

§ 1. The board of supervisors of any county in the state is hereby authorized to grant financial assistance, relief and support to indigent persons who have been honorably discharged from any branch of the United States army or navy, or the American Red Cross, and who have served in any war in which the United States has been engaged, such assistance, relief and support to be administered through and by any military, naval or marine organization now existing or hereafter created for the purpose of aiding, relieving and supporting such indigent persons under the terms and conditions set forth in this act.

Statement by organizations giving assistance.

§ 2. Any organization desiring to assist the persons mentioned in section one hereof, shall first file with the board of supervisors of the county in which it is operating or intending to operate, a verified statement setting forth the following matters, to wit:

1. Objects and purposes of the organization, one of which must be the purpose mentioned in section one hereof.
2. Date of organization.
3. Names and addresses of officers and relief committee.

4. Name and address of the treasurer or financial officer in charge of the receipt and disbursement of funds.

5. Number of members.

6. Financial condition showing total assets and liabilities.

7. Statement that financial assistance for persons mentioned in section one hereof to be administered in accordance with the provisions of this act, will be asked for.

Consideration of statement.

§ 3. Upon the filing of the said statement the board of supervisors shall set a day not more than ten days from the date of such filing, upon which said statement shall be considered and at least five days notice thereof shall be given by mail to the clerk or secretary of said organization.

Resolution of supervisors.

§ 4. Upon the day set, the board of supervisors shall, after hearing any evidence that may be presented, determine by resolution entered upon its minutes whether or not the said organization is qualified to carry out the provisions of this act. Such resolution shall be effective only for a period of one year and may be revoked at any time.

Treasurer of organization to give bond.

§ 5. No money shall be given to any person under this act except to the treasurer or financial officer of the — organization, whose name shall be stated in subdivision four of the statement mentioned in section two hereof, and such treasurer or financial officer shall, before receiving any money hereunder file with the board of supervisors a good and sufficient bond or undertaking signed by at least two sureties, in an amount to be fixed by the board of supervisors; said bond shall inure to the benefit of the county and shall be conditioned upon the faithful and honest administration of the funds entrusted to said officer in accordance with the provisions of this act.

Warrant for relief upon request of organization.

§ 6. Upon receipt of a request from any organization qualified under this act, giving the names of all persons for whom relief is desired, together with the branch of service, division, regiment and company or other unit or designation by which each of such persons may be identified, and a further statement that the circumstances of each of such persons has been personally investigated by the relief committee of such organization, and that each of such persons is in all respects worthy and entitled to relief hereunder, the board of supervisors may direct the county auditor to draw his warrant upon the county treasurer for the amount specified therein, or a less amount, and such warrant shall be delivered to the treasurer or financial officer of said organization.

Money not to be used for overhead expenses.

§ 7. All money paid out by any county under this act shall be used by the organization receiving it exclusively for the relief of persons mentioned in section one hereof and no part of it shall ever be used for administration or overhead expenses; provided, however, that the indigent and dependent widow, minor child, father or mother of any of said persons may be granted relief by said organization out of said money; provided, further, that the necessary expenses, not to exceed seventy-five dollars for burial or cremation of any deceased person mentioned in section one hereof, may be paid out of such money.

Money taken from general fund or raised by tax levy.

§ 8. The money necessary to carry out the provisions of this act may be taken from the general fund of the county, or the board of supervisors in its discretion may levy

a special tax not to exceed one-half cent on the one hundred dollars of the assessed valuation of all property within the county to carry out said purposes.

Assistance by city.

§ 9. Any municipal corporation may extend assistance to any organization under this act, and in such case all proceedings required to be had before the board of supervisors of the county shall be had before the legislative body of such city, and the words "board of supervisors," "county," "county auditor" and "county treasurer" wherever used in this act shall be deemed to mean "legislative body," "city," "city auditor" and "city treasurer" respectively.

CHAPTER 351.

SONOMA CITY.

Reference: Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.

- ACT 4722. SALE OF PUEBLO LANDS.
- 4723. CONFIRMATION OF CERTAIN SALES OF PUEBLO LANDS.
- 4724. BOARD OF COMMISSIONERS OF THE PUEBLO.
- 4725. BEAR FLAG MONUMENT.

SALE OF PUEBLO LANDS.

ACT 4722—An act to empower and authorize the commissioners of the former pueblo or city of Sonoma to sell and convey a portion of the lands known as the pueblo grant of Sonoma.

History: Approved March 4, 1872, Stats. 1871-72, p. 239.

CONFIRMATION OF CERTAIN SALES OF PUEBLO LANDS.

ACT 4723—An act to confirm and legalize the acts and proceedings of any and all of the mayors, common councils, alcaldes, and justices of the peace of the pueblo of Sonoma.

History: Approved March 28, 1870, Stats. 1869-70, p. 413.

BOARD OF COMMISSIONERS OF THE PUEBLO.

ACT 4724—An act to establish a board of commissioners for the former pueblo or city of Sonoma, and other matters relating thereto, to define the powers and duties of said commissioners, and to repeal all other acts relating to the said pueblo or city, the provisions of which are inconsistent with the provisions of this act.

History: Approved March 30, 1868, Stats. 1867-68, p. 576. Amended March 29, 1878, Stats. 1877-78, p. 633. By the later act of March 4, 1881, Stats. 1881, p. 25, new commissioners were appointed to carry out the provisions of the present act, and the acts of the former commissioners thereunder were validated.

BEAR FLAG MONUMENT.

ACT 4725—An act appropriating the sum of \$5000 for the erection of a monument to commemorate the raising of the bear flag in the city of Sonoma.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1165.

Appropriation: bear flag monument.

§ 1. The sum of \$5000 is hereby appropriated out of any funds in the state treasury not otherwise appropriated for the purpose of erecting a monument to commemorate the raising the bear flag on the spot where the flag was raised in the city of Sonoma.

said sum to be expended by the bear flag monument committee of Sonoma Parlor No. 111, Native Sons of the Golden West, under the supervision of the landmarks committee of the grand parlor, Native Sons of the Golden West, the state engineering department and state board of control.

CHAPTER 352.

SONOMA COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3957.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 4734. DIVISION FENCES.

4738. TRANSCRIBING RECORDS.

4739. TRANSCRIBING CERTAIN RECORDS.

4740. TRANSLATION OF FOREIGN RECORDS.

DIVISION FENCES.

ACT 4734—An act in relation to division fences in the county of Sonoma and the lines of counties bordering thereon.

History: Approved March 29, 1878, Stats. 1877-78, p. 692.

See tit. "Fences."

Superseded.—It is believed that this act has been superseded by the codes and the general law.

TRANSCRIBING RECORDS.

ACT 4738—An act authorizing and empowering the recorder of Sonoma county to transcribe certain records, and to legalize the same.

History: Approved March 20, 1860, Stats. 1860, p. 109.

TRANSCRIBING CERTAIN RECORDS.

ACT 4739—An act to provide for the transcribing of the records of surveys in Sonoma county.

History: Approved March 13, 1862, Stats. 1862, p. 53.

TRANSLATION OF FOREIGN RECORDS.

ACT 4740—An act to provide for the translation of foreign records in Sonoma county, and to make such translations evidence of their contents.

History: Approved April 1, 1870, Stats. 1869-70, p. 582.

SONOMA RIVER.

See Kerr's Cyc. Political Code, § 2349.

SONOMA STATE HOME.

See tit. "Feeble-minded Children."

SONORA.

See Act 3094, note.

SOUTH PASADENA.

See Act 3094, note.

CHAPTER 353.

SOUTH SAN FRANCISCO.

Reference: Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.

ACT 4773. TIDE LAND GRANT.

TIDE LAND GRANT.

ACT 4773—An act granting to the city of South San Francisco the salt marsh, tide and submerged lands of the state of California, including the right to wharf out therefrom to the city of South San Francisco and regulating the management, use and control thereof.

History: Approved June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 701.

Tide lands granted to South San Francisco. Conditions of grant. Franchises for wharves, etc. Persons in possession, rights of. Right of state to wharves reserved. Right to fish reserved.

§ 1. There is hereby granted to the city of South San Francisco, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty, in and to all the salt marsh, tide and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific Ocean, or of any harbor, estuary, bay or inlet within said boundaries, to be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit: That said lands shall be used by said city and its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation and said city or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatever; provided, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods for purposes consistent with the trusts upon which said lands are held by the state of California and with the requirements of commerce or navigation at said harbor, for a term not exceeding twenty-five years, and on such other terms and conditions as said city may determine, including a right to renew such lease or leases for a further term not exceeding twenty-five years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases, and said lease or leases may be for any and all purposes which shall not interfere with navigation or commerce, with reversion to the said city, on the termination of such lease or leases of any and all improvements thereon, and on such other terms and conditions as the said city may determine, but for no purpose which will interfere with navigation or commerce; subject also to a reservation in all such leases or such wharfing out privileges of a street, or of such other reservation as the said city may determine for sewer outlets, and for gas and oil mains, and for hydrants, and for electric cables and wires, and for such other conduits for municipal purposes, and for such public and municipal purposes and uses as may be deemed necessary by the said city; provided, however, that each person, firm or corporation or their heirs, successors or assigns now in possession of land or lands abutting on said lands, within the boundaries of the city of South San Francisco, shall have the right to obtain a lease

for a term of twenty-five years from said city of said land and wharfing out privileges therefrom with a right of renewal for a further term of twenty-five years pursuant to the provisions of this act and on such terms and conditions as said city may determine and specify, subject to the right of said city to terminate said lease at the end of the first twenty-five years or refuse to renew the same, or to terminate the lease so renewed during the term of such renewed lease on such just and reasonable terms for compensation for improvements at the then value of said improvements as said city may determine and specify. Upon obtaining such lease and wharfing out privileges such person, firm or corporation, their heirs or assigns, shall quitclaim to said city any right they or any of them may claim or have to the said lands hereby granted. This grant shall carry the right to such city of the rents, issues and profits in any manner hereafter arising from the lands or wharfing out privileges hereby granted. The state of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California. No discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors in the management, conduct or operation of any of the utilities, structures or appliances mentioned in this section. There is hereby reserved in the people of the state of California the right to fish in the waters on which said lands may front with the right of convenient access to said waters over said lands for said purpose.

Must expend two hundred and fifty thousand dollars within five years. Lands may revert to state.

§ 2. The foregoing conveyance is made upon the condition that the city of South San Francisco shall, within five years from the approval of this act, exclusive of such time as said city may be restrained from so doing by injunction issued out of any court of this state or of the United States, and exclusive of such further delay as may be caused by unavoidable misfortune or great public or municipal clamity, issue its bonds for harbor improvement purposes in an amount of money of not less than two hundred and fifty thousand dollars, and shall, within five years after the approval of this act, exclusive of the time in this section hereinbefore mentioned, commence the work of such harbor improvement, and the said work and improvement shall be prosecuted with such diligence that not less than two hundred and fifty thousand dollars shall be expended thereon within five years from the approval of this act exclusive of the time in this section hereinbefore mentioned. If said bonds be not issued or said work be not prosecuted and completed as and in the manner herein provided, then the lands by this act conveyed to the city of South San Francisco shall revert to the state of California.

CHAPTER 354.

SOUTHERN PACIFIC RAILROAD COMPANY.

Reference: See tit. "Railroads."

CONTENTS OF CHAPTER.

ACT 4775. CHANGE OF LINE OF ROAD AUTHORIZED.

CHANGE OF LINE OF ROAD AUTHORIZED.

ACT 4775—An act to aid in giving effect to an act of congress relating to the Southern Pacific railroad company.

History: Approved April 4, 1870, Stats. 1869-70, p. 883.

CHAPTER 355.

SPANISH ARCHIVES.

CONTENTS OF CHAPTER.

ACT 4778. PRESERVATION OF SPANISH ARCHIVES.

PRESERVATION OF SPANISH ARCHIVES.

ACT 4778—An act to provide for the preservation of the Spanish archives, title papers of land claims, and records relating thereto, in the custody of the United States surveyor general for California.

History: Approved March 20, 1866, Stats. 1865-66, p. 312.

CHAPTER 356.

STALLIONS.

References: Duties of keepers of stallions, see Kerr's Cyc. Penal Code, § 597g.
Lien for services of stallions, see Kerr's Cyc. Civil Code, § 3062.

CONTENTS OF CHAPTER.

ACT 4784. SERVICE OF STALLIONS AND JACKS.

SERVICE OF STALLIONS AND JACKS.

ACT 4784—An act to regulate the public service of stallions and jacks in the state of California.

History: Approved May 1, 1911, Stats. 1911, p. 1306. Amended June 12, 1915. In effect August 11, 1915. Stats. 1915, p. 1495.

Registration of stallions, etc., required.

§ 1. Every association, person, firm or corporation standing or offering any stallion or jack for public service in this state shall cause the name, description, and pedigree of such stallion or jack to be enrolled by a stallion registration board hereinafter provided for, and secure a license from said board, as provided in section three of this act. All enrollment and verification of pedigree shall be done in the office of the secretary of the California state board of agriculture. [Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1495.]

Stallion registration board.

§ 2. In order to carry out the provisions of this act, there shall be constituted a stallion registration board, whose duty it shall be to verify and register pedigrees; to pass upon certificates of veterinary examination; to provide, when necessary, for veterinary inspection; to issue stallion or jack license certificates and tags; to make all necessary rules and regulations; and to perform such other duties as may be necessary to carry out and enforce the provisions of this act. Said board shall hold meetings at the office of the secretary of the California state board of agriculture the first Tuesday and subsequent days of February, May, August and November of each year, and such other meetings as may be necessary. Said stallion registration board shall be composed of three members, consisting of the president and secretary of the California state board of agriculture and the state veterinarian. [Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1495.]

Affidavit of examination of stallions. Pedigree.

§ 3. In order to obtain the license certificate and tag herein provided for, the owner of each stallion or jack shall forward an affidavit on a form which shall be furnished

by the stallion registration board and this affidavit shall be made by a veterinarian, legally qualified to practice as such in this state, to the effect that he has personally examined such stallion or jack. If said stallion or jack is free from communicable diseases and is not affected with any of the diseases or unsoundnesses mentioned in section four of this act, a statement to this effect shall be made on said affidavit by the examining veterinarian. If said examining veterinarian after examination finds such stallion or jack affected with any communicable disease or with any of the diseases or unsoundnesses mentioned in section four of this act, a statement shall be inscribed on such affidavit by said veterinarian specifying the disease or unsoundness so found. The owner of said stallion or jack shall also furnish to the stallion registration board the studbook certificate of registry of the pedigree of said stallion or jack when said stallion or jack is registered, and all other necessary papers relative to his breeding and ownership. Upon verification of pedigree and certificate of breeding (in case of pure-bred stallions and jacks), and receipt of veterinarian's affidavit as provided for in this act, a license certificate shall be issued to the owner; provided, however, that no license certificate shall be issued to the owner of any stallion or jack in case said animal is affected with any communicable disease; and provided, further, that when any stallion or jack is found affected with any of the diseases or unsoundnesses as mentioned in section four of this act, the license certificate so issued to the owner of said animal shall specify the disease or unsoundness with which said animal is affected. [Amendment of June 12, 1915. In effect August 11, 1915. Stats. 1915, p. 1495.]

License to specify diseases.

§ 4. Any stallion or jack found to be affected with any of the following diseases or unsoundnesses is hereby deemed unsound and likely to transmit such disease or unsoundness to its progeny and the license certificate issued to the owner of such a stallion or jack shall specify the disease or unsoundness as provided for in section three of this act:

Periodic ophthalmia (moon blindness); cataract, laryngeal hemiplegia (roaring or whistling); pulmonary emphysema (heaves, broken wind); chorea (St. Vitus dance, crampiness, shivering, stringhalt); bone spavin, ringbone, sidebone, navicular disease, osteoporosis; curb, when accompanied with faulty conformation of hock. [Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1496.]

Records. Temporary certificates.

§ 5. The stallion registration board shall make and keep records of all stallions and jacks enrolled in the state of California; said stallions or jacks to be enrolled as "pure-bred," "cross-bred," "nonstandard bred," "grade," or "mongrel," according as the facts may have been determined. Upon making the enrollment of said stallion or jack, said stallion registration board shall issue the above said license. The stallion registration board is authorized, in case of emergency, to grant temporary license certificates without veterinary examination, upon receipt of an affidavit of the owner to the effect that, to the best of his knowledge and belief, said stallion or jack is free from infectious, contagious, or transmissible disease or unsoundness. Temporary license certificate shall be valid only until veterinary examination can reasonably be made.

License certificate to be posted.

§ 6. The owner of any stallion or jack used for public service in this state shall post and keep affixed during entire breeding season, a copy of the license certificate of such stallion or jack, issued under the provisions of this act, in a conspicuous place, both within and upon the outside of the main door leading to every stable or building where the said stallion or jack is used for public service, and at all times during the

breeding season shall have attached to the harness or bridle of said stallion or jack a tag which shall be issued with the certificate. Each bill and poster and each newspaper advertisement shall show the enrollment certificate number, and state whether it reads "pure-bred," "grade," "cross-bred," "nonstandard bred," or "mongrel," and it shall be illegal to print or advertise any misleading reference to the breeding of said stallion or jack, his dam or sire. [Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1496.]

Form of certificate: pedigree stock.

§ 7. The license certificate issued for a stallion or jack whose sire and dam are of pure breeding, and the pedigree of which is registered in a studbook recognized by said stallion registration board, shall be in the following form:

Pure bred.

CALIFORNIA STALLION REGISTRATION BOARD.

Certificate of pure-bred stallion or jack, No.
The pedigree of the stallion or jack (name)
Owned by
Bred by
Described as follows:
Color Breed
Foaled in the year, has been duly examined, and it is hereby certified that the said stallion or jack is registered as number in studbook, said studbook being recognized by the stallion registration board of California, and is of pure breeding. The above named stallion or jack has been examined by, veterinarian, and is reported as and is licensed to stand for public service in the state of California.

This license expires on, 19...
Signed
Secretary California stallion registration board.
Dated this, 19..., at Sacramento, Cal.

Not pure bred.

The license certificate issued for a grade stallion or jack whose sire or dam is not pure-bred shall be in the following form:

CALIFORNIA STALLION REGISTRATION BOARD.

Certificate of grade stallion or jack, No.
The pedigree of the stallion or jack (name)
Owned by
Bred by
Described as follows:
Color Foaled in the year, has been duly examined, and it is hereby certified that the said stallion or jack is not of pure breeding, and is, therefore, not eligible for registration in any studbook recognized by the stallion registration board of California. The above stallion has been examined by veterinarian, and is reported as and is licensed to stand for public service in the state of California.

This license expires on, 19...
Signed
Secretary California stallion registration board.
Dated this, 19..., at Sacramento, Cal.

Pure-bred, but not of same breed.

The license certificate issued for a stallion whose sire and dam are pure-bred, but not of the same breed, shall be in the following form:

CALIFORNIA STALLION REGISTRATION BOARD.

Certificate of cross-bred stallion No.
The pedigree of the stallion (name)
Owned by
Bred by
Described as follows:

Color Foaled in the year has been
duly examined, and it is found that his sire is registered in the studbook
as number, volume, at page, and his dam in
the studbook as No., volume, and page
.....

Such being the case, the said stallion is not eligible for registration in any studbook
recognized by the stallion registration board of California. The above named stallion
has been examined by, veterinarian, and is reported as
and is licensed to stand for public service in the state of California.

This license expires on, 19...
Signed

Secretary California stallion registration board.

Dated this, 19., at Sacramento, Cal.

Non-standard bred.

The license certificate issued for a non-standard bred stallion shall be in the following
form:

CALIFORNIA STALLION REGISTRATION BOARD.

Certificate of non-standard bred stallion No.
The pedigree of the stallion (name)
Owned by
Bred by
Described as follows:

Color Foaled in the year, has been
duly examined, and it is hereby certified and found that said stallion is not eligible to
registration as standard bred, and for the purpose of this license is not pure-bred,
although recorded in the non-standard department of the American trotting register.

The above named stallion has been examined by, veterinarian,
and is reported as and is licensed to stand for
public service in the state of California.

This license expires on, 19...
Signed

Secretary California stallion registration board.

Dated this, 19., at Sacramento, Cal.

“Mongrel.”

The license certificate issued for a “mongrel” stallion or jack shall be in the follow-
ing form:

CALIFORNIA STALLION REGISTRATION BOARD.

Certificate of “mongrel” or jack No.
The pedigree as far as known or traced, of the stallion or jack (name)
Owned by
Bred by

Described as follows:

Color, Foaled in the year, has been duly examined, and it is hereby certified that the said stallion or jack is of mongrel breeding, and is not eligible for registration in any studbook recognized by the stallion registration board of California.

The above named stallion has been examined by, veterinarian, and is reported as and is licensed to stand for public service in the state of California.

This license expires on, 19...

Signed

Secretary California stallion registration board.

Dated this, 19..., at Sacramento, Cal.

[Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1497.]

Fees.

§ 8. A fee of two dollars and seventy-five cents shall be paid to the secretary of the California stallion registration board for the examination and enrollment of each stallion or jack pedigree, and for issuance of a license certificate and tag, in accordance with the breeding of the stallion or jack as above provided, which shall be in force and effect for a period of one year from its date, and for the purpose of carrying out the provisions of this act. The fee shall be paid to the secretary of the California registration board at the time the application is made for enrollment. Upon a transfer of the ownership of any stallion or jack enrolled under the provisions of this act, the certificate of enrollment may be transferred to the transferee by the secretary of the California stallion registration board upon submittal of satisfactory proof of such transfer of ownership, and upon payment of a fee of one dollar and twenty-five cents. A fee of one dollar and twenty-five cents shall be paid annually for the renewal of a license certificate and tag. A fee of one dollar and twenty-five cents shall be paid for a duplicate license certificate and tag upon proof of the loss or destruction of the original certificate. [Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1499.]

Investigations authorized.

§ 9. Whenever at any time the stallion registration board has reason to believe, or complaint is made, that any stallion or jack has been provided with a license certificate under false or erroneous representation, said stallion registration board is hereby authorized and empowered to cause an investigation to be made, and if in the conduct of such investigation it is deemed necessary by said board to examine said stallion or jack, the owner of said animal shall have the right to select a veterinarian, legally qualified to practice as such in this state, to act with a veterinarian of said stallion registration board in examining said animal, and in case these two shall fail to agree on a verdict or decision they shall appoint a third qualified veterinarian, with the consent and approval of said board and owner, which third veterinarian shall act as a referee therein and the decision of said referee shall be final. If as a result of such investigation or examination, or both, it shall have been found that such stallion or jack is not legally entitled to the license certificate as provided for in this act, then said stallion registration board shall revoke the license in force, or provide the owner of said animal with a proper form of license certificate; provided, that the owner of any stallion or jack used for public service in this state shall have a lien on all colts sired by said stallion or jack for the service fee for a period of one year from the date of the foaling of said colt, as now provided by law. [Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1499.]

Penalty for violation.

§ 10. Every association, person, firm or corporation violating any of the provisions of this act, shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars (\$100) for each offense; or by imprisonment in the county jail not exceeding fifty days, or by both such fine and imprisonment.

Disposition of fees. Duty of board to enforce act.

§ 11. The funds accruing from the above-named fees shall be used by the said stallion registration board to defray the expenses of enrollment of pedigrees and issuance of licenses; to provide for the examination of stallions and jacks when necessary; to publish reports or bulletins containing lists of stallions and jacks examined, which shall be not less than one in each year; to encourage the horse breeding interests in this state; to disseminate information pertaining to horse breeding, and for any other purposes as may be necessary to carry out the purposes and enforce the provisions of this act. Each member of the above committee shall receive his actual expenses incurred while in the performance of any duty imposed under the provisions of this act; the secretary of said board shall receive for his services an amount to be fixed and agreed upon by said board. It shall be the duty of the said stallion registration board to enforce the provisions of this act, and to make an annual report, including financial statement, to the governor of the state on September 15th of each year.

Monthly report of fees collected.

§ 11½. The secretary of the stallion registration board, at least as often as once each month, and oftener if required so to do, shall report to the state controller the total amount of fees collected, and at the same time he shall pay into the state treasury the entire amount of such receipts. All such receipts shall be credited to the stallion registration board contingent fund, which fund is hereby created, and shall be held subject to the uses of the board as defined in this act. [New section added June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1500.]

§ 12. This act shall take effect and be in force on August 1, 1911.

CHAPTER 357.**STANFORD UNIVERSITY.****CONTENTS OF CHAPTER.**

ACT 4788. EXEMPTING UNIVERSITY BUILDINGS FROM TAXATION.
4789. INCORPORATION.

EXEMPTING UNIVERSITY BUILDINGS FROM TAXATION.

ACT 4788—An act exempting from taxation a portion of the property held in trust for the benefit of the Leland Stanford Junior University.

History: Approved February 14, 1901, Stats. 1901, p. 4. Amended March 6, 1907, Stats. 1907, p. 117.

§ 1. The university buildings of the Leland Stanford Junior University, situate in the county of Santa Clara, state of California, used for university purposes, and all bonds held or that may be held by the trustees of such university in trust for the benefit of such university, shall be exempt from taxation; provided, that all other property, real and personal, held in trust for the benefit of such university, shall be subject to state, county and municipal taxation; and provided further, that while this act is in force no fees shall be charged residents of this state for tuition at such university, except that such fees may be charged in professional and engineering courses, but no

such fees shall be charged to any student who is registered in any of such courses when this act takes effect. [Amendment approved March 6, 1907, Stats. 1907, p. 117. In effect immediately.]

§ 2. This act shall take effect from its passage.

INCORPORATION.

ACT 4789—An act granting to the trustees of the Leland Stanford Junior University corporate powers and privileges.

History: Approved February 14, 1901, Stats. 1901, p. 4.

§ 1. The trustees of the Leland Stanford Junior University are given the right to exercise corporate powers and privileges, and to that end they may organize and act as a board of trustees, elect such officers of such board as they may deem to be necessary, adopt by-laws, and as such board, and through the officers thereof, they may transact such business, perform such acts and exercise such powers as they in writing may provide may be transacted, performed and exercised by such board.

Such board may adopt a seal which shall read, "Seal of the Leland Stanford Junior University," and such seal, when attached to any document or writing, shall be prima facie evidence that such document or writing was made by and under due authority from such board and from such trustees.

Nothing herein shall be deemed to alter the tenure or limit the powers or obligations of such trustees.

§ 2. This act shall take effect from its passage.

CHAPTER 358.

STANISLAUS COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3958.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 4806. INCREASE NUMBER OF JUDGES.

INCREASE NUMBER OF JUDGES.

ACT 4806—An act to increase the number of judges of the superior court of the state of California, in and for the county of Stanislaus, to provide for the appointment of an additional judge and for his compensation.

History: Approved May 21, 1915. In effect August 8, 1915. Stats. 1915, p. 724.

Superior judges in Stanislaus county.

§ 1. The number of judges of the state of California, in and for the county of Stanislaus, is hereby increased from one to two.

[Appointment of election.]

§ 2. Within ten days after the taking effect of this act, the governor shall appoint one additional judge of the superior court of the state of California, in and for the county of Stanislaus, who shall hold office until the first Monday after the first day of January, A. D. nineteen hundred and seventeen. At the next general election to be held in November, nineteen hundred and sixteen, one judge of said court, in addition to the present number provided by law for said county, shall be elected in said county, who shall be the successor of the judge appointed hereunder, to hold office for the term prescribed by the constitution and by law.

[Salary.]

§3. The salary of said one additional judge shall be the same in amount, and shall be paid at the same time and in the same manner as the salary of the other judge of the said superior court now authorized by law.

CHAPTER 359.**STANISLAUS RIVER.****CONTENTS OF CHAPTER.**

ACT 4810. ESTABLISHMENT OF FORD.

ESTABLISHMENT OF FORD.

ACT 4810—An act to provide for the establishment, maintenance, and protection of a public ford across the Stanislaus river, and a public road to and from the same, in the county of Stanislaus.

History: Approved March 6, 1872, Stats. 1871-72, p. 283.

STANTON.

See Act 3094, note.

CHAPTER 360.**STATE.**

Reference: Boundary, see tit. "Boundaries of State."

CONTENTS OF CHAPTER.

ACT 4824. SUITS AGAINST THE STATE.

4825. SUITS FOR COYOTE SCALP BOUNTIES.

4826. SUITS TO QUIET TITLE TO ESCHEATED ESTATES.

4826a. SUITS TO QUIET TITLE TO PORTION OF ESTELL LANDS.

4827. SUITS TO QUIET TITLE AGAINST THE STATE.

4828. SUIT BY THE COULTERVILLE AND YOSEMITE TURNPIKE COMPANY.

4830. SUITS TO QUIET TITLE AGAINST THE STATE—ALAMEDA COUNTY LANDS.

4831. SUIT BY JOHN HOAGLAND AND OTHERS.

4832. SUIT BY ROBERT C. BALL.

4833. SUIT BY DRURY MELONE AND OTHERS.

4834. SUITS TO QUIET TITLE TO CERTAIN SALT MARSH AND TIDE LANDS.

4835. SUITS TO QUIET TITLE—PROPERTY IN OAKLAND.

4836. SUITS FOR DAMAGES BY "NEWTOWN JETTIES."

4837. SUITS TO QUIET TITLE WHEN DEEDS ARE LOST.

SUITS AGAINST THE STATE.

ACT 4824—An act to authorize suits against the state, and regulating the procedure therein.

History: Approved February 28, 1893, Stats. 1893, p. 57.

Right of action.

§ 1. All persons who have, or shall hereafter have, claims on contract or for negligence against the state not allowed by the state board of examiners, are hereby authorized, on the terms and conditions herein contained, to bring suit thereon against the state in any of the courts of this state of competent jurisdiction, and prosecute the same to final judgment. The rules of practice in civil cases shall apply to such suits, except as herein otherwise provided.

Limitation of actions.

§ 2. No such suit shall be maintained on any claim now existing, unless the same be brought within two years after this act takes effect; nor shall any such suit be main-

tained on any cause of action hereafter arising, unless the same shall be commenced within two years after such cause of action shall have accrued; provided, that the period of limitation provided for in section two of this act shall not apply to or affect the rights, interest, or claims of any minor or insane person, or a person imprisoned on a criminal charge, or in execution under a sentence of a criminal court for a period of not less than for life, or a married woman and her husband be a necessary party with her in commencing such action, or an incompetent person; but such action may be commenced within the period above provided for after such disability shall cease.

Undertaking.

§ 3. At the time of filing the complaint in any such suit, the plaintiff shall file therewith an undertaking, in such sum, not less than five hundred dollars, as a judge of the court shall fix, with two sufficient sureties, to be approved by a judge of the court, and conditioned that, in case the plaintiff fails to recover judgment, he will pay all costs incurred by the state in such suit, including a reasonable counsel fee, to be fixed by the court.

Service of summons.

§ 4. Service of summons in such suits shall be made on the governor and attorney-general. It shall be the duty of the attorney-general to defend all such suits; and upon his written demand, made at or before the time of answering, the place of trial of any such suit must be changed to the county of Sacramento.

Judgment.

§ 5. In case judgment be rendered for the plaintiff in any such suit, it shall be for the amount actually due from the state to the plaintiff, with legal interest thereon from the time the obligation accrued, and without costs.

Duty of the governor.

§ 6. It shall be the duty of the governor to report to the legislature, at each session, all judgments rendered against the state and not theretofore reported.

Duty of controller.

§ 7. It shall be the duty of the controller to draw his warrant for the payment of any such judgment, without any presentation to or approval of such claim by the state board of examiners, whenever a sufficient appropriation for such payment shall have been made by the legislature; and all claims upon such judgments are hereby expressly exempted from the operation of section six hundred and seventy-two of the Political Code.

§ 8. This act shall take effect immediately.

1. Constitutionality—Not invalid even as applied to prior contracts.—The act is not, even as applied to prior contracts, in conflict with any provision of the constitution.—*Chapman v. State*, 104 Cal. 690, 43 Am. St. Rep. 158, 38 Pac. 457.

2. The state can not be sued without its consent.—*Melvin v. State*, 121 Cal. 16, 53 Pac. 416.

3. Act permissive—Does not give right of action.—The act is permissive, and gives a right of action where none existed previously, but it does not give a right of action for a previous wrong, where no liability theretofore existed.—*Melvin v. State*, 121 Cal. 16, 53 Pac. 416.

4. Same—Same—Does not create liability where none existed.—The act did not

create a liability against the state where none existed, but merely gave an additional remedy to enforce an existing liability.—*Polk v. State*, 138 Cal. 384, 71 Pac. 435, 648.

5. Same—Same—Same—Merely afforded remedy for pending rights.—This act affords a remedy where a corresponding right exists.—*Alameda v. Chambers*, 33 Cal. App. 537, 170 Pac. 650.

6. Same—Same—Same—Same—Additional remedy.—The state was always liable upon its contracts, and the act merely gave an additional remedy for the enforcement of such liability.—*Chapman v. State*, 104 Cal. 690, 43 Am. St. Rep. 158, 38 Pac. 457.

7. Same—Same—Same—Same — Same.—The act did not create a liability against the state where none existed, but merely gave an additional remedy to enforce such liability as would have existed if the statute had not been enacted.—*Denning v. State*, 123 Cal. 316, 55 Pac. 1000.

8. Interest on its debts—State not liable except by contract.—The state is not liable for interest on its debts, except with legislative consent, or by some lawful contract of its executive officers, and no right to recover interest on interest coupons of Indian war bonds is conferred by the present act.—*Davis v. State*, 121 Cal. 210, 53 Pac. 555.

9. Action by assignee of numerous corporations can not be maintained—Recovery

of license tax.—An action can not be maintained by the assignee of a number of corporations for the recovery of corporation license tax against the secretary of state, with the state's consent in view of the fact that the state is the real party in interest.—*McClellan v. State*, 35 Cal. App. 605, 170 Pac. 662.

10. Maintenance of orphans, etc—Claim by county.—A claim against the state for the maintenance of orphans, half orphans, and abandoned children by a county, is a claim resting upon contract within the meaning of this act, and is barred in two years after accrual of cause of action.—*San Luis Obispo Co. v. Gage*, 139 Cal. 398, 73 Pac. 174.

SUITS FOR COYOTE SCALP BOUNTIES.

ACT 4825—An act authorizing suits against the state on claims or demands arising under an act of the legislature entitled "An act fixing a bounty on coyote scalps," approved March 31, 1891, and regulating the procedure therein.

History: Approved March 23, 1901, Stats. 1901, p. 646.

Holders of claims for bounties on coyote scalps authorized to bring suits, etc.

§ 1. The owners or holders of claims or demands against this state arising under the provisions of an act of the legislature entitled "An act fixing a bounty on coyote scalps," approved March thirty-first, eighteen hundred and ninety-one, may, within twelve months from the passage of this act, bring suit upon their said claims or demands in any superior court of this state, and prosecute the same to final judgment. The rules of practice in civil cases shall apply to such suits, except as herein otherwise provided, with the right of appeal to either party.

Service of summons. Duty of attorney general.

§ 2. Service of summons in such suits shall be made on the attorney general. It shall be the duty of the attorney general to defend all such suits; and upon his written demand, made at or before the time of answering, the place of trial of any such suit must be changed to the county of Sacramento.

Costs of suits.

§ 3. All costs in any suit brought hereunder shall be paid by the plaintiff in the action; and in case judgment therein be for the plaintiff, it shall be for the amount actually found due to the plaintiff, without interest thereon and without costs; and such judgment shall bear no interest after rendition.

Report to legislature.

§ 4. It shall be the duty of the attorney general to report to the legislature at its next ensuing session all final judgments recovered against the state hereunder, not theretofore reported.

§ 5. This act shall take effect immediately.

1. Constitutionality—Payment of coyote scalp claims.—There is nothing in the constitutional provision prohibiting the legislature from making any gift of public money or thing of value to prohibit the legislature from paying coyote bounty claims.—*Bickerdike v. State*, 144 Cal. 681, 78 Pac. 270.

2. Same—Creation of debts in excess of

\$300,000.—The act does not violate the constitutional inhibition against the creation of debts in excess of three hundred thousand dollars without submission to a vote of the people.—*Bickerdike v. State*, 144 Cal. 681, 78 Pac. 270.

3. Same—Gift of public money—Waiver of statute of limitations.—The waiver by the legislature of the statute of limitations

as to coyote bounty claims is not a gift of public money within the meaning of the constitution.—*Bickerdike v. State*, 144 Cal. 681, 78 Pac. 270.

4. Purpose of act—Substitution of courts for auditing board.—The manifest object of the act was to put the courts in the place of the auditing board of the state, and to relegate the claimants from a class of creditors that had made a prima facie showing of the validity of their claims to a position where they would be compelled to commence at the beginning and make again the showing that they had already made.—*Bickerdike v. State*, 144 Cal. 681, 78 Pac. 270.

5. Evidence—Certificate of clerk of board of supervisors.—The introduction of the certificate of the clerk of the board of supervisors showing compliance with the provisions of the bounty act as to proof of their claims, constituted prima facie proof thereof.—*Bickerdike v. State*, 144 Cal. 681, 78 Pac. 270.

6. Same—Same—Repeal of coyote bounty act did not destroy the effect of the certificate.—The repeal of the coyote bounty act did not destroy the effect of the certificate as to the claims already accrued, and there is no legislative intent to prescribe further proof than the certificate of the clerk of the board as to claims accruing

before the passage of the present act.—*Bickerdike v. State*, 144 Cal. 681, 78 Pac. 270.

7. Presentation to state board of examiners not required.—Presentation of the claims to the state board of examiners was not required in order to establish a cause of action under the present act.—*Bickerdike v. State*, 144 Cal. 681, 78 Pac. 270.

8. Claims assignable.—Claims against the state for coyote bounties were assignable.—*Bickerdike v. State*, 144 Cal. 681, 78 Pac. 270.

9. Same—Actions may be maintained by assignees.—Actions under the authority of this act may be maintained by assignees either succeeding absolutely to the title or for collection.—*Bauer v. State*, 144 Cal. 740, 78 Pac. 280.

10. Action not a special proceeding.—The action under this act is not a special proceeding, but an ordinary action for money due, and the rules of ordinary actions at law apply.—*San Francisco, etc., Co. v. State*, 141 Cal. 354, 74 Pac. 1047.

11. New trials—Code provisions apply.—The provisions of the Code of Civil Procedure relative to new trials apply in actions against the state for unpaid coyote bounties brought under this act. — *San Francisco, etc., Co. v. State*, 141 Cal. 354, 74 Pac. 1047.

SUITS TO QUIET TITLE TO ESCHEATED ESTATES.

ACT 4826—An act authorizing suits against the state concerning certain real property and regulating procedure therein.

History: Approved May 14, 1917. In effect July 27, 1917. Stats. 1917, p. 435.

Suits against state to quiet title authorized.

§ 1. In all cases where the state of California has apparently acquired some right, title or interest, or the right to acquire some title or interest in or to real property in this state by virtue of an act entitled "An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this state, providing for escheats in certain cases, prescribing the procedure therein, and repealing all acts or parts of acts inconsistent or in conflict therewith," approved May 19, 1913, and no proceedings have been instituted in regard thereto, as provided in said act, any person or persons claiming to own any such real property in fee, which claim is based upon a right existing prior to the said nineteenth day of May, A. D. 1913, is and are authorized to bring suit against the state of California in any court of competent jurisdiction in said state, within one year from the date upon which this act takes effect, to quiet title to the said real property or any portion thereof, and to prosecute the same to final judgment. The rules of practice in civil cases relating to suits to quiet title shall apply to such suits as may be brought under this authorization except as otherwise provided. If judgment be given against the state in such suits, no costs can be recovered from the state.

Service of summons.

§ 2. Service of summons in such suits shall be made on the governor and attorney general of the state. It shall be the duty of the attorney general to defend in all such suits.

Judgment.

§ 3. In all such cases judgment shall not be entered by default but proceedings shall be had as provided in section seven hundred fifty-one of the Code of Civil Procedure of the state of California, and the judgment when entered shall have the same force and effect against the state of California as in said section provided against other defendants.

SUITS TO QUIET TITLE TO PORTION OF ESTELL LANDS.

ACT 4826a—An act to authorize suits against the state concerning certain real property, and regulating the procedure therein.

History: Approved March 8, 1901, Stats. 1901, p. 111.

SUITS TO QUIET TITLE AGAINST THE STATE.

ACT 4827—An act authorizing suits against the state concerning certain real property and regulating the procedure therein.

History: Approved March 20, 1909, Stats. 1909, p. 605.

Suit against state to quiet title in certain cases.

§ 1. In all cases where the state of California has sold any land or lands to any person or persons and the deed or patent from the state of California therefor has been lost or destroyed and was never recorded in the office of any county recorder in the state of California, the person or persons claiming or deraining title to any of such lands through any such lost or destroyed deed or patent is and are hereby authorized to bring suit against the state of California in any court of competent jurisdiction of said state to quiet title to said land or any portion thereof, and to prosecute the same to final judgment. The rules of practice in civil cases relating to suits to quiet title shall apply to such suits as may be brought under this authorization except as otherwise provided. If judgment be given against the state in any such suit, no costs can be recovered from the state thereunder and before any judgment can be given against the state hereunder it must be made to appear to the court affirmatively that such deed or patent has been duly issued by the state.

Must be commenced when.

§ 2. Any such suits to quiet title shall be commenced within one year after this act takes effect.

Summons, service on whom.

§ 3. Service of summons in such suits shall be made on the governor, surveyor-general and attorney-general. It shall be the duty of the attorney-general to defend all such suits.

§ 4. This act shall take effect immediately.

SUIT BY THE COULTERVILLE AND YOSEMITE TURNPIKE COMPANY.

ACT 4828—An act to enable the Coulterville and Yosemite Turnpike Company, a corporation, to sue the state of California for the loss and damage suffered and sustained by said corporation, by the construction of a road by the Yosemite Turnpike Road Company, under and by virtue of an act of the legislature of the state of California entitled "An act granting the right of way to the Yosemite Turnpike Road Company over the Yosemite Grant," approved February 17, 1874, and for the relief of said Coulterville and Yosemite Turnpike Company.

History: Approved March 31, 1891, Stats. 1891, p. 275.

1. Purpose of act.—The sole object of the act was to authorize the company to bring an action against the state, and there was no legislative intent to prevent

all defense thereto by recitals in the act.—Coulterville, etc., Co. v. State, 104 Cal. 321, 37 Pac. 1035.

2. Estoppel—State not estopped to show no exclusive privilege.—The state is not estopped by the recitals of the act from showing in defense that no exclusive privi-

lege to construct a road to the Yosemite Valley on the northerly side of the Merced river was ever granted to the plaintiff by the commissioners of the Yosemite Valley and Mariposa big tree grove.—Coulterville etc., Co. v. State, 104 Cal. 321, 37 Pac. 1035.

SUITS TO QUIET TITLE AGAINST THE STATE—ALAMEDA COUNTY LANDS.

ACT 4830—An act authorizing suits against the state concerning certain real property and regulating the procedure therein.

History: Became a law under constitutional provision, without governor's approval, February 27, 1909, Stats. 1909, p. 84.

SUIT BY JOHN HOAGLAND AND OTHERS.

ACT 4831—An act to enable John Hoagland, James Reid, Mrs. Rebecca C. Hoagland, George Cooper, William B. Todhunter, Mrs. Mary W. G. Van Arsdall, Henry Lienberger, Christopher Green and Charles Trainer to sue the state of California.

History: Approved March 12, 1885, Stats. 1885, p. 107.

1. Act not an admission of liability.—The act was not an admission of liability by the state, nor was it a waiver of any defense it might have to the suit, except its immunity from being sued.—Green v. State, 73 Cal. 29, 11 Pac. 602, 14 Pac. 610.

2. Liability of state same as private

litigants, in absence of statute.—In the absence of any statutory or constitutional provision the measure of the state's responsibility is determined by the same rule as in suits between private litigants.—Green v. State, 73 Cal. 29, 11 Pac. 602, 14 Pac. 610.

SUIT BY ROBERT C. BALL.

ACT 4832—An act to authorize Robert C. Ball to sue the state.

History: Approved March 24, 1891, Stats. 1891, p. 194.

SUIT BY DRURY MELONE AND OTHERS.

ACT 4833—An act to authorize Drury Melone, John Lord Love, and James J. Green to sue the state.

History: Approved April 1, 1876, Stats. 1875-76, p. 680.

SUITS TO QUIET TITLE TO CERTAIN SALT MARSH AND TIDE LANDS.

ACT 4834—An act authorizing suits against the state of California concerning real property purchased under the provisions of an act entitled "An act to survey and dispose of certain salt marsh and tidelands belonging to the state of California," approved March 30, 1868, and of an act entitled "An act supplementary to and amendatory of an act entitled 'An act to survey and dispose of certain salt marsh and tidelands belonging to the state of California,' approved March 30, 1868," approved April 1, 1870, and of an act entitled "An act supplementary to and amendatory of an act supplementary to and amendatory of an act entitled 'An act to survey and dispose of certain salt marsh and tidelands belonging to the state of California,' approved March 30, 1868; also, an act approved April 1, 1870," approved March 30, 1874.

History: Approved April 4, 1919. In effect July 22, 1919. Stats. 1919, p. 32. Prior act of May 3, 1915, in effect August 8, 1915, Stats. 1915, p. 318, apparently superseded by the present act. Also prior act of March 27, 1911, Stats. 1911, p. 504.

Suits to quiet title to salt marsh and tidelands. Deed lost or not recorded.

§ 1. In all cases where the state of California has sold any salt marsh and tidelands under the provisions of the following named acts or of any of them, to wit: "An act to survey and dispose of certain salt marsh and tidelands belonging to the state of California," approved March 30, 1868, and an act entitled "An act supplementary to

and amendatory of an act entitled 'An act to survey and dispose of certain salt marsh and tidelands belonging to the state of California,' approved March 30, 1868," approved April 1, 1870, and an act entitled "An act supplementary to and amendatory of an act supplementary to and amendatory of an act entitled 'An act to survey and dispose of certain salt marsh and tidelands belonging to the state of California,' approved March 30, 1868; also, an act approved April 1, 1870," approved March 30, 1874, to any person or persons and the person or persons purchasing said lands has paid all of the installments required to be paid by him or them on the purchase price thereof prior to the enactment of an act entitled "An act to abolish the state board of tideland commissioners, and to repeal sections three hundred sixty-five and six hundred ninety-eight of the Political Code," approved February 4, 1876, and where no deed was ever executed and delivered to such purchaser or purchasers conveying to him or them the lands so purchased, or where such deed, if delivered, has been lost by such purchaser or purchasers or has never been recorded, the person or persons so purchasing said lands, or his or their successor or successors in interest, is and are hereby authorized to bring suit against the state of California in any court of said state of competent jurisdiction to quiet title to said land, or to any portion thereof, and to prosecute the same to final judgment. The rules of practice in civil cases relating to suits to quiet title shall apply to such suits as may be brought under this authorization, except as herein otherwise provided. If judgment be given against the state in any such suit, no costs can be recovered from the state thereunder.

Contents of complaint.

§ 2. The complaint filed in any suit brought under the provisions of this act shall contain a statement of the time, place and conditions of sale of the lands concerning which title is sought to be quieted, together with a statement of all moneys paid under the terms of said sale and the date of such payments.

Limit of action.

§ 3. Any such suits to quiet title shall be commenced within one year after this act takes effect.

Attorney general to defend.

§ 4. Service of summons in such suits shall be made on the governor and surveyor general. It shall be the duty of the attorney general to represent the state in all such suits.

SUITS TO QUIET TITLE—PROPERTY IN OAKLAND.

ACT 4835—An act to authorize suits against the state of California, concerning and to quiet title to certain real property, and regulating the procedure therein.

History: Approved May 1, 1911, Stats. 1911, p. 1457.

Authorizing suit against state to quiet title of land in Oakland.

§ 1. All persons and all corporations having or claiming title to the whole or to any part of the following described real property, to wit:

2 All that certain lot, piece and parcel of land situate, lying and being in the city of Oakland, county of Alameda, state of California, and being a portion of block No. 297 of said city of Oakland bounded and described as follows: Commencing at a point on the west line of San Pablo ave. one hundred and sixty-five and 64-100 (165 64-100) feet northwest from Grove street and running thence northerly along the west line of San Pablo avenue one hundred and thirty-six and one-half feet (136½ ft.), thence southwesterly three hundred and ninety-one feet (391 ft.) more or less to the north line of Twentieth street, thence southeast one hundred and twenty-five (125 ft.) feet, and thence northeast two hundred and ninety-five feet (295 ft.) more or less to San Pablo

avenue and the point of beginning, are hereby authorized, on the terms and conditions herein contained, to bring suit against the state of California in any court of competent jurisdiction in said state to quiet title to said land or to any portion thereof, and to prosecute the same to final judgment. The rules of practice in civil cases relating to suits to quiet title shall apply to such suit as may be brought under this authorization, except as herein otherwise provided.

Time to commence suit.

§ 2. Any such suit to quiet title shall be commenced within sixty days after this act takes effect.

Plaintiff's sureties.

§ 3. At the time of filing the complaint in any such suit, the plaintiff shall file therewith an undertaking in the sum of two hundred dollars with two sufficient sureties to be approved by the judge of the court, and conditioned that in case the plaintiff fails to recover judgment quieting the title of such plaintiff against the state, he will pay all the costs incurred by the state in such suit.

Service of summons.

§ 4. Service of summons in such suit shall be made on the governor and attorney general. It shall be the duty of the attorney general to defend all such suits.

Recording certified copy of decree.

§ 5. A certified copy of any decree rendered in any such action quieting title to said real property may be recorded in the office of the county recorder of Alameda county aforesaid.

§ 6. This act shall take effect immediately.

SUITS FOR DAMAGES BY "NEWTOWN JETTIES."

ACT 4836—An act authorizing owners of land or their grantees or assigns to sue the state of California, for damages done to real property by reason of the construction and maintenance of jetties in the Sacramento river known as "Newtown jetties" and repealing an act entitled "An act to authorize the Lauritzen Company of San Francisco, a corporation, to sue the state of California," approved March 23, 1907.

History: Approved March 20, 1911, Stats. 1911, p. 403. Prior act of March 23, 1907, Stats. 1907, p. 904, repealed by the present act.

Damages done by "Newtown jetties."

§ 1. Within thirty days from the passage of this act any owner of land or the grantee or assignee thereof is hereby authorized to commence an action in the superior court of the state of California in and for the county of Sacramento against the state of California, for damages done to real property, caused by the construction and maintenance in the Sacramento river, near Wood island in the county of Sacramento, of certain jetties known as "Newtown jetties" by the state of California.

Summons.

§ 2. Summons in said action or actions shall be served by delivering a copy thereof attached to a copy of the complaint to the attorney general and it shall be his duty to defend said action or actions.

Costs.

§ 3. All costs in any suit brought under this act shall be paid by the plaintiff and in case judgment therein be for the plaintiff it shall be for the amount actually found due, without interest thereon and said judgment shall bear no interest.

Amount of damages.

§ 4. If it appears upon the trial of said action that damage has been done to plaintiff by any act for which the state is legally liable, the jury, or in case a jury trial be waived, the court shall ascertain from the evidence and find the amount of damages and thereupon judgment shall be entered for the amount of damages so found.

Appeal.

§ 5. Either party may appeal from any judgment or appealable order from the superior court.

Repeal of act authorizing Lauritzen Company to sue.

§ 6. An act entitled "An act to authorize the Lauritzen Company of San Francisco, a corporation, to sue the state of California," approved March 23, 1907, is hereby repealed.

§ 7. This act shall take effect immediately.

SUITS TO QUIET TITLE WHEN DEEDS ARE LOST.

ACT 4837—An act authorizing suits against the state concerning certain real property and regulating the procedure therein.

History: Became a law under constitutional provision without governor's approval, March 24, 1911, Stats. 1911, p. 466.

Suits to quiet title to lands when deeds are lost.

§ 1. In all cases where the state of California has sold any land or lands to any person or persons and the deed or patent from the state of California therefor has been lost or destroyed and was never recorded in the office of any county recorder in the state of California, the person or persons claiming or deraigning title to any of such lands through any such lost or destroyed deed or patent is and are hereby authorized to bring suit against the state of California in any court of competent jurisdiction of said state to quiet title to said land or any portion thereof, and to prosecute the same to final judgment. The rules of practice in civil cases relating to suits to quiet title shall apply to such suits as may be brought under this authorization except as otherwise provided. If judgment be given against the state in any such suit, no cost can be recovered from the state thereunder and before any judgment can be given against the state hereunder it must be made to appear to the court affirmatively that such deed or patent has been duly issued by the state.

Time to commence suit.

§ 2. Any such suits to quiet title shall be commenced within one year after this act takes effect.

Service of summons. Attorney general to defend.

§ 3. Service of summons in such suits shall be made on the governor, surveyor general and attorney general. It shall be the duty of the attorney general to defend all such suits.

§ 4. This act shall take effect immediately.

STATE AGRICULTURAL BOARD.

See tit. "Agriculture."

STATE AGRICULTURAL SOCIETY.

See tit. "Agriculture."

STATE ANALYST.

See tit. "Adulteration."

STATE BOARD OF AGRICULTURE.

See tit. "Agriculture."

STATE BOARD OF ARBITRATION.

See tit. "Arbitration."

STATE BOARD OF AUTHORIZATION.

See tit. "Taxation."

STATE BOARD OF EMBALMERS.

See tit. "Embalmers."

STATE BONDS.

See tit. "Bonds."

STATE CAPITOL.

See tit. "Capitol."

STATE COMMISSION MARKET.

See tit. "State Market Commission."

STATE DAIRY BUREAU.

See tits. "Adulteration"; "Butter"; "Cheese"; "Dairies"; "Public Health."

Editor's note.—The state dairy bureau was created by section 15, act of 1897, Stats. 1897, p. 65 (Act 621); continued in force by section 45, act of 1911, Stats. 1911, p. 977 (Act 1167). Under the act of 1919 (Act 96) creating the state department of agriculture, the director of agriculture succeeded to all the powers, duties, responsibilities and jurisdiction of the dairy bureau.

STATE MINING BUREAU.

See tits. "Mines and Mining"; "Mining Bureau."

CHAPTER 361.

STATE ENGINEERING.

CONTENTS OF CHAPTER.

- ACT 4847. STATE DEPARTMENT OF ENGINEERING.**
- 4847a. STATE HIGHWAY REVOLVING FUND.
- 4848. WATER RESOURCES TOPOGRAPHIC SURVEY.
- 4848a. SURVEY FOR ADDITIONAL OUTLET FOR THE SACRAMENTO, SAN JOAQUIN, AND FEATHER RIVERS.
- 4849. RECTIFICATION OF CHANNELS OF THE SACRAMENTO, SAN JOAQUIN, AND FEATHER RIVERS.
- 4850. DIRECT IMPROVEMENT OF NAVIGATION, SACRAMENTO, SAN JOAQUIN, AND FEATHER RIVERS.
- 4858. ADDITIONAL RIGHTS OF WAY FOR HIGHWAYS.

STATE DEPARTMENT OF ENGINEERING.

ACT 4847—An act to create for the state of California a department of engineering, to provide for the appointment of the officers and employees thereof, defining its powers and prescribing the duties of said department, its officers and employees, to provide the compensation of such officers and employees, to make an appropriation for the salaries and other expenses for the remainder of the fifty-eighth fiscal year and making certain acts a felony and repealing an act entitled "An act creating a commissioner of public works, defining his duties and powers and fixing his compensation," approved February ninth, nineteen hundred, and all acts or parts of acts amendatory thereof; also repealing an act entitled "An act to create a department of highways for the state of California, to define its duties and powers, to provide for the appointment of officers and employees thereof, and to provide for the compensation of said officers and employees, and for the additional expenses of said department, and to make an appropriation therefor for the remainder of the forty-eighth fiscal year," approved April first, eighteen hundred and ninety-seven; also repealing an act entitled "An act providing for the appointment of an auditing board to the commissioner of public works, authorizing and directing him and them to perform certain duties relating to drainage, to purchase machinery, tools, dredges, and appliances therefor, to improve and rectify water channels, to erect works necessary and incident to said drainage, to condemn land and property for the purposes aforesaid, making certain acts a felony, and making an appropriation of money for the purposes of this act," approved March seventeenth, eighteen hundred and ninety-seven, and all acts or parts of acts amendatory thereof; also repealing an act entitled "An act to provide for the appointment, duties and compensation of a debris commissioner, and to make an appropriation to be expended under his directions in the discharge of his duties as such commissioner," approved March twenty-fourth, eighteen hundred and ninety-three, and all acts or parts of acts amendatory thereof; also repealing an act entitled "An act to create the office of Lake Tahoe wagon road commissioner, providing the term of office and compensation of such commissioner, defining his duties, and making an appropriation for the salary and expenditures provided for and authorized by this act," approved April first, eighteen hundred and ninety-seven, and all acts or parts of acts amendatory thereof.

History: Approved March 11, 1907, Stats. 1907, p. 215. Amended March 20, 1909, Stats. 1909, p. 558; April 8, 1911, Stats. 1911, p. 823; May 19, 1915, in effect August 8, 1915, Stats. 1915, p. 630; May 27, 1915, in effect August 8, 1915, Stats. 1915, p. 898; May 15, 1917, in effect July 27, 1917, Stats. 1917, p. 541; May 18, 1917, in effect July 27, 1917, Stats. 1917, p. 690. The act of March 24, 1893, Stats. 1893, p. 345, creating the office of commissioner of public works, amended February 25, 1897, Stats. 1897, p. 26, was repealed by the act of March 21, 1899, Stats. 1899, p. 157; and both acts were repealed by the act of February 9, 1900, Stats. 1900, p. 20, which was, in turn, repealed by the present act. Also, the act of March 17, 1897, Stats. 1897, p. 171, creating an auditing board for the commissioner of public works, amended February 9, 1900, Stats. 1900, p. 21, and March 2, 1901, Stats. 1901, p. 91, was also repealed by the present act. The act of March 27, 1895, Stats. 1895, p. 263, creating a bureau of highways, was superseded by the act of April 1, 1897, Stats. 1897, p. 443, creating a department of highways, and the latter act was repealed by the present act. The prior act of March 29, 1878, Stats. 1877-78, p. 634, created the office of state engineer; but the amendment of March 19, 1889, Stats. 1889, p. 328, limited the office to an existence of two years, and made the state mineralogist ex-officio state engineer.

Department of engineering created. California highway commission.

§ 1. A department of and for the state of California to be known as the department of engineering is hereby created, to consist of an advisory board composed of the gov-

ernor as ex officio member and chairman of said board, the state engineer, who shall be the chief executive officer of the department, the general superintendent of state hospitals, the chairman of the state board of harbor commissioners of San Francisco, and three other members to be appointed by the governor, which said three appointive members shall hereafter in this act be designated as the appointed members of said advisory board. Said three appointed members shall compose a subdivision of said department of engineering designated as the California highway commission. The said department, its officers and employees, shall have and exercise the powers and duties hereinafter set forth and specified, and such as are or may be hereafter provided by law. [Amendment of May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 692.]

This section was also amended April 8, 1911, Stats. 1911, p. 825.

§ 1½. Consulting board. Meetings. Reports. [Repealed May 18, 1917. Stats. 1917, p. 692.]

This section was amended April 8, 1911, Stats. 1911, p. 826.

Head of department.

§ 2. Upon this act becoming effective the governor shall appoint a competent civil engineer as the head of the department of engineering, and such person shall be known as the state engineer. The state engineer shall devote his entire time to the services of the state and shall not actively engage in any other pursuit while serving as such state official. He shall have charge of all the engineering and structural work of the department. [Amendment of May 15, 1917. In effect July 27, 1917. Stats. 1917, p. 543.]

This section was also amended April 8, 1911, Stats. 1911, p. 826.

Hold office at pleasure of governor.

§ 3. The state engineer and the appointed members of said advisory board shall hold office at the will and pleasure of the governor. Immediately after qualifying, the advisory board shall meet and organize and shall adopt a seal for the authentication of its acts and records. [Amendment approved April 8, 1911, Stats. 1911, p. 826.]

Bond of engineer.

§ 4. Within twenty days after receiving notice of appointment the person appointed as state engineer shall file a bond in the sum of twenty thousand dollars (\$20,000) with at least two sufficient sureties thereon or with a surety company of recognized standing for the faithful performance of his duties which bond must be approved by the governor and filed with the secretary of state and he shall qualify by taking the oath of office as prescribed for other state officers.

Location of office. Meetings.

§ 5. The office of the department of engineering shall be in the state capitol; and the secretary of state shall assign to the department, for its use, such rooms as may be necessary for its accommodation. All of the regular meetings of the advisory board shall be held at such office. The said board may, however, hold such special meetings at such places as the duties of the department or the best interests of the state may require. The state board of harbor commissioners for the port of San Francisco shall assign proper rooms in the ferry building at San Francisco for the use of the chief engineer assigned for service under that board in the harbor of San Francisco, and his necessary office help. [Amendment of May 27, 1915. In effect August 8, 1915. Stats. 1915, p. 900.]

Employees, engineering department.

§ 6. The department of engineering, by and through the state engineer, shall have power to appoint two assistant engineers, a secretary, one state architect, one assistant

state architect, a general superintendent for the architectural division, one mechanical engineer, one architectural designer, one structural engineer, an auditor, one electrical engineer, one estimator, one specification writer, one engineer's draftsman, three architectural draftsmen, two clerks, two stenographers, a blueprint pressman, a janitor, and such additional assistance as the advisory board may, in its judgment, deem necessary, and to fix their salaries and compensation, which officers and appointees shall hold office at the pleasure of the appointive power, and who must be confirmed by the advisory board before proceeding with their duties. Such officers and employees shall devote their entire time to the service of the department. [Amendment of May 15, 1917. In effect July 27, 1917. Stats. 1917, p. 543.]

This section was also amended March 20, 1909, Stats. 1909, p. 560; May 19, 1915, Stats. 1915, p. 632.

Highway engineer.

§ 6a. The department of engineering by and through the chairman of said advisory board shall have the power to appoint one engineer who shall be particularly skilled and qualified by experience in highway construction and who shall be designated highway engineer, and such assistant engineers, designers, draftsmen, clerks, stenographers, and such other technical assistants and help as the advisory board may, in its judgment, deem necessary and said advisory board shall fix their salaries and compensation and prescribe their duties. [New section approved April 8, 1911, Stats. 1911, p. 826.]

Meetings, powers, etc., of advisory board.

§ 7. The advisory board shall meet at such times as the work of the department may require and shall meet at least once in two months. Said board shall advise with the state engineer, highway engineer or state architect as necessity requires and may advise with the boards of managers or trustees of the various state institutions requiring engineering or structural work, and with any state commission regarding all works wherein such commission may be interested. The advisory board shall approve all plans and specifications for all public work and shall determine the kind, quality and extent of all public work of the state. All boards of managers, trustees and state commissioners of state institutions shall apply to the department of engineering for plans and specifications for all public work coming under their charge, and before accepting any such work done under contract shall have a certificate from the state engineer who shall examine and certify to its completion. All public work coming under the full control of the department of engineering may upon the discretion of the advisory board be either contracted for or done by day's labor. The advisory board shall have the power, on the approval of plans and specifications by the state engineer, to direct whether any building or structure at any state institution shall be let by contract in part or in whole, or whether said building or structure shall be built by day's labor in part or in whole, but after approval of the plans, specifications and estimates by the advisory board of the department of engineering, if, in the opinion of such department of engineering, the acceptance of any bid or bids shall not be for the best interests of the state, or if in the opinion of such department of engineering the acceptance of any further bids after the rejection of all bids submitted shall not be for the best interests of the state, it may be legal for them to direct that the work or improvement of any state building, road or any other improvement be done upon a day's labor basis. Whenever any public work to be done by the state except work on property of the state on the waterfront of the city and county of San Francisco under the jurisdiction of the board of state harbor commissioners is placed upon a day's labor basis, it is especially exempted from any law on or relating to contracts of the state. The full control of such day's labor work is placed under the department of engineering and said department shall do all things necessary to properly carry out the work.

When such work is so placed upon a day's labor basis, any appropriation which is now available or which is now or may be appropriated to become available, is by this act taken out of the control of any board of trustees, directors, commissioners, officers or other body to whom it has been appropriated, and placed exclusively under the control of the department of engineering, and the claims for said work shall be approved by the department of engineering, and audited by the board of examiners, upon whose audit the controller shall draw his warrant and the treasurer shall pay the same. The department of engineering shall have power to receive informal bids upon any subdivision of the day's labor work and the state engineer may upon the approval of the advisory board enter into an agreement for any such subdivisional work of the day's labor work. [Amendment approved April 8, 1911, Stats. 1911, p. 826.]

This section was also amended March 20, 1909, Stats. 1909, p. 560.

State work under control of department. Condemnation of rights of way. Additional help.

§ 8. All public work done by the state, except as otherwise provided for by law, shall be under the full control of the said department. It shall be the duty of the department of engineering whenever required by the advisory board to make examinations of lands subject to inundation and overflow by flood waters and of the waters causing such inundation or overflow and plans and estimates of the cost of works to regulate and control such flood waters. All matters of drainage, and improving and rectifying river channels and other work on any river or slough flowing into San Francisco bay, San Pablo bay and Suisun bay, and also the tide waters flowing into said bays, shall be placed under the management and control of the department of engineering whenever the law provides therefor. The department of engineering shall have charge of all expenditures unless otherwise provided by law for all public works relating to general river and harbor improvements, including reclamation and drainage of lands. It may purchase, construct and operate one or more dredges or any other needed appliances to promote or properly carry out the work of the department. The state engineer in the name of the state of California, may obtain or condemn any right of way necessary for any construction herein named and shall proceed if necessary, to condemn under the terms of the Code of Civil Procedure relating to such proceedings. It shall be the duty of the state department of engineering to pass upon all plans, specifications and estimates for the construction of dams now already constructed, in process of construction, or proposed to be constructed for the impounding of water other than the dams now coming under the authority of the California railroad commission. The department shall have the power to employ such additional help for the performance of the work of this section as the advisory board shall order. [Amendment May 19, 1915. In effect August 8, 1915. Stats. 1915, p. 632.]

Control of state highways. Expenditures. Power to obtain rights of way. Powers of state engineer assumed by highway commission. Highway engineer.

§ 9. The department of engineering shall take and have full possession and control of all roads and highways which have been declared and adopted state roads and state highways and all state roads and state highways which may hereafter be acquired and constructed. All expenditures by the state for highway purposes, except as otherwise hereafter provided by law, shall be under the full charge of the department of engineering, and all moneys appropriated for such purpose shall be made payable upon the proper demand of said department when approved and audited by the state board of control. The department of engineering, in the name of the people of the state of California, shall have the power to obtain or condemn necessary rights of way for any authorized state highway or for the change of any existing state highway or for any road placed under the department's charge by law unless otherwise provided. It shall

have power to alter or change the route of a road and shall do all things necessary, and obtain all tools and implements required to properly care for and manage the roads under the charge of the department. Whenever, under any statutes of this state, the performance of any duty or obligation is imposed upon the department of highways, the same shall be assumed by, and the performance of the same shall devolve upon, the department of engineering. The said California highway commission shall forthwith assume and have and exercise all of the powers and duties of the state engineer relating to state roads and state highways and other roads and highways heretofore by law conferred or imposed upon said state engineer, and the said state engineer shall immediately relinquish and transfer to the said California highway commission all funds, papers, maps, records and other documents of the department of engineering relating to the roads and highways of the state and thereafter the state engineer shall have no further duty, power or responsibility with regard to roads and highways, save only such as shall devolve upon him as a member of the advisory board of the department of engineering. Said California highway commission shall have the supervision and direction of all state roads and state highways now existing and the improvement, maintenance, repair and protection thereof, and have charge of and perform all other duties relating to state roads and state highways which may be imposed upon said commission by said advisory board. The highway engineer shall be the chief executive officer of the California highway commission and shall perform such duties as may be imposed upon him by the California highway commission which are not in conflict with any duties which may be placed upon him by said advisory board. [Amendment of May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 692.]

This section was also amended April 8, 1911, Stats. 1911, p. 828.

Duties of highway commission.

§ 10. The California highway commission, in addition to such other duties as may be imposed upon such commission by law, shall

(a) Make such investigations as will put at the service of the state the most approved methods of highway improvement;

(b) Compile statistics relative to the public highways of counties and municipalities;

(c) If deemed expedient by said commission and at the expense of the applicants, either in whole or in part, as determined by said commission, said county, road or boulevard district or division and municipal authorities, upon request of such county, road or boulevard district or division and municipal authorities, in establishing grades and road drainage systems and advise with them as to the construction, improvement and maintenance of highways and bridges.

Act for road districts, etc.

(d) If deemed expedient by said commission and at the expense of the applicants, either in whole or in part, as determined by said commission, cause plans, specifications and estimates to be prepared for the repair and improvement of highways and bridges, and in its discretion, also act as the consulting engineer for any county, road or boulevard district or division, or municipal authorities, when requested to do so by the county, road or boulevard district or division or municipal authorities; and said commission may, in its discretion, and upon the request of the governing board of any county, permanent road division, road or boulevard district or division, accept the funds of any such political subdivision for deposit in the state treasury, said funds to be deposited in such state fund or funds as said commission may designate, and the state department of engineering shall use and expend the funds so deposited for the construction of bridges, roads or boulevards situated within such political subdivision, in accordance with the plans and specifications and other terms as are mutually agreed upon by said commission, on behalf of the state of California, and such governing

board; provided, however, that any bridge, road or boulevard constructed under the provisions of this section by and under the jurisdiction of said state department of engineering shall revert to the original jurisdiction and control immediately upon the completion thereof, unless such bridge, road or boulevard shall, in the opinion of said commission, be and constitute an integral part of the state highway system as contemplated by the state highways act and the state highways act of 1915 or as otherwise provided by law; and, further, the governing board of any county, permanent road division, or road or boulevard district or division may pay into the state treasury, as provided herein, for the purposes hereof, any funds under its jurisdiction and control subject to use for bridge, road or boulevard purposes, created by tax levy or issuance of the bonds of any such political subdivision or otherwise.

[Investigate various methods of road construction.]

(e) Investigate and determine upon the various methods of road construction adapted to the different sections of the state, as to the best methods of construction and maintenance of highways and bridges, and make such experiments in relation thereto from time to time as said commission deems expedient.

[Promote highway improvement.]

(f) Aid at all times in promoting highway improvement throughout the state.

[Power to call for information.]

(g) Have the power to call upon any state, county or municipal official to furnish said commission with any information contained in his office which relates to, or is in any way necessary to, the proper performance of the work of said department of engineering, and it is hereby made the duty of such officials to furnish such information without cost.

Biennial reports.

(h) Prepare biennial reports relating to road and highway work which shall be incorporated by the state engineer in his biennial reports which he is required by law to submit to the governor at least thirty days before each session of the legislature. [Amendment of May 18, 1917. In effect July 27, 1917. Stats. 1917, p. 693.]

Architectural work.

§ 11. All architectural work of the department shall be under the charge of the state architect. When, however, it shall be deemed to be for the best interest of the state, the board of control, with the approval of the governor, may require and arrange for public competition, and in all such competitions, the board of control, with the approval of the governor, and with the advice of the state architect, may prescribe a schedule of prizes the total of which, exclusive of the fee of the winner, shall not exceed one per centum of the amount appropriated for any building. The fee of the successful architect shall not exceed six per centum of the cost of said building. The state architect, in company with the state engineer, shall visit and inspect all completed architectural work, and shall certify to the state engineer its proper or improper completion. The state architect shall have general charge, under the state engineer, of the erection of all buildings and must have an inspector at each building during the whole time of its construction. [Amendment of May 19, 1915. In effect August 8, 1915, Stats. 1915, p. 633.]

This section was also amended April 8, 1911, Stats. 1911, p. 828.

Chief engineer for San Francisco harbor commissioners. Salary. Bond. Duties. Record of cost of work.

§ 12. The department of engineering shall appoint a chief engineer for the board of state harbor commissioners for the port of San Francisco, and his salary shall be

five thousand dollars per annum and be payable monthly out of the San Francisco harbor improvement fund, and he shall hold office at the pleasure of the appointive power. He shall furnish the state with a bond in the sum of ten thousand (\$10,000.00) dollars for the faithful performance of his duties, which bond must be approved by the governor of the state of California and filed in the office of the secretary of state. He shall prepare such plans and specifications as the board may direct, and if adopted, and the work ordered by the board to be done, must superintend its construction. He must give constant attention to the condition of the seawall and throughfare, of the sheds, wharves, piers and landings, of the streets or parts thereof under the jurisdiction of the board, and when repairs are needed must forthwith report to the board in writing their nature and extent, and if ordered by the board must have the same done at once. He must keep himself informed as to the depth of the water in the various docks and slips, and report to the board from time to time what dredging is required. He must keep a register properly indexed, showing the date, place and character of every piece of work done and dock dredged, when begun and finished, with proper descriptions and drawings. He shall do all engineering work required by the said board of state harbor commissioners, and shall be subject at all times to its control, and devote his entire time to the service of the board. A copy of all work under his charge as chief engineer shall be filed in the office of the department of engineering. A complete record of cost in detail of all work done under the supervision of the chief engineer shall be filed with the department of engineering upon the completion thereof. [Amendment of May 27, 1915. In effect August 8, 1915, Stats. 1915, p. 901.]

Co-operative work with U. S. government.

§ 13. All co-operative engineering work now existing or to be engaged in by the state with the United States government shall be placed under the department of engineering. All plans, estimates and specifications shall be approved by the state engineer except that in the case of road and highway work all plans, estimates and specifications shall be approved by the California highway commission, and the advisory board shall have full power to determine the kind, quality and extent of such work under co-operation with said government before entering into agreement with said government for such work. All unexpended moneys provided for by law on the afore-said co-operative basis shall be expressly placed under the full control of the department of engineering and the state controller shall transfer such funds to the credit of the said department. Hereafter plans, estimates and specifications for such work shall be filed in the office of said department. All moneys received by the state treasurer from the United States government under project agreements relating to federal aid road work shall be credited by the state controller to such fund or funds as the state department of engineering shall designate. [Amendment of May 18, 1917. In effect July 27, 1917, Stats. 1917, p. 694.]

Impounding of debris from mines. State engineer to advise with debris commission.

§ 14. It shall be the duty of the state engineer to consult and advise with the members of the corps of engineers of the United States army comprising the California debris commission (created by act of congress, approved March first, eighteen hundred and ninety-three), in relation to the construction of works for the restraining and impounding of debris resulting from mining operations, natural erosion, or other causes; and it shall be his duty to examine such works and to report the result of such examination to the advisory board. Said state engineer is further authorized and directed to consult and advise with said "California Debris Commission" in relation to any and all plans and specifications that may have been or may hereafter be prepared or adopted by said "California Debris Commission," for the construction of such restraining or impounding works, and said state engineer shall file a copy of all such plans

and specifications in the office of the department. Whenever the advisory board approves said plans and specifications the state engineer shall notify the "California Debris Commission." Whenever said "California Debris Commission" or the government of the United States shall have entered into any contract for the construction of works for the purposes described in this act, in pursuance of plans and specifications that have been theretofore approved by the advisory board as in this act provided, it shall then be the duty of the state engineer to cause such work to be carefully inspected during the progress of their construction and to keep a record of the result of such inspection. Said state engineer shall also from time to time, during the progress of the construction of such works, when requested so to do by the said "California Debris Commission," present his claims to the state board of examiners in favor of such person or persons as may be designated by said "California Debris Commission" for such amounts as shall equal one-half of the cost of construction of said works; and said state engineer shall in like manner, and when requested so to do by said "California Debris Commission," present his claims to the state board of examiners for an amount equal [to] one-half the purchase price of any site or sites necessary for the construction of said works; provided, that the purchase of said site or sites shall have been first approved by the advisory board. All unexpended balances or money provided by law for the work under the debris commissioner shall be placed to the credit of the department of engineering by the state controller. Whenever under any statutes of the state any duty or obligation the performance of which is imposed upon the debris commissioner, the same shall be assumed and the performance of the same shall devolve upon the department of engineering.

Assistance on public works, employment of. How paid. Reports of inspectors.

§ 15. When in his judgment, it is deemed necessary, the state engineer, subject to the approval of the advisory board, shall employ such assistance on the public work of the state or on public work at any state institution as may be necessary for the proper discharge of his duties, and shall under like restrictions, have the authority to purchase any supplies, instruments, tools and conveniences as may be necessary for the proper discharge of the duties of the department of engineering. All employees of the department of engineering, when employed upon public work at or for any state institution in this state shall be paid, unless otherwise provided, from the revolving fund hereinafter created, and the amount of such payment shall be a charge against the institution for which such work is performed, and when collected from said institution by the department of engineering, shall be paid into said revolving fund. In all other cases such employees shall be paid by the department of engineering. All inspectors employed by the state engineer on any public work shall render to the state engineer a full, true and correct report of the kind, manner and progress of all work upon which he is such inspector. Any inspector who shall render a false report knowing the same to be false shall be guilty of a felony. It shall be the duty of the state engineer to keep a full, true and correct detailed account of the cost of all work done under the control of the department of engineering, and with the consent of the advisory board, may employ a clerk for the proper compiling thereof. Such accounts shall be always open to the inspection of the public. [Amendment approved March 20, 1909, Stats. 1909, p. 561. In effect immediately.]

Biennial report of state engineer.

§ 16. The state engineer shall prepare biennial reports which shall be submitted to the governor at least thirty days before each session of the legislature. Said report shall embrace the work and investigation of the department under his charge for the previous two years, together with such recommendations for changes in the laws affecting the department as he may deem advisable. It shall be the duty of the state

printer to print all reports, bulletins or other matter and furnish any other necessary illustrations or diagram therefor as the department may deem necessary, all of which shall, however, be subject to the approval of the state board of examiners. [Amendment of May 18, 1917. In effect July 27, 1917, Stats. 1917, p. 695.]

Salaries. Bond.

§ 17. The highway engineer shall receive not to exceed the sum of ten thousand dollars per annum; the state engineer shall receive the sum of five thousand dollars per annum; each assistant engineer shall receive the sum of three thousand dollars per annum; the secretary shall receive the sum of three thousand dollars per annum; the state architect shall receive the sum of four thousand eight hundred dollars per annum; the assistant state architect shall receive the sum of three thousand dollars per annum; the general superintendent for the architectural division shall receive the sum of three thousand dollars per annum; the mechanical engineer shall receive the sum of two thousand seven hundred dollars per annum; the architectural designer shall receive the sum of two thousand seven hundred dollars per annum; the structural engineer shall receive the sum of two thousand four hundred dollars per annum; the auditor shall receive the sum of two thousand four hundred dollars per annum; the electrical engineer shall receive the sum of two thousand one hundred dollars per annum; the estimator shall receive the sum of two thousand one hundred dollars per annum; the specification writer shall receive the sum of two thousand one hundred dollars per annum; the engineer's draftsman shall receive the sum of two thousand dollars per annum; two architectural draftsmen shall receive the sum of two thousand one hundred dollars per annum, each; one architectural draftsman shall receive the sum of one thousand eight hundred dollars per annum; two clerks shall receive the sum of one thousand eight hundred dollars each, per annum; two stenographers shall receive the sum of one thousand five hundred dollars each, per annum; the blueprint pressman shall receive the sum of one thousand five hundred dollars per annum; the janitor shall receive the sum of nine hundred dollars per annum. Such salaries shall be paid at the same time and in the same manner as are the salaries of other state officers. The highway engineer shall furnish the state with a bond in the sum of twenty thousand dollars; the two assistant engineers and the state architect shall each furnish the state with a bond in the sum of ten thousand dollars; and the secretary shall furnish the state with a bond in the sum of fifteen thousand dollars, for the faithful performance of their duties. Such bonds must be approved by the governor of the state of California, and filed in the office of the secretary of state. Each of the three appointed members of the advisory board shall receive the sum of three thousand six hundred dollars per annum. Each and every one of the above-mentioned officers shall take the oath of office as prescribed for other state officers. The members of the advisory board, the state engineer and other officers and employees of the department of engineering shall be allowed their necessary traveling expenses while engaged in the discharge of their duties within the state. Every employee of the department of engineering who is entrusted with moneys belonging to the state and who is not already required by law to furnish an official bond shall file a bond if the said department shall so require in such an amount as the department shall deem to be expedient with two sufficient sureties thereon or with a surety company of recognized standing for the faithful performance of his trust, which bond must be approved by the state board of control and filed with the state treasurer. The premium or charge for every such bond, if given by a surety company, shall be paid by said department out of the particular fund under its control, from which fund the moneys are withdrawn and placed in the custody of the bonded employee or out of that fund to which the services of such employee directly pertain. [Amendment of May 15, 1917. In effect July 27, 1917. Stats. 1917, p. 543.]

This section was also amended March 20, 1909, Stats. 1909, p. 562; April 8, 1911, Stats. 1911, p. 828; May 19, 1915, Stats. 1915, p. 633.

Auditing of bills. Attorney general is legal adviser.

§ 18. The state board of examiners shall audit all bills or claims incurred by the department of engineering and the state engineer shall present claims to said board for all expenditures directly under his charge. The attorney general of the state shall be the legal adviser of the department of engineering and the said department shall call upon the attorney general of the state for all such legal advice and services as the discharge of its duties may require.

Revolving fund.

§ 19. The sum of ten thousand dollars (\$10,000) is hereby appropriated out of any money in the state treasury not otherwise appropriated to provide and maintain a permanent revolving fund for the payment of salaries and wages of employees in the department of engineering when employed upon public work at or for any state institution, other than those employees whose salaries are fixed and determined by section 17 of this act. Such payment so made for salaries and wages shall be charged against the institutions for which said act is performed and in favor of the department of engineering, and when collected by said department, shall be paid into the revolving fund hereby created. [Amendment approved April 8, 1911, Stats. 1911, p. 829.]

This section was also amended March 20, 1909, Stats. 1909, p. 562.

Certain commissions to transfer all their property.

§ 20. It shall be the duty of the auditing board to the commissioner of public works, the commissioner of public works, the state highway commissioner, the debris commissioner and the Lake Tahoe wagon road commissioner to transfer to the state controller all of the property, books, reports and papers and maps of every description which is state property, and the said controller shall transfer all of said things and property to the department of engineering.

Repeal of act creating commissioner of public works.

§ 21. An act entitled "An act creating a commissioner of public works, defining his duties and powers and fixing his compensation," approved February ninth, nineteen hundred, and all acts or parts of act amendatory thereof are hereby expressly repealed.

Repeal of act creating department of highways.

§ 22. An act entitled "An act to create a department of highways for the state of California, to define its duties and powers, to provide for the appointment of officers and employees thereof, and to provide for the compensation of said officers and employees, and for the additional expenses of said department, and to make an appropriation therefor for the remainder of the forty-eighth fiscal year," approved April first, eighteen hundred and ninety-seven, is hereby expressly repealed.

Repeal of act creating auditing board.

§ 23. An act entitled "An act providing for the appointment of an auditing board to the commissioner of public works, authorizing and directing him and them to perform certain duties relating to drainage, to purchase machinery, tools, dredges, and appliances therefor, to improve and rectify water channels, to erect works necessary and incident to said drainage, to condemn land and property for the purposes aforesaid, making certain acts a felony, and making an appropriation of money for the purposes of this act," approved March seventeen, eighteen hundred and ninety-seven, and all acts or parts of acts amendatory thereof are hereby expressly repealed.

Repeal of act creating debris commissioner.

§ 24. An act entitled "An act to provide for the appointment, duties and compensation of a debris commissioner, and to make an appropriation to be expended under his

directions in the discharge of his duties as such commissioner," approved March twenty-fourth, eighteen hundred and ninety-three, and all acts or parts of acts amendatory thereof are hereby expressly repealed.

Repeal of act creating Lake Tahoe wagon road commissioner.

§ 25. An act entitled "An act to create the office of Lake Tahoe wagon road commissioner, providing the term of office and compensation of such commissioner, defining his duties, and making an appropriation for the salary and expenditures provided for and authorized by this act," approved April first, eighteen hundred and ninety-seven, and all acts or parts of acts amendatory thereof are hereby expressly repealed.

§ 26. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

1. **Liability for negligence of contractor.**—This act does not make the advisory board of the highway commission and the state engineer, under whose general direction state highway construction is carried on, liable for the negligence of the contractor in the construction of the highway.—*Buckingham v. Commery-Peterson Co.*, 39 Cal. App. 154, 178 Pac. 318.

STATE HIGHWAY REVOLVING FUND.

ACT 4847a—An act authorizing the establishment of a cash revolving fund for the department of engineering and defining its use.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 487.

State highway revolving fund.

§ 1. Out of the moneys in the "state highway fund," created by the "state highways act," approved March 22, 1909, the state controller, upon the demands of the advisory board of the department of engineering, audited by the state board of control, without receipts, vouchers or itemized statements at the time being required, shall draw his warrants in such sums as such advisory board of the department of engineering may specify, to create a cash revolving fund to be used in advancing cash payments for such expenditures as are necessary and proper to carry out the provisions of said "state highways act," such expenditures, evidenced by proper receipts, vouchers or itemized statements, to be subsequently paid for out of the said "state highway fund" and the money returned to the cash revolving fund; but the amount in such cash revolving fund shall at no time exceed one hundred thousand dollars.

WATER RESOURCES TOPOGRAPHIC SURVEY.

ACT 4848—An act providing for topographic surveys and investigations of the water resources of the state and making an appropriation therefor.

History: Approved April 22, 1909, Stats. 1909, p. 1079.

Topographic surveys. Continuous appropriation.

§ 1. The department of engineering is hereby empowered to carry on topographic surveys and investigations into matters pertaining to the water resources of the state along the lines of hydrography, hydro-economics and the use and distribution of water for agricultural purposes, and to that end, where possible and to the best interest of the state, shall enter into contracts for co-operation with the different departments of the federal government in such amounts as may be an equitable and necessary division of the work. The state engineer, with the consent of the governor, may maintain and continue such investigations where there is available money not covered by co-operation contract. For the permanent maintenance of said surveys and investigations there is hereby continuously appropriated out of the general fund of the state treasury for each and every fiscal year, commencing with the date upon which this act becomes effective, the sum of thirty thousand dollars.

§ 2. This act shall take effect immediately.

SURVEY FOR ADDITIONAL OUTLET FOR THE SACRAMENTO, SAN JOAQUIN
AND FEATHER RIVERS.

ACT 4848a—An act providing a survey for an additional outlet for the waters of the Feather, Sacramento and San Joaquin rivers and their tributaries.

History: Approved March 5, 1868, Stats. 1867-68, p. 91.

RECTIFICATION OF CHANNELS OF THE SACRAMENTO, SAN JOAQUIN AND
FEATHER RIVERS.

ACT 4849—An act to appropriate money to be expended by and under the direction of the department of engineering for the purpose of rectifying and improving the channels of the Sacramento, San Joaquin and Feather rivers and such other waters of the state as the department of engineering may determine; improving the navigability of such waters and acquiring land for necessary rights of way therefor; making surveys, investigations and report upon the feasibility of canalizing the rivers of the state and constructing canals for navigation, and making surveys, investigations and plans for flood control; the examination and supervision of dams; the investigation of rainfall, snowfall and runoff affecting navigation and flood control; and giving the department of engineering authority over dams, making it unlawful to construct or maintain dams in a dangerous condition and providing penalties for violations of the act and directing who shall prosecute such violations.

History: Approved May 14, 1917. In effect July 27, 1917. Stats. 1917, p. 516. Prior acts: (1) Act of March 21, 1907, Stats. 1907, p. 849, appropriated \$125,000 for the purpose indicated in the present act; (2) act of April 12, 1909, Stats. 1909, p. 850, appropriated \$150,000; (3) act of April 21, 1911, Stats. 1911, p. 1072, appropriated \$200,000; (4) act of June 7, 1913, Stats. 1913, p. 889, appropriated \$150,000; (5) act of June 9, 1915, Stats. 1915, p. 1305, appropriated \$150,000. The later act of May 22, 1919, Stats. 1919, p. 856, appropriated \$175,000. All the above acts are substantially identical in every way except as to the amount of the appropriation, and differ from the present act in no respect, except that they contain none of the provisions of § 2 hereof.

Appropriation: improving Sacramento, San Joaquin and Feather rivers.

§ 1. The sum of one hundred fifty thousand dollars is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, to be expended by the department of engineering for the purpose of rectifying and improving the channels of Sacramento, San Joaquin and Feather rivers, and such other waters of the state as the department of engineering may determine, improving the navigability of such waters, acquiring land for necessary rights of way for such improvements; making surveys, investigations and reports upon the feasibility of canalizing the rivers of the state and constructing navigable canals, making surveys, investigations and plans for flood control upon any stream, the flood waters of which may injure or menace lands in the state of California, including the examination and supervision of dams, and investigation of rainfall, snowfall and runoff affecting or tending to affect navigation or flood control upon any of the streams of the state; provided, however, that before any expenditure shall be made or contracts awarded by said department for construction work to be done affecting navigable waters, the plans therefor shall be approved by the proper officers of the government of the United States having charge of river work in California.

Dams under authority of department of engineering.

§ 2. (a) All dams in the state of California, other than those for impounding mining debris constructed under the authority of the California debris commission, or dams constructed by a municipal corporation maintaining a department of engineering, shall be under the authority of the state department of engineering, and the department shall

exercise supervision over any dam, the failure of which would endanger life or property, and shall have power to prescribe and enforce compliance with measures for making such dams safe against failure; provided, that this section shall not apply to any dam which is part of a "water system" as defined in section two of the public utilities act of this state, and nothing in this act shall be construed to limit the jurisdiction of the railroad commission over such dams.

Approval of plans.

(b) It shall be unlawful for any person, firm, corporation or district to construct, maintain or operate any dam known to be unsafe, or which if the destruction or failure thereof would endanger life or property; or to construct, reconstruct, repair or improve, maintain or operate any dam which is or would be ten feet or more in height or which will impound water or other fluid to the amount of three million gallons unless the plans, specifications and construction thereof shall have been approved in writing by the state department of engineering.

Penalty.

(c) Any person, firm, corporation or district who shall violate the provisions of this section is subject to a penalty of not less than five hundred nor more than two thousand dollars for each and every offense. Each day that such violation of the provisions of this section shall continue shall be deemed and considered a separate and distinct offense.

Permitting work contrary to plans felony.

(d) Any person acting for himself as owner, or as director, officer, agent or employee of any firm, corporation or district engaged in the construction, reconstruction, improvement or repair of any dam, the plans and specifications of which have been approved by the department of engineering, or any contractor, or agent or employee of such contractor, who shall knowingly permit work to be executed thereon contrary to the plans and specifications approved as aforesaid, or any inspector or employee of the department of engineering who shall have knowledge of such work being done and fail to immediately notify the department of engineering thereof, is guilty of a felony and subject to the penalty of confinement in the state penitentiary for not less than one nor more than five years.

Duty of district attorney.

(e) Upon the complaint of the department of engineering any district attorney is hereby authorized and directed to prosecute violations of the provisions of this section.

Audit.

§ 3. All expenditures hereunder for rights of way, labor, materials and machinery, or in payment, in whole or in part, of any contract shall, before being paid, be audited by the state board of control, as provided by law.

When available.

§ 4. Of the money herein appropriated fifty thousand dollars shall become available immediately upon this act becoming effective and the remaining one hundred thousand dollars shall become available on the first day of July, 1918.

DIRECT IMPROVEMENT OF NAVIGATION, SACRAMENTO, SAN JOAQUIN AND
FEATHER RIVERS.

ACT 4850—An act to provide for the accomplishment of the work of the direct improvement of the navigation of the Sacramento, San Joaquin and Feather rivers of the state of California, by controlling the floods, removing the debris and continuing the improvement of the Sacramento river, California, in accordance with the plans of the California debris commission contained in the report of said commission submitted August 10, 1910, and transmitted to the speaker of the house of representatives of the United States by the secretary of war on June 27, 1911, and printed in house of representatives document number eighty-one of the first session of the sixty-second United States congress, as modified by the report of said commission submitted February 8, 1913, approved by the chief of engineers of the United States army and the board of engineers for rivers and harbors and printed in rivers and harbors committee document number five, sixty-third United States congress, first session, in so far as said plan provides for the rectification and enlargement of river channels and the construction of weirs; and making an appropriation for such work; and providing for the continuance of such work as provided by section two of an act of the congress of the United States entitled "An act to provide for the control of the floods of the Mississippi river and of the Sacramento river, California, and for other purposes," approved March 1, 1917.

History: Approved May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 851. Prior acts: (1) Act of March 10, 1909, Stats. 1909, p. 249, appropriated \$400,000 for the purpose indicated; (2) act of June 7, 1913, Stats. 1913, p. 882, appropriated \$200,000; (3) act of May 18, 1915, Stats. 1915, p. 505, appropriated \$250,000; (4) act of May 15, 1917, Stats. 1917, p. 536, appropriated \$500,000. All these acts are substantially identical with the present act except as to the amount of the appropriation. A similar act approved February 12, 1909, Stats. 1909, p. 14, appropriating \$400,000 for the same purpose, was repealed March 25, 1909, Stats. 1909, p. 754. By the act of June 11, 1913, Stats. 1913, p. 595, removed from the act of 1909, *supra*, the condition that the appropriation should not be available unless the United States government shall first undertake the work or assume control or appropriate a specific sum therefor, and making the appropriation available free from that condition.

Appropriation: flood control.

§ 1. The sum of five hundred thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated, which shall be available July 1, 1919, for controlling the floods, removing the debris and continuing the improvement of the Sacramento river, California, in accordance with the plans of the California debris commission contained in the report of said commission submitted August 10, 1910, and transmitted to the speaker of the house of representatives of the United States by the secretary of war on June 27, 1911, and printed in house of representatives document number eighty-one of the first session of the sixty-second United States congress, as modified by the report of said commission submitted February 8, 1913, approved by the chief of engineers of the United States army and the board of engineers for rivers and harbors and printed in rivers and harbors committee document number five, sixty-third United States congress, first session, in so far as said plan provides for the rectification and enlargement of river channels and the construction of weirs.

Purpose of act.

§ 2. The appropriation made by section one of this act is made in compliance with the provisions of section two of that certain act of congress of the United States entitled "An act to provide for the control of the floods of the Mississippi river and of the Sacramento river, California, and for other purposes," approved March 1, 1917, and shall be paid to the treasurer of the United States whenever a like sum of five

hundred thousand dollars shall have been appropriated or authorized to be appropriated by the congress of the United States, conditional on the payment of an equal amount by the state of California, for the prosecution of said work pursuant to section two of said act of congress.

Jurisdiction of California debris commission.

§ 3. The money hereby appropriated, when paid to the treasurer of the United States, shall be expended under the direction of the California debris commission and in such manner as it may require or approve, and as provided in section two of said act of congress; and none of the money so appropriated shall be expended in the purchase of or payment for any right of way, easement or land acquired for the purposes of said improvement.

Warrants in favor of United States treasurer.

§ 4. The controller of the state of California is hereby authorized and directed, upon request of the governor, to draw his warrant or warrants on the state treasurer in favor of the treasurer of the United States for the amount hereby appropriated, and the state controller is hereby directed to pay the same.

Sum to equal that appropriated by United States.

§ 5. If the congress of the United States shall not appropriate the full sum of five hundred thousand dollars for the prosecution of said work in accordance with section two of said act of congress, as hereinbefore referred to, but shall appropriate a less sum or sums from time to time for said purpose, then the said sum hereby appropriated shall become available and be paid over to the treasurer of the United States, for said purpose as hereinbefore provided, in such sum or sums from time to time as may equal the sum or sums so appropriated or authorized to be appropriated by congress.

ADDITIONAL RIGHTS OF WAY FOR HIGHWAYS.

ACT 4858—An act to provide that the department of engineering of the state of California may acquire for and in the name of the people of the state of California, by purchase, donation, dedication or by proceedings in eminent domain, additional rights of way, land and trees on and along the course of any state highway.

History: Approved April 1, 1915. In effect August 8, 1915. Stats. 1915, p. 22.

Additional rights of way along state highways.

§ 1. The department of engineering may acquire for and in the name of the people of the state of California, by purchase, donation, dedication or by proceedings in eminent domain, rights of way, land or trees and ground necessary for the culture and support thereof on or along the course of any state highway, within a maximum distance of three hundred feet on each side of the center thereof, in any case when the acquisition of such rights of way, land and trees will be for the benefit of a state highway in aiding in the maintenance and preservation of the roadbed of such highway or aid in the maintenance and preservation of the attractions and scenic beauty thereof.

STATE FAIR.

See tits. "Agriculture"; "Bonds."

CHAPTER 362.

STATE FLOWER.

CONTENTS OF CHAPTER.

ACT 4862. STATE FLOWER.

STATE FLOWER.

ACT 4862—An act to select and adopt the “golden poppy” as the state flower of California.

History: Approved March 2, 1903, Stats. 1903, p. 78.

§ 1. The golden poppy (*eschscholtzia*) is hereby selected, designated, and adopted as the state flower of the state of California.

§ 2. This act shall be in force and effect from and after its passage.

STATE GEOLOGICAL SURVEY.

See Kerr's Cyc. Political Code, § 550.

STATE LANDS.

See tit. “Public Lands.”

CHAPTER 363.

STATE LAND SETTLEMENT BOARD.

CONTENTS OF CHAPTER.

ACT 4868. STATE LAND SETTLEMENT BOARD.

STATE LAND SETTLEMENT BOARD.

ACT 4868—An act creating a state land settlement board and defining its powers and duties and making an appropriation in aid of its operations.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1566. Amended May 23, 1919. In effect July 23, 1919. Stats. 1919, p. 838. Subsequent act of May 27, 1919, Stats. 1919, p. 1182, providing for a state land settlement bond issue of \$10,000,000, and for its submission to the people, was declared unconstitutional in *Hatfield v. Jordan* (Cal.), 190 Pac. 1030, and the court refused a writ of mandate to compel the secretary of state to submit it to the people, and it was not submitted.

Importance of land settlement.

§ 1. The legislature believes that land settlement is a problem of great importance to the welfare of all the people of the state of California and for that reason through this particular act endeavors to improve the general economic and social conditions of agricultural settlers within the state and of the people of the state in general.

Object of act.

§ 2. The object of this act is to provide employment and rural homes for soldiers, sailors, marines and others who have served with the armed forces of the United States in the European war or other wars of the United States, including former American citizens who served in allied armies against the central powers and have been repatriated, and who have been honorably discharged, to promote closer agricultural settlement, to assist deserving and qualified persons to acquire small improved farms, to demonstrate the value of adequate capital and organized direction in subdividing and preparing agricultural land for settlement, and to provide homes for farm laborers.

State land settlement board created.

To carry out the objects herein stated, there is hereby created a state land settlement board to consist of five members appointed by the governor to hold office for a term of four years and until their successors have been appointed and shall have qualified; provided, however, that of the members first appointed two shall be appointed to hold office until the first day in January, 1918, one until the first day in January, 1919, one until the first day in January, 1920, and one until the first day in January, 1921.

Officers.

The governor shall designate one of the members as chairman of the board and director of land settlement. The secretary may or may not be a member of the board. The board shall appoint such expert, technical, and clerical assistance as may prove necessary, and shall define their duties. It shall fix the salaries of all employees, with the approval of the state board of control.

Compensation.

The four members of the board shall receive a per diem for each meeting attended, and the chairman shall receive a salary, said per diem and salary to be fixed by the state board of control with the approval of the governor. The members shall also receive their actual necessary traveling expenses in the discharge of their duties.

Co-operation with United States government.

The said land settlement board shall have power to co-operate with and to contract with the duly authorized representatives of the United States government in carrying out the provisions of this act. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 839.]

Body corporate.

§ 3. The state land settlement board, hereinafter called the board, shall constitute a body corporate with the right on behalf of the state to hold property, receive and request donations, sue and be sued, and all other rights provided by the constitution and laws of the state of California as belonging to bodies corporate.

Agricultural lands to be acquired and sold.

§ 4. For the purposes of this act, the board may acquire on behalf of the state by purchase, gift or the exercise of the power of eminent domain, all lands, water rights and other property needed for the purposes hereof, and may take title in trust and shall without delay improve, subdivide and sell such land, water rights and other property with appurtenances and rights to approved bona fide settlers; the board shall have the authority to set aside for townsite purposes a suitable area purchased under the provisions of this act and to subdivide such area and sell or lease the same for cash, in lots of such size, and with such restrictions as to resale, as they shall deem best; and provided, further, that the board shall have authority to set aside and dedicate to public use such area or areas as it may deem desirable for roads, schoolhouses, churches, or other public purposes. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 839.]

Purchase of private lands.

§ 5. Whenever the board believes that private land should be purchased for settlement under this act, it shall give notice by publication in one or more newspapers of general circulation in this state, setting forth approximately the area and character of the land desired and the conditions that shall govern the proposed purchase, and inviting owners of land willing to enter into a contract of sale on the conditions proposed to submit such land for inspection. [Amendment of May 23, 1919. In effect July 23, 1919. Stats. 1919, p. 840.]

Inspection of tracts.

§ 6. Within thirty days thereafter the board shall direct an officer or officers in its employ, or one or more persons who may at its request be designated by the dean of the college of agriculture of the university of California, to inspect and report on all tracts of land suitable for closer settlement which are so submitted.

Report of inspection.

§ 7. The board shall give not less than one week's notice of the approximate date when tracts submitted will be inspected and every report of such inspection shall as far as practicable specify the —

- (a) Situation and brief description thereof;
- (b) Extent and situation of land comprising so much of any tract as it is proposed to acquire;
- (c) Names and addresses of the owners thereof;
- (d) Character of water rights;
- (e) Nature of improvements;
- (f) Crops being grown on land;
- (g) Appraisalment of value of land, water rights and improvements.

Decision.

§ 8. On receiving the reports on all of the land examined the board shall decide which of the areas is best suited to the purposes of this act. Before so deciding the board may examine the land, or it may employ one or more competent valuers to fix the productive value of the land and report the same in writing; the owner or his agent may give evidence as to its value.

Purchase.

§ 9. If from the evidence submitted or from the results of its personal inspection, the board is satisfied that one or more of the tracts submitted are suited to intensive, closer settlement and can be acquired at a reasonable price, it shall submit to the governor its report, giving the reasons for recommending the purchase, and on the approval of the governor the board shall be authorized to purchase the same; provided, that before such purchase is made, the attorney general shall approve the title of such lands and any water rights appurtenant thereto, and the state water commission shall certify in writing as to the sufficiency of any water rights to be conveyed. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 840.]

Control by board until moneys advanced repaid.

§ 10. All sales to settlers of land under this act shall be made under such terms and conditions as shall give to the board full control of any subdivisions thereof until all moneys advanced by the state for the purchase, improvement, or equipment of such subdivisions are fully repaid, together with interest thereon as herein provided. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 840.]

Subdivision.

§ 11. Immediately upon taking possession of any land purchased as above, and after deducting any areas to be set aside for townsites or public purposes in accordance with section four of this act, the board shall subdivide it into areas suitable for farms and farm laborer's allotments, and lay out, and where necessary, construct roads, ditches, and drains for giving access to and insuring the proper cultivation of the several farms and allotments. The board, prior to disposing of it to settlers, or at any time after such land has been disposed of, but not after the end of the fifth year from the commencement of the term of the settler's purchase contract, may—

Improvement of land.

- (a) Prepare all or any part of such land for irrigation and cultivation;
- (b) Seed, plant, or fence such land, and cause dwelling houses and outbuildings to be erected on any farm allotment or make any other improvements not specified above necessary to render the allotment habitable and productive in advance of or after settlement, the total cost to the board of such dwellings, outbuildings, and improvements not to exceed one thousand five hundred (\$1500) dollars on any one farm allotment;
- (c) Cause cottages to be erected on any farm laborer's allotment and provide a domestic water supply, the combined cost to the board of the cottage and water supply not to exceed eight hundred (\$800) dollars on any one farm laborer's allotment;

Loans.

- (d) Make loans to approved settlers on the security of permanent improvements, stock and farm implements, such loans to be secured by mortgage or mortgages, deed or deeds of trust on such permanent improvements, stock or farm implements, and the total amount of any such loan, together with money spent by the board on improvements as above specified, not to exceed three thousand dollars on any one farm allotment, or two thousand dollars on any one farm laborer's allotment. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 840.]

Irrigation works.

§ 12. Authority is hereby granted to the board, where deemed desirable, to operate and maintain any irrigation works constructed to serve any lands purchased and sold under the provisions of this act. All moneys received in tolls or charges for the operation and maintenance of any works or for any water supplied therefrom, shall be deposited in the land settlement fund created by this act and shall become available for the payment of any costs, expenses, or other charges authorized in this act to be paid from said land settlement fund.

Lease.

§ 13. After the purchase of land by the board under the provisions of this act and before its disposal to approved bona fide applicants the board shall have authority to lease such land or a part thereof on bonded or secured lease on such terms as it shall deem fit.

Allotments. Notice of opening for settlement. Right to reject applications.

§ 14. Lands disposed of under this act, other than lands set aside for townsites or public purposes, shall be sold either as farm allotments, each of which shall have a value not exceeding, without improvements, fifteen thousand dollars, or as farm laborer's allotments, each of which shall have a value not exceeding, without improvements, one thousand dollars. Before any part of an area is thrown open for settlement there shall be public notice thereof once a week for four weeks in one or more daily newspapers of general circulation in the state, setting forth the number and size of farm allotments or farm laborer's allotments, or both, the prices at which they are offered for sale, the minimum amount of capital a settler will be required to have, the mode of payment, the amount of cash payment required, and such other particulars as the board may think proper and specifying a definite period within which applications therefor shall be filed with the board on forms provided by the board. The board shall have the right in its uncontrolled discretion to reject any or all applications it may see fit and may readvertise as aforesaid as often as it sees fit until it receives and accepts such number of applications as it may deem necessary.

Sale of allotments.

If no applications satisfactory to the board are received for any farm allotment or farm laborer's allotment following such advertising, the board at any time prior to readvertising, may sell any such farm allotment or farm laborer's allotment at the prices at which they were so offered for sale, without the necessity of readvertising.

Subdivision or amalgamation of allotments.

The board shall also have the power in dealing with any such farm allotments or farm laborer's allotments for which there has been no such application satisfactory to the board, to subdivide or amalgamate any one or more of such allotments as it may see fit, and fix the prices thereon, provided that the limitations of fifteen thousand dollars for a farm allotment and one thousand dollars for the farm laborer's allotment, as in this section set forth, are not violated. Such subdivision or amalgamation may be had without the necessity of readvertising.

Sale of areas not suitable for allotments.

The board may also sell at public auction, under such conditions of sale and notice thereof as the board may prescribe, any areas which the board may determine are not suitable for farm allotments or farm laborer's allotments, whether or not included in any subdivision into farm allotments or farm laborer's allotments; provided, that if such area has been included in such a farm allotment or farm laborer's allotment, then such sale at public auction can be made only after a failure to receive any application satisfactory to the board after the advertising thereof, as required by the terms of this section. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 841.]

Who may apply. Limit. Fitness to cultivate.

§ 15. Any citizen of the United States, or any person who has declared his intention of becoming a citizen of the United States, and who is not the holder of agricultural land or of possessory rights thereto to the value of fifteen thousand dollars, and who by this purchase would not become the holder of agricultural land or of possessory rights thereto exceeding such value, and who is prepared to enter within six months upon actual occupation of the land acquired, may apply for and become the purchaser of either a farm allotment or a farm laborer's allotment; provided, that no more than one farm allotment or more than one farm laborer's allotment shall be sold to any one person; provided, further, that no applicant shall be approved who shall not satisfy the board as to his or her fitness successfully to cultivate and develop the allotment applied for.

Co-operation with other public agencies. Preference to soldiers and sailors, etc.

The board may, in offering for sale farm allotments or farm laborer's allotments, co-operate or contract with the duly authorized representatives of the United States government and other public corporations or agencies generally. The board is hereby authorized to perform all acts necessary to co-operate fully with the agencies of the United States engaged in work of similar character, and with similar boards and agencies of other states. In any such sales made in co-operation with such representatives or agencies of the United States government, preference must be given to soldiers, sailors, marines and others who have served with the armed forces of the United States in the European war or other wars of the United States, including former American citizens who served in allied armies against the central powers, and have been repatriated, and who have been honorably discharged. The board may likewise, whether or not acting in co-operation with the duly authorized representatives of the United States government, give such preference to any of such citizens of California, who as soldiers,

sailors, marines and others have served with the armed forces of the United States, as in this section described. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 842.]

Applications considered.

§ 16. Within ten days after the final date set for receiving applications for either farm allotments or farm laborer's allotments the board shall meet to consider the applications, and may request applicants to appear in person; provided, that the board shall have the power and the uncontrolled discretion to reject any or all applications.

Selling prices.

§ 17. The selling prices of the several allotments into which lands purchased under this act are subdivided, other than those set aside for townsite and public purposes, shall be fixed by the board, so as to render such allotments as nearly as possible equally attractive, and calculated to return to the state the original cost of the land, together with a sufficient sum added thereto to cover all expenses and costs of surveying, improving, subdividing, and selling such lands, including the payment of interest, and all costs of engineering, superintendence, and administration, including the cost of operating any works built, directly chargeable to such land, and also the price of so much land as shall on subdivision be used for roads and other public purposes, and also such sum as shall be deemed necessary to meet unforeseen contingencies.

Contract of purchase. Cash deposit. Loan from federal farm loan bank. Balance paid in amortizing payments.

§ 18. Every approved applicant shall enter into a contract of purchase with the board, which contract shall among other things provide that the purchaser shall pay as a cash deposit a sum equal to five per cent of the sale price of the allotment and in addition not less than ten per cent of the cost of any improvements made thereon, and such applicant shall, if required by the board, enter into an agreement to apply for a loan from the federal land bank under provisions of the federal farm loan act for an amount to be fixed by the board, and shall pay to the board the amount of any loan so made as a partial payment on such land and improvements. The balance due on the land shall be paid in amortizing payments extending over a period to be fixed by the board, not exceeding forty years, together with interest thereon at the rate of five per cent per annum. The amount due on improvements shall be paid in amortizing payments extending over a period to be fixed by the board not exceeding twenty years, together with interest thereon at the rate of five per cent per annum. The repayment of loans made on live stock or implements shall extend over a period to be fixed by the board not exceeding five years; provided, however, in each case, that the settler shall have the right, on any installment date, to pay any or all installments still remaining unpaid. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 843.]

Calculation of installments.

§ 19. The number and amount of yearly or half yearly installments of principal and interest to be paid to the board under contracts of purchase shall be calculated according to any table adopted or approved by the federal farm loan board.

Cultivation of land. Insurance.

§ 20. Every contract entered into between the board and an approved purchaser shall contain among other things provisions that the purchaser shall cultivate the land in a manner to be approved by the board and shall keep in good order and repair all buildings, fences, and other permanent improvements situated on his allotment, reasonable wear and tear and damage by fire excepted. Each settler shall, if required, insure and keep insured against fire all buildings on his allotment, the policies therefor to be

made out in favor of the board and to be in such amount or amounts and in such insurance companies as may be prescribed by the board.

Insurance in name of board.

The board shall have power in its own name to insure and keep insured against fire all buildings or other improvements on any of the lands under the control of the board, and any contract of insurance heretofore made by the board is hereby ratified and confirmed. The board shall likewise have the power in any contract of purchase under which the board purchases lands as authorized in this act, to provide for the return by the board to the owner so selling to the state of any insurance premiums or taxes which may have been paid on said property by such owner, or for which such owner may have become obligated to pay, and any such agreement or contract of purchase heretofore made by the board is hereby ratified and confirmed. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 843.]

Consent to transfer allotment.

§ 21. No allotment sold under the provisions of this act shall be transferred, assigned, mortgaged, or sublet in whole or in part, without the consent of the board given in writing, until the settler has paid for his farm allotment or farm laborer's allotment in full and complied with all of the terms and conditions of his contract of purchase. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 844.]

Failure to comply with contract terms. Security. Sale of forfeited land.

§ 22. In the event of a failure of a settler to comply with any of the terms of his contract of purchase and agreement with the board, the state and the board shall have the right at its option to cancel the said contract of purchase and agreement and thereupon shall be released from all obligation in law or equity to convey the property and the settler shall forfeit all right thereto and all payments theretofore made shall be deemed to be rental paid for occupancy. The board may require of the settler such mortgage or deed of trust or other instrument as may be necessary under the terms and conditions of the contract of purchase in order to adequately protect and secure the board. There may be included in such contract of purchase, mortgage, deed of trust or other instrument any conditions with reference to sale of the property or reconveyance back to the board or notice of such sale or reconveyance as may in the discretion of the board be required to be so included in such contract of purchase, mortgage, deed of trust or other instrument, in order to so adequately protect the said board in the premises; and any such contracts of purchase, mortgages, deeds of trust or other instruments heretofore executed are hereby confirmed. The failure of the board or of the state to exercise any option to cancel, or other privilege under the contract of purchase for any default shall not be deemed as a waiver of the right to exercise the option to cancel or other privilege under the contract of purchase for any default thereafter on the settler's part. But no forfeiture so occasioned by default on the part of the settler shall be deemed in any way, or to any extent, to impair the lien and security of the mortgage or trust instrument securing any loan that it may have made as in this act provided. The board shall have the right and power to enter into a contract of purchase for the sale and disposition of any land forfeited as above provided, because of default on the part of a settler, and this right may be exercised indefinitely without the necessity of advertising. [New section added May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 845.]

Residence.

§ 23. Actual residence on any allotment sold under the provisions of this act shall commence within six months from the date of the approval of the application and shall continue for at least eight months in each calendar year for at least ten years from the

date of the approval of the said application, unless prevented by illness or some other cause satisfactory to the board; provided, that in case any farm allotment disposed of under this act is returned to and resold by the state, the time of residence of the preceding purchaser may in the discretion of the board be credited to the subsequent purchaser.

Condemnation of water rights and rights of way. Appropriation of water.

§ 24. The power of eminent domain shall be exercised by the state at the request of the board for the condemnation of water rights and rights of way for roads, canals, ditches, dams, and reservoirs necessary or desirable for carrying out the provisions of this act, and on request of the board the attorney general shall bring the necessary and appropriate proceedings authorized by law for such condemnation of said water rights or rights of way, and the cost of all water rights or rights of way so condemned shall be paid out of the land settlement fund hereinafter provided for. The board shall have full authority to appropriate water under the laws of the state when such appropriation is necessary or desirable for carrying out the purposes of this act.

Appropriation. "Land settlement fund." Administrative expenses.

§ 25. For the purpose of carrying out the provisions of this act the sum of two hundred sixty thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated. Of this amount, the sum of two hundred fifty thousand dollars shall constitute a revolving fund to be known as the "land settlement fund," which is calculated to be returned to the state with interest at the rate of four per cent per annum within a period of fifty years from the date of the passage of this act, on the daily balances representing the amounts drawn out of such fund and thus depleting the fund to an amount less than said sum of two hundred fifty thousand dollars, which said daily balances shall be so calculated only on the amounts so drawn out of such fund, from the date of the passage of this act. The remaining ten thousand dollars shall constitute a fund available for the payment of administrative expenses alone until such time as other moneys are available for such purpose from the sales of land as provided for in this act. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 844.]

Advances by board of control.

§ 26. The state board of control is hereby authorized to provide for advances of money to the board needed to meet contingent expenses to such an amount, not exceeding five thousand dollars as the said board of control shall deem necessary.

Money paid for lands, etc.

§ 27. The money paid by settlers on lands, improvements, or in the repayment of advances, shall be deposited in the land settlement fund and be available under the same conditions as the original appropriation. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 844.]

Rules and regulations.

§ 28. The board shall have authority to make all needed rules and regulations for carrying out the provisions of this act. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 844.]

Investigation of land settlement conditions.

§ 29. The board is hereby authorized to investigate land settlement conditions in California and elsewhere and to submit recommendations for such legislation as may be deemed by it necessary or desirable.

Annual report of board.

The board shall render an annual report to the governor and a copy thereof to the secretary of the interior, which report shall be filed and printed as required by sections three hundred thirty-two, three hundred thirty-three, three hundred thirty-four, three hundred thirty-six and three hundred thirty-seven of the Political Code, with the exception that they shall be so filed and printed annually instead of biennially, as provided in said sections. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 844.]

Stats. 1915, p. 475, repealed.

§ 30. The act of the legislature entitled "An act providing for the appointment of a commission to investigate and report at the forty-second session of the legislature relative to the adoption of a system of land colonization and rural credits and making an appropriation therefor," approved May 17, 1915, is hereby repealed.

Title.

§ 31. This act may be known and cited as the "land settlement act."

The amending act of 1919, contained the following section:

Appropriation.

§ 17. For the purpose of carrying out the provisions of this act and of the act amended by this act, the sum of one million dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, which sum of one million dollars is calculated to be returned to the state within a period of fifty years from the date of this appropriation of one million dollars going into effect, with interest at the rate of four per cent per annum on the daily balances representing the amounts drawn out of such appropriation, and thus depleting the appropriation to an amount less than said sum of one million dollars. The state controller is hereby authorized and directed to draw warrants upon such funds from time to time upon requisition of the board approved by the state board of control, and the state treasurer is hereby authorized and directed to pay such warrants.

CHAPTER 364.**STATE LIBRARY.**

Reference: See Kerr's Cyc. Political Code, §§ 2292, et seq.

CONTENTS OF CHAPTER.

ACT 4873. ACCEPTANCE OF "SUTRO LIBRARY" VALIDATED.

ACCEPTANCE OF "SUTRO LIBRARY" VALIDATED.

ACT 4873—An act validating the action of the trustees of the state library in accepting as a gift from the heirs of the late Adolph Sutro of the city and county of San Francisco the library commonly denominated the "Sutro library," and in establishing a branch of the state library in the city and county of San Francisco, to be known as the "Sutro library."

History: Approved May 24, 1915. In effect August 8, 1915. Stats. 1915, p. 822.

Acceptance of Sutro library by state library validated.

§ 1. The action of the trustees of the state library in accepting as a gift from the heirs of the late Adolph Sutro, on behalf of the state of California, the collection of rare books and manuscripts gathered by the said Adolph Sutro is hereby approved and validated.

Establishment of branch validated.

§ 2. The establishment by the trustees of the state library of a branch of the state library in the city and county of San Francisco, to be known as the "Sutro library," in which branch the said collection of rare books and manuscripts shall, in accordance with the terms of the gift, be maintained is hereby approved and validated.

CHAPTER 365.**STATE MARKET COMMISSION.****CONTENTS OF CHAPTER.**

ACT 4875. "STATE MARKET COMMISSION ACT."

4876. "STATE FISH EXCHANGE ACT."

"STATE MARKET COMMISSION ACT."

ACT 4875—An act to provide for the creation of the "state market commission" and the organization thereof; to define its other duties and powers; to create the position of state market director; to define his duties and powers; to create the state market commission fund, and a revolving fund; and repealing that act known as "state commission market act," approved June 10, 1915, chapter seven hundred thirteen of the statutes of 1915, and all other acts and parts of acts in conflict with the provisions of this act.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1669. Amended April 30, 1919. In effect July 22, 1919. Stats. 1919, p. 264. Prior act of June 10, 1915, Stats. 1915, p. 1390, creating the state commission market, was repealed by the present act.

"State market commission" created. Purposes.

§ 1. There is hereby created the "state market commission," a state organization for the following purposes, to wit:

First—To act as advisor for producers and distributors when requested, assisting them in economical and efficient distribution of any such products at fair prices.

Second—To gather and disseminate impartial information concerning supply, demand, prevailing prices and commercial movements, including common and cold storage of any such products.

Third—To promote, assist and encourage the organization and operation of co-operative and other associations and organizations for improving the relations and services among producers, distributors and consumers of any such products, and to protect and conserve the interests of the producers and consignors of such products.

Fourth—To foster and encourage co-operation between producers and distributors of any such products, in the interest of the general public.

Fifth—To foster and encourage the standardizing, grading, inspection, labelling, handling, storage and sale of any such products.

Sixth—To act as a mediator or arbitrator, when invited by both parties, in any controversy or issue, that may arise between producers and distributors of any such products.

Seventh—To certify, for the protection of owners, buyers or creditors, when so requested, warehouse receipts for any such products, verifying quantities and qualities thereof, and to charge for such service fees sufficient to make the service at least self-supporting.

Eighth—To issue labels bearing the seal of the state market commission on request of the producer, packer, canner or distributor, for any such products, for which state labels have not otherwise been authorized by law, under such rules and regulations as

the director may deem necessary and to charge for such labels such fees as in the judgment of the state market director may be proper.

Ninth—To act on behalf of the consumers of any such products in conserving and protecting their interests in every practicable way.

Tenth—To improve, broaden and extend in every practicable way, the distribution and sale of any such California products throughout the markets of the world.

Eleventh—To promote in the interest of the producer, the distributor, and consumer, economical and efficient distribution and marketing of all or any agricultural, fishery, dairy and farm products produced, grown, raised, caught, manufactured or processed within the state of California.

It shall be within the province of the state market director, hereinafter provided for, to determine and decide, when, where and to what extent, existing conditions render it necessary or advisable to carry out any or all the purposes of this act and he is herewith granted power and authority to carry out any or all of said purposes.

Title of act. Terms defined.

§ 2. This act shall be known as the "state market commission act."

The following terms used in this act shall, unless a different meaning is plainly required by the context, be construed as follows:

The "commission" shall be the state market commission.

The "director" shall be the state market director himself personally or his duly appointed and authorized representative.

The word "products" shall refer to the agricultural, fishery, dairy and farm products produced, grown, raised, caught, manufactured or processed within the state of California.

The term "organizations of producers and distributors" shall include all corporations, societies, associations and organizations of producers or of producers and distributors, or of distributors, co-operative or otherwise, formed for the purpose of facilitating the marketing of any such products.

A "person" shall be understood to include individuals, partnerships, associations and corporations or their agents or employees.

When the singular is used the plural is also included. Whenever the masculine is used, the feminine and neuter are included.

State market director. Secretary.

The state market commission shall consist of a governing body of one person, to be known as the state market director, hereinafter referred to as the director, who shall be appointed by the governor of the state of California, and of a secretary to be appointed by the state market director, as hereinafter provided, and these two shall perform the duties and exercise the powers of the state market commission and shall administer the provisions hereof, administer oaths, certify to all official acts, and do all proper acts to carry out any and all of the purposes hereof.

Power of director.

§ 4. The director is hereby vested with full power, authority and jurisdiction to do and perform any and all things which are necessary or convenient in the exercise of any power, authority or jurisdiction designated and conferred upon him under this act.

Bureau of correspondence.

§ 5. The commission shall have a bureau of correspondence for gathering and disseminating information on all subjects relating to the marketing of California products, and may issue bulletins thereon, and by every practicable means keep the producers informed of the supply and demand and at what market their products can best be handled.

Term of director. Removal.

§ 6. The director shall hold office at the pleasure of the governor and his annual salary shall be five thousand dollars. The legislature by a two-thirds vote may remove the director for misconduct, neglect of duty or incompetency. [Amendment of April 30, 1919. In effect July 22, 1919, Stats. 1919, p. 264.]

Term of secretary.

§ 7. The state market commission shall have a secretary who shall be appointed by the director and hold office at his pleasure, and shall perform such duties as he may prescribe. The annual salary of the secretary shall be three thousand six hundred dollars.

Seal.

§ 8. The state market commission shall have a seal bearing the inscription "state market commission of California," which seal shall be affixed to all such instruments as the director shall require.

Salaries.

§ 9. The salaries of the director and secretary shall be paid to them in the same manner as are the salaries of other state officers.

The salary or compensation of all other persons holding office or employment under the director shall be fixed by the director and shall be paid monthly from the state market commission fund, as hereinafter provided, and after being approved by the director upon claims therefor to be audited by the state board of control.

All expenses incurred by the director pursuant to the provisions of this act, including actual and necessary traveling expenses, and other disbursements of the director, his officers and employees, incurred while on business of the commission shall be paid from the state market commission fund in the same manner, except as provided for in section twelve of this act.

Whole time devoted to duties.

§ 10. The director shall not engage in any other line of business during his term of office, but shall devote his whole time, attention and ability to the duties of his office. The director shall not hold or own any stock or other interest whatsoever in any produce commission business.

"State market commission" fund.

§ 11. There is hereby created a fund to be known as the "state market commission fund." All fees, charges and costs collected by said commission under this act shall be paid into the treasury of the state to the credit of such fund. All appropriations made by this act or any subsequent act for the use of the state market commission, shall be placed to the credit of such fund. All expenses of whatsoever nature, incurred by the commission under the provisions of this act, shall be paid from the state market commission fund, after being approved by the director, upon claims therefor to be audited by the board of control except as provided for in section fourteen a of this act.

Revolving fund.

§ 12. A revolving fund of two hundred and fifty dollars shall be established by the board of control for expenses of the state market commission, other than salaries, rent and other regular expenses, and the director may expend such revolving fund without first procuring the authority of the board of control, but shall file vouchers monthly with the board of control covering such disbursement.

Annual report.

§ 13. The director shall make and submit to the governor, on or before the first day of December of each year, a report containing a full and complete account of the trans-

actions and proceedings of the state market commission for the preceding fiscal year, together with such other facts, suggestions and recommendations as may be deemed of value to the people of the state.

Bond.

§ 14. The director, before entering upon the duties of his office, shall make and execute to the people of the state of California an official bond in the sum of five thousand dollars, for the faithful performance of the duties of his office. The director may require of the officers and employees such bonds for the faithful performance of their duties as in his judgment may be necessary.

Investigation of products held in storage.

§ 15. The director may make pertinent investigations concerning the aggregate amount of products held in common and cold storage. In connection with any such investigation, the director shall have the right to inspect only the pertinent books and records of common or cold-storage warehouses for the purpose of determining and publishing aggregate amounts of products held in storage, and the director is hereby empowered to issue subpoenas for the attendance of witnesses and the production of pertinent books, papers, accounts, documents and testimony in any such investigation.

Moneys transferred.

§ 16. Any and all moneys in the state treasury to the credit of and any moneys due the state commission market fund under the authority of the act creating the state commission market fund, approved June 10, 1915, shall be transferred to the credit of the state market commission fund, created by this act.

Constitutionality.

§ 17. If any section, subsection, sentence, clause or phrase of this act is for any reason declared to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Stats. 1915, p. 1390, repealed.

§ 18. That certain act entitled "An act to provide for the creation of the state commission market, and the organization thereof, to carry on the business of receiving from the products thereof the agricultural, fishery, dairy and farm products of the state of California and selling and disposing of such products on commission, creating the 'state commission market fund' and appropriating money therefor," approved June 10, 1915, and known as the "state commission market act," chapter seven hundred thirteen of the statutes of 1915, and all other acts and parts of acts in conflict with this act are hereby repealed.

"STATE FISH EXCHANGE ACT"

ACT 4876—An act to empower the state market director of California to regulate and control the business of buying and selling fresh fish; to regulate the destruction of food fish; to create a state fish exchange; to license those engaged in marketing fish; to create a state fish exchange fund and a revolving fund; to provide penalties for violations of this act; to investigate and report on the fish industry; and to promote the sale of fish.

History: Approved June 1, 1917. In effect July 31, 1917. Stats. 1917, p. 1673.

Title.

§ 1. This act shall be known as the "state fish exchange act."

Purpose.

§ 2. It is hereby declared that it is the purpose of this act to bring about an increased consumption of fresh fish by the people of California, to enable them to obtain the same at reasonable prices, and to empower the state market director to regulate and control the business of buying and selling fresh fish, to regulate the destruction of food fish, to create a state fish exchange, to license those engaged in marketing fresh fish, to create a state fish exchange fund, to provide penalties for violations of this act, to investigate and report on the fish industry, and to promote the sale of fish.

Terms construed.

§ 3. The following terms used in this act shall, unless a different meaning is plainly required by the context, be construed as follows:

The "state market director" shall be understood to be himself personally or his duly appointed and authorized representative. A "person" shall be deemed to include individuals, partnerships, associations and corporations or their agents or employees. A "retail dealer," "peddler," or "huckster," is one engaged in the business of selling fresh food fish direct to the consumer. A "wholesale dealer" is one who sells fresh food fish to hotels, restaurants, railroads, steamships, hospitals, institutions and all others than the consumer, and especially to retail dealers for resale. A "fish buyer" or "fish broker" is one engaged in the business of buying or selling fresh food fish for the owner or consignee, or who, without an established place of business, buys from the fishermen for the purpose of reselling to others than the consumer. "Market fishermen" are individuals engaged in the business of catching fish under licenses issued by the state fish and game commission authorizing them to do so. When the singular is used, the plural is also included; whenever the masculine is used, the feminine and neuter are included.

Title to fish in state.

§ 4. It is hereby declared that the ownership and title to all fish found in the waters under the jurisdiction of the state are in the state of California; no such fish shall be caught, taken or killed in any manner or at any time except that the person so catching, taking or killing or having the same in his possession, irrespective of the manner in which they were obtained, shall by such act or possession thereby consent that the title to such fish shall be and remain in the state of California for the purpose of regulating and controlling the use and disposition of same after such catching, taking or killing, except that the title to such fish legally taken shall vest in the person so taking or possessing them, subject to the restrictions and provisions of law. All fish found in the possession of a person within the state of California shall be presumed to have been taken under the jurisdiction of the state.

Fish business regulated by state market director.

§ 5. (a) The state market director is hereby vested with jurisdiction to regulate and control the business of buying and selling and otherwise disposing of fresh food fish caught in the waters under the jurisdiction of the state, and the business of buying, selling and disposing of such fresh food fish may not be carried on except in accordance with the provisions of this act.

State markets.

(b) The state market director is hereby vested with jurisdiction to open and conduct where, when, and for so long as he deems it advisable, state markets for the buying and selling of fresh food fish, and to rent, lease or purchase plants and equipment necessary for the same, and to use so much of the funds placed at the disposal of the state market

director by the act creating the state commission market, approved June 10, 1915, or in the event of the repeal of said act, by the state market commission act, as may be required in establishing and conducting said markets.

Additional powers of state market director.

(c) The state market director is hereby vested with full power, authority and jurisdiction to do and perform any and all things, whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction conferred under this act.

Maximum prices.

§ 6. (a) The state market director shall, when and where for so long as he deems it advisable, establish maximum prices to be paid or charged in any particular locality, for food fish of any or all varieties intended for human consumption in its fresh condition, caught in the waters under the jurisdiction of the state:

First. To be paid to those engaged in catching such fish for sale.

Second. To be paid to those engaged in the wholesale fish business.

Third. To be charged to the consumer by retail fish dealers, peddlers or hucksters; and said prices shall be such as will allow, in the judgment of the state market director, a reasonable compensation or profit to those engaged in the catching or selling of such fish.

Changes in prices.

(b) The state market director may, at his discretion, from time to time make such changes or withdrawals in the prices authorized in section six (a) hereof, as he may deem necessary.

Unlawful to charge more than lawful price.

(c) It shall be unlawful for any person engaged in the business of selling fresh food fish in a particular locality to charge more than the maximum prices authorized for such locality, as provided in section six (a) hereof. Any violation of the provisions of this paragraph, after receipt of notice of maximum prices established in accordance with the provisions of section six (a) of this act, shall be good and sufficient ground for the suspension or revocation by the state market director in his discretion of any license issued under the authority of this act.

Advice on maximum prices.

(d) In the exercise of powers under this act, the state market director may confer with parties interested with a view of securing their advice and counsel as to maximum prices to be paid and charged.

Consent to destruction or diversion of fish.

§ 7. It shall be unlawful for any one to destroy, or cause or permit to be destroyed any food fish in excess of fifty pounds within one day of twenty-four hours or to divert, or cause or permit to be diverted any food fish to any use other than human consumption, without having first obtained the written consent of the state market director to such destruction or diversion. Consent to such destruction or diversion shall be given only where the applicant establishes to the satisfaction of the state market director that such destruction or diversion is not for the purpose of influencing prices and that reasonable efforts have been made to induce its consumption by the public. Nothing in this section shall be construed to apply:

Fish excepted.

First. To the use of food fish by fishermen as bait in the customary manner; and.

Second. To any individual market fisherman who is unable to sell for human consumption.

sumption fish he has caught and who within forty-eight hours after the destruction or diversion of said fish shall report to the state market director the number of pounds and varieties of fish and how disposed of. The deposit in the United States mail of a written statement of said facts, properly addressed to the state market director and stamped, shall be accepted as a sufficient report.

Third. To food fish in the possession of canners, curers or packers and which are not suitable for their use and which in consequence are destroyed or diverted to use other than human consumption; provided, that within forty-eight hours after the destruction or diversion of any such fish, the person responsible therefor shall report to the state market director the number of pounds and varieties of fish, reason for destruction or diversion and how disposed of. The deposit in the United States mail of a written statement of said facts, properly addressed to the state market director, shall be accepted as a sufficient report.

When excessive supply of fish reaches market.

§ 8. In the event of a supply of fresh food fish reaching any market, which supply in the judgment of the state market director is excessive or abnormal:

(a) It shall be the duty of the state market director, in his discretion, to use every means at his command to induce its consumption by the public, including reduction in prices thereon and increased publicity, as hereinafter provided for.

(b) It shall be obligatory on the part of market fishermen and wholesale fish dealers, who find themselves possessed of an excessive supply, to notify the state market director of the fact, and failure to give such notice shall be sufficient grounds for the suspension for a period not exceeding one month, in the discretion of the state market director, of any license issued under the authority of this act.

(c) The state market director may at his option, use the moneys of the state fish exchange fund hereinafter provided for, in purchasing any part or all of an excess of food fish over the amount than can be sold through ordinary channels, and to place same in cold storage, and to resell same to any or all buyers, and any loss or profit in such transactions shall be charged or credited to the state fish exchange fund.

License fees.

§ 9. Every person, individual, partnership, association or corporation, other than market fishermen, engaged in the business of buying and selling fish for consumption in its fresh condition, shall pay to the state a semiannual license fee, as follows:

First. All retail dealers, dealing exclusively in fish, crustaceans and mollusks, ten dollars.

Second. All retail dealers, handling fish in connection with a retail business, owned by them, in other products than crustaceans and mollusks, and all peddlers and hucksters, five dollars.

Third. All fish brokers and all fish buyers, fifty dollars.

Fourth. All fishermen's organizations selling the catch of their members or agents selling the catch of such fishermen's organizations, fifty dollars.

Fifth. All salesmen or agents representing wholesale fish dealers located outside the state, fifty dollars.

Wholesale fish dealers.

Sixth. All wholesale fish dealers, on the basis of their gross receipts from the sale of fresh food fish, including their sales at branch houses, as follows:

When gross receipts for six months are:

Not in excess of twenty-five thousand dollars, fifty dollars.

Between twenty-five thousand dollars and fifty thousand dollars, seventy-five dollars.

Between fifty thousand dollars and one hundred thousand dollars, one hundred dollars.

Between one hundred thousand dollars and two hundred thousand dollars, one hundred fifty dollars.

Between two hundred thousand dollars and three hundred thousand dollars, two hundred dollars.

More than three hundred thousand dollars, two hundred fifty dollars.

Seventh. All branch houses of wholesale dealers—that is, wholesale dealers operating more than one wholesale establishment—for each branch house, five dollars.

Payable in advance. If sales greater or less than amount of which fee based.

Fees payable by wholesale dealers under paragraph six of this section, as above, shall be due and payable in advance, and shall be based on the applicant's sworn statement as to his gross receipts from the sale of food fish sold for human consumption in its fresh condition, using the corresponding period of the preceding year as a basis. If the applicant did no wholesale business during said corresponding period, a license shall be issued upon payment of a fee of fifty dollars and the execution of a good and satisfactory bond by the applicant to the state market director, guaranteeing the payment of such additional amount as will make the total payable on his actual business during such period equal to the license fee fixed in said paragraph six of this section. If the amount of actual sales of any such dealer for any semiannual period, for which he has paid license fees in advance, shall be greater or less than the amount on which such license fee was based, he shall at the end of such period, be charged with and shall pay to the state such additional amount as would be due on the basis of actual sales as set forth in paragraph six hereof, if the amount of actual sales be greater than the amount on which license fee was paid; or if the actual sales be less than such amount for any such semiannual period, he shall, at the end thereof, be credited with the difference between the license fee paid in advance and the fee that would have been due on the basis of actual sales as set forth in paragraph six hereof; but such credit shall be made only on further license fees that may be payable by any such dealer.

When payable. For portion of period. License for each place of business.

§ 10. All licenses provided for in this act shall be paid in advance and shall terminate with December thirty-first and June thirtieth, whichever date may first follow the date of issue. A proportionate charge shall be made, according to the number of months covered, for licenses issued for a portion of the semiannual period, but in no case shall the fee be less than one-half of the semiannual fee, excepting those issued to wholesale dealers as hereinabove provided in section nine of this act. A separate license shall be required for each place of business from persons owning or operating more than one establishment, except that the sale of fish from a vehicle by the holder of an exclusive retail fish dealer's license shall not require a peddler's license. Persons doing both a wholesale and retail business shall be required to take out both wholesale and retail licenses unless the total receipts of any such person amount to less than ten thousand dollars per annum, and any such person having total receipts of less than ten thousand dollars per annum shall be considered a retail dealer for licenses hereunder.

Application.

§ 11. All licenses provided for in this act shall be issued by the state fish exchange hereinafter provided for, upon written application accompanied by proper fee, together with a certificate from the local health authorities, or other satisfactory assurance to the effect that the state and local rules and regulations as to equipment and sanitary conditions have been complied with.

Licenses prepared by state controller.

§ 12. The state controller shall prepare suitable license blanks, of the form and class designated by the state market director, which shall purport to license the holder

to deal in fish. They shall be numbered consecutively commencing with one, and shall provide spaces in which to insert the name of the person to whom issued, his business address, and the period covered. The controller shall deliver all licenses to the state market director, who shall thereupon sign and issue them in accordance with the terms of this act.

License transferred or assigned.

§ 13. Any license may be transferred or assigned by the holder thereof upon payment of a transfer fee of five dollars; provided, notice shall be given in writing to the state fish exchange, hereinafter provided for, within ten days of such transfer or assignment. In such cases the original license shall be returned to the state fish exchange and cancelled and a new license issued in lieu thereof for the unexpired portion of the original license, on payment of the fee named. If notice of transfer or assignment be not given, the license shall be invalid for any other person than the original licensee.

Duplicate license.

§ 14. In the event of a license issued under the authority of this act being lost or accidentally destroyed, a duplicate license may be issued by the state fish exchange, hereinafter provided for, upon payment of a fee of five dollars.

Display of license.

§ 15. Every license shall be conspicuously displayed in the place of business for which it is issued, or upon request must be shown by any licensee having no established place of business.

"State fish exchange" created.

§ 16. To carry out the provisions of this act, there is hereby created a "state fish exchange" as a department of the state commission market, created by chapter seven hundred thirteen of the statutes of nineteen hundred fifteen, approved June 10, 1915, and of the state market commission created by the "state market commission act." The state fish exchange shall have a secretary who shall execute a bond to the people of the state of California in the sum of ten thousand dollars for the faithful performance of his duties. The state market director shall have authority, subject to the state civil service act, to appoint all employees of the state fish exchange necessary to carry out the provisions of this act and shall fix their compensation.

Rules and regulations.

§ 17. The state market director shall establish and enforce rules and regulations necessary for the proper carrying out of the provisions of this act, and shall print and distribute the same to all persons applying therefor without charge.

"State fish exchange fund."

§ 18. There is hereby created a fund to be known as the "state fish exchange fund." On or before the tenth day of each month, the state fish exchange shall remit to the state treasury all moneys collected by said exchange under this act, during the preceding month. All such remittances shall be placed to the credit of the state fish exchange fund and said fund shall be kept separate and apart from other state moneys. All expenses of whatsoever nature incurred by said exchange pursuant to the provisions of this act, including the actual and necessary traveling and other expenses of its employees incurred while on business of the exchange and including the premium and charge for bonds given by surety companies for employees of the exchange when required by the state market director or by the provisions hereof, shall be paid from the said fund, after approval by the state market director, upon claims to be audited by the state board of control, except as provided in section nineteen of this act.

Revolving fund.

§ 19. A revolving fund of five hundred dollars shall be established by the state board of control out of the state fish exchange fund for expenses of the state fish exchange, other than salaries, rent and other regular expenses, and the state market director may expend such revolving fund without first procuring the authority of the board of control, but shall file vouchers therefor monthly with the board of control.

Payments to state market commission fund.

§ 20. A sum equaling five per cent of the gross receipts of the state fish exchange shall be paid out of the state fish exchange fund, monthly, to the credit of the state commission market fund, or in the event of the repeal of the act creating the state market commission fund, approved June 10, 1915, to the state market commission fund as a commission on the business of the state fish exchange, for services rendered it by the state market director.

Educational and publicity campaigns.

§ 21. Any surplus over and above the expenditures of the state fish exchange in the state fish exchange fund shall be expended by said exchange, under the direction of the state market director, in educational and publicity campaigns for the purposes of increasing the consumption of fresh food fish, and of enabling the public to obtain fish at reasonable prices.

Fish exempted.

§ 22. Nothing in this act shall be construed as applying to fish bought or sold for canning, curing or packing; or as requiring the payment of license fees by canners, curers, or packers of fish; or to fish caught by other than market fishermen; or to fish sold direct by fishermen to private consumers; or to fish caught in waters within the state privately owned, or to crustaceans or mollusks except that provisions of section seven as to destruction or diversion of food fish shall be of general application.

License suspended or revoked.

§ 23. Any license issued under the authority of this act may be suspended or revoked by the state market director in his discretion, as herein provided, or upon evidence that the holder thereof has been or is a violator of the provisions of section six of this act, authorizing the fixing of maximum prices on fish, or of the fish and game laws of the state, as evidenced by conviction in any court of competent jurisdiction; or any such license may be suspended in the discretion of the state market director for a period not to exceed thirty days for any violation of the rules and regulations provided for in section seventeen. Such suspension or revocation shall be made only after due notice of such intention has been given the offender and an opportunity given him to rebut the charge at a formal hearing by the state market director, at which hearing the accused shall be entitled to be represented by attorney.

Statement of fish caught.

§ 24. The state market director may require from any person engaged in marketing fish a written statement as to the amount and varieties of fish caught, or on hand, or sold by said person. Failure to furnish such statement on demand shall be good and sufficient grounds for the suspension of license issued under the provisions of this act, at the discretion of the state market director, for a period not exceeding thirty days.

Seal.

§ 25. The state fish exchange shall have a seal bearing the inscription "state fish exchange, state of California, seal," which seal shall be affixed to all instruments, including licenses, issued under the provisions of this act.

Investigations.

§ 26. (a) The state market director may make investigations concerning all matters relating to the provisions of this act. In connection therewith he shall have the right to inspect the books and records of any person engaged in marketing fish, and the state market director is hereby empowered to hear complaints, administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.

Subpoenas.

(b) The superior court in and for the county, or city and county, in which any inquiry, investigation or proceeding may be held by the state market director, shall have power to compel the attendance of witnesses, the giving of testimony and the production of papers, including books, accounts and documents, as required by any subpoena issued by the state market director. The court upon petition of the state market director shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he had not attended and testified or produced said papers before the state market director. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the state market director, the court shall thereupon enter an order that said witness appear before the state market director at a time and place to be fixed in such order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.

Penalty.

§ 27. Any violation of the provisions of section seven of this act as to destruction or diversion of food fish, of section nine as to licenses required, or of section ten as to license regulations, or of section fifteen requiring licenses to be displayed or shown, shall be a misdemeanor punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding ninety days, or by both such fine and imprisonment.

Suits commenced when.

§ 28. All prosecutions or suits brought under this act shall be commenced within six months from the time such offense was committed.

Annual report.

§ 29. The state market director shall make and submit to the governor, on or before the first day of December of each year, a report containing a full and complete account of the transactions and proceedings of the state fish exchange, for the preceding fiscal year, together with such facts, suggestions and recommendations as may be deemed of value to the people of the state.

Constitutionality.

§ 30. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Repealed.

§ 31. All acts and parts of acts in conflict with this act are hereby repealed.

1. Constitutionality—Right of fishery.—The act is not obnoxious to the constitutional right of fishery in section 25, article I, of the constitution.—Paladini v. Superior Court, 178 Cal. 369, 173 Pac. 588.

2. Same—Same.—The state's legislative power to alienate what it owns on such terms as it chooses to impose was not modified by section 25, article I, of the constitution.—Paladini v. Superior Court, 178 Cal. 369, 173 Pac. 588.

3. Same—Same.—Neither section 25½, article IV, authorizing the division of the state into fish and game districts, for the protection of fish and game, nor subdivision 33, section 25, article IV, of the constitution, prohibiting the enactment of local laws, limits the sovereign power of the state over fish and game, or of the legislature to legislate concerning it.—Paladini v. Superior Court, 178 Cal. 369, 173 Pac. 588.

4. Same—Same.—The right may be taken away under the police power.—**Production of books and papers.**—The right of fishery is a privilege and may be taken away under the police power, but a proceeding to take away such right is not criminal, so as to make an order for the produc-

tion of books and papers of the defendant unconstitutional.—Paladini v. Superior Court, 178 Cal. 369, 173 Pac. 588.

5. Same—Production of books and papers.—Since the passage of the act the books and papers of licensed fishermen and fish dealers, are not private, and an order for their production is not an unreasonable search and seizure within the meaning of section 19, article I, of the California constitution, or of the fourth amendment to the federal constitution.—Paladini v. Superior Court, 178 Cal. 369, 173 Pac. 588.

6. Same—Fixing prices.—If the power given the state market director to fix prices is invalid, that fact does not render the whole act unconstitutional.—Paladini v. Superior Court, 178 Cal. 369, 173 Pac. 588.

7. Production of papers—Order too broad.—An order under the authority of the state fish exchange act requiring a person engaged in the fish and other business to produce his books covering a certain period without limiting it the production of books relating to the fish business alone, is too broad, and beyond the jurisdiction of the state market director and of the superior court.—Paladini v. Superior Court, 178 Cal. 369, 374, 173 Pac. 588.

STATE PRINTER.

See Kerr's Cyc. Political Code, §§ 526-540.

STATE PRISONS.

See tit. "Prisons."

CHAPTER 366.

STATE PURCHASING DEPARTMENT.

CONTENTS OF CHAPTER.

ACT 4880. STATE PURCHASING DEPARTMENT ACT.

STATE PURCHASING DEPARTMENT ACT.

ACT 4880—An act to create a state purchasing department, to define the authority, powers, and duties thereof; to provide for the appointment of and to define the authority, powers, and duties and to fix the compensation of the officers and employees thereof, and to appropriate money for the support of said department; and to repeal all acts or parts of acts in conflict with the provisions of this act.

History: Approved May 18, 1915. In effect August 8, 1915. Stats. 1915, p. 508. Amended May 2, 1919. In effect July 22, 1919. Stats. 1919, p. 279.

State purchasing department created.

§ 1. There is hereby created, of and for the the state of California, a department to be known as the state purchasing department. Said department shall be in charge of a state officer to be known as the state purchasing agent. He shall be appointed by the governor and shall hold office at the pleasure of the governor. He shall be a civil executive officer. He shall execute to the people of the state a bond in the penal sum of ten thousand dollars for the faithful discharge of the duties of his office. He shall receive a salary of four thousand dollars per annum,

Powers and duties.

§ 2. The state purchasing agent shall, under the restrictions of this act, have full and sole power and authority and it shall be his duty upon approval of the state board of control to contract for and purchase or direct and supervise the purchase of all supplies of whatever nature necessary for the proper transaction of the business of each and every state department, commission, board, institution, or official. For the purpose of making such purchases and contracts the state purchasing agent shall be and is hereby made the purchasing agent of and for each and every state department, commission, board, institution and official. All appropriations or funds of the state university or funds that are now or may hereafter be exempted from the provisions of section 672 of the Political Code shall be exempt from the operation of this act, and where the best interests of the state demand, any purchase or contract against any other appropriation or fund may be exempted from the jurisdiction of the state purchasing department by the unanimous vote of the state board of control.

Warehouses.

§ 3. The state purchasing agent shall have the power and authority, subject to the approval of the state board of control, to maintain warehouses, and to rent or lease, or construct the same, and to issue such rules and regulations as may be necessary for the proper and economical conduct of the business of the state purchasing department.

The state purchasing agent is hereby authorized to insure, in the name of the state, any goods or merchandise belonging to the state which may be stored in any warehouse or storage depot not under exclusive state control, in an amount sufficient to indemnify the state against loss or damage by fire. The premium for such insurance shall be paid out of the revolving fund created for the use of the state purchasing department and the expense thereof shall be prorated and added to the price of the goods or merchandise, when shipped, and billed to the various institutions and department of the state, to which the same are supplied. [Amendment of May 2, 1919. In effect July 22, 1919, Stats. 1919, p. 279.]

Power to contract.

§ 4. An estimate or requisition approved by the department, commission, board or state official in control of the appropriation or fund against which such contract and purchase is to be charged, shall be full authority for any contract and any purchase made by the state purchasing agent, provided such contract and such purchase shall have first met the approval of the state board of control before being made.

Claims.

§ 5. Every valid claim on account of such contracts and purchases negotiated by the state purchasing agent shall be audited and paid from the appropriations or funds against which the contract and purchase estimates or requisitions were allowed as provided in section four hereof upon the sworn statement of the executive officer of the department, commission or board, or of the business manager of the institution or of the state official for whose benefit the appropriations or funds are made available, to the effect that the services have been rendered and the supplies delivered in accordance with the contract and the law, together with the sworn statement of the state purchasing department as to the correctness of the claim. Such sworn statements after approval by the state board of control, shall be full and sufficient authority for the controller to draw his warrant and the treasurer to pay the same against said appropriations or funds. Said executive officer, business manager or state official must immediately upon the proper rendition of services or delivery of supplies or both, transmit the invoice or demand for payment of the same together with his sworn statement to the office of the state purchasing department. No such claim on account of such contracts and purchases shall require the signature of any officer or officers other than

those mentioned in this section, any other act or regulation to the contrary notwithstanding, and no contrary provision contained in any law hereafter enacted shall be deemed to contravene the provisions hereof unless the direction is accompanied by a special provision exempting it from the operation of this section; provided, however, that no claim shall be audited against or paid from any appropriation or fund unless an estimate or requisition for the same is approved in accordance with section four of this act. [Amendment of May 2, 1919. In effect July 22, 1919, Stats. 1919, p. 279.]

Assistants.

§ 6. The state purchasing agent shall have the power to appoint one deputy state purchasing agent at an annual salary of three thousand dollars, who shall be a civil executive officer, one state testing engineer at an annual salary of two thousand seven hundred dollars, and to appoint and fix the salaries of three assistant state purchasing agents, subject to the approval of the state board of control. The state purchasing agent shall also have power, with the approval of the state board of control, to appoint and fix the compensation of such additional employees as the proper and economical conduct of the state purchasing department may demand.

Bond of assistants.

The deputy and each subordinate of the department who has personal supervision and control of any warehouse or storage depot wherein merchandise or goods belonging to the state are stored, shall execute to the people of the state a bond in the penal sum of five thousand dollars, the premium of which shall be paid by the state as are the premiums upon the bonds of state officers.

Deputy to succeed in case of death, etc.

In the event of the death, resignation, removal from office, or disqualification of the state purchasing agent, the deputy shall become the acting state purchasing agent, and shall serve as such until a state purchasing agent shall be appointed and qualified according to law. [Amendment of May 2, 1919. In effect July 22, 1919, Stats. 1919, p. 280.]

Testing laboratory.

§ 7. The state purchasing department shall maintain a testing laboratory and the state testing engineer shall be the custodian thereof, and of all the apparatus therein and pertaining thereto, and of all the testing apparatus and machinery which shall be in the possession of any state department, commission, board, institution, or official, and for which through the operation of this act they shall have no use. The state testing engineer shall perform such tests as may be required by any state department, commission, board, institution, or official, and for any tests made by the state testing engineer and not made on account of any purchase, lease, rental, or contract under the jurisdiction of the state purchasing agent, a charge may be made based upon the actual cost of material and labor employed, plus five per centum for use of apparatus and machinery, which shall be paid into the maintenance fund of the state purchasing department.

Appropriation.

§ 8. The sum of fifty thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated to support the state purchasing department for the sixty-seventh and sixty-eighth fiscal years.

§ 9. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

STATE TREASURER.

See tit. "Treasurer."

CHAPTER 367.

STATISTICS.

CONTENTS OF CHAPTER.

ACT 4883. AGRICULTURAL AND INDUSTRIAL STATISTICS.

AGRICULTURAL AND INDUSTRIAL STATISTICS.

ACT 4883—An act to provide for the collection, compilation and publication or agricultural and other industrial statistics for the state of California, and making an appropriation therefor.

History: Approved April 25, 1911, Stats. 1911, p. 1108.

Agricultural society to publish annually agricultural and industrial statistics.

§ 1. The board of directors of the state agricultural society are authorized, and it is hereby made their duty, to collect, compile and publish annually, on or before the 31st day of January in each year, statistics showing the yield of agricultural and other farm and industrial products of the state of California for each preceding year, and shall, as nearly as may be practicable, ascertain and publish each year the number of acres of land within the state that are under irrigation, and the number, location and extent of any new irrigation enterprises, exclusive of individual pumping plants, that may have been started within the state during the preceding year.

Appropriation.

§ 2. For the purpose of carrying out the provisions of this act, the sum of five thousand (\$5,000) dollars per annum is hereby appropriated out of any money in the state treasury not otherwise appropriated, and the controller is hereby authorized to draw his warrant from time to time up to the amount of said appropriation in favor of the board of directors of the state agricultural society, and the state treasurer is hereby authorized and directed to pay the same.

STATUTE OF LIMITATIONS.

See Kerr's Cyc. Code Civil Procedure, § 348.

CHAPTER 368.

STATUTES.

CONTENTS OF CHAPTER.

ACT 4894. OMNIBUS REPEAL ACT.

OMNIBUS REPEAL ACT.

ACT 4894—An act to abolish all laws now in force in this state, except such as have been passed by the present session of the legislature.

History: Passed April 22, 1850, Stats. 1850, p. 342.

1. Laws in force April 22, 1850, not foreign laws.—Laws in force in this state unrepealed prior to April 22, 1850, are not foreign laws requiring to be proved, and the court is bound to take judicial notice of them.—Wells v. Stout, 9 Cal. 475.

2. Contracts before April 22, 1850—Governed by rules of civil law.—All contracts made here before the 22nd of April, 1850, must have their effect and construction by the rules of the civil law.—Fowler v. Smith, 2 Cal. 568.

STEAMBOATS.

See Kerr's Cyc. Political Code, §§ 2374-2377.

CHAPTER 369.

STEAM BOILERS.

CONTENTS OF CHAPTER.

ACT 4903. STEAM BOILER INSPECTION ACT.

STEAM BOILER INSPECTION ACT.

ACT 4903—An act to provide for the periodical inspection of steam boilers, with certain exceptions, operated in this state; requiring a permit, to be issued by the industrial accident commission, for the operation of such boilers; making it a misdemeanor to operate such boilers without such permit; and allowing an injunction against such operation without such permit where dangerous to the life or safety of employees; providing for a hearing before the industrial accident commission prior to refusal of a permit; providing for the determination of competency of inspectors making such inspections and requiring reports of inspections; and prescribing maximum fees for such inspections.

History: Approved May 9, 1917. In effect July 27, 1917. Stats. 1917, p. 297.

Permit required to operate steam boiler. Violation. Injunction restraining operation.

§ 1. No steam boiler, unless exempted in the following section, shall be operated in the state of California unless there shall have been issued for the operation of such boiler a permit, as hereinafter provided, and unless such permit shall remain in full force and effect. Such permit must be posted under glass in a conspicuous place on or near the boiler covered by it. The violation of this section by any person owning or having the custody, management or operation of such boiler without such permit shall be a misdemeanor and the operation of such boiler without such permit shall constitute a separate offense for each day that it shall be so operated; provided, that no prosecution shall be maintained where the issuance or renewal of such permit shall have been requested and shall remain unacted upon. If the operation of such boiler without such permit shall constitute a serious menace to the lives or safety of persons employed about it, the industrial accident commission, a commissioner or any safety inspector thereof, or any person affected thereby, may apply to the superior court of the county in which such boiler is situated for an injunction restraining the operation of said boiler until such condition shall be corrected or such permit secured. The certification of the industrial accident commission that no permit exists for the operation of such boiler, and the affidavit of any such inspector that its operation constitutes a menace to the life or safety of any person or persons employed about it, shall be sufficient proof to warrant the immediate granting of a temporary restraining order.

Boilers exempt.

§ 2. The following boilers are exempt from the provisions of this act:

(1) Boilers under the jurisdiction or inspection of the United States government, and all other boilers operated by employers not subject to the workmen's compensation, insurance and safety act of 1917, and acts amendatory thereof.

(2) Boilers of twelve horsepower or less, on which the pressure does not exceed fifteen pounds per square inch.

Inspection of steam boilers. Hearing. Temporary permits.

(3) Automobile boilers and boilers on road motor vehicles.

§ 3. The industrial accident commission shall cause to be inspected, internally and externally, not less frequently than once in each year, every steam boiler subject to the provisions of this act. If such boiler be found upon such inspection to be in a safe

condition for operation, a permit shall be issued by the commission for its operation for not longer than one year, which shall be the permit referred to in section one of this act. If any such inspection shall show such boiler to be in an unsafe or dangerous condition, the commission, or a commissioner, may issue a preliminary order requiring such repairs or alterations to be made to such boiler as may be necessary to render it safe, and may order the use of such boiler discontinued until such repairs or alterations are made or such dangerous or unsafe conditions are remedied. Unless such preliminary order be complied with, a hearing before the commission, a commissioner or referee of such commission, shall be allowed, upon request, at which the owner, operator or other person in charge of said boiler shall have opportunity to appear and show cause why he should not comply with said order. If it shall thereafter appear to the commission that such boiler is unsafe and that the requirements contained in said preliminary order should be complied with, or that other things should be done to make said boiler safe, the commission may order or confirm the withholding of the permit to operate said boiler, and may make such requirements as it deems proper for the repair or alteration of said boiler, or the correction of such dangerous and unsafe conditions. Such order may thereafter be reheard by the commission, or reviewed by the courts, in the manner specified by the workmen's compensation, insurance and safety act of 1917 for safety orders, and not otherwise. It may also, in its discretion, issue and renew temporary permits for not to exceed thirty days each, pending the making of replacements or repairs. Nothing contained in this act shall be construed to limit the authority of the commission to prescribe or enforce general or special safety orders.

Who may inspect. Certificate of competency.

§ 4. The commission may cause the inspection herein provided for to be made either by its safety inspectors or by any qualified boiler inspector employed by any county, city and county, city, or insurance company, or by any boiler inspector employed by any person or corporation for the purpose of testing his own boilers only; provided, that such persons making inspections other than such safety inspectors shall first secure from the said industrial accident commission a certificate of competency to make such inspections. The industrial accident commission is hereby vested with full power and authority to determine the competency of any applicants for such certificate, either by examination or by other satisfactory proof of qualifications. The commission may rescind at any time, upon good cause being shown therefor, any certificate of competency issued by it to a boiler inspector, or may at any time, upon good cause being shown therefor, and after notice and an opportunity to be heard, revoke any permit to operate such steam boiler.

Fees.

§ 5. The industrial accident commission shall fix and collect fees for the inspection of steam boilers covered by this act, not exceeding two dollars and fifty cents for each external inspection and seven dollars and fifty cents for each internal inspection per annum. Such fees must be paid before the issuance of any permit to operate the said boiler. No fee shall be charged by the industrial accident commission where an inspection, as herein provided, has been made by an inspector holding a certificate of competency from said commission and employed by any county, city and county, city, insurance company, or by any person or corporation for the purpose of testing his own boilers only. All fees collected by the commission under this act shall be paid into the accident prevention fund.

Report of inspection.

§ 6. Every inspector so certified shall forward to the commission on the forms provided by it, within twenty-one days after such inspection is made, a report of such inspection, in default of which the certificate of competency may be canceled.

ST. HELENA.

See Act 3094, note.

CHAPTER 370.**STOCKTON.****CONTENTS OF CHAPTER.****ACT 4910. FREEHOLDERS' CHARTER.****FREEHOLDERS' CHARTER.****ACT 4910—Freeholders' charter of the city of Stockton.**

History: Voted for and ratified at a special municipal election October 17, 1911; filed with the secretary of state December 20, 1911, Stats. 1911 (ex. sess.), p. 254. Originally incorporated April 21, 1852, Stats. 1852, p. 211; amended April 2, 1853, Stats. 1853, p. 74. This act was repealed and the city reincorporated March 31, 1857, Stats. 1857, p. 133. This act was amended (1) April 11, 1857, Stats. 1857, p. 197; (2) March 7, 1859, Stats. 1859, p. 72. Both this act and the original act of 1852 were repealed and the city reincorporated by the act of April 21, 1862, Stats. 1862, p. 314. This act was amended (1) March 31, 1866, Stats. 1865-66, p. 598; (2) January 26, 1870, Stats. 1869-70, p. 24. This act was repealed and the city reincorporated April 2, 1870, Stats. 1869-70, p. 587. This act was repealed and the city reincorporated by the act of March 27, 1872, Stats. 1871-72, p. 595. This latter act was amended (1) February 28, 1874, Stats. 1873-74, p. 193; (2) March 18, 1874, Stats. 1873-74, p. 439; (3) March 28, 1876, Stats. 1875-76, p. 523; (4) March 12, 1878, Stats. 1877-78, p. 220. The act of 1872 was superseded by incorporation under the general law, and this incorporation was in turn superseded by the adoption of a freeholders' charter November 20, 1888; resolution of approval adopted March 2, 1889, Stats. 1889, p. 577. This charter was amended May 19, 1903; adopted February 2, 1905, Stats. 1905, p. 832; and was superseded by the present charter.

1. Date charter went into effect.—The charter of the city of Stockton, except for the purpose of nomination and election of officers, and taxation and assessment, did not go into effect until after the public utilities act.—*Oro Electric Corp. v. Railroad Commission*, 169 Cal. 466, 147 Pac. 118.

2. Powers over public utilities.—The city of Stockton had no power under the charter of 1889 and prior to the effective date of the public utilities act, to grant a franchise which would authorize an electric light and power company to engage in the business of furnishing light and power therein.—*Oro Electric Corp. v. Railroad Commission*, 169 Cal. 466, 147 Pac. 118.

3. Same—Streets.—The charter of 1889 went no further than to assert the city's control over the streets, its power to regulate the laying of wires and erecting lights therein and thereupon, to provide for lighting such streets and to fix the rates thereof.—*Oro Electric Corp. v. Railroad Commission*, 169 Cal. 466, 147 Pac. 118.

4. Same—Electric light and power corporations.—The express powers contained in subdivisions 28 and 34 of section 30 of the charter of 1889, have the effect of limiting the power of the city to grant franchises to electric light and power corporations which might otherwise be inferred from the general grant of power to control streets and make police and sanitary regulations.—*Oro Electric Corp. v. Railroad Commission*, 169 Cal. 466, 147 Pac. 118.

5. Same—Same.—The conclusion that there was no intention, by the charter of 1889, and the 1905 amendments, to vest in the city the power to grant franchises to furnish electric lights to the inhabitants, is aided by a consideration of section 19, article XI, of the constitution, by which such companies were given the privilege of using the public streets of such cities as had no public light or waterworks for the purpose of supplying the inhabitants with light and water.—*Oro Electric Corp. v.*

Railroad Commission, 169 Cal. 466, 147 Pac. 118.

6. Same—Licensing master plumbers.—The charter empowers the city to exact a license from master plumbers as a condition of their right to engage in the plumbing business, and an ordinance exacting such a license is not in conflict with the acts of 1885 (Stats. 1885, p. 12) and 1887 (Stats. 1887, p. 58), granting the power of

regulating the plumbing and drainage of buildings.—In re Prentice, 24 Cal. App. 345, 141 Pac. 220.

7. Same—Same—Not controlled by general law.—The imposition of a license tax for plumbers is a "municipal affair," and the charter of Stockton is uncontrolled by general law with respect thereto.—In re Prentice, 24 Cal. App. 345, 141 Pac. 220.

STOCKTON SLOUGH.

See Kerr's Cyc. Political Code, § 2349.

CHAPTER 371.

STORM WATER DISTRICTS.

Reference: See tits. "Levee Districts"; "Protection Districts."

CONTENTS OF CHAPTER.

ACT 4925. "STORM WATER DISTRICT ACT OF 1909."

4926. COACHELLA VALLEY STORM WATER DISTRICT—VALIDATION ACT.

STORM WATER DISTRICTS.

ACT 4925—An act to provide for the formation, organization and government of storm water districts, for the purpose of protecting the land therein from damage from storm water and from the waters of any innavigable stream, watercourse, canyon or wash, for the construction of the necessary works of protection by said district, and for the levying of taxes and assessments to pay for the cost of constructing, repairing and maintaining such improvements.

History: Approved March 13, 1909, Stats. 1909, p. 339. Amended June 6, 1913, in effect August 10, 1913, Stats. 1913, p. 504; May 4, 1917, in effect July 27, 1917, Stats. 1917, p. 214; May 10, 1919, in effect July 22, 1919, Stats. 1919, p. 525.

Formation of storm water districts. Petition. Resolution of intention. Hearing. Notice.

§ 1. Storm water districts may be formed under the provisions of this act for the purpose of protecting the lands in such district from damage by storm water, dams, ditches, dikes and other structures, and by spreading, conserving, storing, retaining or causing to percolate into the soil any or all waters of any innavigable stream, watercourse, canyon or wash. Said storm water districts may include within their exterior boundaries land which lies within incorporated territory with land which lies in unincorporated territory, or said districts may be formed from land lying wholly within or wholly without incorporated territory. When twenty-five per cent or more owners of land whose names appear as such upon the last assessment roll in any district of land which lies in one body and is liable to damage from storm water or from the waters of any innavigable stream, watercourse, canyon or wash, shall present a petition to the board of supervisors of the county in which said land lies, or if the same lies in more than one county, then to the board of supervisors of the county in which the greater area of such land lies, setting forth the exterior boundaries of said district and asking that the district so described be formed into a storm water district under the provisions of this act. The said board of supervisors shall pass a resolution declaring their intention to form or organize said portion of said county or counties into a storm water district for the purpose of protecting the land therein from damage from storm water and from the waters of any innavigable stream, canyon or wash, and describing the exterior boundaries of the district. Said resolution shall fix a time and place for the

hearing of the matter not less than thirty days after the passage thereof, and direct the clerk of said board to publish the notice of the intention of the board of supervisors to form such storm water district and of the time and place fixed for the hearing, and shall designate some newspaper of general circulation published and circulated in said proposed storm water district, or if there is no newspaper so published and circulated, then some newspaper of general circulation published and circulated in each county in which any part of said proposed district is situated in which said notice is to be published. [Amendment of May 10, 1919. In effect July 22, 1919, Stats. 1919, p. 525.]

This section was also amended June 6, 1913, Stats. 1913, p. 504; May 4, 1917, Stats. 1917, p. 215.

Publication of notice. Notice to owners.

§ 2. Thereupon said clerk shall cause to be published in the newspaper or newspapers so designated, for a period of twenty days before the date fixed for the hearing, a notice, which shall be headed "Notice of intention of the board of supervisors to form a storm water district." Said notice shall set forth the fact of the passage of such resolution with the date thereof, the boundaries of the proposed district, and the time and place for the hearing, and shall state that it is proposed to assess all property embraced in said proposed storm water district, for the purpose of paying the damages, costs and expenses of constructing and repairing such dikes, levees, ditches, canals, reservoirs, shafts and other improvements as may be necessary to protect the land in said district from damage from storm water and from waters of any innavigable stream, canyon or wash, or to spread, conserve, store, retain or cause to percolate into the soil within such district any or all of such waters, and the necessary expense of maintaining said district, and shall refer to the resolution for further particulars. The assessor shall certify to the clerk the name of each owner of land in the proposed district whose name appears as such on the last assessment roll of the county or counties in which said proposed district lies, and said clerk shall forthwith send a copy of said notice by registered mail, postage prepaid, to each owner so certified, addressed to such owner at his address given on said assessment roll or, if no address is given, then at his last known address, or if it be not known, then at the county seat of the county in which his land lies. Said clerk shall make and file in his office an affidavit of such mailing, showing the names and addresses of the persons to whom such notices were sent, which shall be prima facie evidence that such notices were mailed as herein required. [Amendment of May 4, 1917. In effect July 27, 1917, Stats. 1917, p. 216.]

This section was also amended June 6, 1913, Stats. 1913, p. 505.

Objections.

§ 3. Any person interested objecting to the formation of such proposed district, or to the extent thereof, may, at or before the time fixed for the hearing of the matter, file a written objection thereto, with the clerk of said board of supervisors, who shall indorse thereon the date of its reception by him, and shall at the time fixed for the hearing, place all such objections filed with him before said board of supervisors. [Amendment of May 4, 1917. In effect July 27, 1917, Stats. 1917, p. 216.]

Hearing. Declaration of supervisors.

§ 4. At the time fixed for the hearing, or to which the hearing may be adjourned, the board of supervisors shall hear the objections filed, if any, and pass upon the same. Said board may, in its discretion, sustain any or all of the objections filed, and may change or alter the boundaries of such proposed district to conform to the needs of the district, except that they shall not include therein any territory not included in the boundaries mentioned in the petition, and may, in their discretion, declare such storm water district formed with the boundaries designated by them, and shall design-

nate such district by name as the storm water district of county (or counties); provided, that no such district shall be formed wherein a majority of the owners of property in said district, according to the last previous assessment roll, object. Said storm water district may be organized and incorporated and managed as herein expressly provided, and may exercise the powers herein expressly granted or necessarily implied. The county clerk shall immediately cause to be filed with the secretary of state a certified copy of such order of the board of supervisors, and from and after the date of the filing of such certified copy, the district named therein shall be deemed incorporated as a storm water district with all the rights, privileges and powers set forth in this act, and necessarily incident thereto. [Amendment of May 10, 1919. In effect July 22, 1919, Stats. 1919, p. 526.]

This section was also amended May 4, 1917, Stats. 1917, p. 216.

Control of district.

§ 5. Each storm water district shall be under the control of three trustees, to be elected as hereinafter provided, who shall constitute the governing board thereof. Each trustee shall be a freeholder of the district and shall have resided therein at least one year next preceding his election; provided, however, that when unincorporated territory is included with incorporated territory in said district, at least one of said trustees shall be an eligible freeholder of the unincorporated territory, if such there be residing in said district, and shall give bond in such sum as the board of supervisors who formed the district shall fix, which bond shall be approved by a superior judge of said county and filed with the county clerk thereof. Said trustees, except those first elected, shall take office on the first day of July next succeeding their election, and shall hold office for the term of two years and until their successors are elected and qualified. [Amendment of May 10, 1919. In effect July 22, 1919, Stats. 1919, p. 526.]

Election of trustees. Conduct of election. Organization of board of trustees.

§ 6. Upon the formation of such storm-water district the said board of supervisors must call an election therein for the election of three trustees of such district. Notice of said election stating the time, place or places and purpose thereof, and the names of the election officers shall be given by the board by publication in some newspaper of general circulation, designated by the board and published in their county, for two weeks before said election. Such election shall, except as herein otherwise provided, be held in conformity to the law for holding special elections, as to matters provided for thereby, and as to other matters in conformity to the general election law, so far as applicable; but no sample ballot shall be sent out. The election board shall count the votes as soon as the polls are closed, and forward the returns of the election to said board of supervisors. Said board of supervisors at their next regular meeting thereafter shall canvass said returns, and issue certificates of election to the persons elected. The board of trustees so elected shall meet and organize on the next Monday after their certificates of election are issued to them, and shall hold office until the first day of July next succeeding the first regular election of trustees hereinafter provided for after the formation of said district, and until their successors are elected and qualified. On the first Friday of June of each even-numbered year there shall be held an election in said storm-water district for the purpose of electing three trustees of said district. Such regular election must be called by the board of trustees of such district in the manner herein provided for calling the first election, and the election shall be held in the same manner as the said first election, and certificates of election shall be issued by the trustees.

Trustees, compensation. Meetings, etc.

§ 7. The trustees shall receive no compensation for their services. They shall elect one of their own number president. They shall appoint a clerk, who shall hold office at their pleasure, and receive such compensation as they may fix. They must establish and keep an office in or near the district for the transaction of the business thereof, at which all books, records, and papers of the district must be kept and be open to public inspection at all reasonable times. They shall hold regular meetings at such office, at such times as they shall by order prescribe. Special meetings may be held on written order of any two trustees and two days written notice to any trustee not joining in the order. The order must specify the business for which the special meeting is called and no other business shall be transacted thereat.

Powers of districts. Contracts. Emergency work.

§ 8. Each storm-water district shall have power to sue and be sued. The trustees thereof shall have power in the name and in behalf of the district to purchase, receive by donation, or acquire by condemnation any rights of way or other real or personal property necessary to carry out the purposes for which the district was formed, and for that purpose all the provisions of the Code of Civil Procedure relating to eminent domain are hereby made applicable to proceedings by such district to condemn property. The said board of trustees shall also have power to employ such engineers, surveyors and others as may be necessary to survey, plan, or locate, or supervise the construction or repair of, the improvements necessary to carry out the purposes for which the district was formed; to construct, maintain and keep in repair any and all improvements, requisite or necessary to carry out the purposes of the district; and to do any and all other acts and things necessary or required for the protection of the lands in said district from damage from storm waters and from waters of any innavigable stream, watercourse, canyon or wash; or for the spreading, conserving, storing, retaining or causing to percolate into the soil within such district any or all of such waters; and to employ the services of any person, legal or otherwise, which in the judgment of said board of trustees may be necessary to carry out said purposes. All work of construction, repair, or maintenance, the cost whereof exceeds \$500.00, shall be done by contract; and all contracts shall be let by the board to the lowest responsible bidder, who will give bond for the faithful performance thereof satisfactory to the board, after advertisement for bids published by their clerk for not less than ten days in some newspaper of general circulation, designated by the board and published in the county in which the district or some part thereof is situated, specifying the time and place for the opening of bids, and the particular work to be bid for; provided, however, that the board may reject all bids and re-advertise, and may by unanimous action in cases of great emergency, the nature of which shall be entered on their minutes, proceed at once to replace or repair any of the works or improvements of the district without advertisement. [Amendment approved June 6, 1913, Stats. 1913, p. 505. In effect August 10, 1913.]

Improvements, survey for determining what.

§ 9. As soon as said district is organized, the board of trustees thereof shall cause a survey to be made to determine what improvements shall be made to carry out the purposes of the district, and shall also cause a map of such survey, and plans and specifications showing such improvements in detail, to be prepared, and they shall adopt such map, plans and specifications, and thereafter all such improvements shall be made in accordance with the map, plans and specifications so adopted; provided, that at any time after the adoption of said map, plans and specifications, and before the commissioner's report of assessment of benefits and award of damages has been finally adopted and confirmed by the board of trustees, said board may rescind their action in adopting

said map, plans and specifications, and may modify the same or adopt others in place thereof.

Commissioners, appointment and duties of. Compensation.

§ 10. After adopting said map, plans and specifications, the board of trustees shall appoint three commissioners, one of whom shall be a civil engineer, to assess benefits and damages and to estimate the total cost of making the proposed improvements, which estimate shall include all expenses of every kind incurred or to be incurred, either directly or indirectly, in carry out said improvements. Before entering upon the discharge of their duties, the commissioners shall each take and subscribe an oath to perform the duties of such commission to the best of their ability, and shall each file with the clerk of said trustees a bond to the state of California in the penal sum of one thousand dollars, to faithfully perform the duties of the office of said commissioner, which bond must be approved by said board of trustees. The board of trustees may at any time remove any or all of said commissioners for cause upon reasonable notice and hearing, and may fill any vacancies occurring among them from any cause. Said commissioners shall receive for their services such compensation as the trustees may determine from time to time, provided that such compensation shall not exceed ten dollars per day for such civil engineer, nor five dollars per day for the other commissioners, nor continue for more than three months unless the board of trustees shall extend the time. The compensation of the commissioners shall be considered as an expense of the improvements, and shall be chargeable and payable as other expenses thereof.

Assessments of costs.

§ 11. Said commissioners shall proceed to view the land embraced within the boundaries of said storm-water district and the improvements to be made, and may examine witnesses under oath, to be administered by any one of them. Having viewed the land to be taken and the improvements to be made, and considered the testimony presented, they shall proceed with all diligence to determine the value of the land to be taken for rights of way or construction of improvements, and the damage to property affected thereby, and also to estimate the cost of constructing the proposed improvements and the expenses incident thereto, and having determined the same, shall proceed to assess the said value of land taken, damage to property affected and cost and expenses of the proposed improvements to the county or counties and upon the lands embraced within the exterior boundaries of said storm-water district. Said assessment shall be made in the following manner. The board of supervisors of each county in which any part of the district is situated, may, if they consider that the proposed improvements will be of benefit to the county roads, by order entered upon their minutes, provide that such county shall pay a portion of the total cost of the improvements, such payment to be made out of the road fund of the district where the improvements are to be made, or out of the general road fund, as the board of supervisors may determine. The total amount to be paid by all counties contributing shall not exceed one-half of the total cost of the improvements. The commissioners shall assess to the county or counties aforesaid such part of the total cost of the improvement as the board of supervisors thereof have agreed to pay as aforesaid, and the remainder of such assessment shall be made upon the lands in said district in proportion to the benefits to be derived by such lands from said improvements, including in said assessment the property of any railroad company within said district, if such there be.

Report to trustees. Rights of way.

§ 12. Said commissioners, after making their assessment of benefits and damages, shall with all diligence make a written report thereof to the board of trustees of the

district and shall accompany thier report with a plat of the district, showing the land taken or to be taken for rights of way or the construction of the improvements, or to be damaged thereby, and the land assessed, showing the relative location of each lot or parcel of land and its dimensions and area, so far as the commissioners can reasonably ascertain the same. Each lot or parcel of land to be taken, damaged or assessed shall be designated in said plat by an appropriate number, and a reference to it by such number in the report shall be a sufficient description of it in all respects. Said report of the commissioners shall specify each lot or parcel of land taken or to be taken for rights of way or the construction of such improvements, or to be damaged thereby, with the names of the owners thereof or persons interested therein, and the particulars of their interest, so far as the same can be ascertained; the names of the land owners who consent to give the right of way, or to waive damages to their land not taken, and their written consent thereto; the names of land owners who do not consent and the amount of damage claimed by each; and the amount awarded to each land owner by the commissioners for the value of land to be taken or damages to land not taken. Said report shall also specify each lot, or parcel of land to be assessed, together with the names of the owners or claimants thereof or persons interested therein, so far as the same and known to the commissioners, and the particulars of their interest, so far as the same can be ascertained, and the amount assessed against each such piece or parcel of land.

Conflicting claims.

§ 13. If in any case the commissioners find that conflicting claims of title exist, or they are in doubt as to the ownership of any lot or parcel of land or any improvement thereon, or of any interest in such land or improvement, it shall be set down as belonging to unknown owners. Errors in the designation of the owner or owners of, or persons interested in, any land or improvements or of the particulars of their interest, shall not affect the validity of the assessment or of any condemnation of the property to be taken.

Hearing of report.

§ 14. The report of such commissioners and the plat accompanying it shall be filed with the trustees of the district, and said board of trustees shall thereupon fix a time for the hearing thereof, which shall not be less than four weeks after the filing thereof, and thereupon the clerk of said board of trustees shall give notice of such hearing by publication for at least two weeks in a newspaper of general circulation published and circulated in said district, if such there be, or if there is no such newspaper, then in some newspaper of general circulation published in one of the counties in which said district is situated, said newspaper to be designated by the board. Such notice shall be substantially in the following form:

Notice of the filing of the commissioner's report of storm-water district of the county of

Notice is hereby given that the commissioners of the storm-water district of the county of, did on the day of, 19.., file their report of the assessment of benefits and award of damages with the board of trustees of said district, which said report is now on file in the office of said trustees, at, and that said report will be heard by said trustees at their office on the day of, 19.., at the hour of M. Said report and the map, plans and specifications of the improvements mentioned therein are hereby referred to for further particulars. All persons interested are hereby required to show cause, if any they have, at the time fixed for said hearing, why such report should not be adopted and confirmed by said board of trustees, and the improvements therein referred to constructed by said district. All

objections shall be in writing, signed by the person objecting, and filed with the board of trustees at or before the time above mentioned.

(Signed).....

Clerk of the board of trustees of storm-water district, of county.

Objections to report, hearing of.

§ 15. Any person interested may file with the said board of trustees, at or before the time fixed for the hearing, a written objection to said report or any part thereof, or to the map, plans, or specifications for the proposed improvements, or to the making of such proposed improvements. At the time fixed for such hearing or at any other time to which the hearing may be adjourned, the board of trustees shall hear all objections so filed, if any, and pass upon the same, and shall proceed to pass upon such report, and may confirm, correct or modify the same, or may take such action in regard to the map, plans, and specifications as is authorized by section 9 of this act, or may order the commissioners to make a new assessment, report and plat, which shall be filed, heard, and acted upon in the same manner and on like notice, as in the case of an original report. The action of the board upon the report and objections thereto, and upon the map, plans and specifications, shall be final and conclusive as to all matters which they might have remedied or avoided; and no assessment shall be set aside, except upon such hearing, for any error, defect, or informality therein or in the proceedings prior thereto, where the district has been legally formed and notice of the hearing of the report has been given as herein prescribed. When such report has been adopted and confirmed, said board may by order entered upon its minutes discharge said commissioners, and their authority shall thereupon cease.

Installment assessments. Duty of tax collector. Payment of assessments.

§ 16. After said report has been adopted, the board of trustees, if they consider the total sum to be raised for the payment of the cost of such improvements too great to be properly expended in one year, or too great to be raised in one year by assessment against the property in such storm-water district, may by order entered upon their minutes, provide that the total sum assessed shall be raised in any number of equal annual installments, not exceeding ten. When the board has adopted the report and determined the number of equal annual installments in which such assessment shall be raised, they shall cause their clerk to forward to the tax collector of the county in which such district is situated, who shall file the same in his office, a certified copy of the report, assessment and plat as adopted and confirmed by said board of trustees, together with a certified copy of the order of said board, fixing the number of equal annual installments in which such assessment is to be raised, and the county tax collector shall enter said assessments upon the county assessment roll in the same manner as county taxes. From and after such entry upon the county assessment roll, the first year's installment of the amount assessed thereon against each parcel of land shall become due and payable immediately, and the total amount assessed against each parcel of land shall constitute a lien thereon; and thereafter installments of the assessment for the succeeding years shall become due and payable on the first Monday of October of each year; provided, that any or all subsequent installments of the assessment on any parcel of land may, at the option of any person desiring to pay the same, be paid at any time after the first installment becomes due and payable. If the district is situated in two or more counties, a certified copy of said report, assessment, plat and order of the board of trustees shall be filed with the tax collector of each county in which any part of said district is situated, and thereafter each tax collector shall enter the assessments upon the assessment roll of his county and proceed as to the property in said district within his own county in the manner hereinafter directed, and the assessment on the property in said county shall be collected in the manner hereinafter directed. [Amendment of May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 217.]

Assessments raised by installments.

§ 16a. When the board of trustees orders that the sum to be assessed shall be raised by annual installments as provided in section sixteen of the act, said board shall have the power to provide that all installments after the first installment shall bear interest at the rate of not to exceed seven per cent per annum until paid, said interest to be collected in the same manner as the principal and together with the principal be a lien against the property assessed.

Said board of trustees when the assessments are to be paid by annual installment shall have the power to enter into contracts for said work providing for payments on said contracts in annual installments, not exceeding ten, and not exceeding the amount to be raised by the annual assessment installment provided for in section sixteen a of this act. Interest not to exceed seven per cent per annum may be paid on deferred contract installments. Said contract installments together with interest shall be a lien on the funds raised by annual assessments. [New section added May 10, 1919. In effect July 22, 1919. Stats. 1919, p. 527.]

Notice by tax collector that assessments are due. Annual notice.

§ 17. Within one month after the filing of such certified copy of said report, assessment, plat and order with the tax collector, and the entry of the same upon the county assessment roll, said tax collector shall give notice by ten days' publication in a newspaper of general circulation published in said district, or if there is none, in a newspaper of general circulation published in his county, that the assessment roll of storm-water district of county, has been filed in his office, and entered upon the county assessment roll, with the date of such entry; that the amounts entered thereon are due and payable; that if not paid on or before the first Monday in January next ensuing, the same will become delinquent and will be collected in the same manner as delinquent taxes. If the first Monday in January next ensuing is less than three months from the date of filing the assessment roll with the tax collector, the date, to be stated in the notice, shall be three months after such entry upon the county assessment roll. The tax collector shall note on the county assessment roll all assessments paid, with the dates of payment, giving receipts as in the case of payments of taxes, and shall pay all money collected into the county treasury at the same time and in the same manner as money collected for taxes paid into such treasury. All collections of subsequent installment of the assessment shall be made in the same manner as above set forth, and the tax collector shall annually (after the first year), immediately after the first Monday of October give notice as above directed that the (giving the number) annual installments of the assessments of said district is now due and payable, and that if not paid on or before the first Monday of January next ensuing, the same will become delinquent and will be collected in the same manner as delinquent taxes; and the same proceedings shall be had thereon as upon the collection of the first assessment. If said district is situated in two or more different counties, all moneys collected on account of such assessment shall be paid into the treasury of the county in which said district was organized. [Amendment of May 4, 1917. In effect July 27, 1917, Stats. 1917, p. 218.]

Delinquent installments, penalty added. Duty of county treasurer.

§ 18. When any installment of said assessments has become delinquent, as stated in said notice of the tax collector, the tax collector shall proceed to collect such delinquent installments of assessments, with five per cent added thereon, and pay the same, including the said five per cent so collected, over to the county treasurer as aforesaid, in the same manner as state and county taxes are collected and paid over; and all of the provisions of chapter 7, title IX, part III, and of section 3897 of the Political Code not in conflict with any of the provisions of this act, are hereby made applicable to the collec-

tion of assessments and delinquent installments of assessments in such storm-water district. Before any installment of said assessment becomes delinquent, the board of supervisors of each county against which any part of the cost of the improvement has been assessed, as hereinbefore provided, shall direct the county treasurer to transfer the amount of such installment of such assessment from any money then in the fund of such county from which the same is to be paid, to the special fund to be raised by such assessments; or if such district is in two or more counties, and was organized in some other county, to pay such amount to the treasurer of such other county, who shall place the same in the special fund raised by said assessment.

Disposition of fund. Payments from fund.

§ 19. All moneys paid upon such assessments, either by property owners or by the county or counties affected, shall be placed in the county treasury of the county in which such storm-water district was organized, to the credit of a special fund to be known as the storm-water district improvement fund; and shall be used only to pay the expense and cost of constructing the improvements described in the map, plans and specifications adopted by the board of trustees. Any surplus remaining after the construction thereof shall be paid into the current expense fund. All payments from said fund shall be made upon claims prepared in the manner required by law for the preparation of claims against a county, and first presented to the board of trustees of said district and by them approved, and thereafter presented and filed as claims against the county and approved by the board of supervisors of said county, and upon a warrant drawn by the auditor of said county upon the order of said board of supervisors, in the same manner as other claims upon the county treasury.

Payments for property taken. Notice of payment.

§ 20. When sufficient money is in such storm-water district improvement fund to pay for the property to be taken and damaged according to the award made in the report of the commissioners, the clerk of said board of trustees shall notify the owner, possessor or occupant of any land or improvement thereon to whom an award shall have been made for property to be taken or damaged, that such award has been made, stating the amount thereof and the property affected thereby, and that upon such person filing a claim and tendering a conveyance of the property to be taken or a release of the damages to property not taken, such claim will be allowed and the amount awarded paid to him. Such notice shall be given by depositing such notice in the postoffice at the county seat of such county, postage prepaid addressed to such owner, possessor or occupant, if his name be known, at his last known postoffice address. If the name of the owner of such property is not given in the report of the commissioners, or his postoffice address can not be ascertained, said notice shall be given by said clerk by posting a copy thereof in a conspicuous place upon the property described in said notice. He shall thereupon indorse a certificate of such posting upon the original notice and file the same in his office.

Awards not accepted, proceedings when.

§ 21. If any award of damages for land or right of way to be taken or damaged is not accepted within fifteen days after the mailing or posting of this notice, it shall be deemed rejected by the property owner, and thereupon the board of trustees of the district may cause proceedings to secure the land or right of way desired to be instituted in the name of the district, by some attorney to be employed by them for that purpose, against all nonaccepting property owners; and when thereunder the right of way or land is secured, the improvement must be commenced as hereinafter provided. In such suit no informality in the proceedings of the board of supervisors or of the commissioners or of the board of trustees shall vitiate such suit; but the order of the board of

trustees directing the suit to be brought shall be conclusive proof of the regularity of such prior proceedings; and the suit shall be determined by the court or jury in accordance with the rights of the respective parties as shown in court, independent of said proceedings before said board of supervisors or before said commissioners or before said trustees.

Defective rights of way.

§ 22. If any right of way attempted to be acquired by virtue of this act shall be found to be defective from any cause, the board of trustees may again institute proceedings to acquire the right of way as in this act provided, or otherwise, or may purchase the same, and include the cost thereof in the expenses of such improvement.

Improvements to begin, when.

§ 23. As soon as there is sufficient money in the improvement fund to pay for the construction of the improvements, or any separate part thereof, and the necessary land and rights of way therefor have been secured, the trustees must proceed with the construction of said improvement. The board of trustees shall determine the amount of work to be done in each year and the place where such work is to be done, and may let a contract for any portion of such improvement that they may deem proper, and none of such work shall be done without their order. The work shall be done under the direction and to the satisfaction of the board of trustees.

Kinds of improvements.

§ 24. The improvements made under this act may include the widening, deepening and straightening of the channels of the innavigable streams, watercourses or washes, the construction of new courses therefor, and the construction of levees, banks, dikes, conduits, ditches, canals, reservoirs and the sinking of shafts, for the conveyance of storm waters of any innavigable stream, canyon or wash, or for confining such streams, watercourses or washes to their channel, or for the spreading, conserving, storing, retaining or causing to percolate into the soil within such district any or all of such waters, and said work may be done either within or without the boundaries of the district, may be necessary in order to properly protect the land in said district from damage and secure a free outlet for such streams, watercourses, washes, and storm water, or to spread, conserve, store, retain or cause to percolate into the soil within such district any such waters. [Amendment approved June 6, 1913, Stats. 1913, p. 506. In effect August 10, 1913.]

Estimate for tax levy.

§ 25. The board of trustees of each storm-water district shall annually during the month of August estimate the amount of money which will be needed for the current year for maintaining and repairing the works and improvements of said district, and defraying the other ordinary expenses of said district, and shall upon the first Monday of September of each year certify to the board of supervisors of the county or counties in which said district lies, the amount of money which is needed for said purposes. Such board or boards of supervisors shall at the time of making the levy of taxes for county purposes for that year, levy a tax upon the property in their county in said district sufficient in amount to raise the sum estimated by the board of trustees to be necessary. When the district is in two or more counties, the amount to be raised upon the part of the district in each county shall be in proportion to the assessed valuation of the several portions of the district in the respective counties. Said tax when levied shall be entered upon the assessment-roll and collected in the same manner as state and county taxes. When the same is collected, it shall be placed in the treasury of the county in which said district was organized, to the credit of the current expense fund

of said district, and shall be used only for the purpose for which it was raised. Payments shall be made from said fund in the same manner as from the improvement fund of the district.

Additional improvements.

§ 26. Whenever the board of trustees of any storm-water district shall deem it necessary to construct new or additional improvements other than those which have been constructed under the first proceedings had for that purpose, they may cause plans, specifications, and a map of said improvements to be prepared and may thereupon proceed in the same manner as in the case of the construction of the first improvements of said district, by the appointment of commissioners and the levy of an assessment to pay the cost thereof.

Bonded indebtedness. Election. Notice.

§ 26a. Whenever the board of trustees deem it necessary for the district to incur a bonded indebtedness, it shall, by resolution, so declare and state the proposition to be submitted to the electors, the purpose for which the proposed debt is to be incurred, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed twenty years, and the maximum rate of interest to be paid, which shall not exceed six per cent per annum, payable semi-annually. The board of trustees shall fix a date upon which an election shall be held, for the purpose of authorizing said bonded indebtedness to be incurred. It shall be the duty of the board of trustees to provide for holding such special elections on the day so fixed and in accordance with the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided. Such board of trustees shall give notice of the holding of such election, which notice shall contain the resolution adopted by the board of trustees of the district, boundaries of precincts, the location of polling places, and the names of the officers selected to conduct the election, who shall consist of one judge, one inspector and one clerk in each precinct. Such notice shall be published for two weeks in at least one newspaper, and not more than two newspapers published in such district, which newspaper or newspapers shall be designated by the board of trustees; and if there is no newspaper printed in such district, then by publication for two weeks in one newspaper published in the county in which such district is situated, or by posting such notice in three public places therein, at least two weeks before the date of such election. All the expenses of holding such election shall be borne by the district. The returns of such election shall be made, the votes canvassed by said board of trustees on the first Monday following said election, and the results thereof ascertained and declared in accordance with the general election laws of the state, so far as they may be applicable, except as herein otherwise provided. The secretary of the board of trustees, as soon as the result is declared, shall enter in the records of such board a statement of such results. No irregularities or informalities in conducting such election shall invalidate the same, if the election shall have otherwise been fairly conducted. In all respects not otherwise provided for herein, said election shall be called, managed and directed as is by law provided for general elections in this state applicable thereto. [New section added May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 218.]

Bonds issued if two-thirds vote favors.

§ 26b. If from such returns it appears that more than two-thirds of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of trustees may, by resolution, at such time or times as it deems proper, provide for the form, denomination and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such

time or times and in such manner, either in cash in lawful money of the United States, or its equivalent, as it may deem to be to the public interest, but for not less than the par value thereof; said bonds shall be signed by the president and clerk of said district and the seal of the district shall be affixed. [New section added May 4, 1917. In effect July 27, 1917, Stats. 1917, p. 219.]

Bonds exempt from taxation.

§ 26c. Any bonds issued by any district, under the provisions of this act, are hereby given the same force as bonds issued by any municipality, and shall be exempt from all taxation within the state of California. [New section added May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 219.]

Bonds lien upon property of district.

§ 26d. Any bonds issued under the provisions of this act shall be a lien upon the property of the district and the lien of the bonds of any issue shall be a preferred lien to that of any subsequent issue. Said bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district; and all the real property in the district shall be and remain liable to be assessed for such payments. [New section added May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 219.]

Estimate of amount to pay interest and principal. Tax levy.

§ 26e. The board of trustees of each storm-water district shall annually during the month of August estimate the amount of money which will be needed to pay the interest and such portion of any bond issue maturing prior to the preceding August, and certify such amount to the board of supervisors of the county or counties in which said district lies. Such board or boards of supervisors shall, at the time of making the levy of taxes, for county purposes for that year, levy a tax upon the real property in their county in said district, sufficient in amount to raise the sum estimated by the board of trustees to be necessary. When the district is in two or more counties, the amount to be raised upon the part of the district in each county shall be in proportion to the assessed valuation of the several portions of the districts in the respective counties. Said tax, when levied, shall be entered upon the assessment roll and collected in the same manner as the state and county taxes. When the same is collected, it shall be placed in the treasury of the county in which said district is organized, to the credit of the bond fund of said district, and shall be used only for the purpose for which it is raised. [New section added May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 220.]

Proceedings for disincorporation.

§ 27. Any storm water district may be disincorporated at any time before the adoption of the first commissioner's report by proceedings had in the following manner: Whenever a petition praying for such disincorporation shall be presented to the trustees of said district signed by a majority of the landowners therein, they shall call an election in the same manner as elections for members of the board of trustees are called, and submit to the electors of said district the question of disincorporation. Said election shall be held in all respects in the same manner as regular elections of trustees of the district. If it appears that a majority of the electors voting at said election have voted in favor of disincorporation, the trustees shall cause such fact to be entered upon their minutes, and shall forward a copy of such entry to the board of supervisors by whom the district was organized, who shall file the same with their clerk, and from the date of such filing, said district shall be deemed disincorporated; provided, that if at the time of the dissolution, or disincorporation of said district, there be any outstanding bonded or other indebtedness of such district, then taxes for the payment of such

bonded or other indebtedness shall be levied and collected, the same as if such district had not been dissolved and disincorporated, but for all other purposes, such district shall be deemed dissolved and disincorporated from the time of the forwarding of said copy of such entry to said board of supervisors. [Amendment of May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 220.]

Property may be added to or excluded.

§ 28. Property may be added to or excluded from any storm-water district by action of the board of supervisors by whom said district was organized, upon a petition presented to them signed by a majority of the owners of land within said territory to be annexed or excluded, as shown by the last previous assessment-roll. Before making the order of annexation or exclusion, the board of supervisors shall give notice in like manner as upon the original formation of the district, and protests may be presented and shall be considered at the same time and in the same manner as in the case of the formation of the district. Upon the final hearing of said petition, the board of supervisors shall make such order as shall seem best to them; provided, however that property in any territory so excluded shall not be released from the lien of any assessment which has been made upon said property.

Intent of act.

§ 29. This act is not intended to supersede or repeal any other act for the construction and maintenance of ditches, levees, dikes, or works for protection, drainage or reclamation, but is intended as an independent and alternative method of constructing the improvements herein provided for.

Construction of act.

§ 30. The provisions of this act shall be liberally construed to promote the objects thereof. This act may be designated and referred to as the "storm-water district act of 1909," and shall take effect and be in force upon its passage and approval.

1. Board of supervisors exercises judicial functions.—The board of supervisors, under this act, exercises judicial functions in ascertaining the required facts and determining that they exist, and its conclusions are subject to review.—*Bryant v. Supervisors*, 32 Cal. App. 495, 163 Pac. 341.

2. Genuineness of signatures—Jurisdiction of board not affected by failure to make proof.—The fact that no proof was made to the board as to the genuineness of the signatures to the petition prior to the adoption of the resolution of intention does not deprive the board of supervisors of jurisdiction to organize the district, where the necessary jurisdictional fact of

ownership of the land by petitioners was proved by the certificate of the assessor that they appeared as such owners on the assessment roll at the time of the filing of the petition.—*Bryant v. Supervisors*, 32 Cal. App. 495, 163 Pac. 341.

3. Notice of hearing—Not sufficient.—Notice of hearing sent June 27, 1916, to owners whose names appeared on the assessment roll of that year, was not sufficient notice of a hearing to be held July 19, 1916, the assessment roll for the latter year not having been made up and completed on said last named date.—*Bryant v. Supervisors*, 32 Cal. App. 495, 163 Pac. 341.

COACHELLA VALLEY STORM WATER DISTRICT—VALIDATION ACT.

ACT 4926—An act to validate bonds of Coachella valley storm water district of Riverside county, California, and all proceedings relating thereto.

History: Approved March 31, 1919. In effect July 22, 1919. Stats. 1919, p. 18.

Coachella valley storm water district bonds validated.

§ 1. Bonds in the amount of three hundred thousand dollars of the Coachella valley storm water district of Riverside county, California, and all the acts and proceedings of said district and of the board of trustees thereof, and of the board of supervisors of Riverside county, California, and of the officers of said county, leading up to and including the authorizing and issuance of said bonds are hereby legalized, ratified, con-

firmed and declared valid to all intents and purposes, and said bonds when issued and sold shall be, and are hereby, declared to be legal and valid obligations of said district, and the faith and credit of said district is hereby pledged for the prompt payment and redemption of the principal and interest of said bonds, and said bonds by their issuance shall be conclusive evidence of the regularity of all proceedings leading up thereto.

STRAWBERRY VALLEY.

See tit. "County Boundaries."

CHAPTER 372.

STREET RAILROADS.

References: See tits. "Franchises"; "Public Utilities"; "San Francisco"; "Railroads."

Incorporation regulation, etc., see Kerr's Cyc. Civil Code, §§ 497, et seq.

Particular street railroad, see particular title.

Rates of fare, see Kerr's Cyc. Civil Code, § 501.

Safety of employees and passengers, see Kerr's Cyc. Penal Code, § 369a.

CHAPTER 373.

STREETS.

Reference: See tit. "Municipal Corporations."

CONTENTS OF CHAPTER.

ACT 4941. "TREE PLANTING ACT OF 1915."

4942. TREE PLANTING ACT OF 1893.

4943. "TREE PLANTING ACT OF 1913."

4945. STREET OPENING ACT OF 1889.

4946. "STREET OPENING ACT OF 1903."

4947. STREET OPENING ACT OF 1893.

4948. "VROOMAN ACT," "STREET WORK ACT."

4948a. "LOCAL IMPROVEMENT ACT OF 1919."

4949. "LOCAL IMPROVEMENT ACT OF 1901."

4950. STREET IMPROVEMENT BOND ACT OF 1893.

4950a. "IMPROVEMENT BOND ACT OF 1915."

4951. REDEMPTION FROM SALES FOR DELINQUENT ASSESSMENTS.

4952. ABANDONMENT OF PROCEEDINGS UNDER "STREET IMPROVEMENT ACT OF 1909."

4953. "STREET IMPROVEMENT ACT OF 1913."

4954. "CHANGE OF GRADE ACT OF 1909."

4955. SPECIAL IMPROVEMENT BOND ACT OF 1911.

4956. "IMPROVEMENT ACT OF 1911."

4957. BOUNDARY IMPROVEMENT ACT OF 1911.

4958. DISPOSITION OF LAND OF ABANDONED STREETS.

4959. OPENING STREETS THROUGH CEMETERIES.

"TREE PLANTING ACT OF 1915."

ACT 4941—An act to provide for the planting, protection, maintenance, removal and change of trees, shrubs, plants and grass along and in public streets, avenues, lanes, alleys, courts, places and pathways within municipalities, and providing a method for the assessment of the costs and expenses thereof.

History: Approved June 7, 1915. In effect August 8, 1915. Stats. 1915, p. 1256.

Streets deemed open and city empowered to plant trees, etc.

§ 1. All streets, avenues, lanes, alleys, courts, places and pathways within the municipalities of this state, now open or dedicated, or which may hereafter be opened or

dedicated to public use, shall be deemed and held to be open public streets, avenues, lanes, alleys, courts, places and pathways for the purposes of this act, and the city council of each municipality of this state is hereby empowered to cause trees, shrubs, plants or grass to be planted, protected, maintained for a period of not exceeding five years, removed or changed, or to maintain existing trees, shrubs, plants and grass along and in said streets, avenues, lanes, alleys, courts, places and pathways, and is hereby invested with jurisdiction to order to be done thereon and therein any of the work mentioned in section two of this act in the manner and under the proceedings herein-after described.

City may order trees, etc., planted.

§ 2. Whenever the public interest or convenience may require, the city council of any municipality of this state is hereby authorized and empowered to order, trees, shrubs, plants or grass to be planted, protected or maintained for a period of not exceeding five years, or removed or changed along and in the whole or any part of any such public street, avenue, lane, alley, court, place or pathway in such municipality; also to order suitable guards, coverings or gratings for the protection of said trees or shrubs, and to order any other work to be done which shall be necessary to plant, protect, maintain, remove or change, trees, shrubs, plants or grass along and in the whole or any part of any such public street, avenue, lane, alley, court, place or pathway, in such municipality.

Resolution of intention. Report of city engineer.

§ 3. Before ordering any improvement to be made which is authorized by section two of this act, the city council shall adopt a resolution of intention so to do, briefly describing the proposed improvement, which may include the whole or any part of one or more such streets, avenues, lanes, alleys, courts, places or pathways, in any such municipality. Said proposed improvement may include any or all of the different kinds of work mentioned in section two of this act; provided, however, that the care of said trees, shrubs, plants or grass, shall be for a period stated in the resolution of intention, which shall not exceed five years; and provided, further, that it shall not be necessary to specify or describe in said resolution of intention the kind of trees, shrubs, plants or grass to be planted or removed or changed, their size or age or the method or manner of planting or removing or changing the same. The city council shall also, in the same resolution, refer the proposed improvement to the city engineer or other officer, board or commission designated by the said council, and direct said person, board or commission, to make and file with the clerk of the city council a report in writing presenting the following:

1. Plans and specifications for the work to be performed and the general method and manner of making the improvement.

2. An estimate of the cost of said improvement including the incidental expenses in connection therewith, and the annual cost of the maintenance thereof for a period not exceeding five years.

3. A diagram of the property affected or benefited by the proposed work or improvement and to be assessed to pay the expenses thereof, including the annual maintenance, if any; such diagram shall show each separate lot, piece or subdivision of land, and the relative location of the same to the work proposed to be done, all within the limits of the assessment district, each of which lots, pieces or subdivisions shall be given a separate number in red ink upon said diagram.

4. The proposed assessment of the total amount of the costs and expenses of the proposed improvement (including all incidental expenses) upon the lots, pieces or subdivisions of land within said assessment district as shown by said diagram, sufficient to cover the total expenses of the improvement. Each lot, piece or subdivision shall be separately assessed in proportion to the estimated benefits to be received by it.

Said assessment shall refer to said lots, pieces or subdivisions of land upon said diagram by the respective red ink numbers thereof, and shall show the names of the owners, if known, otherwise designating them as unknown. No mistake in the name of the owner of any lot, piece or subdivision of land shall affect the validity of the assessment thereon.

Tree planting commission.

§ 4. In any municipality having a board, commission or officer in charge of tree planting, created by its charter, or by law or ordinance, the proposed improvement shall be referred to said board, commission or officer, and the report provided for in section three of this act shall be made and filed by said board, commission or officer.

Consideration of engineer's report.

§ 5. Upon the filing of the report provided for in section three of this act, the clerk of the city council shall present the same to the city council for consideration, and said council may modify the same in any respect, and, in case of any such modification, the report as modified shall stand as the report for the purpose of all subsequent proceedings. Thereafter, the council, by resolution, shall appoint a time and place for hearing protests in relation to the proposed improvement, which time shall not be less than twenty days from the date of the passage of said resolution, and shall direct the clerk of the city council to give notice of said hearing, and shall designate the newspaper in which such notice shall be published.

Notices posted.

§ 6. After the passage of the resolution mentioned in section five of this act, the superintendent of streets of said city shall cause to be conspicuously posted along all streets, avenues, lanes, alleys, courts, places and pathways, or parts thereof, included in said resolution of intention, at not more than three hundred feet in distance apart, but not less than three in all upon each such street, avenue, lane, alley, court, place and pathway, notices of the passage of said resolution of intention and of the filing of said report. Said notices shall be headed "Notice of Parkway Improvement," in letters not less than one inch in length, shall be in legible characters, and shall state the fact and date of the passage of said resolution of intention and of the filing of said report, and the day and hour set for the hearing of said protests, and briefly describe the improvement proposed and refer to said resolution and report for further particulars. He shall also cause a notice similar in substance to be published for a period of two days in a daily newspaper published and circulated in said municipality and designated by said city council for that purpose, or if there is no daily newspaper in said municipality, then by one insertion in a weekly paper, so published, circulated and designated. Said notices must be posted and published, as above provided, at least ten days before the date set for the hearing of said protests. In case there is no daily or weekly newspaper published and circulated in said city, then said notice shall be posted in three of the most public places in such city at least ten days before the dates set for the hearing of said protest.

Written protest. Majority protest.

§ 7. Any person, interested, objecting to said improvement, or to the proposed assessment provided for in section three hereof, may file a written protest with the clerk of the city council at or before the time set for the hearing referred to in section five hereof. The clerk shall indorse on every such protest the date of its reception by him, and at the time appointed for said hearing shall present to said city council all protests so filed with him. If such protests are against said improvement, and said city council finds that the same are signed by the owners of a majority of the frontage of the property fronting on streets or parts of streets within said assessment district,

all further proceedings under said resolution of intention shall be barred and no new resolution of intention for the same improvement shall be passed within six months after the presentation of such protests to the city council, unless the owners of a majority of the frontage of the property fronting on streets or parts of streets within said assessment district shall in the meantime petition therefor. If such protests are against the improvement, and the council finds that they are not signed by the owners of a majority of the frontage of the property fronting on streets or parts of streets within said assessment district, the council shall hear said protests at the time appointed therefor, as above provided, or at any time to which the hearing thereof may be adjourned, and pass upon the same, and its decision shall be final and conclusive, and if such protests are sustained the proceedings shall be abandoned, but may be renewed at any time, and if such protests are denied, the proposed assessment shall be confirmed. If such protests are against the proposed assessment, the council shall hear said protests at the time appointed therefor, as above provided, or at any time to which the hearing thereof may be adjourned, and may confirm or correct said proposed assessment; provided, however, that they shall not alter the same so as to provide for the doing of any kind of work not included in said report, or the doing of work upon any street, avenue, lane, alley, court, place or pathway, or portion thereof not included in said report and shall not increase the amount to be raised above the amount specified in said report. When, upon the hearing, said proposed assessment is confirmed or corrected, or in case no protests have been filed and the report provided for in section three hereof has been adopted as a whole with any modifications or corrections that have been made therein, the city council shall by resolution declare its action upon said report, order said proposed improvement to be made and levy said assessment upon the lots, parts of lots and subdivisions of land fronting upon the streets, avenues, lanes, alleys, courts, places and pathways, or parts thereof, along and in which said improvement is to be made. Said resolution shall be final and conclusive upon all persons.

Validity of assessments.

§ 8. The validity of an assessment levied under this act shall not be contested in any action or proceeding unless the same is commenced within thirty days after the time said assessment is levied, and any appeal from a final judgment in such action or proceeding must be perfected within thirty days after the entry of such judgment.

Diagram to tax collector.

§ 9. Upon the passage of the resolution provided for in section seven hereof, the clerk of said city council shall transmit to the tax collector of the municipality, the diagram and assessment provided for in subdivisions three and four of section three hereof, and any modifications or corrections thereof made by the city council. Thereupon the tax collector shall annually enter said assessments upon the assessment roll upon which other taxes of said city are entered, and the same shall be annually collected in the same manner as such other taxes are collected. Such entry and collection to be made at the same time and by the same officers as in the case of other city taxes.

Special fund. Provision for deficiency.

§ 10. All sums collected on account of such assessment shall be placed in the city treasury to the credit of a special fund, which shall be designated by the name of the proposed improvement. The city council shall cause to be paid or transferred to such special fund from any other available funds in the city treasury as soon as needed, such part of the cost of such proposed work as has theretofore been ordered to be paid out of the city treasury. Said special fund shall be used only for paying the costs and expenses of the work described in the resolution ordering the work to be done, including the cost of all posting and publication herein provided for, and any other incidental

expenses of the work. If the amount raised is insufficient to pay the whole of such costs and expenses, the city council may provide for such deficiency by an appropriation out of the general fund of such city, or may take further proceedings to raise the amount of such deficiency by ordering a supplementary assessment to be made upon the same property in the same manner and form and subject to the same procedure as the original assessment, but on such proceedings no report shall be necessary from the person or board making the original report specified in section three hereof, except an estimate of the deficiency, and no protest shall be received except as to the amount of money necessary to complete the work. The city council may at any time advance to such special fund out of any available funds in the city treasury, sums in excess of the amount to be paid by the city towards the cost of such work and may reimburse the city for such advances by repaying the same out of any money that may thereafter come into such special fund.

City to do work.

§ 11. At any time after the funds for the work or any part of the work, shall be in the city treasury, or if the municipality has advanced the money from the general fund as a loan to said special fund, the municipality shall itself without awarding a contract therefor, execute and perform the work embraced in the plans and specifications contained in the report provided for in sections three and four of this act, in accordance with said plans and specifications, and employ the labor, and provide the nursery stock, material and supplies necessary therefor, or at its option do the work or any portion thereof by contract let in the manner provided by the charter of said municipality or the law under which the said municipality is organized. The work must be done under the supervision, direction and control of the board, commission or officer by whom the report provided for in section three of this act was made, and no work shall be paid for except upon the order and approval of said board, commission or officer.

Assessment lien on property.

§ 12. Every assessment levied under this act shall from the date of levy thereof be a lien upon the land upon which it is levied in the same manner and to the same effect as other city taxes are a lien upon said land. And such lien shall continue and be enforced in the same manner as other taxes of said city are continued and enforced.

Definitions.

§ 13. The following words and phrases shall, where used in this act, have the following meanings:

(1) The terms "municipality" and "city" include all corporations heretofore organized and now existing, and those hereafter organized for municipal purposes.

(2) The terms "council" and "city council" include any body or board in which by law is vested the legislative power of any city.

(3) The terms "treasurer" and "city treasurer" include any person or officer who has charge and makes payments of the city funds.

(4) The term "city engineer" includes any person or officer who has charge of the surveying and engineering work of said city.

(5) The terms "clerk" and "city clerk" include any person or officer who shall be clerk of the said council.

(6) The term "improvement" includes all work and improvements mentioned in section two of this act.

(7) The term "incidental expenses" shall include the cost and expense of making the report mentioned in sections three and four hereof, including fees for surveying and engineering work; also the cost of printing and publishing as provided herein; also the expenses of making the assessment for any work authorized by this act.

(8) The term "owner" and "any person interested" includes the person owning the fee, or the person in whom, on the day any protest or petition is filed, the legal title to real property appears, by deeds duly recorded in the county recorder's office of the county in which said city is situated, or any person in possession of real property, as the executor, administrator, trustee under an express trust, guardian or other legal representative of the owner, or any person in possession of real property under a written contract of purchase thereof duly recorded, or any person in possession of real property as lessee thereof under a lease duly recorded, which shall require such lessee to pay or discharge all assessments for street or other public improvements, that may be levied or assessed against such real property.

(9) Any act required herein to be performed by resolution may be performed by ordinance with the same force and effect.

Proof of publication.

§ 14. Proof of publication of any notice required by this act shall be made by affidavit, as provided in the Code of Civil Procedure, and proof of the posting of any such notice shall be made by the affidavit of the person posting the same, setting forth the facts regarding such posting. It shall be the duty of any officer who is required by this act to have any notice published or posted, to obtain and file in his office the affidavit or affidavits in proof thereof; provided, that his failure so to do shall not affect the validity of any proceedings under this act. Any such affidavit so filed shall be prima facie evidence of the facts therein stated regarding such publication or posting.

Act not affected.

§ 15. This act shall in no wise affect an act entitled "An act to provide for the planting, maintenance, and care of shade trees upon streets, lanes, alleys, courts and places within municipalities, and of hedges upon the lines thereof; also, for the eradication of certain weeds within city limits," approved March 11, 1893, or any act amendatory thereof or supplementary thereto, or any other acts on the same subject, or apply to proceedings had thereunder, but it is intended to and does provide an alternate system of proceedings for making the improvements provided for by this act; and it shall be within the discretion of the city council of any municipality to proceed in making such improvements, either under the provisions of this act, or under the provisions of such other acts; but when any proceedings are commenced under this act, the provisions of this act, and of such amendments thereof as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts or any acts in conflict with the provisions hereof shall be void and of no effect as to the proceedings commenced under the provisions of this act. The election of the city council to proceed under the provisions of this act shall be expressed in its resolution of intention to order the work done.

Title of act.

§ 16. The provisions of this act shall be liberally construed to promote the objects thereof, and no publication or notice other than that provided for in this act shall be necessary to give validity to any proceedings had thereunder. This act may be designated and referred to as the "Tree Planting Act of 1915."

TREE PLANTING ACT OF 1893.

ACT 4942—An act to provide for the planting, maintenance and care of shade trees upon streets, lanes, alleys, courts and places within municipalities, and of hedges upon the lines thereof; also, for the eradication of certain weeds within city limits.

History: Approved March 11, 1893, Stats. 1893, p. 153. Amended March 13, 1909. In effect immediately. Stats. 1909, p. 331. Act not affected by later acts, see § 15, Act 4941; § 21, Act 4943.

Provisions for planting shade trees.

§ 1. All streets, lanes, alleys, places, or courts in the municipalities of this state now open or dedicated, or which may hereafter be opened or dedicated, to public use, whose grade has been officially established, and which have been actually graded in conformity therewith, may be planted with shade trees, along the edges of the sidewalks thereof, by order of the city council, which shall have power, also, to provide for the maintenance and care of the same; and the city council shall have power to prescribe the height, thickness, and manner of trimming of all hedges set out, or that shall hereafter be set out, along the line of any street, lane, alley, place, or court dedicated to public use, whether graded or not, and to compel compliance with its ordinances in the premises by the owners or occupants of the lots fronting thereon. The powers hereby conferred upon city councils shall be exercised in the manner and under the proceedings hereinafter described.

Resolution of intention to plant shade trees on graded streets.

§ 2. The city council of any municipality in the state may, at its discretion, pass a resolution of intention to plant, or cause to be planted, with shade trees, any graded street, lane, alley, place, or court within the limits of such municipality. Such resolution of intention may embrace the entire length of any street, lane, alley, place, or court, or any portion thereof, but must specify the kind of trees to be planted, their size, age, and their distance apart. The street superintendent shall thereupon cause to be conspicuously posted along both sides of the street mentioned in the resolution, at not more than three hundred feet in distance apart, notices of the passage of said resolution. Said notice shall be headed "notice to plant shade trees," in letters not less than one inch in length, and shall, in legible characters, set forth the language of the resolution, and the date of its passage. The city clerk shall also cause a copy of the resolution to be published for six days in one or more daily newspapers published and circulated in said city, and designated by said city council. Should there be no daily newspaper published in said city then in such case publication may be made of such resolution, and of all other matters herein provided to be published, in a weekly newspaper, published and circulated in said city, and designated by said city council. [Amendment approved March 13, 1909, Stats. 1909, p. 331. In effect immediately.]

Objections, how made. Hearing. Notice to objectors. Majority of frontage to control. New proceedings, institution of.

§ 3. The owners of a majority of the frontage of the property on both sides of the street proposed to be planted as aforesaid may, within ten days after the expiration of the time of publication of said resolution, file their written statement of the objections to the proposed work with the city clerk, which must be signed by the objectors, each one writing after his or her name the number of feet frontage owned by him or her. Such objection must show wherein the parties making them will be injured or aggrieved by the proposed work, and if the objection be to the kind of trees proposed to be planted, they must name some other kind of tree to be substituted therefor. The city council shall, at its next meeting after the filing of said objections, fix a time for hearing the same, not less than one week thereafter. The city clerk shall thereupon notify each objector, or his agent, who has signed his or her name to the statement, by depositing, in the postoffice of said city a notice addressed to him or her, postage prepaid, notifying the objectors of the time and place of hearing. At the time specified, the council shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive, except that in the choice of trees to be planted, it shall be governed by the written request of the owners of a majority of the frontage on both sides of the street which it is proposed to plant. If the objections be sustained, no further proceedings shall be taken under the resolution of intention for six months

after the date of its passage. If it be again proposed to plant the street, the council shall commence proceedings de novo as if no action had been previously taken.

When council acquires jurisdiction.

§ 4. At the expiration of ten days after the expiration of the time of publication of said resolution of intention, if no written objections to the work therein described shall have been filed with the city clerk, as hereinbefore provided, otherwise, immediately upon the overruling of the objections by the council, the council shall be deemed to have acquired jurisdiction to order to be done the work which is authorized by this act, which order shall be published for two days in the same papers and manner as provided for the publication of the resolution of intention.

Notices and specifications posting and advertising. Bids. Care and maintenance for three years. Awards. Re-advertising. Unfinished work.

§ 5. Before passing any resolutions for the planting of any street, the city council shall cause notice, with specifications, to be posted conspicuously for five days near the door of the council chamber, and shall advertise the same for five days in the same manner and papers as heretofore provided for the publication of the resolution of intention, inviting sealed proposals for bids for furnishing the trees and doing the work ordered. All bids shall state the sum or price for which the bidder will undertake to furnish the trees, of the kind, age, and size required, and will suitably prepare the ground, set out the trees, warrant every one of them to grow, or replace all that fail to grow or receive damage from whatever cause with others of the same kind, and of suitable age and size to preserve uniformity, and will for three years care for, cultivate, protect, irrigate, and trim said trees. And no order for the planting of any street shade trees shall be made that does not likewise provide for the care and maintenance of the trees for three years by the contractor planting the trees. All proposals or bids shall be accompanied by a check payable to the order of the mayor or president of the city council, certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of the proposal. Said proposals or bids shall be delivered to the clerk of the city council, indorsed "proposals to plant trees," and said council shall, in open session, examine and publicly declare the same; provided, that no proposal or bid shall be considered unless accompanied by said check. The council may reject all proposals, should it deem this for the public good, and shall reject the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and may award the contract to the lowest responsible bidder, at the prices named in his bid, which award shall be approved by the mayor or president of the council. Notice of such awards of contract shall be posted and advertised for five days, in the manner hereinbefore provided, and it shall be the duty of the superintendent of streets to enter into a contract with the bidder to whom the work shall have been awarded by the council, and at the prices specified in his bid; whereupon the certified checks of all the other bidders shall be returned to them, respectively. But if such lowest bidder neglects, fails, or refuses, for fifteen days after the first posting and publication of the award, to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and shall award the contract for said work to the then lowest bidder. If the contractor who shall have taken any contract shall not complete the planting, within the time limited in the contract, or within such further time as the council may give him, the superintendent of streets shall report such delinquency to the council, which may relet the unfinished portion of the planting and the future care of the trees, after pursuing the formalities hereinbefore prescribed for the letting of the whole in the first instance.

Bond of contractor. What bidder must pay in advance.

§ 6. All contractors shall, at the time of executing any contract for the planting and

care of trees, execute a bond to the satisfaction of the mayor or president of the city council, with two or more sureties, and payable to the city in such sums as the mayor or president of the council shall deem adequate, conditioned for the faithful performance of the contract, and the sureties shall justify before the recorder or a justice of the peace, in double the amount mentioned in such bond, over and above all statutory exemption. Before being entitled to any contract, the bidder to whom the award shall have been made must pay into the city treasury the cost of the publication of notices, resolutions, and orders, and all other incidental expenses required under the proceedings prescribed by this act.

All work under direction of superintendent of streets.

§ 7. All work done under the provisions of this statute shall be executed under the direction of the superintendent of streets, whose duty it shall be, under the general control of the council, to see that all the obligations assumed by contractors towards the city are faithfully complied with, and that all trees furnished are sound, healthy, free from infection by insects, and of the kind, size, and age called for by the contract. He shall certify to the completion of all work, or portion of work, which, by the terms of the contract, shall entitle the contractor to payment in whole or in part, and the presentation of his certificate by the contractor shall be a condition precedent to each payment that shall become due under the contract.

Payment to contractors to be in installments.

§ 8. All sums due to contractors under the provisions of this act shall be payable by installments, as follows, to wit: Not more than one-half the entire consideration in the contract shall be payable on the completion of the planting, and out of this amount the superintendent of streets shall see that the trees are paid for, to the party furnishing the same; one-half the balance at the end of eighteen months after the completion of the planting; provided, all conditions shall have been complied with; the remaining one-half to be paid at the end of three years after the completion of the planting; provided, all conditions shall have been complied with.

Duty of city assessor. Unknown owners. Diagram of work, etc. Warrants.

§ 9. Immediately upon the execution of any contract for the planting and care of street trees under the provisions of this act, it shall be the duty of the city assessor to make an assessment to cover the sum to become due for the work specified in such contract (including all incidental expenses) upon the lots and land fronting on the street, lane, alley, court, or place to which such contract relates, each lot or portion of a lot being separately assessed, in proportion to the frontage, at a rate per foot front sufficient to cover the total expense of the work. Said assessment shall briefly refer to the contract, the work contracted for, and shall show the amount to be paid therefor, together with any incidental expenses, the rate per foot front assessed, the amount of each assessment, the name of the owner of each lot, if known to the assessor (if unknown, the word "unknown" shall be written opposite the number or description of the lot, with the amount assessed thereon). And the assessor shall attach to said assessment a diagram, exhibiting the street, lane, alley, place, or court on which the work is contracted to be done, and showing the relative location and frontage of such lot, numbered to correspond with the numbers in the assessment. To said assessment shall be attached a warrant, which shall be signed by the superintendent of streets, and countersigned by the mayor or president of the council. The said assessments and warrants shall be separately issued for each payment that shall be due the contractor, as specified in section 8 of this act, and shall be substantially in the following form:

Form of the Warrant.

By virtue hereof, I (name of the superintendent of streets), of the city of, county of, and state of California, by virtue of the authority vested in me as

said superintendent of streets, do authorize and empower (name of contractor), his agents or assigns, to demand and receive the several assessments upon the assessment and diagram hereto attached, and this shall be his warrant for the same.

Date, (Name of superintendent of streets.)

Countersigned by (name of mayor or president of council.)

Recorded (date.....,). (Name of superintendent of streets.)

Said warrant, assessment, and diagram shall be recorded in the office of the superintendent of streets. When so recorded, the several amounts assessed shall be a lien upon the lands, lots, or portions of lots, assessed, respectively, for the period of two years from the date of said recording, unless sooner discharged. From and after the date of said record, all persons interested in any manner in any or all of the lots assessed shall be deemed to have notice of the contents of said record.

Warrant, etc., to be delivered to contractor. Proceedings on default in payment.

§ 10. After said warrant, assessment, and diagram shall have been recorded, the same shall be delivered to the contractor, his agents or assigns, on demand, who shall thereby be authorized to demand and receive the amounts of the several assessments. In default whereof, and as regards enforced collections, interest, cost, and penalties, and the correction of errors, the same proceedings are to be had as are specified in sections 9, 10, 11, 12, 16, and 17 of an act entitled "An act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for the construction of sewers within municipalities," approved March eighteenth, eighteen hundred and eighty-five, amended March fourteenth, eighteen hundred and eighty-nine.

Jurisdiction of city council over hedges, fences, etc. Eradication of weeds.

§ 11. The city council of every municipality in this state has jurisdiction of the hedges and fences placed by property owners along street lines, and may, by ordinance, prohibit the planting of thorn-bearing hedges and the use of barbed-wire along street lines, and may regulate the height, width, and the mode of trimming hedges, and enforce ordinances enacted for such purposes against absentees, or other negligent or recusant owners or occupants of lots or lands on which hedges are maintained. They may also condemn as public nuisances, any or all weeds whose seeds are of a winged or downy nature, and are spread by the winds, and may compel the eradication of such weeds by the owners of the lots whereon they grow, or at their expense.

Replacement of missing trees.

§ 12. The city council or trustees of every municipality shall provide for the replacement of missing trees, and for the trimming and care of all trees that have or shall have been planted for three or more years in the streets and highways, whether such planting shall have been done under this act or otherwise; the expense whereof must be defrayed out of the street fund, and the work be done by the superintendent of streets of such municipality.

To what municipalities applies.

§ 13. This act shall only apply to such municipalities as shall by vote of the electors residing therein determine to come within its provisions.

§ 14. This act shall take effect from and after its passage.

See. ante, Act 4941, and, post, Act 4943, on same subject.

TREE PLANTING ACT OF 1913.

ACT 4943—An act to provide for the planting, protection and care, and the removal and change, of shade trees and ornamental shrubs along and in public streets, avenues, lanes, alleys, courts and places within municipalities, and for the assessment of the costs and expenses thereof upon the lots, parts of lots and lands fronting on the public streets, avenues, lanes, alleys, courts or places where such work is to be done.

Amended title:

“An act to provide for the planting, protection, and care, and the removal and change of trees, shrubs, plants and grass along and in public streets, avenues, lanes, alleys, courts, places and pathways, within municipalities, and for the assessment of the cost and expenses thereof upon the lots, parts of lots, and lands within the district assessed, in proportion to the benefits to be received where such work is to be done.” [As amended June 12, 1915. In effect August 11, 1915. Stats. 1915, p. 1516.]

History: Approved June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 596. Amended June 12, 1915. In effect August 11, 1915. Stats. 1915, p. 1516.

Streets, etc., defined.

§ 1. All streets, avenues, lanes, alleys, courts, places or pathways within the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, avenues, lanes, alleys, courts, places or pathways for the purposes of this act, and the city council of each municipality of this state is hereby empowered to cause trees, shrubs, plants or grass to be planted, protected and cared for, and removed and changed, or to care for and maintain trees, shrubs, plants or grass, along and in said streets, avenues, lanes, alleys, courts, places and pathways and is hereby invested with jurisdiction to order to be done thereon and therein any of the work mentioned in section two of this act in the manner and under the proceedings hereinafter described. [Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1517.]

Cities may plant, etc., trees.

§ 2. Whenever the public interest or convenience may require, the city council of any municipality of this state is hereby authorized and empowered to order trees, shrubs, plants or grass to be planted, protected, and cared for, and to be removed or changed, along and in the whole or any part of any such public street, avenue, lane, alley, court, place or pathway in such municipality; also to order suitable guards, coverings, or grating for the protection of said trees, shrubs, plants or grass, and to order any other work to be done which shall be necessary to plant, protect or care for, and to remove or change, trees, shrubs, plants or grass, along and in the whole or any part of any such public street, avenue, lane, alley, court, place or pathway in such municipality. [Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1517.]

Resolution of intention. Report of city engineer.

§ 3. Before ordering any improvement to be made which is authorized by section two of this act the city council shall adopt a resolution declaring its intention to do so, briefly describing the proposed improvement, which may include the whole or any part of one or more such streets, avenues, lanes, alleys, courts, places or pathways in any such municipality. Said proposed improvement may include any or all of the different kinds of work mentioned in section two of this act; provided, however, that the care of said trees, shrubs, plants or grass shall be for a period stated in the resolution of intention, which shall not exceed five years; and provided, further, that it shall not

be necessary to specify or describe in said resolution of intention the kind of trees, shrubs, plants or grass to be planted or removed or changed, their size or age or the method or manner of planting or removing or changing them. The city council shall also, in the same resolution, refer the proposed improvement to the city engineer, or other officer, board, or commission, designated by said council as provided in section 4 herein, and direct such person, board or commission to make and file with the clerk of the city council a report in writing, presenting the following:

1. Plans and specifications for the work to be performed, and the general method or manner of making the improvement.

2. An estimate of the cost of said improvement, and of the incidental expenses in connection therewith.

3. A diagram of the property affected or benefited by the proposed work of improvement, which diagram shall show each separate lot, piece or parcel of land, and the relative location of the same to the work proposed to be done, all within the limits of the assessment district, each of which subdivisions shall be given a separate number in red ink upon said diagram.

4. The proposed assessment of the total amount of the costs and expenses of the proposed improvement (including all incidental expenses) upon the lots, parts of lots, and lands within said assessment district as shown by said diagram sufficient to cover the total expenses of the improvement. Each of said lots, parts of lots, and lands shall be separately assessed in proportion to the estimated benefits to be received by it. Said assessment shall refer to said lots, parts of lots and lands upon said diagram by the respective red ink number thereof, and shall show the names of the owners, if known, otherwise designating them as owners. Any mistake in the name of the owner of any lots, parts of lots, or lands shall not affect the validity of the assessment thereon. [Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1518.]

Tree planting commission.

§ 4. In any municipality having a board, commission or officer in charge of tree planting, created by its charter or by law or ordinance, the proposed improvement shall be referred to said board, commission or officer, and the report provided for in section three of this act shall be made and filed by said board, commission or officer. [Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1518.]

Hearing on report.

§ 5. Upon the filing of the report provided for in section three of this act, the said clerk shall present the same to the city council for consideration, and said council may modify the same in any respect, and, in case of any such modification, the report as modified shall stand as the report for the purpose of all subsequent proceedings. Thereafter, the council, by resolution, shall appoint a time and place for hearing protests in relation to the proposed improvement, which time shall not be less than twenty days from the date of the passage of said resolution, and shall direct the clerk of the city council to give notice of said hearing, and shall designate the newspaper in which such notice shall be published.

Posting of resolution.

§ 6. After the passage of the resolution mentioned in section five of this act, the clerk of said city council shall cause to be conspicuously posted along all streets, avenues, lanes, alleys, courts, places or pathways, or parts thereof, included in said resolution of intention, at not more than three hundred feet in distance apart, notices (not less than three in all), of the passage of said resolution of intention and of the filing of said report. Said notices shall be headed "notice of local improvement," in letters not less than one inch in length, shall be in legible characters, and shall state

the fact and date of the passage of said resolution of intention and of the filing of said report, and the date set for the hearing of said protests, and briefly describe the improvement proposed and refer to said resolution and report for further particulars. He shall also cause a notice similar in substance to be published for a period of two days in a daily newspaper published and circulated in said municipality and designated by said city council for that purpose, or if there is no daily newspaper in said municipality, then by two successive insertions in a weekly paper, so published, circulated and designated. Said notices must be posted and published, as above provided, at least ten days before the date set for the hearing of said protests. In case there is no daily or weekly newspaper published and circulated in said city, then said notice shall be posted in three of the most public places in such city at least ten days before the date set for the hearing of said protest. [Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1519.]

Hearing of protests.

§ 7. Any person interested, objecting to said improvement, or to the proposed assessment provided for in section three hereof, may file a written protest with the clerk of the city council at or before the time set for the hearing referred to in section five hereof. The clerk shall indorse on every such protest the date of its reception by him, and at the time appointed for said hearing shall present to said city council all protests so filed with him. If such protests are against said improvement, and said city council finds that the same are signed by the owners of a majority of the property fronting on the streets, avenues, lanes, courts, places and pathways, or parts thereof, within said assessment district, all further proceedings under said resolution of intention shall be barred and no new resolution of intention for the same improvement shall be passed within six months after the presentation of such protests to the city council, unless the owners of a majority of the property fronting on the streets, avenues, lanes, courts, places and pathways, or parts thereof, within said assessment district, shall in the meantime petition therefor. If such protests are against the improvement, and the council finds that they are not signed by the owners of a majority of the frontage of the property fronting on said proposed improvement, the council shall hear said protests at the time appointed therefor, as above provided, or at any time to which the hearing thereof may be adjourned, and pass upon the same, and its decision shall be final and conclusive, and if such protests are sustained the proceedings shall be abandoned, but may be renewed at any time, and if such protests are denied, the proposed assessment shall be confirmed. If such protests are against the proposed assessment, the council shall hear said protests at the time appointed therefor, as above provided, or at any time to which the hearing thereof may be adjourned, and may confirm or correct said proposed assessment; provided, however, that they shall not alter the same so as to provide for the doing of any kind of work not included in said report, or the doing of work upon any street, avenue, lane, alley, court, place or pathway, or parts thereof, not included in said report, and shall not increase the amount to be raised above the amount specified in said report. When, upon the hearing, said proposed assessment is confirmed or corrected, or in case no protests are filed, the report provided for in section three hereof shall be adopted as a whole, with any modifications or corrections that have been made therein and the city council shall, by resolution, order said proposed improvement to be made, and declare its action upon said report and assessment, which resolution shall be final and conclusive on all persons, and the assessment shall be thereby levied upon the lots, parts of lots and lands fronting upon the streets, avenues, lanes, alleys, courts and places, or parts thereof, along and in which said improvement is to be made. [Amendment of June 12, 1915. In effect August 12, 1915, Stats. 1915, p. 1519.]

Validity of assessment.

§ 8. The validity of an assessment levied under this act shall not be contested in any action or proceeding unless the same is commenced within thirty days after the time said assessment is levied, and any appeal from a final judgment in such an action or proceeding must be perfected within thirty days after the entry of such judgment.

Diagram of tax collector.

§ 9. Upon the passage of the resolution provided for in section seven hereof, the clerk of said city council shall transmit to the tax collector of the municipality, the diagram and assessment provided for in subdivisions 3 and 4 of section three hereof, and any corrections thereof made by the city council.

Diagram recorded. Assessments delinquent.

§ 10. Upon the receipt of the diagram and assessment referred to in the last preceding section, the tax collector of the municipality shall record the same in a substantial book, to be kept for that purpose, in his office, and shall thereupon fix a day not less than twenty, nor more than thirty, days from the date of the receipt by him of said diagram and assessment, after which all assessments unpaid shall become delinquent and ten per cent shall be added to the amount thereof, and shall also fix a day for the sale of the various parcels of land upon which the assessments are unpaid, which said date shall be not less than fifty days nor more than sixty days from the date of the receipt by him of said diagram and assessment.

Notice of sale. Sale.

§ 11. Notice of the sale of property upon which the said assessments are delinquent shall be given by said tax collector by posting and publication in the manner now provided by the general laws of the state of California, for giving notice of sale of real estate upon execution; provided, however, that the descriptions of the various parcels of land need not be set out at length, but only by the respective numbers of the same as they appear upon the assessment and diagram, which shall be properly referred to in said notice, and said descriptions shall all be contained in one notice. At the time and place fixed for the sale of said property, the tax collector shall separately sell the respective parcels of land, and assessments against which have not been paid, or so much of each parcel as shall be necessary to realize the amount assessed against said parcel, said ten per cent penalty for delinquency, and its proportion of the expenses of sale, in the order of their numbers upon said diagram. At said sale the municipality may be a purchaser.

Certificate of sale.

§ 12. The tax collector shall issue for each sale an original and a duplicate certificate of sale, referring to the proceedings, describing the parcel sold, and giving the name of the purchaser and the amount for which said parcel was sold. The original certificate he shall deliver to the purchaser, and the duplicate he shall keep on file in his office in the form of a stub in the certificate book.

Redemption of property sold.

§ 13. At any time before the expiration of one year from the date of the sale, any property sold under the provisions of the preceding sections may be redeemed by the payment to the tax collector of the amount for which the property was sold, with an additional penalty of twenty-five per cent of said amount. Said redemption money shall be paid by the tax collector to the person holding the original certificate of sale upon his delivering up the same and receipting for the amount received from the tax collector therefor. Upon redemption of any parcel of land the tax collector shall enter the fact and date of such redemption upon the duplicate certificate of sale thereof.

Deed after one year.

§ 14. If the property is sold, and is not redeemed within said period of one year from the date of sale, the tax collector shall execute to the person named in the original certificate, or to his assignee, a deed of the property described in said certificate, which said deed shall refer in general terms to the proceedings under which the same is issued, and shall contain a description of the property. Such deed shall convey title in fee to said property, and the grantee is immediately, upon the receipt thereof, entitled to possession of the property described therein.

Special fund. Loan to special fund.

§ 15. The funds collected by the tax collector under the proceedings herein provided for, either upon voluntary payment, or as the result of sales, shall be paid by said tax collector as fast as collected to the treasurer of said municipalities, who shall place the same in a special fund designated by the city council, and payments shall be made out of said special fund only for the purposes provided for in this act. To expedite the making of any such improvement, the city council may at any time transfer into said special fund, out of any money in the general fund, such sums as it may deem necessary, and the sums so transferred shall be deemed a loan to such special fund and shall be repaid out of the proceeds of the assessments provided for in this act.

Performance of work.

§ 16. At any time after the funds for the work, or any part of the work, shall be in the hands of said treasurer, the municipality shall itself execute and perform the work embraced in the plans and specifications contained in the report provided for in sections three and four of this act, in accordance with said plans and specifications without awarding a contract therefor and employ the labor, and provide the nursery stock material and supplies necessary therefor, or at its option do the work or any portion thereof by contract let in the manner employed by the charter of said municipality, or the law under which the said municipality is organized. The cost and expenses of such work shall be paid out of said special fund; and in case of a deficiency in the fund for such improvement, the city council, in its discretion, may provide for such deficiency by an appropriation out of the general fund of the treasury, or by ordering a supplementary assessment to be made upon the same property in the same manner and form, and to the same effect, and subject to the same procedure as the original assessment; and in the last named case, in order to avoid delay, the city council may advance such deficiency out of any money in the general fund of the treasury, and reimburse the treasury from the collections under such supplementary assessment. The work must be done under the supervision, direction and control of the board, commission or officer by whom the report provided for in section three of this act was made, and no work shall be paid for except upon the order and approval of said board, commission or officer. [Amendment of June 12, 1915. In effect August 11, 1915, Stats. 1915, p. 1520.]

Pro rata refund of surplus.

§ 17. If at any time an assessment for any such improvement shall realize a larger sum than is necessary therefor, the excess shall be refunded pro rata to the parties by whom it was paid.

Assessment lien on land.

§ 18. Every special assessment levied under this act shall, from the date of the levy thereof, be a lien upon the land upon which it is levied paramount to all other liens, except prior assessments and taxation, and such lien shall continue until such special assessment is paid, or until the property is sold and a deed is made therefor to the

purchaser as hereinbefore provided, and all parties shall have constructive notice of such lien from the date of the passage of the resolution referred to in section seven hereof.

Definitions.

§ 19. The following words and phrases shall, where used in this act, have the following meanings:

(1) The terms "municipality" and "city" include all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes.

(2) The terms "council" and "city council" include any body or board in which by law is vested the legislative power of any city.

(3) The terms "treasurer" and "city treasurer" include any person or officer, who has charge and makes payments of the city funds.

(4) The term "city engineer" include any person or officer, who has charge of the surveying and engineering work of said city.

(5) The terms "clerk" and "city clerk" include any person or officer who shall be clerk of the said council.

(6) The term "improvement" includes all work and improvements mentioned in section two of this act.

(7) The term "incidental expenses" shall include the cost and expense of making the report mentioned in sections three and four hereof, including fees for surveying and engineering work; also the cost of printing and publishing as provided herein; also the expenses of making the assessment for any work authorized by this act.

(8) The term "owner" and "any person interested" included the person owning the fee, or the person in whom, on the day any protest or petition is filed, the legal title to real property appears, by deeds duly recorded in the county recorder's office of the county in which said city is situated, or any person in possession of real property, as the executor, administrator, trustee under an express trust, guardian or other legal representative of the owner, or any person in possession of real property under a written contract of purchase thereof duly recorded, or any person in possession of real property, as lessee thereof under a lease duly recorded, which shall require such lessee to pay or discharge all assessments for street or other public improvements, that may be levied or assessed against such real property.

Proof of publication.

§ 20. Proof of publication of any notice required by this act shall be made by affidavit, as provided in the Code of Civil Procedure, and proof of the posting of any such notice shall be made by the affidavit of the person posting the same, setting forth the facts regarding such posting. It shall be the duty of any officer who is required by this act to have any notice published or posted, to obtain and file in his office the affidavit or affidavits in proof thereof; provided, that his failure so to do shall not affect the validity of any proceedings under this act. Any such affidavit so filed shall be prima facie evidence of the facts herein stated regarding such publication or posting.

Act of 1893 not affected.

§ 21. This act shall in no wise affect an act entitled "An act to provide for the planting, maintenance, and care of shade trees upon streets, lanes, alleys, courts and places within municipalities, and of hedges upon the lines thereof; also, for the eradication of certain weeds within city limits," approved March 11, 1893, or any act amendatory thereof or supplementary thereto, or any other acts on the same subject, or apply to proceedings had thereunder, but it is intended to and does provide an alternate system of proceedings for making the improvements provided for by this act; and it shall be within the discretion of the city council of any municipality to

proceed in making such improvements, either under the provisions of this act, or under the provisions of such other acts; but when any proceedings are commenced under this act, the provisions of this act, and of such amendments thereof as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provision contained in said acts or any acts in conflict with the provisions hereof shall be void and of no effect as to the proceedings commenced under the provisions of this act. The election of the city council to proceed under the provisions of this act shall be expressed in its resolution of intention to order the work done.

How constructed. Title of act.

§ 22. The provisions of this act shall be liberally construed to promote the objects thereof, and no publication or notice other than that provided for in this act shall be necessary to give validity to any proceedings had hereunder. This act may be designated and referred to as the "tree planting act of 1913."

See, ante, Acts 4941, 4942, on same subject.

STREET OPENING ACT OF 1889.

ACT 4945—An act to provide for laying out, opening, extending, widening, straightening, or closing up in whole or in part any street, square, lane, alley, court or place within municipalities, and to condemn and acquire any and all land and property necessary or convenient for that purpose.

History: Approved March 6, 1889, Stats. 1889, p. 70. Amended April 21, 1909, Stats. 1909, p. 1034; June 3, 1913, in effect August 10, 1913, Stats. 1913, p. 376; May 8, 1919, in effect July 22, 1919, Stats. 1919, p. 464. Repealed as to municipalities over 40,000 population March 23, 1893, Stats. 1893, p. 220. See Act 4947.

Laying out, opening, closing, etc., streets, lanes, alleys, etc.

§ 1. Whenever the public interest or convenience may require, the city council of any municipality shall have full power and authority to order the opening, extending, widening, straightening, or closing up in whole or in part of any street, square, lane, alley, court, or place within the bounds of such city, and to condemn and acquire any and all land and property necessary or convenient for that purpose.

Resolution of council declaring intention to perform street work.

§ 2. Before ordering any work to be done or improvement made which is authorized by section one of this act, the city council shall pass a resolution declaring its intention to do so, describing the work or improvement, and the land deemed necessary to be taken therefor, and specifying the exterior boundaries of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the damages, cost, and expenses thereof.

Street superintendent to post notice.

§ 3. The street superintendent shall then cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than three hundred feet in distance apart, but not less than three in all, notices of the passage of said resolution. Said notice shall be headed "notice of public works." in letters not less than one inch in length, shall be in legible characters, state the fact of passage of the resolution, its date, and, briefly, the work or improvement proposed, and refer to the resolution for further particulars. He shall also cause a notice, similar in substance, to be published for a period of ten days in one or more daily newspapers published and circulated in said city, and designated by said city council; or if there is no daily newspaper so published and circulated in said city, then by four successive insertions in a weekly or semi-weekly newspaper, so published, circulated, and designated.

Interested person may file objections.

§ 4. Any person interested objecting to said work or improvement, or to the extent of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the cost and expenses thereof, may make written objections to the same within ten days after the expiration of the time of the publication of said notice, which objection shall be delivered to the clerk of the city council, who shall indorse thereon the date of its reception by him, and at the next meeting of the city council after the expiration of said ten days lay said objections before said city council, which shall fix a time for hearing said objections, not less than one week thereafter. The city clerk shall thereupon notify the persons making such objections, by depositing a notice thereof in the postoffice of said city, postage prepaid, addressed to such objector.

Decision of council to be final.

§ 5. At the time specified or to which the hearing may be adjourned, the said city council shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive. If such objections are sustained, all proceedings shall be stopped, but proceedings may be again commenced at any time by giving notice of intention to do said work or make said improvement. If such objection is overruled by the city council, the proceedings shall continue the same as if such objection had not been made. At the expiration of the time prescribed during which objections to said work or improvement may be made, if no objection shall have been made, or if an objection shall have been made, and said council, after hearing, shall have overruled the same, the city council shall be deemed to have acquired jurisdiction to order any of the work to be done, or improvements to be made, which is authorized by section 1 of this act.

Jurisdiction.

§ 6. Having acquired jurisdiction as provided in the preceding section, the city council shall order said work to be done, and unless the proposed work is for closing up, and it appears that no assessment is necessary, shall appoint three commissioners to assess benefits and damages, and have general supervision of the proposed work or improvement until the completion thereof in compliance with this statute. For their services, they shall receive such compensation as the city council may determine from time to time; provided, that such compensation shall not exceed two hundred dollars per month each, nor continue more than six months, unless extended by order of the city council. Such compensation shall be added to and be chargeable as a part of the expenses of the work or improvement. Each of said commissioners shall file with the clerk of the city council an affidavit, and a bond to the state of California, in the sum of five thousand dollars, to faithfully perform the duties of his office. The city council may at any time remove any or all of said commissioners for cause, upon reasonable notice and hearing, and may fill any vacancies occurring among them for any cause.

Commissioners to employ assistance.

§ 7. Said commissioners shall have power to employ such assistance, legal or otherwise, as they may deem necessary and proper; also to rent an office, and provide such maps, diagrams, plans, books, stationery, fuel, lights, postage, expressage and incur such incidental expenses as they may deem necessary.

Expenses to be a charge upon the particular work required.

§ 8. All such charges and expenses shall be deemed as expenses of said work or improvement, and be a charge only upon the lands devoted to the particular work

or improvement, as provided hereinafter. All payments, as well for the land and improvements taken or damaged, as for the charges and expenses, shall be paid by the city treasurer, upon warrants drawn upon said fund from time to time, signed by said commissioners, or a majority of them. All such warrants shall state whether they are issued for land or improvements taken or damaged, or for charges and expenses, and that the demand is payable only out of the money in said fund, and in no event shall the city be liable for the failure to collect any assessment made by virtue hereof, nor shall said warrant be payable out of any other fund, nor [be] a claim against the city.

Assessment for damages.

§ 9. Said commissioners shall proceed to view the lands described in the resolution of intention, and may examine witnesses on oath to be administered by any one of them. Having viewed the land to be taken, and the improvements affected, and considered the testimony presented, they shall proceed, with all diligence, to determine the value of the land, and the damage to improvements and property affected, and also the amount of the expenses incident to said work or improvement, and having determined the same shall proceed to assess the same upon the district of lands declared benefited, the exterior boundaries of which were fixed by the resolution of intention provided for by section 2 hereof. Such assessment shall be made upon the lands within said district in proportion to the benefit to be derived from said work or improvement, so far as the said commissioners can reasonably estimate the same, including in such estimate the real property of any railroad company within said district, if such there be, and may also include in such estimate any or all public property within said district. [Amendment approved April 21, 1909, Stats. 1909, p. 1034. In effect immediately.]

Report to council accompanied with a plat of the assessment district.

§ 10. Said commissioners having made their assessment of benefits and damage, shall, with all diligence, make a written report thereof to the city council, and shall accompany their report with a plat of the assessment district showing the land taken or to be taken for the work or improvement, and the lands assessed, showing the relative location of each district, block, lot, or portion of lot, and its dimensions, so far as the commissioners can reasonably ascertain the same. Each block and lot, or portion of lot, taken or assessed, shall be designated and described in said plat by an appropriate number, and in reference to it by such descriptive number shall be a sufficient description of it in any suit entered to condemn, and in all respects. When the report and plat are approved by the city council, a copy of said plat, appropriately designated, shall be filed by the clerk thereof in the office of the recorder of the county.

Report what must specify.

§ 11. Said report shall specify each lot, subdivision, or piece of property taken or injured by the widening or other improvement, or assessed therefor, together with the name of the owner or claimants thereof, or of persons interested therein as lessees, encumbrancers, or otherwise, so far as the same are known to such commissioners, and the particulars of their interest, so far as the same can be ascertained, and the amount of value or damage, or the amount assessed, as the case may be.

When set down to unknown owners.

§ 12. If in any case the commissioners find that conflicting claims of title exist, or shall be in ignorance or doubt as to the ownership of any lot of land, or of any improvements thereon, or of any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any land or improvements, or of the particulars of their interest, shall not affect the validity of the assessment or of the condemnation of the property to be taken.

Filing of report and plat, and publication of.

§ 13. Said report and plat shall be filed in the clerk's office of the city council, and thereupon the clerk of said city council shall give notice of such filing by publication for at least ten days in one or more daily newspapers published and circulated in said city; or if there be no daily paper, by three successive insertions in a weekly or semi-weekly newspaper so published and circulated. Said notice shall also require all persons interested to show cause, if any, why such report should not be confirmed, before the city council on or before a day fixed by the clerk thereof, and stated in said notice, which day shall not be less than thirty days from the first publication thereof.

Objections must be in writing.

§ 14. All objections shall be in writing, and filed with the clerk of the city council, who shall, at the next meeting after the day fixed in the notice to show cause, lay the said objections, if any, before the city council, which shall fix a time for hearing the same, of which the clerk shall notify the objectors in the same manner as objectors to the original resolution of intention; at the time set, or at such other time as the hearing may be adjourned to, the city council shall hear such objections and pass upon the same; and at such time, or, if there be no objections, at the first meeting after the day set in such order to show cause, or such other time as may be fixed, shall proceed to pass upon such report, and may confirm, correct, or modify the same, or may order the commissioners to make a new assessment, report, and plat, which shall be filed, notice given, and hearing had, as in the case of an original report.

Duty of clerk of council.

§ 15. The clerk of said city council shall forward to the street superintendent of the city a certified copy of the report, assessment, and plat, as finally confirmed and adopted by the city council. Such certified copy shall thereupon be the assessment-roll. Immediately upon receipt thereof by the street superintendent, the assessment therein contained shall become due and payable, and shall be a lien upon all the property contained or described therein.

Duty of superintendent of streets on receiving certified copy of report as confirmed by council.

§ 16. The superintendent of streets shall thereupon give notice by publication for ten days in one or more daily newspapers published and circulated in such city or city and county, or by two successive insertions in a weekly or semi-weekly newspaper so published and circulated, that he has received said assessment-roll, and that all sums levied and assessed in said assessment-roll are due and payable immediately, and that the payment of said sums is to be made to him within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of each delinquent assessment, together with the cost of advertising each delinquent assessment, will be added thereto. When payment of any assessment is made to said superintendent of streets, he shall write the word "paid," and the date of the payment, opposite the respective assessment so paid, and the names of persons by or for whom said assessment is paid, and shall, if so required, give a receipt therefor. On the expiration of said thirty days, all assessments then unpaid shall be and become delinquent, and said superintendent of streets shall certify such fact at the foot of said assessment-roll, and shall add five per cent to the amount of each assessment so delinquent. The said superintendent of streets shall, within five days from the date of said delinquency, proceed to advertise and collect the various sums delinquent, and the

whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece, or parcel of land separately assessed, by the sale of the assessed property in the same manner as is or may be provided for the collection of state and county taxes; and after the date of said delinquency, and before the time of such sale herein provided for, no assessment shall be received unless at the same time the five per cent added thereto, as aforesaid, together with the costs of advertising then already incurred, shall be paid therewith. Said list of delinquent assessments shall be published daily for five days in one or more daily newspapers published and circulated in such city, or by at least one insertion in a weekly newspaper so published and circulated, before the day of sale of such delinquent assessment. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment-list, and the place must be in or in front of the office of said superintendent of streets. All property sold shall be subject to redemption in the same time and manner as in sales for delinquent state and county taxes; and the superintendent of streets may collect for each certificate fifty cents, and for each deed one dollar. All provisions of the law, in reference to the sale and redemption of property for delinquent state and county taxes in force at any given time, shall also then, so far as the same are not in conflict with the provisions of this act, be applicable to the sale and redemption of property for delinquent assessments hereunder, including the issuance of certificates and execution of deeds. The deed of the state superintendent made after such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings hereunder, and of title in the grantee. It shall be conclusive evidence of the necessity of taking or damaging the lands taken or damaged, and the correctness of the compensation awarded therefor. The superintendent of streets shall, from time to time, pay over to the city treasurer all moneys collected by him on account of any such assessments. The city treasurer shall, upon receipt thereof, place the same in a separate fund, designating such fund by the name of the street, square, lane, alley, court, or place for the widening, opening, or other improvement of which the assessment was made. Payments shall be made from said fund to the parties entitled thereto, upon warrants signed by the commissioners, or a majority of them.

Payments for land and improvements, when and how made.

§ 17. When sufficient money is in the hands of the city treasurer, in the fund devoted to the proposed work or improvement, to pay for the land and improvements taken or damaged, and when in the discretion of the commissioners, or a majority of them, the time shall have come to make payments, it shall be the duty of the commissioners to notify the owner, possessor, or occupant of any land or improvement thereon to whom damages shall have been awarded, that a warrant has been drawn for the payment of the same, and that he can receive such warrant at the office of such commissioners upon tendering a conveyance of any property to be taken; such notification, except in the case of unknown owners, to be made by depositing a notice, postage paid, in the postoffice, addressed to his last known place of abode or residence. If at the expiration of thirty days after the deposit of such notice, he should not have applied for such warrant, and tendered a conveyance of the land to be taken, the warrant so drawn shall be deposited with the county treasurer, and shall be delivered to such owner, possessor, or occupant, upon tendering a conveyance as aforesaid, unless judgment of condemnation shall be had, when the same shall be canceled.

Proceedings to condemn on refusal to accept payment.

§ 18. If any owner of land to be taken neglects or refuses to accept the warrant drawn in his favor, as aforesaid, or objects to the report as to the necessity of taking his land, the commissioners, with the approval of the city council, may cause proceedings to be taken for the condemnation thereof, as provided by law under the right of

eminent domain. The complaint may aver that it is necessary for the city to take or damage and condemn the said lands, or an easement therein, as the case may be, without setting forth the proceedings herein provided for, and the resolution and ordinance ordering said work to be done shall be conclusive evidence of such necessity. Such proceedings shall be brought in the name of the municipality, and have precedence so far as the business of the court will permit; and any judgment for damages therein rendered shall be payable out of such portion of the special fund as may remain in the treasury, so far as the same can be applied. At any time after trial and judgment entered, or preceding an appeal, the court may order the city treasurer to set apart in the city treasury a sufficient sum from the fund appropriated to the particular improvement to answer the judgment and all damages, and thereupon may authorize and order the municipality to enter upon the land and proceed with the proposed work and improvement. In case of a deficiency in said fund to pay the whole of such judgment and damages, the city council may, in their discretion, order the balance thereof to be paid out of the general fund of the treasury or to be distributed by the commissioners over the property assessed by a supplementary assessment; but in the last-named case, in order to avoid delay, the city council may advance such balance out of any appropriate fund in the treasury, and reimburse the same from the collections of the assessment. Pending the collection and payment of the amount of the judgment and damages, the court may order such stay of proceedings as may be necessary.

Duty of treasurer on payment of warrants.

§ 19. The treasurer shall pay such warrants out of the appropriate fund, and not otherwise, in the order of their presentation; provided, that warrants for land or improvements taken or damaged shall have priority over warrants for charges and expenses, and the treasurer shall see that sufficient money is and remains in the fund to pay all warrants of the first class before paying any of the second.

Supplementary assessment to meet delinquency. Pro rata dividend.

§ 20. If after the sale of the property for delinquent assessments there should be a deficiency, and there should be unreasonable delay in collecting the same, or if for the purpose of equalizing the assessments supplying a deficiency, or for any cause it appear desirable, the commissioners may so report to the city council, who may order them to make a supplementary assessment and report the same in manner and form as the original, and subject to the same procedure. If by reason of such supplementary assessment, or for any cause, a surplus should remain after all claims against the improvement fund have been paid, the city council may appropriate said surplus and declare a dividend pro rata to the parties paying the same, and they, upon demand, shall have the right to have the amount of such pro rata dividends refunded to them, or credited upon any subsequent assessment for taxes made against said parties in favor of said city; provided, the city council may appropriate and transfer the said surplus to the general fund of the fiscal year in which the surplus exists, if said surplus does not exceed 5 per cent of the total amount expended out of the improvement fund; and, provided, further, that said surplus so transferred shall in no case exceed one thousand dollars. [Amendment approved June 3, 1913, Stats. 1913, p. 377. In effect August 10, 1913.]

Proceedings to settle defective title.

§ 21. If any title attempted to be acquired by virtue of this act shall be found to be defective from any cause, the city council may again institute proceedings to acquire the cause as in this act provided, or otherwise, or may authorize the commissioners to purchase the same and include the cost thereof in a supplementary assessment as provided in the last section.

Procedure when boundaries of districts of lands affect whole city.

§ 22. If the city council deem it proper that the boundaries of the districts of lands to be affected and assessed to pay the whole or any portion of the damages, cost and expenses of any work or improvement under this act, shall include the whole city, then the commissioners appointed shall proceed in a summary manner to purchase the lands to be taken or condemned from the owners and claimants thereof. If said commissioners and the owners and claimants can not agree upon the price to be paid for said lands, they shall proceed to view and value the same, and shall thereupon make a summary report to the city council. Upon final confirmation of the report, the city council, if there be not sufficient money available in the city treasury, shall cause the whole or any such portion of the cost and expenses of the contemplated public improvement to be assessed upon the whole of the taxable property of said city, and to be included in and form part of the next general assessment roll of said city, and with like effect in all respects as if the same formed a part of the city, state and county taxes; and when the same shall have been collected the said city council shall cause the land required to be paid for or the value thereof tendered, and the said contemplated public improvement to be forthwith made and completed. All the provisions of the preceding sections not in conflict with this section shall be applicable thereto. [Amendment of May 8, 1919. In effect July 22, 1919, Stats. 1919, p. 464.]

Use of words "work" and "improvement."

§ 23. 1. The words "work" and "improvement," as used in this act, shall include all work mentioned in section 1 of this act.

Notices to be posted when publication can not be had.

2. In case there is no daily or weekly or semi-weekly newspapers printed and circulated in the city, then such notices as are herein required to be published in a newspaper shall be posted and kept posted for the length of time required herein for the publication of the same in a weekly newspaper, in three of the most public places in such city. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher or clerk of the newspaper or of the poster of the notice.

Construction of words "municipality" and "city."

3. The word "municipality" and the word "city" shall be understood and so construed as to include all corporations heretofore organized and now existing, or hereafter organized, for municipal purpose.

Construction of terms "street superintendent" and "superintendent of streets."

4. The terms "street superintendent" and "superintendent of streets," as used in this act, shall be understood and so construed as to include, and are hereby declared to include any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof, in any city. In all those cities where there is no street superintendent or superintendent of streets, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of street superintendent or superintendent of streets; and all the provisions hereof applicable to the street superintendent or superintendent of streets shall apply to such persons so appointed.

Construction of term "city council."

5. The term "city council" is hereby declared to include any body or board which, under the law, is the legislative department of the government of any city.

Construction of terms "clerk" and "city clerk."

6. The terms "clerk" and "city clerk," as used in this act, is hereby declared to include any person or officer who shall be clerk of said city council.

Construction of terms "treasurer" and "city treasurer."

7. The term "treasurer" or "city treasurer," as used in this act, shall include any person or officer who shall have charge and make payment of the city funds.

8. No publications or notice other than that provided for in this act shall be necessary to give validity to any proceedings had thereunder.

Proceedings commenced before passage of this act to be continued by resolution of council.

§ 24. The proceedings in any work or improvement, such as is provided for in this act, already commenced, and now progressing under any other act now in force, or by virtue of any ordinance passed by any city council or board of supervisors of any city, county, or city and county, by virtue of any other act now in force, may, from any stage of such proceedings already commenced and now progressing, be contained under this act by resolution of the city council. The said work or improvement may then be conducted under the provisions of this act with full force and effect in all respects, from the stage of such proceedings under such other acts or ordinances at and from which such resolution shall declare an election or intention to have said work or improvement cease under such other act or ordinance, and continue under this act; and from such election so made, all proceedings theretofore had under such other act or ordinance are hereby ratified, confirmed, and made valid, and it shall be unnecessary to renew or conduct over again proceedings had under such other act or ordinance. This section shall not apply to any work or improvement, proceedings in which were commenced more than eighteen months prior to the passage of this act.

Act to be liberally construed.

§ 25. The provisions of this act shall be liberally construed to promote the objects thereof. This act shall take effect and be in force from and after its passage.

Repealed as to cities over 40,000. See post Act 4949.

1. Constitutionality—Due process satisfied.—The provision for notice and hearing of objections fully satisfied the mandate of the constitution as to due process.—United, etc., Co. v. Barnes, 159 Cal. 242, 113 Pac. 167.

2. Same—General law—Uniform in operation—Title covers subject of assessments.—The act is not unconstitutional either because not a general law or because it is not uniform in its operation, or because its title does not express the subject as assessments on which it legislates.—Clute v. Turner, 157 Cal. 73, 106 Pac. 240.

3. Same—No denial of equal protection—Assessment for special benefits.—The act does not deny equal protection in the matter of providing for assessments for special benefits.—Clute v. Turner, 157 Cal. 73, 106 Pac. 240.

4. Same—Los Angeles charter—Amendment of 1896, section 6, article XI, constitution.—Opening and widening streets are "municipal affairs," and the provisions of the Los Angeles charter upon the subject, which were suspended by the present act, were relieved from its control by the amendment of 1896 to section 6, article XI

of the constitution.—Byrne v. Drain, 127 Cal. 663, 60 Pac. 433.

5. Same—Same—Same—Assessment void.—The act ceased to be operative in Los Angeles on the adoption of the amendment, and an assessment based on the general law after that date was void.—Byrne v. Drain, 127 Cal. 663, 60 Pac. 433; Baird v. Monroe, 150 Cal. 560, 89 Pac. 352.

6. Same—Power to open streets and regulate railroads therein is reserved to city.—The power to establish, lay out, and open streets and crossings thereof, and to regulate the construction and operation of railroads within the city is conferred by the charter (section 2, charter of 1889, as amended 1905, 1909, 1911), and hence is expressly reserved to the city by section 23, article XII, of the constitution, and section 82 of the public utilities act.—City of Los Angeles v. Central Trust Co., 173 Cal. 323, 159 Pac. 1169.

7. Same—Upheld.—The act is held constitutional on the authority of Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771; Cohen v. Alameda, 124 Cal. 504, 57 Pac. 377; Alameda v. Cohen, 133 Cal. 5, 65 Pac. 127.

8. Same—Assessment in proportion to benefits valid.—An assessment based on

proportionate benefits confirmed by the city council without objection is not invalid on constitutional grounds.—Cohen v. Alameda, 124 Cal. 504, 37 Pac. 377.

9. Same—Title covers sections providing for assessments to pay for condemned land.—The title is sufficient to cover the subject of assessment of other lands to pay for lands condemned.—Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771.

11. Same—Due process—Sufficient notice.—The act requires notice of every material step in the proceedings, and does not therefore, deny due process of law.—Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771.

12. Same—Same—Same—Personal notice.—The fact that notice is by posting and not personal notice does not affect the constitutionality of the act.—Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771.

13. Same—Same—Same—Assessment of lands benefited.—The notice of assessment of lands benefited with the resolution of intention is sufficiently definite to call the attention of the property owner that the improvement is contemplated.—Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771.

14. Same—Same—Same—Same.—The reference in the notice of assessment of lands benefited to the resolution of intention is sufficient to call the attention of the property owner to the fact that his own lands are included.—Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771.

15. Same—Same—Same—Legislative discretion as to sufficiency of notice.—It is for the legislature to say what is sufficient notice, so long as the notice required is reasonable and not arbitrary, oppressive or unjust.—Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771.

16. Same—Same—Certainty of benefits before lien imposed.—It is not necessary that the benefits should be certain before the lien is imposed, and the statute does not require this to be done.—Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771.

17. Same—Same—Same—Statute not invalidated by uncertainty.—Assessments for benefits are made upon the theory that the work is to be accomplished, and if it is not, it is certain that no benefit would accrue, but such a contingency could hardly invalidate the statute.—Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771.

18. Same—Same—Assessments too high.—The act is not invalidated because it admits of an assessment for benefits largely in excess of the amount required, since the act requires the refunding of the excess.—Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771.

19. Same—Same—Assessment of value of property taken.—The provision as to the assessment of the value of the property taken does not invalidate the act, since it is optional with the property owner to accept such assessment, and a full scheme of condemnation is provided.—Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771.

20. Same—Same—Same—Owner of property not taken can not object.—The owner

of property not taken can not object to the matter of condemnation of property taken, which is a matter affecting only the rights of the city and such property owner.—Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771.

21. Same—Appointment of special commission to perform municipal functions.—The commissions provided for in the act are merely the agents of the municipality and act under direction of the city authorities, and their acts are not binding until approved and confirmed, and the provisions for their appointment is not violative of section 13, article XI, of the constitution, prohibiting the appointment of commissions to perform municipal functions.—Davies v. Los Angeles, 86 Cal. 37, 24 Pac. 771.

22. Same—Title sufficiently covers subject.—The title of the act sufficiently covers the subject of the act.—San Francisco v. Kiernan, 98 Cal. 614, 33 Pac. 720.

23. Same—Due process of law—Notice by posting and publication.—Service of the notice of public work by posting and publication required by the act does not constitute a violation of due process of law.—Wulzen v. Supervisors, 101 Cal. 15, 40 Am. St. Rep. 17, 35 Pac. 353.

24. Same—Board of supervisors have no jurisdiction to condemn land.—An order of the board of supervisors opening and extending Market street to the ocean and purporting to condemn, appropriate, set apart and take for public use the land within the exterior boundaries of such proposed street, is, so far as the condemning, appropriating, setting apart and taking are concerned, judicial in its nature, and to that extent void, as beyond the board's jurisdiction.—Wulzen v. Supervisors, 101 Cal. 15, 40 Am. St. Rep. 17, 35 Pac. 353.

25. City council must comply strictly with statute.—In proceedings to open streets, municipalities can act legally only in strict compliance with the requirements of the statutory law.—Petaluma v. Hughes, 37 Cal. App. 473, 174 Pac. 336.

26. Street law—Opening street—Proceedings under repealed act.—Proceedings to open street commenced four months after repeal of act authorizing same are null and void.—Cohen v. Gray, 70 Cal. 85, 11 Pac. 508.

27. Not repealed by 1907 amendments to eminent domain sections of the Code of Civil Procedure.—The act was not repealed by the 1907 amendments to the Code of Civil Procedure relative to eminent domain.—Clute v. Turner, 157 Cal. 73, 106 Pac. 240.

28. Not repealed by act of 1903 (Stats. 1903, p. 376).—The act was not repealed by the act of 1903 (Stats. 1903, p. 376), which merely provides an alternative method.—Clute v. Turner, 157 Cal. 73, 106 Pac. 240.

29. Act applies to Petaluma.—The city of Petaluma was authorized to proceed under the present act, in the matter of opening streets.—Petaluma v. Hughes, 37 Cal. App. 473, 174 Pac. 336.

30. Act not superseded by charter of Napa.—The act was not superseded by the charter of Napa providing that the commissioners shall perform their duties in the direction of the councilman in charge of the street department and public improvements and the city attorney.—*Napa v. Maxwell*, 36 Cal. App. 103, 171 Pac. 837.

31. Continuation of proceedings commenced under prior act.—Proceedings commenced within eighteen months prior to enactment may be continued under the act.—*San Francisco v. Klernan*, 98 Cal. 614, 33 Pac. 720.

32. Jurisdictional requirements.—It is a fundamental principle, in proceedings of this character, that every requirement of the statute which has a semblance of benefit to the owner must be observed in order to give jurisdiction; but after jurisdiction has been once acquired, irregularities affecting substantial rights only may constitute ground of attack.—*Dehall v. Morford*, 95 Cal. 457, 30 Pac. 593.

33. Diminishing width of street—Power to close in whole or in part authorizes the diminution of width.—The power to close a street in whole or in part, conferred by the act, authorizes the board to diminish the width of a street.—*Brown v. Supervisors*, 124 Cal. 274, 57 Pac. 82.

34. Same—Adoption of order is determination of public interest and convenience.—The adoption of an order diminishing the width of a public street is a determination of the question of public interest and convenience.—*Brown v. Supervisors*, 124 Cal. 274, 57 Pac. 82.

35. Same—Same—Hearing of objections.—The hearing of objections is not judicial but merely the mode of determining the question of public interest.—*Brown v. Supervisors*, 124 Cal. 274, 57 Pac. 82.

36. Same—Same—Same—Determination final and conclusive.—The determination of the question of public interest and convenience is final and conclusive.—*Brown v. Supervisors*, 124 Cal. 274, 57 Pac. 82.

37. Same—Determination as fact of resulting damages.—The board is authorized in its legislative discretion to determine in the first instance whether damages will result from the diminution of the width of a street.—*Brown v. Supervisors*, 124 Cal. 274, 57 Pac. 82.

38. Same—Assessment—Notice—Hearing.—The necessity of an assessment is to be determined by the board, and may be determined irrespective of any previous notice, or after such hearing and investigation as it may deem appropriate.—*Brown v. Supervisors*, 124 Cal. 274, 57 Pac. 82.

39. Same—Damage.—The diminishing of the width of a street so as to give it the same width as the majority of the streets of the city can not be said to interfere with the rights of an abutting owner.—*Brown v. Supervisors*, 124 Cal. 274, 57 Pac. 82.

40. Same—Same—Diminution in value not compensable.—The damage which an abutting owner may sustain by reason of the diminution in value of his land is not

damage for which compensation is recoverable.—*Brown v. Supervisors*, 124 Cal. 274, 57 Pac. 82.

41. Boundaries of district—Exclusion of public property—Within power of council.—The exclusion of public lands from the district was a mere exercise of the power of the city council under the act to determine the extent of the district and the liability of public property therein, and did not invalidate the assessment.—*Cohen v. Alameda (Cal.)*, 191 Pac. 1110.

42. Same—Description by metes and bounds—Not impaired by failure to describing exceptions.—Where the boundaries of the proposed street are clearly defined and all in private ownership are to be taken, the description of lands by metes and bounds is not impaired by an exception of lands of the city held as open ways, with describing the exceptions.—*Cohen v. Alameda*, 124 Cal. 504, 57 Pac. 377.

43. Same—Insufficient description.—An ordinance providing that exterior boundaries of the district to be benefited are "all lots and parcels of land fronting on each side of First street, from the west side of Los Angeles street to the west side of Alameda street," does not comply with the requirements of the act that the exterior boundaries of the district shall be specified, and a sale of lands for a delinquent assessment will be enjoined.—*Dehall v. Morford*, 95 Cal. 457, 30 Pac. 593.

44. Same—Same—Purpose of requirement as to specifying exterior boundaries.—The obvious reason for the requirement is that each owner of property within the district may be informed of the extent of territory which is to bear the burden, and thereby to calculate the relative burden upon himself, and determine with it is disproportionate to the benefits, and make suitable representations to the city council when it comes to act.—*Dehall v. Morford*, 95 Cal. 458, 30 Pac. 593.

45. Same—"Land," "Lands"—Defined.—The words "land" and "lands" as used in the street opening act of 1889 are used in their technical sense, meaning "territory," and not in their popular sense, as meaning the exposed surface of the earth, as distinguished from ground alternately covered and uncovered by the tides.—*West Berkeley Land Co. v. Berkeley*, 164 Cal. 406, 407, 129 Pac. 281.

46. Same—Description held sufficient.—Description of exterior boundaries of district held sufficient under section 2 of the street opening act of 1889.—*West Berkeley Land Co. v. Berkeley*, 164 Cal. 406, 410, 129 Pac. 281.

47. Same—Same—Reference to map not in county records.—A description in a resolution by reference to an official map of state tide lands is not insufficient merely because such map is not in the custody of an official located in the county.—*West Berkeley Land Co. v. Berkeley*, 164 Cal. 406, 411, 129 Pac. 281.

48. Tide lands—Opening streets over.—A municipality is given power under the

street opening act of 1889 to open or extend its streets over tide lands.—*West Berkeley Land Co. v. Berkeley*, 164 Cal. 406, 407, 129 Pac. 281.

49. Same—Manner of posting notices.—The posting of the notices of the resolution of intention under the street opening act of 1889 may, in case of opening a street across tide land, be made by attaching the same to floats anchored at proper intervals along the line of the proposed street.—*West Berkeley Land Co. v. Berkeley*, 164 Cal. 406, 409, 129 Pac. 281.

50. Same—Same—Notices posted on floats presumed to remain in place.—Notices posted under the street opening act of 1889 by being attached to floats anchored along the line of the proposed street across tide lands, in the absence of a contrary showing, are presumed to have remained in place during the statutory period.—*West Berkeley Land Co. v. Berkeley*, 164 Cal. 406, 409, 129 Pac. 281.

51. Same—Same—Owners of assessment not interested where notices are for condemnation.—A posting under the street opening act of 1889, insufficient against the owners of tide lands to be condemned for street purposes, can furnish no ground of complaint by landowners of the assessment district.—*West Berkeley Land Co. v. Berkeley*, 164 Cal. 406, 409, 129 Pac. 281.

52. Resolution of intention—Notice of work—Description—Sufficient.—Where the strip of land to be taken as a public street was described in detail, and lands held by the city or the people as public ways were excepted, the resolution and notice were sufficient.—*Cohen v. Alameda (Cal.)*, 191 Pac. 1110.

53. Notice—Immaterial changes during publication does not invalidate.—Immaterial changes in the notice during publication does not invalidate it.—*Petaluma v. Hughes*, 37 Cal. App. 473, 174 Pac. 336.

54. Hearing objections—Premature adjournment.—The city council lost jurisdiction to make a supplemental assessment by prematurely meeting and adjourning before the hour noticed.—*Gill v. Oakland*, 124 Cal. 335, 57 Pac. 150.

55. Expenses of improvement—Publication of delinquent assessment list—Not payable out of general fund.—Payment of the expense of publishing the delinquent assessment list, being one of the necessary expenses of the improvement, is restricted to the special fund provided, and the general fund of the city can not be made liable.—*Brooks v. San Luis Obispo*, 109 Cal. 50, 41 Pac. 791.

56. Assessment—Relationship of commissioner to owner of property—Ownership of property in district.—The fact that two of the commissioners were owners of property in district to be assessed and one was related to an owner of property therein, does not disqualify them to act or render the assessment void.—*United, etc., Co. v. Barnes*, 159 Cal. 242, 113 Pac. 167.

57. Same—Same—Same—Confirmation by the city council without objection.—In the

absence of a showing that the assessment was excessive, or that the damages allowed were too high, or that the proceedings were unfair or unjust as a matter of fact, the confirmation by the city council, without objection as to the interest of the commissioners, was conclusive.—*United, etc., Co. v. Barnes*, 159 Cal. 242, 113 Pac. 167.

58. Same—Error in designation of property-owning corporation.—An error in the designation of the name of a corporation owning an electric railway, in making the assessment, must be disregarded where the corporation paid the assessment, and it can not be complained of on the ground that all the property benefited was not assessed.—*Cohen v. Alameda*, 124 Cal. 504, 57 Pac. 377.

59. Same—Second supplemental assessment.—When a deficiency arises in the collection of the original assessment, and a supplemental assessment to reimburse advances from the general fund has been insufficient, the city council may, if the proceedings have been regularly pursued, make a second supplemental assessment to complete such reimbursement.—*Gill v. Oakland*, 124 Cal. 235, 57 Pac. 150.

60. Same—Graveling and grading street not authorized.—This act does not confer upon a city council power to include in an assessment for widening a street the cost of grading and graveling the lands taken, and such assessment being illegal creates no lien therefor.—*Wilcoxon v. San Luis Obispo*, 101 Cal. 508, 35 Pac. 988.

61. Same—Owner of property not assessed can not object to invalid assessment of other property.—Owner whose property was not assessed for costs and expenses of an improvement can not urge the objection that other property benefited was not lawfully assessed.—*San Francisco v. Kiernan*, 98 Cal. 614, 33 Pac. 720.

62. Same—Payment of commissioners out of, does not invalidate.—The payment of compensation awarded to commissioners to assess damages and benefits out of assessments does not invalidate the assessments.—*Cohen v. Alameda (Cal.)*, 191 Pac. 1110.

63. Same—Property owner not debarred from attacking because of making and denial of protest.—A property owner is not debarred from attacking a street opening assessment by legal proceedings because of the fact that he made his protest and was denied.—*Spring Street Co. v. Los Angeles*, 170 Cal. 24, 31, L. R. A. 1918E, 197, 148 Pac. 217; *Hamberger, etc., Co. v. Los Angeles*, 170 Cal. 24, 31, L. R. A. 1918E, 197, 148 Pac. 217.

64. Same—Denial of protests by city council not conclusive.—The action of city council in a street opening proceeding in denying the protests of property owners as to protests, is not conclusive, where the assessment is invalid.—*Spring Street Co. v. Los Angeles*, 170 Cal. 24, 31, L. R. A. 1918E, 197, 148 Pac. 217; *Hamberger, etc., Co. v. Los Angeles*, 170 Cal. 24, 31, L. R. A. 1918E, 197, 148 Pac. 217.

65. Condemnation—Immaterial issues.—Denials of the city's right and power to lay out any street or alley, and that it is not necessary to condemn defendant's property, and that the right of way sought to be condemned is for private and not public benefit, raise no material issues in a suit to condemn land for an alley under the act.—*Santa Ana v. Brunner*, 132 Cal. 234, 64 Pac. 287.

66. Same—Alley a public use—Allegation that property is necessary for an alley sufficient.—An alley in a municipality is a public use, and it is only necessary to allege in a suit to condemn a right of way, that such right of way is necessary for the purposes of an alley.—*Santa Ana v. Brunner*, 132 Cal. 234, 64 Pac. 287.

67. Same—Tender—Allegation and denial raises no material issue.—Allegation of tender unnecessary and a denial thereof raised an immaterial issue.—*Santa Ana v. Brunner*, 132 Cal. 234, 64 Pac. 287.

68. Same—Plaintiff's motive not issuable.—Averments in answer as to motive of plaintiff in bringing action presents no material issue.—*Santa Ana v. Brunner*, 132 Cal. 234, 64 Pac. 287.

69. Same—Disqualification of trustee—Absence of allegation that vote was essential.—An averment as to the disqualification of a trustee to act on the petition to open an alley is insufficient in any event, in the absence of an averment that the vote of such trustee was essential.—*Santa Ana v. Brunner*, 132 Cal. 234, 64 Pac. 287.

70. Same—Objections to jurisdiction—No allegations of irregularities.—When defendant actually had a hearing before the board does not show failure of the board to acquire jurisdiction, where his answer does not show that his objections were fully presented with evidence, or that he and his counsel were thereafter excluded from the hearing, or that it passed on the objections in private session.—*Santa Ana v. Brunner*, 132 Cal. 234, 64 Pac. 287.

71. Same—Market value—Rule of compensation.—The proper rule of compensation is the amount defendant could have sold his property for in the open market, for cash, on the day of the summons, after reasonable time to make the sale.—*Santa Ana v. Brunner*, 132 Cal. 234, 64 Pac. 287.

72. Same—Defendant can not complain of irregularity of assessment.—The proceedings to assess and enforce payment of assessments are entirely distinct from actions to condemn land, and owners of lands taken can not complain of the irregularity of assessments for benefits upon land not taken or damaged.—*Alameda v. Cohen*, 133 Cal. 5, 65 Pac. 127.

73. Same—Provisions of act not exclusive—Code provisions available.—The method of condemnation of land for a proposed street provided by this act is not exclusive and a municipality is not prohibited from maintaining proceedings under the code where it has funds in the treasury available without resort to the

method provided by the act.—*Los Angeles v. Leavis*, 119 Cal. 164, 51 Pac. 81.

74. Same—Necessity of work—Action of city council final and conclusive.—When the several steps provided by the act have been taken and the resolution and ordinance ordering the work have been regularly adopted the action of the council is final and conclusive of the necessity of the improvement, and the courts may not adjudicate such necessity in an action or proceeding for the condemnation of lands necessary to the improvement.—*Santa Ana v. Harlin*, 99 Cal. 538, 34 Pac. 224.

75. Same—Public use and necessity—Question for city council.—A question going to the public character of the use and necessity for its establishment was properly solvable by the city council.—*Santa Ana v. Harlin*, 99 Cal. 538, 34 Pac. 224.

76. Same—Same—Bond of private persons to contribute to expense of opening street.—The mere fact that individuals have subscribed money or given a bond to contribute toward the expense of laying out a street will not vitiate the proceedings or prove that the land was taken for the accommodation of private persons, and not for public uses.—*Santa Ana v. Harlin*, 99 Cal. 538, 34 Pac. 224.

77. Same—"Present market value."—The present market value is the measure of damages, not the value in use to the owner or to the parties seeking to condemn it.—*Santa Ana v. Harlin*, 99 Cal. 538, 34 Pac. 224.

78. Same—Same—Defined.—By the term "present market value" is meant not what the owner could realize at forced sale, but the price that he could obtain after reasonable and ample time, such as would ordinarily be taken by an owner in making sale of his property.—*Santa Ana v. Harlin*, 99 Cal. 538, 34 Pac. 224.

79. Same—Same—Proof.—The court should permit a full and free investigation as to the adaptability of the land to the varied practical purposes to which it is naturally adapted, but the proof should be limited to showing the present condition of the property and the uses to which it is adapted, and may not extend to speculative inquiries as to possible future uses under altered circumstances, which may or may not arise.—*Santa Ana v. Harlin*, 99 Cal. 538, 34 Pac. 224.

80. Same—Same—Same.—The general rule in estimating the market value of property is that "it is not competent for the owner to prove what he has been offered therefor (Central, etc., Co. v. Pearson, 35 Cal. 247), or what persons who have been looking for similar property were willing to give for it."—*Santa Ana v. Harlin*, 99 Cal. 538, 34 Pac. 224. But see *Muller v. Southern, etc., Co.*, 83 Cal. 240, 23 Pac. 265.

81. Same—Same—Same—Report of commissioners.—The report of the commissioners showing what they had paid for similar land nearby was not properly admissible to show market value.—*San Luis Obispo v. Brizzolara*, 100 Cal. 434, 34 Pac. 1083.

82. Same—Invalid ordinance can not be taken as a basis.—An invalid ordinance which fails to confer upon the city of Los Angeles any jurisdiction and authority to make an improvement can not be used as a basis of any action for condemnation of the land sought to be included in the improvement.—*Los Angeles v. Dehail*, 97 Cal. 13, 31 Pac. 626.

83. Same—City must comply strictly with the act.—Municipalities must act in strict compliance with the statute in the matter of condemnation to open and widen street.—*Petaluma v. Hughes*, 37 Cal. App. 473, 174 Pac. 336. To the same effect: *Napa v. Maxwell*, 36 Cal. App. 103, 171 Pac. 837.

84. Same—Commissioners must be appointed before proceedings are commenced.—Commissioners must be appointed as required by the act before condemnation proceedings are commenced.—*Napa v. Maxwell*, 36 Cal. App. 103, 171 Pac. 837.

85. Same—Proceedings invalid on face.—In a street widening proceeding by the district plan, an assessment not based upon benefits, but made upon a plan whereby each property owner along the street was required to pay an amount equal to the sum awarded him in condemnation proceedings, plus a proportionate part of the cost of the condemnation proceedings themselves, is invalid on its face.—*Spring Street Co. v. Los Angeles*, 170 Cal. 24, L. R. A. 1918E, 197, 148 Pac. 217; *Hamberger, etc., Co. v. Los Angeles*, 170 Cal. 24, L. R. A. 1918E, 197, 148 Pac. 217.

86. Benefits—Decision of city council conclusive.—The decision of the city council as to the extent of the district benefited is conclusive and the commissioners have no power to assess public lands excluded by the council.—*Cohen v. Alameda* (Cal.), 191 Pac. 1110.

87. Actions—Injunction against collection of assessment—Objection not presented to city council.—An objection that an assessment did not include all the land benefited is not available in an action to enjoin the collection of the assessment, where no such objection was made to the city council, in the manner provided by the act.—*United, etc., Co. v. Barnes*, 159 Cal. 242, 113 Pac. 167.

88. Same—Recovery of money paid under protest on void assessment—Section

3819, Political Code.—Money paid under protest and to prevent sale under a void assessment may be recovered, whether section 3819, Political Code, applies to local assessments or not.—*Gill v. Oakland*, 124 Cal. 335, 57 Pac. 150.

89. Certiorari—Determination of legislative policy not reviewable.—The determination of the board of supervisors as to whether a street is to be opened or closed, widened or contracted, is an exercise of legislative functions, and not of judicial functions which may be reviewed.—*Brown v. Supervisors*, 124 Cal. 274, 57 Pac. 82.

90. Same—Closing street—Parties not specially injured not entitled to writ.—Property owners and taxpayers, whose property does not abut on the street, who are not deprived of access thereto by the closing of street, who do not suffer special injury but only inconvenience in common with the community at large, are not entitled to certiorari to review the order of the board of supervisors closing and vacating the street.—*Symons v. San Francisco*, 115 Cal. 555, 42 Pac. 913, 47 Pac. 453.

91. Same—Same—Same—Lands remotely affected.—Owners of land only remotely damaged are not authorized to attack by certiorari the order of the board.—*Symons v. San Francisco*, 115 Cal. 55, 42 Pac. 913, 47 Pac. 453.

92. Same—Same—Same—Diminution of value.—The question whether the order will have the effect of diminishing the value of such land is not a ground for certiorari, and the fact, if true, would not be ground for its annulment.—*Symons v. San Francisco*, 115 Cal. 555, 42 Pac. 913, 47 Pac. 453.

93. Same—Question of public interest and convenience—Determination of board not reviewable.—The determination of the question of public interest and convenience by the board is final and conclusive, and not open to review on certiorari.—*Symons v. San Francisco*, 115 Cal. 555, 42 Pac. 913, 47 Pac. 453.

94. Same—Proceedings legislative and not reviewable.—The proceedings of the board of supervisors of San Francisco, under the present act, to open and extend Market street to the Pacific Ocean, are legislative in character and not reviewable on certiorari.—*Wulzen v. Supervisors*, 101 Cal. 15, 35 Pac. 353.

“STREET OPENING ACT OF 1903.”

ACT 4946—An act to provide for the laying out, opening, extending, widening, or straightening, in whole or in part, of public streets, squares, lanes, alleys, courts, and places, within municipalities, for the condemnation of property necessary or convenient for such purposes, and for the establishment of assessment districts and the assessment of property therein to pay the expense of such improvement.

History: Approved March 24, 1903, Stats. 1903, p. 376. Amended April 21, 1909, Stats. 1909, p. 1035; April 10, 1911, Stats. 1911, p. 855; April 12, 1911, Stats. 1911, p. 894; June 10, 1913, in effect August 10, 1913, Stats. 1913, p. 429; May 25, 1919, in effect July 25, 1919, Stats. 1919, p. 1046.

Power to open streets, etc.

§ 1. Whenever the public interest or convenience may require, the city council of any municipality shall have full power and authority to order the laying out, opening, extending, widening, or straightening, in whole or in part, of any public street, square, lane, alley, court, or place within such municipality, and to acquire, by condemnation, any and all property necessary or convenient for that purpose.

Ordinance of intention to improve streets, etc. City may pay percentage.

§ 2. Declaration of intention. City may pay percentage. Before ordering any improvement to be made which is authorized by section one of this act, the city council shall pass an ordinance declaring its intention to do so, describing the improvement and the land necessary or convenient to be taken therefor, and specifying the boundaries of the district to be benefited by said improvement and to be assessed to pay the expense thereof and to be known as the assessment district. Said city council may, in its discretion, order and declare that the whole, or any percentage, of the expense of said improvement be paid out of the treasury of the municipality from such fund as the council may designate, in which case it shall be so stated in said ordinance of intention. [Amendment of May 25, 1919. In effect July 25, 1919, Stats. 1919, p. 1047.]

This section was also amended June 10, 1913. In effect August 10, 1913, Stats. 1913, p. 429.

Notice to be posted. Publication. Notice mailed to owners. Affidavit of clerk.

§ 3. The street superintendent shall thereupon cause to be conspicuously posted along all streets and parts of streets or other public places or rights of way where any property is to be taken for the widening or straightening thereof, and along or upon any private unimproved property which is to be taken for the opening or extending of any street or other public place, at not more than three hundred feet apart, notices (not less than three in all) of the passage of said ordinance. Said notices shall be headed, "notice of public work," in letters not less than one inch in length, shall be in legible characters, and shall state the fact and date of the passage of said ordinance and briefly describe the improvement proposed, and refer to said ordinance of intention for a description of the assessment district and for further particulars. He should also cause a notice similar in substance to be published by two insertions in a daily, weekly or semi-weekly newspaper published and circulated in said city and designated by the city council for that purpose. The city clerk shall, immediately upon the publication of the notice required by this section, mail, postage prepaid, to each property owner in the assessment district, at his last known address as the same appears on the tax-rolls of said city, or when no address so appears, to the general delivery, a postal card containing a notice which shall be in the following or substantially the following form (filling blanks), to wit:

"You are hereby notified that on the day of, 19.., the legislative body of the city of, California, by virtue of the street opening act of 1903, passed an ordinance of intention numbered, for the opening and widening of street between street and street. Written protests may be filed with the city clerk within days after the day of, 19... Your property is in the district to be assessed for this improvement.

.....
City Clerk."

If any lots or parcels of land in the assessment district be assessed to "unknown owners" on the tax-rolls of said city, no postal cards shall be mailed to the owners thereof, but the notice of public work by the publication as herein provided shall be deemed legal notice to such owners of such contemplated improvement. The city clerk shall immediately upon the completion of the mailing of said postal cards file, or cause

to be filed in the office of the superintendent of streets an affidavit stating the time and manner of compliance within this requirement, but the names of the persons to whom said postal cards were addressed need not be set forth in said affidavit. The failure of the city clerk to address said postal cards or any thereof to the proper owners of said property or to mail said cards, or the failure of said property owners to receive the same shall not affect the validity of the proceedings or prevent the legislative body from acquiring jurisdiction to order the work; provided, that the legislative body shall not pass any ordinance ordering the improvement until such affidavit is made and filed as herein prescribed. [Amendment approved June 10, 1913, Stats. 1913, p. 430. In effect August 10, 1913.]

Written protest. When majority protests. City deemed owner of percentage. Protest not signed by majority. Hearing protests. Decision.

§ 4. Any person interested, objecting to said improvement, or to the extent of the assessment district, described in said ordinance of intention, may file a written protest with the clerk of the city council, within thirty days after the first publication of the notice required by section three of this act. Every such protest must contain a description of the property in which each signer thereof is interested, sufficient to identify the same, and must set forth the nature of his interest therein, and must be accompanied by the affidavit of one of the signers thereof that each signature thereof is the genuine signature of the person whose name is thereto subscribed; and in case any signature is made by an agent, there must be attached to the protest the affidavit of the agent that he is duly authorized to sign such protest. Any protest not complying with the foregoing requirements, shall not be considered by the city council. In the case of property held by tenancy in common, if any co-tenant sign such protest, only the proportionate share of the frontage thereof represented by his interest therein, shall be counted in determining the amount of frontage represented by such protest. The clerk shall endorse on every such protest the date of its reception by him, and, at the next regular meeting of the city council, after the expiration of the time for filing protests, he shall present to said city council all protests so filed with him. If such protests are against said improvement, and said city council finds that the same are signed by the owners of a majority of the frontage of the property fronting on streets or parts of streets within said assessment district, all further proceedings under said ordinance of intention, excepting in the cases hereinafter otherwise provided, shall be barred, and no new ordinance of intention for the same improvement shall be passed within six months after the presentation of such protest to the city council, unless the owners of a majority of the property fronting on streets or parts of streets within said assessment district shall in the meantime petition therefor. For the purpose of passing upon and determining the sufficiency of such protests in cases where by a resolution of intention it is declared that the city shall pay a percentage of the expense of the improvement, the city shall be deemed to be the owner of frontage within the assessment district bearing the same proportion to the whole frontage therein as the proportion of the expense which it is to pay, and the actual frontage of property within such district shall be increased by the addition of such amount as is necessary to produce said result, and the amount of frontage as so increased shall be the total frontage to be used in determining whether a protest is signed by the owners of a majority of the frontage of the property fronting on streets or parts of streets within said assessment district. If such protests are against the improvement, and the council finds that they are not signed by the owners of a majority of the frontage of the property fronting on streets or parts of streets within said assessment district, or if such protests are only against the extent of said assessment district, or if the proposed improvement is for the opening or extending of a street for a distance of not more than two blocks intervening between the terminations of two different streets, or two portions of the same street,

existing at the time of the passage of the ordinance of intention for the proposed improvement, each of said different streets or said portions of the same streets being at least five blocks in length, and the opening or extending of the street described in the ordinance of intention through such intervening block or blocks will, together with such different streets or portions of the same street so existing, make one connecting or continuous street, as nearly as may be practicable, or if the proposed improvement is for the opening or extending of a street into a different street, for a distance of not more than one block intervening between the termination of such street so proposed to be opened or extended and such different street, when the street so proposed to be opened or extended through such intervening block exists, at the time of the passage of the ordinance of intention, for a distance of at least five blocks, or if the proposed improvement is for the opening or extending of a public street, lane, alley, court or place through the remainder of a block when such public street, lane, alley, court or place exists, at the time of the passage of the ordinance of intention for the proposed improvement, for at least one half of the distance through such block, the city council shall thereupon fix a time for hearing said protests, not less than ten days after the meeting of the council at which such time is so fixed, and shall cause notice of the time of such hearing to be published for at least five days in a daily newspaper published and circulated in said city, or if there be no such daily newspaper, by at least two insertions in a weekly newspaper so published and circulated, the city council shall hear said protests at the time appointed, or at any time to which the hearing thereof may be adjourned, and pass upon the same, and its decision thereon shall be final and conclusive. If any such protests are sustained, no further proceedings shall be had under said ordinance of intention, but a new ordinance of intention for the same improvement may be passed at any time. If the protests are denied, the proceedings shall continue as if such protests had not been made. At the expiration of the time within which protests may be filed, if none are filed, or if protests are filed, and after hearing are denied, as above provided, then upon such denial, the city council shall acquire jurisdiction to order the improvement described in the ordinance of intention. [Amendment approved June 10, 1913, Stats. 1913, p. 431. In effect August 10, 1913.]

This section was also amended April 21, 1909, Stats. 1909, p. 1035.

Order for improvement.

§ 5. Having acquired jurisdiction, the city council, shall, by ordinance, order said improvement to be made, and direct an action to be brought by the city attorney, in the proper superior court, in the name of the municipality, for the condemnation of the property necessary or convenient to be taken therefor. Such ordinance need not describe the property to be taken, nor the assessment district, but may refer to the ordinance of intention for all particulars.

Actions, when to be brought. Procedure.

§ 6. Said action must be brought within sixty days after the passage of the ordinance ordering the improvement, but the council may, by ordinance, extend the time for bringing such action for an additional period not exceeding ninety days. Said action shall in all respects be subject to and governed by such provisions of the Code of Civil Procedure now existing or that may be hereafter adopted, as may be applicable thereto, except in the particulars otherwise provided for in this act. [Amendment approved April 21, 1909, Stats. 1909, p. 1037.]

Complaint, what shall set forth.

§ 7. The complaint shall set forth, or state the effect of, the ordinance of intention, and the ordinance ordering the improvement, but need not set up any other proceedings had before the bringing of the action. Said ordinances shall be conclusive evidence,

in such action, of the public necessity of the proposed improvement, and also that the same is located in the manner which will be most compatible with the greatest public good and the least private injury.

Motion to set for trial. Waiver of trial. Referees.

§ 8. When all parties defendant to the action have answered, or have been served with summons, and their default entered, the plaintiff or any party defendant to the action whose default has not been so entered, may, upon five days' notice to the parties, except defendants in default, move the court to set the action for trial. If, upon the hearing of such motion, a trial by jury or by the court without a jury is not demanded by the defendants, or any of them, or by the plaintiff, such trial shall be deemed to be waived, and the court must appoint three disinterested persons referees, to ascertain the compensation to be paid to such defendants so waiving trial by a jury, or by the court without a jury. Such referees must be residents of the municipality where such improvement is to be made, and over the age of twenty-one years, and must take and file with the court an oath to discharge their duties faithfully and impartially. If any of such referees fails to qualify, or resigns, or is removed by order of court, or is or becomes unable to act, the vacancy so created shall be filled by the court. [Amendment approved April 21, 1909, Stats. 1909, p. 1037.]

Report of referees.

§ 9. The referees shall at once proceed to view the lands sought to be condemned, and ascertain the compensation proper to be paid to such of the parties interested in each parcel thereof as have waived a trial by jury, or by the court. They shall have power to examine witnesses under oath, to be administered by any of them, and may have subpoenas issued by the clerk of the court, requiring the attendance of witnesses, or the production of evidence before them. They shall make and file with the court a written report of their findings, and of their necessary expenses, within thirty days after the date of their appointment; provided, however, that the time so allowed may be extended, upon good cause shown, by the court or judge thereof, but such extension shall not exceed ninety days; and provided further, that if any vacancy in the referees is created and filled as provided in section 8 of this act, or if new referees are appointed, or if a new report from the same referees is ordered, as provided in section 11 of this act, the time herein specified for the filing of such report shall be deemed to be thirty days from the date of the order filling such vacancy, or appointing new referees, or ordering a new report from the same referees, and the same may be extended accordingly, as above provided. Any two of such referees who agree thereto, may make such report. [Amendment approved April 21, 1909, Stats. 1909, p. 1038.]

Assessment of damages. Findings.

§ 10. For the purpose of assessing the compensation and damages, the right thereto shall be deemed to have accrued at the date of the order appointing referees or of the order setting the cause for trial, as the case may be, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed by the provisions of this act. No improvements placed upon the property proposed to be taken, subsequent to the date of the publishing of the notice of the passage of the ordinance of intention, shall be included in the assessment of compensation or damages.

The referees, or court, or jury, as the case may be, shall find separately:

First. The value of each parcel of property sought to be condemned, and all improvements thereon pertaining to the realty, and of each separate estate or interest therein;

Second. If any parcel of property sought to be condemned is only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, and

to each separate estate or interest therein, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff. Such damages must be fixed irrespective of any benefit from such improvement. [Amendment approved April 21, 1909, Stats. 1909, p. 1038.]

Hearing of referees' report. Exceptions. Notice of hearing. Intervention. Notice of trial. Postponement.

§ 11. Upon the filing of such report the court must, upon motion of any party, appoint a day for hearing the same, not less than twenty days thereafter. Notice of the time and place of said hearing must, at least ten days before the time so appointed, be served on all the other parties, except defendants whose default has been entered. The plaintiff, or any defendant who has answered, may file exceptions in writing to said report, specifying the grounds upon which such exceptions are based, at any time within not less than one day prior to the hearing; and any such party so filing exceptions to said report, may appear at the hearing of said report and contest the same. In addition to the notice hereinbefore provided, the clerk of the court must give notice of the filing of said report, and of the time and place appointed for the hearing of the same, to all persons owning or having an interest in any property included within the assessment district for said improvement described in the ordinance of intention, by causing said notice last mentioned to be published for five days in a daily newspaper published and circulated in the city; and, if there be no such daily newspaper, then by two insertions in a weekly newspaper so published and circulated. Any publication of such notice shall commence at least ten days before the time appointed for the hearing of the report. Said notice shall require all persons owning or having an interest in any property included within said assessment district for said improvement to intervene in said action, and file, in the office of the clerk of said court, his exceptions in writing to said report if any he has, specifying the grounds upon which such exceptions are based. Said notice shall also contain a description of the said assessment district as set forth in the ordinance of intention. At any time within not less than one day prior to the hearing, any person not a party to the action, owning or having an interest in any property included within said assessment district, may intervene in the action, and file his exceptions in writing to said report, specifying the grounds upon which such exceptions are based; and any such person so intervening may appear and contest the said report, and introduce evidence in support of such exceptions. After hearing the report, and any exceptions thereto, the court may confirm the report, or may modify it and confirm it as modified, or may set it aside and order a new report from the same referees, or from new referees to be appointed. If new referees are appointed, the same proceedings shall be had as upon the first reference.

If there be a trial of the action by a jury, or by the court without a jury, the clerk of the court must give notice of the time and place of such trial to all persons owning or having an interest in any property within said assessment district for said improvement. Said notice shall be published in the same manner and for the same time as the notice hereinbefore in this section required to be given by said clerk, and shall require all persons owning or having an interest in any property included within said assessment district for said improvement, to intervene in said action, and to appear at the trial thereof and introduce evidence relative to the compensation and damages to be awarded to the defendants therein. At any time within not less than one day prior to the trial, any person not a party to the action, having an interest in any property included within said assessment district, may intervene in the action, and, upon the trial thereof, may appear and introduce evidence relative to the compensation and damages to be awarded to the defendants therein. The cost of the publication of the notices required by this section shall be paid by the plaintiff, and allowed as costs in the action.

When a time has been appointed for hearing the report of the referees, or for the trial of the action, and notice thereof has been given by the clerk by publication as in this section provided, if the hearing or trial be postponed or continued by the court to any subsequent date, no such notice need be given by the clerk of the hearing or trial upon any such postponement or continuance. [Amendment approved April 21, 1909, Stats. 1909, p. 1039.]

Confirmation of report. Interlocutory judgment. Compensation of referees.

§ 12. Upon the confirmation of the report of the referees, or receipt of the verdict of the jury, or the filing of the findings of the court, the court shall make and enter an interlocutory judgment in accordance with such report, verdict or findings, adjudging that upon payment to the respective parties, or into court for their benefit, of the several amounts found due them as compensation, and of the costs allowed to them, the property involved in the action shall be condemned to the use of the plaintiff, and dedicated to the use specified in the complaint. The court shall allow to the referees, as costs to be paid by the plaintiff, a reasonable compensation for their services, the amount of which compensation shall be fixed by the court upon the hearing of the report, and their necessary expenses. [Amendment approved April 21, 1909, Stats. 1909, p. 1040.]

Appeal.

§ 13. An appeal may be taken from such interlocutory judgment within thirty days from the entry thereof, and from any order granting or denying a new trial within ten days after the entry thereof.

Abandonment of proceedings.

§ 14. The city council may, at any time prior to the payment of the compensation awarded the defendants, abandon the proceedings, by ordinance, and cause the said action to be dismissed, without prejudice; and if any of the assessments levied to pay the expense of the improvements, as hereinafter provided, shall have been actually paid in money at the time of such abandonment, the same shall be refunded to the persons by whom they were paid. If the proceedings be abandoned or the action dismissed no attorney's fees shall be awarded the defendants or either or any of them. [Amendment approved April 12, 1911, Stats. 1911, p. 894.]

This section was also amended April 21, 1909, Stats. 1909, p. 1040. See, post, note to section 37.

Diagram of improvement.

§ 15. Upon the entry of the interlocutory judgment, the city council shall order the city engineer, or if there be no city engineer, any civil engineer whom it may employ for that purpose, to make and deliver to the street superintendent, a diagram of the improvement and of the property within the assessment district described in the ordinance of intention. Said diagram shall show the land to be taken for the proposed improvement, and also each separate lot, piece or parcel of land within the assessment district, and the dimensions of each such lot, piece, or parcel of land, and the relative location of the same to the proposed improvement.

Delivery of diagram. Completed assessment.

§ 16. The city engineer shall deliver said diagram to the street superintendent and shall endorse thereon the date of such delivery. The street superintendent upon receiving the said diagram shall proceed to assess the total expenses of the proposed improvement (first deducting from such total expenses such percentage thereof, if any, as the city council may have declared by the ordinance of intention that the city shall pay) upon and against the lands, including the property of any railroad or street railroad, within said assessment district, except the land to be taken for such improvement, in

proportion to the benefits to be derived from said improvement. The street superintendent shall complete said assessment within sixty days after the receipt by him of said diagram; provided, however, that the city council may by order extend the time for completing said assessment for a period not exceeding ninety days additional. The total expense of the improvements so to be assessed shall include the amounts awarded to the defendants by the interlocutory judgment in the action for condemnation, together with their costs, the compensation and expenses of the referees, as allowed by the court, and all other costs of the plaintiff in such action, the expenses of making the assessment, and all expenses necessarily incurred by said city, in connection with the proposed improvement, for the publication of ordinances, posting and publication of notices, for maps, diagrams, plans, surveys, searches and certificates of title to the property to be taken, and all other matters incident thereto. [Amendment approved June 10, 1913, Stats. 1913, p. 433. In effect August 10, 1913.]

This section was also amended April 21, 1909, Stats. 1909, p. 1040.

Assessment, how made and what to show.

§ 17. The street superintendent shall make the said assessment in writing. Such assessment shall describe each lot, piece, or parcel of land assessed for said improvement, and shall designate each such lot, piece, or parcel of land with an appropriate number. The street superintendent shall also designate each such lot, piece, or parcel of land on said diagram, with the number corresponding with the number thereof in said assessment, and said diagram shall thereupon be attached to and become and be deemed to be a part of said assessment. Such assessment shall show the total sum to be raised thereby, as hereinbefore provided, and also the items of such total sum, and opposite each lot, piece, or parcel of land assessed, the amount assessed thereon, and the name of the owner thereof, if known to the street superintendent; or if the owner's name is unknown, the word "unknown" shall be written instead of such name. Any error or mistake in the designation of the owner of any lot, piece, or parcel of land, or in the particulars of his interest therein, shall not affect the validity of the assessment.

Notice of filing of assessment.

§ 18. As soon as said assessment is completed the street superintendent shall file the same, with the diagram attached thereto and made a part thereof as aforesaid, with the clerk of the council, who shall give notice of such filing by publication for, at least, ten days in a daily newspaper published and circulated in the city, or if there be no such daily newspaper, by three successive insertions in a weekly newspaper so published and circulated. Said notice shall require all persons interested to file with said clerk their objections, if any they have, to the confirmation of said assessment, within thirty days after the date of the first publication of such notice, which date shall be stated in said notice.

Objections.

§ 19. All objections shall be in writing and shall be filed with said clerk within the time prescribed in the notice required by section 18 hereof. The clerk shall, at the next regular meeting of the city council after the expiration of the time for filing objections, lay said assessment and all objections so filed with him, before the council; and said council shall hear all such objections at said meeting, or at any other time to which the hearing thereof may be adjourned, and pass upon such assessment, and may confirm, modify, or correct said assessment, or may order a new assessment, upon which like proceedings shall be had, as in the case of an original assessment; or if there be no objections, the council shall, at any regular meeting after the expiration of the time for filing objections, confirm such assessment, and the action of the council upon such objections and assessment shall be final and conclusive in the premises.

Record of assessment.

§ 20. The clerk of the council shall thereupon deliver to the street superintendent the assessment as confirmed by the city council, with his certificate of such confirmation, and of the date thereof. The street superintendent shall thereupon record such assessment and diagram in his office, in a suitable book to be kept for that purpose, and append thereto his certificate of the date of such recording, and such record shall be the assessment roll. From the date of such recording all persons shall be deemed to have notice of the contents of such assessment roll. Immediately upon such recording, the several assessments contained in such assessment roll shall become due and payable, and each of such assessments shall be a lien upon the property against which it is made.

Payment by offset.

§ 21. The owner of any property assessed, who is entitled to compensation under the award made by the interlocutory judgment, may, at any time after such assessment becomes payable, and before the sale of said property for nonpayment thereof, as hereinafter provided, demand of the street superintendent that such assessment, or any number of such assessments, be offset against the amount to which he is entitled under said judgment. Thereupon, if said amount is equal to or greater than such assessments, including any penalties and costs due thereon, the assessments shall be marked "Paid by offset"; and if the said amount is less than the assessments, and any penalties and costs due thereon, the person demanding such offset shall at the same time pay the difference to the street superintendent in money, and the assessments shall, on such payment, be marked paid, the entry showing what part thereof is paid by offset and what part in money. In either case, as a condition of the offset, such person must execute to the city and deliver to the street superintendent duplicate receipts for such part of the amount due him under said interlocutory judgment as is offset against such assessments, penalties, and costs. One of said duplicate receipts shall be filed by the street superintendent in his office, the other shall be filed with the clerk of the superior court, and on such filing, the city shall be entitled to a satisfaction pro tanto of said interlocutory judgment.

Notice to pay. Delinquency.

§ 22. The street superintendent shall, upon the recording of said assessment, give notice, by publication for ten days in a daily newspaper, published and circulated in such municipality, or by three successive insertions in a weekly newspaper, so published and so circulated, that said assessment has been recorded in his office, and that all sums assessed therein are due and payable immediately, and that the payment of the said sums is to be made to him within thirty days after the date of the first publication, which date shall be stated in the notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will become delinquent, and that thereupon five per cent upon the amount of each such assessment will be added thereto. When payment for any assessment is made, the street superintendent shall mark opposite such assessment, the word, "paid," the date of payment, and the name of the person by or for whom the same is paid, and shall, if so requested, give receipt therefor. On the expiration of said period of thirty days, all assessments then unpaid shall become delinquent, and the street superintendent shall certify such fact at the foot of said assessment roll, and mark each such assessment "delinquent," and add five per cent to the amount of each assessment delinquent.

Delinquent assessment. Notice. Sale.

§ 23. The street superintendent shall, within ten days from the date of such delinquency, begin the publication of a list of the delinquent assessments, which list must contain a description of each parcel of property delinquent, and opposite or against

each description, the name of the owner as stated in the assessment roll, and the amount of the assessment, penalty, and costs due, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece, or parcel of land, separately assessed. The street superintendent shall append to and publish with said delinquent list a notice that unless each assessment delinquent, together with the penalty and costs thereon, is paid, the property upon which such assessment is a lien, will be sold at public auction at a time and place to be specified in the notice. The publication must be made for a period of ten days, in some daily newspaper published and circulated in the municipality, or for three weeks in a weekly newspaper so published and circulated. The time of sale must not be less than five days, nor more than ten days, after the expiration of the period of publication of said list, and the place of sale must be in, or in front of, the office of the street superintendent.

Payment may be made prior to sale.

§ 24. At any time after such delinquency, and prior to the sale of any piece of property assessed and delinquent, any person may pay the assessment on such piece of property, together with the penalty, and costs then due, including the cost of advertising, if such payment is made after the first publication of the list of delinquent assessments. The street superintendent shall thereupon mark such assessment "Paid," as hereinbefore provided.

Delinquent sale.

§ 25. On the day fixed for the sale, the street superintendent must, at the hour of 10 o'clock a. m. commence the sale of the property advertised, commencing at the head of the list, and continuing in the numerical order of lots or parcels of land until all are sold; provided, that he may postpone or continue the sale from day to day until all the property is sold. Each lot, piece or parcel of land separately assessed must be offered for sale separately, and the person who will take the least quantity of land, and then and there pay the amount of the assessment, penalty, and costs due, including fifty cents to the street superintendent for a certificate of sale, shall become the purchaser. In case there is no purchaser, for any lot, piece or parcel of land so offered for sale, the same shall be struck off to the municipality, as purchaser, and the city council shall appropriate out of the general fund of the treasury, the amount required for such purchase, and shall order the city treasurer to place the same in the special fund for such improvement. No charge shall be made for the certificate of sale when the municipality is the purchaser.

Certificate of sale.

§ 26. After making the sale, the street superintendent must execute, in duplicate, a certificate of sale setting forth a description of the property sold, the name of the owner thereof, as given on the assessment roll, that said property was sold for a delinquent assessment, (specifying the improvement for which the same was made), the amount for which such property was sold, the date of sale, the name of the purchaser, and the time when the purchaser will be entitled to a deed. The street superintendent must file one copy of such certificate in his office, and deliver the other to the purchaser, or if the municipality is the purchaser, to the clerk of the council, who shall file the same in his office. On the filing of the copy of such certificate in the office of the street superintendent, the lien of the assessment shall vest in the purchaser, and is only divested by a redemption of the property, as in this act provided. The street superintendent shall also enter on the assessment roll, opposite the description of each piece of property offered for sale, a description of the part thereof sold, the amount for which the same was sold, the date of the sale, and the name of the purchaser.

New assessment may be made when first one in declared invalid. Court required to point out defects. New assessment ordered. Procédure. Reassessment based on benefits. Cost payable by land benefited.

§ 26a. Whenever any assessment made and issued under the provisions of this act, or whenever any bond or bonds issued to represent the amount of any such assessment in accordance with the provisions of "An act providing for the issuance of improvement bonds to represent certain special assessments for public improvements, and providing for the effect and enforcement of such bonds," approved April 27, 1911, and all acts supplementary thereto or amendatory thereof, have been set aside by any court of competent jurisdiction, or such court has refused to enforce any assessment, or has decreed any such bond or bonds issued under the above mentioned statute, approved February 27, 1911, not to constitute valid and subsisting liens against the lots, pieces or parcels of land upon which the assessments represented by them have been levied, then the superintendent of streets shall cause a new assessment to be made for the same purpose for which the former assessment was made, whether any of the assessments have been paid or not, and new bonds shall in regular course thereafter issue in the event that bonds were issued under or provided for in the original assessment. It is hereby made the duty of any court of competent jurisdiction in rendering its judgment holding invalid any assessment or assessments hereafter made or issued, or of any bond or bonds hereafter made or issued to represent the amount or amounts of any such assessment, to make a finding as to whether or not the issuing of such assessment was entirely without the power of the said city to issue, and if not, then what omission, irregularity, illegality, informality or noncompliance with the requirements of the statutes of which this is amendatory has occurred in the proceedings upon which said assessment or assessments and bonds rest, and what effect shall be given to them in making the reassessment. In the event that the court shall find that the improvement, the expenses of which are represented by said assessment or bonds, was commenced in good faith and carried on pursuant to an ordinance or resolution of the city council providing for such improvement to be paid for by a special assessment, it shall be the duty of the said court to order the making of a new assessment. The city council may, at the request of any interested party, or on its own motion, by resolution duly passed, set aside any assessment or assessments and bonds, as the case may be, and order a new assessment or assessments and bonds, to be made and issued without any decree having been obtained of or from any court regarding said matter, if in its opinion the assessment be invalid, and it may take all necessary steps and make and pass all necessary orders, resolutions or ordinances to reassess and relevy such assessment, and may reassess and relevy the same with the same force and effect as an original levy. Such reassessment, whether made after decree of court has been rendered, or pursuant to a resolution of the council, shall be based upon the special and peculiar benefit of the proposed improvement to the respective lots, pieces or parcels of land assessed. The total amount of the reassessment shall not exceed the total amount of the original assessment. Such reassessment so made shall become a charge upon the property upon which the same is levied, notwithstanding any omission, failure or neglect of any officer, body or person to comply with the provisions of this statute, and notwithstanding the fact that the proceedings of the city council, board of public works or any officer of the city or other person connected with such proceedings, may have been irregular, illegal, informal, or defective, or not in full conformity with the requirements of this statute. It is hereby declared to be the true intent and meaning of this section to make the cost and expense of all local improvements actually made or proposed to be made in the attempted exercise of the powers conferred upon municipalities under this statute, payable by the real estate benefited or to be benefited by such improvements by making a reassessment therefor which shall be equitably proportioned to each lot, each

piece or parcel of land thereby benefited the amount of the actual benefits derived or to be derived from said improvement, notwithstanding that the proceedings of the city council or other officers or agents of the city, or other persons connected therewith may have been irregular, illegal or defective, or not in full conformity with the requirements of this statute. Such reassessment shall be made without a repetition of the proceedings had prior to the issuance of the assessment and shall be made and issued in the following manner: The superintendent of streets shall, upon the entering of a decree of court directing the reassessment, or upon the passage of a resolution of the city council directing a reassessment, proceed at once to make a reassessment in accordance with the said decree of court, or said resolution of the city council. Such reassessment shall be made upon the district described in the ordinance of intention for said improvement, and in the event that there shall have been informalities, uncertainties or ambiguities in the description of the limits of said district, then upon the district which the court or council shall find to be that actually benefited by said improvement, but in so finding said court or council shall follow the lines described in the ordinance of intention so far as the same can be ascertained, and in all cases of uncertainty or ambiguity they shall give regard to the lines described and make such a determination as to the lines where there is any uncertainty or ambiguity in the ordinance of intention as may be just and equitable. In the event that a portion of the improvement has been found to be entirely without the power of said city to order, then said assessment shall be for the remainder of the improvement only, and the benefits arising from the improvement entirely without the jurisdiction of the city to order shall not be considered in making the reassessment. Upon the completion of the reassessment it shall be presented to the city council and a day of hearing shall be fixed by it which shall be at least twenty (20) days after the filing of the reassessment. The city clerk shall then advertise the fact of filing by publishing a notice in the official newspaper, or in such other paper as the council may direct, by five (5) insertions if the paper be a daily, or by two (2) insertions if it be a weekly or semi-weekly newspaper, stating the fact that the reassessment has been filed with him and that objections to said reassessment will be heard at the time specified by the city council. At the time fixed for such hearing, or at such time or times to which the same may be thereafter adjourned, the city council shall consider the objections to said reassessment and in its discretion revise, correct and modify such reassessment in such manner as is most equitable, and it shall thereupon pass a resolution approving and confirming such reassessment and such decision shall be a final determination of all matters relating to the actual benefits derived or to be derived from the improvement by the respective lots, pieces and parcels of land enumerated in the reassessment. Said reassessment shall thereupon be recorded by the street superintendent and it shall in all respects have the same effect and weight as the original assessment, and shall be enforced in the same manner. All payments made upon the original assessment shall be credited upon the reassessment and in the event that the reassessment in any instance is less than the amount of the original assessment, the excess shall be payable to the persons who paid the original assessments. [New section approved June 10, 1913, Stats. 1913, p. 433. In effect August 10, 1913.]

Redemptions.

§ 27. A redemption of any parcel of property sold for delinquent assessment may be made by any party in interest, at any time prior to the execution and delivery of a deed therefor, by paying to the street superintendent the amount for which the property was sold, and in addition thereto, ten per cent thereon if paid within three months from the date of sale; twenty per cent if paid within six months; thirty per cent if paid within nine months; forty per cent if paid within twelve months, or fifty per cent if paid at any time after twelve months. When redemption is made, the street superintendent shall note that fact on the duplicate certificate of sale on file in his office, and

deposit the amount paid with the city treasurer, who shall credit the purchaser named in the certificate of sale with the said amount, and pay the same to such purchaser, or his assignee, upon the surrender of the certificate of sale, and upon satisfactory proof of assignment thereof, if any. When the municipality is the purchaser, the treasurer shall notify the clerk of the council of the redemption, and such clerk shall thereupon cancel the certificate of sale on file in his office.

Deed, when executed. Cost. Service of notice. Redemption.

§ 28. At any time after the expiration of twelve months from the date of sale, the street superintendent must execute to the purchaser, or his assignee on his application, if such purchaser or assignee has complied with the provisions of this section, a deed of the property sold, in which shall be recited substantially the matters contained in the certificate, also any assignment thereof and the fact that no person has redeemed the property. The street superintendent shall receive from the applicant for a deed, one dollar for making such deed, unless the municipality is the purchaser, in which case no charge shall be made therefor. The purchaser or his assignee must, at least thirty days before he applies for a deed, serve upon the owner of the property, and upon the occupant of such property, if the same is occupied, a written notice, setting forth a description of the property, that said property has been sold for a delinquent assessment (specifying the improvement for which the same was made), the amount for which it was sold, the amount necessary to redeem at the time of giving notice, and the time when such purchaser or assignee will apply to the street superintendent for a deed. If the said owner can not be found, after due diligence, said notice must be posted in a conspicuous place upon said property, at least thirty days before the time stated therein, at which the application for a deed will be made. The person applying for a deed must file with the street superintendent an affidavit or affidavits showing that notice of such application has been given, as herein required, and if the notice was not served on the owner of the property personally, that due diligence was used to find said owner; which affidavit or affidavits must be filed by the street superintendent in his office. If redemption of the property is made after such affidavits are filed, and more than eleven months from the date of sale, the person making such redemption must pay, in addition to the other amounts required, three dollars for the service of notice and the making of such affidavits, which amount shall be paid over to the purchaser or his assignee in the same manner as other sums paid for redemption. No deed for any property sold for delinquent assessment shall be made until the purchaser or his assignee has complied with all the provisions of this section, and filed the proper affidavits with the street superintendent.

Deed is prima facie regular.

§ 29. The deed of the street superintendent shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the execution thereof, and of title in the grantee.

Receipts paid into special fund.

§ 30. The street superintendent shall from time to time pay over to the city treasurer all moneys collected by him on account of any assessment made under the provisions of this act. The city treasurer shall on receipt thereof place the same in a special fund, designating such fund by the name of the improvement for which the assessment was made. The city council shall on or before the time when said assessments become delinquent, cause to be transferred from the general or other appropriate fund of the city to said special fund the percentage of the total expense of such improvement to be paid by the city as provided in the ordinance of intention. [Amendment approved June 10, 1913, Stats. 1913, p. 436. In effect August 10, 1913.]

Payment of awards. Final judgment.

§ 31. As soon as there is sufficient money in the hands of the city treasurer, in the special fund devoted to the proposed improvement, to pay the amounts awarded to the defendants by the interlocutory judgment in the action of condemnation, or such parts thereof as have not been paid by offset against assessments, as hereinbefore provided, the said amounts shall be paid to the parties entitled thereto, or into court for their benefit. On satisfactory proof being made to the court of payment of the amounts awarded by the interlocutory judgment to the respective parties entitled thereto, or into court for their benefit, it shall direct the interlocutory judgment to be satisfied, and shall make and enter a final judgment, condemning the lands described in the complaint to the use of the plaintiff for the purposes specified in such complaint.

Proceedings in case of a deficiency.

§ 32. In case of a deficiency in the fund for such improvement, the city council, in its discretion, may provide for such deficiency by an appropriation out of the general fund of the treasury, or by ordering a supplementary assessment to be made by the street superintendent upon the property in said assessment district in the same manner and form, and subject to the same procedure as the original assessment, and in the last named case, in order to avoid delay, the city council may advance such deficiency out of the city treasury and reimburse the treasury from the collections under such supplementary assessment. In case of a surplus in the fund for such improvement, the city council may order such surplus refunded pro rata to the parties who paid the assessments.

Definitions.

§ 33. The following words and phrases shall, where used in this act, have the following meanings:

(1) The term "improvement" includes all of the improvements mentioned in section 1 of this act.

(2) The terms "municipality" and "city" include all incorporated cities, cities and counties, and other corporations organized for municipal purposes.

(3) The terms "city council" and "council" include any body or board in which by law is vested the legislative power of any municipality.

(4) The terms "clerk" and "city clerk" include any person or officer who acts as clerk of said city council.

(5) The terms "treasurer" and "city treasurer" include any person or officer who has charge and makes payment of the city funds.

(6) The term "street superintendent" includes any officer or board whose duty it is by law to have the care or charge of streets, or the improvement thereof, in any city. In any city where there is no street superintendent, or no such board, the city council thereof is hereby authorized to appoint a suitable person to perform the duties imposed by this act on the street superintendent, and all the provisions hereof applicable to the street superintendent shall apply to the person so appointed.

(7) The terms "owner" and "any person interested" include the person owning the fee, or the person in whom, on the day any protest or petition is filed, the legal title to real property appears, by deeds duly recorded in the county recorder's office of the county in which said city is situated, or any person in possession of real property, as the executor, administrator, trustee under an express trust, guardian or other legal representative of the owner, or any person in possession of real property under a written contract of purchase thereof duly recorded, or any person in possession of real property, as lessee thereof under a lease duly recorded, which shall require such lessee to pay or discharge all assessments for street or other public improvements, that may be levied or assessed against such real property.

(8) The term "property of any railroad or street railroad" shall be deemed to include and shall include property owned or controlled by any person, firm or corporation, as railroad, street railroad or interurban railroad right of way whether such right of way be owned or controlled in fee or as an easement or by virtue of a franchise or otherwise, also the roadbed, ties and rails located on such right of way; and such property shall be assessed and the assessment thereof enforced in the same manner and to the same effect as other lands and property in the assessment district. [Amendment approved April 10, 1911, Stats. 1911, p. 855.]

This section was also amended April 21, 1909, Stats. 1909, p. 1041.

Description by reference sufficient.

§ 33a. In all resolutions, notices, orders and determinations subsequent to the ordinance of intention a description of the assessment district by reference to the ordinance of intention shall be sufficient, and in all resolutions, notices, orders, and determinations subsequent to the "notice of street work" a description of the work by reference to the ordinance of intention shall be sufficient. [New section approved June 10, 1913, Stats. 1913, p. 436. In effect August 10, 1913.]

When no paper in city, notices may be published.

§ 34. In case there is no daily or weekly newspaper published and circulated in the city, then such notices and delinquent lists as are herein required to be published in a newspaper shall be posted in three of the most public places in such city, for the length of time required herein for the publication of the same in a weekly newspaper. No publication or notice other than that provided in this act shall be necessary to give validity to any proceedings had thereunder.

Proof of publication and notice.

§ 35. Proof of publication of any notice required by this act shall be made by affidavit, as provided in the Code of Civil Procedure, and proof of the posting of any such notice shall be made by the affidavit of the person posting the same, setting forth the facts regarding such posting. It shall be the duty of any officer who is required by this act to have any notice published or posted, to obtain and file in his office the affidavit or affidavits in proof thereof; provided that his failure so to do shall not affect the validity of any proceedings under this act. Any such affidavit so filed shall be prima facie evidence of the facts therein stated regarding such publication or posting.

Act of 1889 not affected. Alternative system of proceedings.

§ 36. This act shall in no wise affect an act entitled, "An act to provide for laying out, opening, extending, widening, straightening, or closing up, in whole or in part, any street, square, lane, alley, court, or place within municipalities, and to condemn and acquire any and all land and property necessary or convenient for that purpose," approved March 6, 1889, or amendments thereto, or any other acts on the same subject, or apply to proceedings had thereunder, but it is intended to and does provide an alternate system of proceedings for making the improvements provided for by this act; and it shall be within the discretion of the city council or any municipality to proceed in making such improvements, either under the provisions of this act, or under the provisions of such other acts; but when any proceedings are commenced under this act, the provisions of this act, and of such amendments thereof as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts or any acts in conflict with the provisions hereof shall be void and of no effect as to the proceedings commenced under the provisions of this act. The election of the city council to proceed under the provisions of this act shall be expressed in its ordinance of intention to order the work done.

Act shall be liberally construed.

§ 37. The provisions of this act shall be liberally construed to promote the objects thereof. This act may be designated and referred to as the "Street Opening Act of 1903," and shall take effect and be in force upon its passage and approval.

The amendatory act of April 21, 1909, contained also the following:

"§ 11. Any proceeding or action for any improvement, such as is provided for in this act, or in said act to which this act is amendatory, already commenced and pending at the time this act takes effect, under or by virtue of any ordinance of intention theretofore passed, shall, from the stage of any such proceeding or action already commenced and in progress at the time this act takes effect, be continued under the provisions of this act. Any such proceeding or action shall then be continued and conducted under the provisions of this act, with full force and effect in all respects from the state of such proceeding or action at and from the taking effect of this act; and from the taking effect of this act all proceedings theretofore had for any such improvement, and all proceedings theretofore had or taken in any such action, are hereby ratified, confirmed, and made valid, and it shall not be necessary to renew or conduct over again any such proceedings or actions, commenced prior to the taking effect of this act."

The amendatory act of April 12, 1911, contained the following provision:

§ 2. The provisions of this act shall not apply to or affect any proceedings taken under the act to which this act is amendatory, and pending at the time this act takes effect, and in which the interlocutory judgment has been entered.

1. Constitutionality — Impairment of vested rights.—The provisions of section 11 of the amendatory act of 1909 are not violative of the constitutional provision against the impairment of vested rights.—Title, etc., Co. v. Lusk, 15 Cal. App. 358, 115 Pac. 53.

2. Same—Not special legislation.—The amending act of 1909 is not violative of the constitutional limitation against special legislation.—Title, etc., Co. v. Lusk, 15 Cal. App. 358, 115 Pac. 53.

3. Same—Waiver of jury trial.—Section 8 of the street opening act of 1893 as amended providing in effect that failure to demand a jury trial when the motion to set the case for trial is heard, shall be deemed a waiver of such trial is not unconstitutional under section 14, article I of the constitution.—City of Los Angeles v. Zeller, 176 Cal. 194, 196, 167 Pac. 849.

4. Same—Attorney's fees—Amendment of 1911.—So far as the amendment of 1911 attempts to deprive the defendant of attorney's fees given them under section 6, and section 1255a, Code Civil Procedure, upon dismissal of action, it is a special law, and obnoxious to section 11, article I of the constitution.—Los Angeles v. Cline, 40 Cal. App. 487, 181 Pac. 78.

4a. Same—Assessment of railroad right of way.—The act does not make the right of way of a railroad subject to assessment and sale on account of work having reference to the improvement of streets already laid out and established.—San Pedro, etc., Co. v. Pillsbury, 23 Cal. App. 675, 139 Pac. 669, 671.

5. Property of street railroad covering longitudinally its right of way.—A taking

of the property of a street railroad longitudinally covering its right of way is a taking within the meaning of section 14, article I of the constitution and requires to be compensated.—Los Angeles v. Allen, 32 Cal. App. 553, 163 Pac. 697.

6. Same — Measure of damages.—The measure of damages for the taking of the property of a street railroad longitudinally covering its right of way is the decrease in value for use for railroad purposes from value for use for street purposes.—Los Angeles v. Allen, 32 Cal. App. 553, 163 Pac. 697.

7. Same—"Land" and "property" are synonymous — Improvements nonassessable.—The words "land" and "property," as used in the act, are synonymous, and do not include the "improvements," which are non-assessable.—Los Angeles, etc., Co. v. Hubbard, 17 Cal. App. 646, 121 Pac. 306.

8. Same—Assessment of property of railroads.—The provisions of the act as to assessing the property of railroads are to be construed with other portions of the act, and, so construed, the act contemplates the assessment of the "land" alone of such corporations, and not the "improvements" thereon.—Los Angeles, etc., Co. v. Hubbard, 17 Cal. App. 646, 121 Pac. 306.

9. Resolution of intention — Failure to post renders proceedings void.—The failure of the superintendent of streets to post notices of the resolution of intention along the proposed street or parts of street, at not more than 300 feet apart renders subsequent proceedings and the assessment void.—Pierce v. Los Angeles, 15 Cal. App. 702, 115 Pac. 746.

10. Notice—Publication—Incorrect date of passage of ordinance.—A notice pub-

lished and posted under the authority of section 3 of the street opening act of 1903 and amendments, is insufficient to give jurisdiction, and the assessment made thereon is void, if the date of the passage of the ordinance is incorrectly stated, and the error is not cured by a reference in the notice to the ordinance for further particulars.—*Ferri v. Los Angeles (City of Long Beach)*, 176 Cal. 645, 169 Pac. 385.

11. Hearing objections — Refusal of council—Basing decision on illegal considerations.—Under section 19 an assessment must be sustained unless it is shown that the council arbitrarily refused to decide the objections on their merits, and wilfully based its decision on illegal considerations which were inconsistent with making the assessments in proportion to benefits, and which in effect amounted to fraud on the rights of the property owner.—*Nutting v. Los Angeles*, 35 Cal. App. 519, 170 Pac. 680; *Fitzwilliams v. Los Angeles*, 35 Cal. App. 807, 170 Pac. 685; *Murphy v. Los Angeles*, 35 Cal. App. 808, 170 Pac. 685; *Rindge Co. v. Los Angeles*, 35 Cal. App. 809, 170 Pac. 685.

12. Same—Same—Same.—It is held in this case that the record fails to establish the charge that the city council acted wrongfully and illegally, or that the assessment resulted from anything other than an honest attempt to make it in proportion to benefits.—*Nutting v. Los Angeles*, 35 Cal. App. 519, 170 Pac. 680; *Fitzwilliams v. Los Angeles*, 35 Cal. App. 807, 170 Pac. 685; *Murphy v. Los Angeles*, 35 Cal. App. 808, 170 Pac. 685; *Rindge Co. v. Los Angeles*, 35 Cal. App. 809, 170 Pac. 685.

13. Same—Adjournment of hearing of report of referee.—After full jurisdiction is acquired the court may adjourn from time to time the hearing of the report of the referee, with other notice than that required by section 11 as it existed at the time jurisdiction was acquired.—*Bernard Co. v. Los Angeles*, 18 Cal. App. 626, 124 Pac. 88.

14. Same—Loss of jurisdiction.—The city council lost jurisdiction to proceed under the publication of notice of filing of assessment and diagram, where, after filing of objections, no action was taken at the first regular meeting after the lapse of thirty days, either by consideration, or adjournment of such consideration to a day fixed, and any further action under such publication will be annulled.—*Stoner v. City Council*, 8 Cal. App. 607, 97 Pac. 692.

15. Same—Same—Judicial notice of date of regular meetings will be taken.—The court will take judicial notice of the provisions of the city charter as to date of regular meetings of the city council.—*Stoner v. City Council*, 8 Cal. App. 607, 97 Pac. 692.

16. Same—Property owner's right.—Under the street opening act of 1903 a property owner's protest is a matter upon which he has a right to be heard, and when heard, and there is no charge of fraud, the determination of the council is

final.—*Cake v. Los Angeles*, 164 Cal. 705, 711, 130 Pac. 723.

17. Same—Failure of clerk to present assessment and objections—Loss of jurisdiction.—Where the clerk fails and neglects, through inadvertence or other cause, to present the assessment and objections to the council at the next regular meeting after the expiration of the time to file objections, the council loses jurisdiction to proceed under that notice, but does not lose jurisdiction of the entire proceeding, and may resume the same by republication of notice under section 18.—*Rindge Co. v. City Council*, 29 Cal. App. 683, 156 Pac. 975.

18. Same—Discrepancy in assessment of one parcel—Assessment not invalidated.—A slight discrepancy in the record of one parcel of property included in the district, of which the owner does not complain, does not avail another owner who is not interested, or invalidate the entire assessment.—*Bernard Co. v. Los Angeles*, 18 Cal. App. 626, 124 Pac. 88.

19. Same—Made from memorandum.—The fact that an assessment was not made in accordance with the free and uninfluenced judgment of the board of works, but solely under the memorandum of instructions furnished to the board by the city council, would be no ground for overthrowing it.—*Cake v. Los Angeles*, 164 Cal. 705, 710, 130 Pac. 723.

20. Same—New assessment—Failure to prepare in sixty days—No extension of time.—A new assessment is not rendered void by the failure to prepare the same within sixty days from the order of the city council, even though no extension of time therefor was granted.—*Cake v. Los Angeles*, 164 Cal. 705, 710, 130 Pac. 723.

21. Same—Provisions as to assessments directory—Sections 16, 19.—The provisions of sections 16 and 19 of the street opening act of 1903 as amended in 1909 as to completion of assessments, and as to ordering new assessments, are directory.—*Cake v. Los Angeles*, 164 Cal. 705, 708, 130 Pac. 723.

21. Diagram—Mode of record—Pasting on stubs of record book.—The act does not prescribe the mode of recording the diagram and the pasting thereof on a stub in the record book is a substantial compliance with the requirements of the statute, which contemplates such a record as will afford notice. — *Bernard Co. v. Los Angeles*, 18 Cal. App. 626, 124 Pac. 88.

23. Abandonment of proceedings — Amending act of 1909.—The amendment of 1909 expressly limited the jurisdiction of the city council to abandon proceedings to a time prior to the interlocutory judgment, and an attempt to abandon made after such judgment was null and void.—*Title, etc., Co. v. Lusk*, 15 Cal. App. 358, 115 Pac. 53; *Bernard Co. v. Los Angeles*, 18 Cal. App. 626, 124 Pac. 88.

24. Condemnation—Time at which value of property taken is fixed.—The provisions of the code of civil procedure as to the

time when the value of the property taken shall be fixed governs.—*Los Angeles v. Gager*, 10 Cal. App. 378, 102 Pac. 17.

25. **Same—"Rules"—Defined.**—As used in the act the word "rules" does not refer exclusively to the rules of the code of civil procedure, which govern pleading and practice; but is of wide and varied significance, depending on the context, and in a legal sense is synonymous with "laws."—*Los Angeles v. Gager*, 10 Cal. App. 378, 102 Pac. 17.

26. **Same—"Rules of the Code of Civil Procedure"—Defined.**—The phrase "rules of the Code of Civil Procedure," as used in section 6 of the act, means the laws or provisions of that code.—*Los Angeles v. Gager*, 10 Cal. App. 378, 102 Pac. 17.

27. **Benefits—Street railroad.**—A street railroad may be benefited by the widening of the street over which it operates.—*Los Angeles, etc., Co. v. Hubbard*, 17 Cal. App. 646, 121 Pac. 306.

28. **Same—Same—Franchise properly assessed.**—It was proper to include the "franchise" of a street railroad in an assessment for benefits for widening a street along which the company operated.—*Los Angeles, etc., Co. v. Hubbard*, 17 Cal. App. 646, 121 Pac. 306.

29. **Same—Same—Same—"Ties, tracks, poles and switches" part of franchise.**—The "ties, tracks, poles and switches" of a street railroad are included in the term "franchise," and it is improper to include them separately in the assessment, but, so included, they are mere surplusage.—*Los Angeles, etc., Co. v. Hubbard*, 17 Cal. App. 646, 121 Pac. 306.

30. **Delinquency—Penalty.**—Under sections 21, 22 and 24 of the act of 1903, a property owner whose assessment becomes delinquent is liable for a five per cent penalty thereon, without the allowance, as an offset, of any amount that may be due as damages for land condemned for the street.—*Cake v. Los Angeles*, 164 Cal. 705, 711, 130 Pac. 723.

31. **Remedy for irregularities—Equity.**—The amending act of 1909 affords no remedy for irregularities in the proceedings after interlocutory judgment, but the sole remedy is by suit in equity.—*Title, etc., Co. v. Rusk*, 15 Cal. App. 358, 115 Pac. 53.

32. **Suit to quiet title—Proof of ordinance—Admissibility of deed.**—Proof of the ordinance ordering the work was not necessary to the admissibility of the deed of the board of public works in a proceeding under street opening act of 1903 in a suit to quiet title, where the deed itself recites the passing of the resolution of intention and the order to make the improvement.—*Tilton v. Russek*, 171 Cal. 731, 733, 154 Pac. 860.

33. **Same—Sufficiency of deed to support finding of regularity.**—Under section 29 of the street opening act of 1903, declaring the deed to be prima facie evidence "of the truth of all matters recited therein and of the regularity of all proceedings prior to its execution, and of the title of the grantee,"

the deed is sufficient to support a finding that all preliminary steps in the street opening proceedings were taken.—*Tilton v. Russek*, 171 Cal. 731, 734, 154 Pac. 860.

34. **Same—Constructive service of notice—Diligence must be shown.**—The affidavit of service of notice by posting upon the property must be shown, not merely asserted.—*Hennessy v. Hall*, 14 Cal. App. 759, 113 Pac. 350.

35. **Same—Same—What is diligence.**—A statement that "due diligence was used" merely alleges the fact, while "showing it" is to state the evidentiary facts which make it manifest or prove it.—*Hennessy v. Hall*, 14 Cal. App. 759, 113 Pac. 350.

36. **Same—Constructive service of notice—Diligence shown.**—The due diligence in the service of the notice upon the property owner, required by section 28, is shown by an affidavit that inquiry was made upon named persons who were the nearest neighbors of the property as to the whereabouts of the owner, and that such persons were unable to furnish any information thereof, that search was made of the city directories without success, and that the property was vacant and unoccupied.—*Tilton v. Russek*, 171 Cal. 731, 735, 154 Pac. 860.

37. **Same—Same—Diligence not shown.**—Merely making ineffective search for an owner who parted with title four years before posting notice, and making inquiries of persons near the property as to his whereabouts, does not show diligence.—*Hennessy v. Hall*, 14 Cal. App. 759, 113 Pac. 350.

38. **Same—Publication—Intervening Sundays.**—Section 18 does not require any specific number of publications of notice, and intervening Sundays, when no publications were had are properly counted as a part of the period of time required.—*Tilton v. Russek*, 171 Cal. 731, 738, 154 Pac. 860.

39. **Sale—Recital in certificate of sale.**—A recital in the certificate of sale that "the purchaser or his assignee will be entitled to a deed . . . at any time after the expiration of twelve months from the said date of sale," etc., is a sufficient statement, as to when the purchaser will be entitled to a deed, within the requirements of section 26.—*Tilton v. Russek*, 171 Cal. 731, 738, 154 Pac. 860.

40. **Same—Same—Recitals in deed.**—Where the deed recites that the certificate of sale set forth various matters including "the time when the purchaser would be entitled to a deed," without repeating in detail such recitals, the requirement of section 28 that the deed shall recite "substantially the matters contained in the certificate," is satisfied.—*Tilton v. Russek*, 171 Cal. 731, 740, 154 Pac. 860.

41. **Deed—Prima facie evidence of title.**—The deed to purchaser at sale for delinquent assessments is prima facie evidence of title.—*Spencer v. Los Angeles*, 180 Cal. 103, 179 Pac. 163.

See, also, *Colkins v. Doolittle*, (Cal. App.) 188 Pac. 601.

STREET OPENING ACT OF 1893.

ACT 4947—An act to provide for laying out, opening, extending, widening, straightening, diverting, curving, contracting, or closing up, in whole or in part, any street, square, lane, alley, court, or place within municipalities or cities and cities and counties of forty thousand inhabitants or over, and to condemn and acquire any and all land and property necessary or convenient for that purpose.

History: Approved March 23, 1893, Stats. 1893, p. 220.

The code commissioners say of this act: "Probably unconstitutional: *Darcy v. Mayor of San Jose*, 104 Cal. 642, 38 Pac. 500; *Pasadena v. Stimson*, 91 Cal. 238, 27 Pac. 604."

"VROOMAN ACT"—"STREET WORK ACT."

ACT 4948—An act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for the construction of sewers within municipalities.

History: Approved March 18, 1885, Stats. 1885, p. 147. Amended: (1) March 15, 1887, Stats. 1887, p. 148; (2) March 14, 1889, Stats. 1889, p. 157; (3) March 17, 1891, Stats. 1891, p. 116; (4) March 31, 1891, Stats. 1891, p. 196; (5) March 31, 1891, Stats. 1891, p. 461; (6) March 9, 1893, Stats. 1893, p. 89; (7) March 11, 1893, Stats. 1893, p. 172; (8) February 21, 1899, Stats. 1899, p. 23; (9) March 6, 1903, Stats. 1903, p. 88; (10) February 20, 1905, Stats. 1905, p. 15; (11) March 6, 1905, Stats. 1905, p. 63; (12) March 6, 1907, Stats. 1907, p. 126; (13) March 23, 1907, Stats. 1907, p. 1000; (14) February 20, 1909, Stats. 1909, p. 31; (15) March 18, 1909, Stats. 1909, p. 399; (16) April 21, 1909, Stats. 1909, p. 1017; (17) April 5, 1911, Stats. 1911, p. 626; (18) April 10, 1911, Stats. 1911, p. 849; (19) May 30, 1913, in effect August 10, 1913, Stats. 1913, p. 353; (20) June 6, 1913, in effect August 10, 1913, Stats. 1913, p. 402; (21) June 10, 1915, in effect August 9, 1915, Stats. 1915, p. 1400; (22) May 10, 1919, in effect July 22, 1919, Stats. 1919, p. 480. Repealed: §§ 38-44, added by the amending act of March 17, 1891 (Stats. 1891, p. 116), was repealed by the act of February 27, 1893 (Act 4950), but the same legislature (Stats. 1893, p. 89) amended the same sections, and they are therefore inserted as of the character of new sections. The act, in so far as it related to sidewalks was repealed March 9, 1909 (Stats. 1909, p. 167); but this last named act was repealed April 5, 1911 (Stats. 1911, p. 618), and the repealing act expressly revived the provisions of the Vrooman act relating to sidewalks. (See § 1 of the repealing act inserted at the end of this act.) The act of March 6, 1883, Stats. 1883, p. 32, was repealed by the present act.

PART I.

Streets, lanes, alleys, etc., are public streets. City council empowered to establish and change grades and fix width.

§ 1. All streets, lanes, alleys, places, or courts, in the municipalities of this state now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, lanes, alleys, places, or courts, for the purposes of this act, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, lanes, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in section 2 of this act, under the proceedings hereinafter described.

Cities may order streets improved.

§ 2. Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to order the whole or any portion, either in length or width, of any one or more of the streets, avenues, lanes, alleys, courts, places, boulevards, highways, crossings, intersections or public ways of any such city graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regraveled, piled or repiled, capped or recapped, oiled or reoiled, and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings and parkways, sewers, ditches, drains, conduits and channels for sanitary and drainage purposes or either or both

thereof, with outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels and other appurtenances, pipes, hydrants and appliances for fire protection, or the distribution of a municipal water supply, tunnels, viaducts, conduits and subways, breakwaters, levees, bulkheads and walls of rock or other material to protect the same from overflow or injury by water, and poles, posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting the same, the planting of trees thereon, and the construction or reconstruction in, over or through property or rights of way owned by such city, of tunnels, sewers, ditches, drains, conduits and channels for sanitary and drainage purposes or either or both thereof, with necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels and other appurtenances, pipes, hydrants and appliances for fire protection and breakwaters, levees, bulkheads and walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways and other property in any such city, from overflow by water, and poles, posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting the streets, avenues, lanes, alleys, courts, public ways and other property in any such city, and to order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, lanes, alleys, courts, places or public ways or property or rights of way of such city, including the acquisition, construction, reconstruction, extension, maintenance or repair of any public utility owned or proposed to be acquired by any municipal corporation, or the pipes, wires, conduits and other appliances and appurtenances for the operation thereof; provided, that such acquisition of any public utility already installed, and any of the appliances and appurtenances thereof shall not be included in the same proceeding with any of the other improvements mentioned in this section. [Amendment of June 10, 1915. In effect August 9, 1915, Stats. 1915, p. 1400.]

This section was also amended (1) March 14, 1889, Stats. 1889, p. 157; (2) March 31, 1891, Stats. 1891, p. 196; (3) March 11, 1893, Stats. 1893, p. 172; (4) February 20, 1905, Stats. 1905, p. 15; (5) March 6, 1907, Stats. 1907, p. 126; (6) April 21, 1909, Stats. 1909, p. 1017; (7) April 5, 1911, Stats. 1911, p. 626; (8) June 6, 1913, Stats. 1913, p. 402.

Resolution of intention. Publication. Notices posted, published and mailed. Objections. Hearing. Proceedings when not more than two blocks remain unimproved. Charging expense against a district.

§ 3. Before ordering any work done or improvement made, which is authorized by section 2 of this act, the city council shall pass a resolution of intention so to do, and describing the work, which shall be posted conspicuously for two days on or near the chamber door of said council, and published by two insertions in one or more daily, semi-weekly or weekly newspapers published and circulated in said city and designated by said council for that purpose. Whenever the construction of culverts, bridges, gutters, curbs, steps, parkings and parkways, sewers, ditches, drains, conduits and channels for sanitary and drainage purposes, or either or both thereof, together with appurtenances, pipes, wires, conduits and other appliances and appurtenances, constitutes the work or improvement or any portion thereof mentioned in the resolution of intention, such resolution of intention shall be sufficient if it mentions the fact that the construction of said improvements, or such of them as it be desired to have done in the work or improvement, is embraced in the said work or improvement, briefly describes the same and refers to plans and specifications on file with the city engineer or city clerk for particulars. The street superintendent shall, after the passage of the resolution of intention, cause to be conspicuously posted along all streets and parts of streets or other public places and rights of way where any work is to be done or improvement made at not more than three hundred (300) feet apart but not less than three in all, or when the work to be done is only upon an entire crossing or any part

thereof, in front of each quarter block and irregular block liable to be assessed, notices of the passage of said resolution. Said notices shall be headed "notice of street work," in letters of not less than one inch in length, and shall, in legible characters, state the fact of the passage of the resolution, its date and briefly describe the work or improvement proposed, and refer to the resolution for further particulars. He shall also cause a notice similar in substance, to be published by two insertions in one or more daily newspapers published and circulated in said city, and designated by said city council, or in cities where there is no daily newspaper by one insertion in a semi-weekly or weekly newspaper so published, circulated and designated. In case there is no such paper published in said city, said notice shall be posted for six days on or near the chamber door of said council, and in two other conspicuous places in said city, as hereinafter provided. The city clerk shall immediately upon the passage of said resolution of intention mail, postage prepaid, to each property owner whose property is to be assessed to pay the costs and expenses of said improvement at his last known address as the same appears upon the tax rolls of said city, or when no address so appears, to the general delivery, a postal card containing a notice which shall be in the following or substantially the following form (filling blanks):

"You are hereby notified that on the day of, 19.., the council of the city of, California, by virtue of an act commonly known as 'the Vrooman act,' passed a resolution of intention providing for the improvement of street between street and street. You are hereby referred to the said resolution for further particulars. Property belonging to you is to be assessed for this improvement.

..... City Clerk."

If any lots or parcels of land in the assessment district be assessed to "unknown owners" on the tax rolls of said city, no postal cards containing such notice need be mailed to the owners thereof. The city clerk shall, upon the completion of the mailing of said postal cards, file in the office of the superintendent of streets an affidavit setting forth the time and manner of the compliance with this requirement; provided, that the failure of the city clerk to mail said cards, or the failure of the property owners to receive the same, or the failure of the superintendent of streets to post the notices of street work, shall in no wise affect the validity of the proceedings or prevent the city council from acquiring jurisdiction to order the work; provided, however, that the city council may require affidavits to be filed showing the posting and mailing of notices before it adopts the resolution ordering the work. The owners of a majority of the frontage of the property fronting on said proposed work or improvement where the same is for one block or more, may make a written objection to the same within ten days after the expiration of the time of the publication and posting of said notice, which objection shall be delivered to the clerk of the city council who shall indorse thereon the date of its reception by him, and such objections so delivered and indorsed shall be a bar for six months to any further proceedings in relation to the doing of said work or making said improvements, unless the owners of one-half or more of the frontage, as aforesaid, shall meanwhile petition for the same to be done. At any time before the issuance of the assessment-roll, all owners of lots or lands liable to assessment therein, who, after the first publication of said resolution of intention, may feel aggrieved, or who may have objections to any of the subsequent proceedings of said council in relation to the performance of the work mentioned in said notice of intention, shall file with the clerk a petition of remonstrance, wherein they shall state in what respect they feel aggrieved, or the proceedings to which they object; such petition or remonstrance shall be passed upon by the said city council, and its decision therein shall be final and conclusive. But when the work or improvement proposed to be done is the construction of sewers, manholes, culverts, or cesspools, crosswalks, or sidewalks, curbs and gutters, and the objection thereto is signed by the owners of a majority of the frontage liable to be assessed for the expense of said work, as aforesaid,

the city council shall, at its next meeting, fix a time for hearing said objection, not less than one week thereafter. The city clerk shall thereupon notify the persons making such objections, by depositing a notice thereof in the postoffice of said city, postage prepaid, addressed to each objector, or his agent, when he appears for such objection. At the time specified said city council shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive, and the said bar for six months to any further proceedings shall not be applicable thereto. And when not more than two blocks, including street crossings, remain ungraded to the official grade, or otherwise unimproved, in whole or in part, and a block or more on each side upon said street has been so graded or otherwise improved, or when not more than two blocks at the end of a street remain so ungraded or otherwise unimproved, said city council may order any of the work mentioned in this act to be done upon said intervening ungraded or unimproved part of said street, or at the end of a street, and said work upon said intervening part, or at the end of a street, shall not be stayed or prevented by any written or other objection unless such council shall deem proper. And if one-half or more in width or in length, or as to grading, one-half or more of the grading work of any street lying and being between two successive main street crossings, or if a crossing has been already partially graded or improved as aforesaid, said council may order the remainder improved, graded or otherwise, notwithstanding such objections of property owners. At the expiration of twenty days after the expiration of the time of said publication by said street superintendent, and at the expiration of twenty-five days after the advertising and posting, as aforesaid, of any resolution of intention, if no written objection to the work therein described has been delivered, as aforesaid, by the owners of a major frontage of the property fronting on said proposed work or improvement, or if any written objection purporting to be signed by the owners of a major frontage is disallowed by said council, as not of itself barring said work for six months, because in its judgment, said objection has not been legally signed by the owners of a majority of said frontage, the city council shall be deemed to have acquired jurisdiction to order any of the work to be done, or improvement to be made, which is authorized by this act; which order, when made, shall be published for two days, the same as provided for the publication of the resolution of intention. Before passing any resolution for the construction of said improvements, plans and specifications and careful estimates of the costs and expenses thereof shall be furnished to said city council, if required by it, by the city engineer of said city; and for the work of constructing sewers, specifications shall always be furnished by him. Whenever the contemplated work or improvement in the opinion of the city council, is of more than local or ordinary public benefit, or whenever, according to estimates to be furnished by the city engineer, the total estimated costs and expenses thereof would exceed one-half the total assessed value of the lots and lands assessed, if assessed upon the lots or land fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment roll whereon it was assessed for taxes for municipal purposes, and allowing a reasonable depth from such frontage for lots or lands assessed in bulk, the city council may make the expense of such work or improvement chargeable upon a district, which said city council shall, in its resolution of intention, declare to be assessed to pay the costs and expenses thereof. Said resolution of intention shall in general terms describe the said district and refer to a plat or map approved by the city council, which shall indicate by a boundary line the extent of the territory to be included in said assessment district, which plat or map shall be on file in the office of the city engineer before said superintendent of streets shall proceed with the publication and posting of the notices of street work, and shall govern for all details as to the extent of the said assessment district. Objections to the extent of the district of lands to be affected or benefited by said work or improvement, and to be assessed

to pay the cost and expenses thereof, may be made by interested parties, in writing, within ten days after the expiration of the time of the publication of the notice of the resolution of intention. The city clerk shall lay such objections before the city council, which shall, at its next meeting, fix a time for hearing said objections not less than one week thereafter. The city clerk shall thereupon notify the persons making such objections by depositing a notice thereof in the postoffice of said city, postage prepaid, addressed to each objector. At the time specified the city council shall hear the objections urged, and pass upon the same, and its decisions shall be final and conclusive. If the objections are sustained, all proceedings shall be stopped; but proceedings may be immediately again commenced by giving the notice of intention to do the said work or make said improvements. If the objections are overruled by the city council, the proceedings shall continue the same as if such objections had not been made. [Amendment approved June 6, 1913, Stats. 1913, p. 493. In effect August 10, 1913.]

This section was also amended March 14, 1889, Stats. 1889, p. 158; March 31, 1891, Stats. 1891, p. 199, and March 6, 1895, Stats. 1895, p. 63.

Council may order work done after majority of frontage petitions.

§ 4. The owners of a majority in frontage of lots and lands fronting on any street, avenue, lane, alley, place, or court, or of lots or lands liable to be assessed for the expense of the work petitioned to be done, or their duly authorized agents, may petition the city council to order any of the work mentioned in this act to be done, and the city council may order the work mentioned in said petition to be done, after notice of its intention so to do has been posted and published as provided in section 3 of this act. [Amendment approved March 31, 1891, Stats. 1891, p. 199.]

This section was also amended March 14, 1889, Stats. 1889, p. 160.

Procedure preliminary to letting contracts. Award of contract, etc.

§ 5. Before the awarding of any contract by the city council for doing any work authorized by this act, the city council shall cause notice, with specifications, to be posted conspicuously for five days on or near the council chamber door of said council, inviting sealed proposals or bids for doing the work ordered, and shall also cause notice of said work inviting said proposal, and referring to the specifications posted or on file, to be published for two days in a daily, semi-weekly, or weekly newspaper, published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall only be posted as hereinbefore provided. All proposals or bids offered shall be accompanied by a check payable to the order of the mayor of the city, certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of the proposal, or by a bond for the said amount and so payable, signed by the bidder and by two sureties, who shall justify, before any officer competent to administer an oath, in double the said amount, and over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said city council, and said council shall, in open session, examine and publicly declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by said check or bond satisfactory to the council. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent and unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid, which award shall be approved by the mayor or a three-fourths vote of the city council. If not approved by him, or a three-fourths vote of the city council, without further proceedings, the city council may readvertise for proposals or bids for the performance of the work as in the first instance, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the respective checks and bonds corresponding to the bids so rejected. But the checks

accompanying such accepted proposals or bids shall be held by the clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder or by the owners of three-fourths part of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects or refuses to enter into the contract to perform said work or improvement, as hereinafter provided, then the certified check accompanying his bid and the amount therein mentioned, shall be declared to be forfeited to said city, and shall be collected by it and paid into its fund for repairs of streets; any bond forfeited may be prosecuted, and the amount due thereon collected and paid into said fund. Notice of such awards of contract shall be posted for five days, in the same manner as hereinbefore provided for the posting of proposals for said work. It shall be published for two days in a daily newspaper published and circulated in said city and designated by said city council, or in cities where there is no daily newspaper, by one insertion in a semi-weekly or weekly newspaper so published, circulated and designated; provided, however, that in case there is no newspaper printed or published in any such city, then such notice of award shall only be kept posted as hereinbefore provided. The owners of three-fourths of the frontage of lots and lands upon the street whereon said work is to be done, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may, within ten days after the first posting and publication of said notice of said award, elect to take said work and enter into a written contract to do the whole work at the price at which the same has been awarded. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within ten days, or to commence the work within fifteen days after the first posting and publication of said award, and to prosecute the same with diligence to completion, it shall be the duty of the superintendent of streets to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid. But if such original bidder neglects, fails or refuses, for fifteen days after the first posting and publication of notice of award, to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids as in the first instance, and award the contract of said work to the then lowest regular bidder. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work. If, however, the owner or contractor, who may have taken any contract, do not complete the same within the time limited in the contract, or within such further time as the city council may give them, the superintendent of streets shall report such delinquency to the city council, which may relet the unfinished portion of said work, after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the superintendent of streets of said city, with two or more sureties and payable to such city, in such sums as the mayor shall deem adequate, conditioned for the faithful performance of the contract; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions. Before being entitled to a contract, the bidder to whom the award was made, or the owners who have elected to take the contract, must advance to the superintendent of streets, for payment by him, the cost of publication of notices, resolutions, orders, or other incidental expenses and matters required under the proceedings prescribed in this act, and such other notices as may be deemed requisite by the city council; provided, however, that all contracts entered into between the owners of any property and the contractor or his agents to perform the work of improvement on any street, alley, lane, avenue, place, or court, shall be in triplicate and shall contain all items of expense and the total contract price

therefor, and no other payment shall be allowed to or recovered by such contractor, other than as itemized and set forth in said contract. The original of such contract shall be held by the city, one copy thereof shall be held by the contractor or his agent, and one copy thereof duplicate shall be held by the owners. And in case the work is abandoned by the city before the letting of the contract, the incidental expenses incurred previous to such abandonment shall be paid out of the city treasury. [Amendment approved April 10, 1911, Stats. 1911, p. 849.]

This section was also amended March 14, 1889, Stats. 1889, p. 160; and March 31, 1891, Stats. 1891, p. 199.

Notice of faulty proceedings. Objections, when deemed to be waived.

§ 5½. At any time within ten days from the date of the first publication of the notice of award of contract, any owner of or other person having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings relating to said improvement are irregular, defective, erroneous or faulty, may file with the clerk of the city council a written notice specifying in what respect said acts and proceedings are irregular, defective, erroneous or faulty. Said notice shall state that it is made in pursuance of this section. All objections to any act or proceeding, prior to the date of the aforesaid notice of award, in relation to said improvement, not made in writing and in the manner and at the time aforesaid, shall be waived, excepting as to matters directly affecting the jurisdiction of the council to order the said work or improvement. [New section approved February 20, 1909, Stats. 1909, p. 31. In effect immediately.]

Superintendent of streets. Powers and duties. Work and materials. Assessment and expenses.

§ 6. The superintendent of streets is hereby authorized, in his official capacity, to make all written contracts, and receive all bonds authorized by this act, and to do any other act, either express or implied, that pertains to the street department under this act; and he shall fix the time for the commencement, which shall not be more than fifteen days from the date of the contract, and for the completion of the work under all contracts entered into by him, which work shall be prosecuted with diligence from day to day thereafter to completion, and he may extend the time so fixed from time to time, under the direction of the city council. The work provided for in section 2 of this act must, in all cases, be done under the direction and to the satisfaction of the superintendent of streets, and the materials used shall comply with the specifications and be to the satisfaction of said superintendent of streets, and all contracts made therefor must contain a provision to that effect, and also express notice that, in no case, except where it is otherwise provided in this act, will the city, or any officer thereof, be liable for any portion of the expense, nor for any delinquency of persons or property assessed. The city council may, by ordinance, prescribe general rules directing the superintendent of streets and the contractor as to the materials to be used, and the mode of executing the work, under all contracts thereafter made. The assessment and apportionment of the expenses of all such work or improvement shall be made by the superintendent of streets in the mode herein provided.

Bonds for labor and material. Lien for materials furnished.

§ 6½. Every contractor, person, company or corporation including contracting owners, to whom is awarded any contract for street work under this act, shall, before executing the said contract, file with the superintendent of streets a good and sufficient bond, approved by the mayor, in a sum not less than one-half of the total amount payable by the terms of said contract; such bond shall be executed by the principal and at least two sureties, who shall qualify for double the sum specified in said bond, and shall be made to inure to the benefit of any and all persons, companies, or corporations who perform labor on, or furnish materials to be used in the said work of

improvement, and shall provide that if the contractor, person, company, or corporation to whom said contract was awarded fails to pay for any materials so furnished for the said work of improvement, or for any work or labor done thereon of any kind, that the sureties will pay the same, to an amount not exceeding the sum specified in said bond. Any laborer, materialman, person, company, or corporation, furnishing materials to be used in the performance of said work specified in said contract, or who performed work or labor upon the said improvement, whose claim has not been paid by the said contractor, company, or corporation, who executed the said contract, shall severally have a first lien upon and against the assessment, any partial assessment, any reassessment, and any bonds which may be issued to represent any assessment or reassessment. Such laborers, or materialmen may, at any time prior to thirty days after the recording of the assessment for said work, file with the superintendent of streets a verified statement of his or its claim, together with a statement that the same, or some part thereof, has not been paid. At any time within ninety days after the filing of such claim the person, company, or corporation filing the same or their assigns, may commence an action either to enforce the aforesaid lien, or on said bond, for the recovery of the amount due on said claim, together with the costs incurred in said action, and a reasonable attorney fee, to be fixed by the court, for the prosecution thereof. [Amendment of May 8, 1919. In effect July 22, 1919, Stats. 1919, p. 481.]

This section was added February 21, 1899, Stats. 1899, p. 23.

Expenses of work.

§ 7. Subdivision One.—The expenses incurred for any work authorized by this act (which expense shall not include the cost of any work done in such portion of any street as is required by law to be kept in order or repair by any person or company having railroad tracks thereon, nor include work which shall have been declared in the resolution of intention to be assessed on a district benefited) shall be assessed upon the lots and lands fronting thereon, except as herein specifically provided; each lot or portion of a lot being separately assessed, in proportion to the frontage, at a rate per front foot sufficient to cover the total expense of the work.

Street crossings.

Subdivision Two.—The expense of the work done on main street crossings shall be assessed at a uniform rate per front foot of the quarter blocks and irregular blocks adjoining and cornering upon the crossings, and separately upon the whole of each lot or portion of a lot having any frontage in the said blocks fronting on said main streets, halfway to the next main street crossing, and all the way on said blocks to a boundary line of the city where no such crossing intervenes, but only according to its frontage in said quarter blocks and irregular blocks.

One street terminating in another.

Subdivision Three.—Where a main street terminates in another main street, the expense of the work done on one-half of the width of the street opposite the termination shall be assessed upon the lots in each of the two quarter blocks adjoining and cornering on the same, according to the frontage of such lots on said main streets, and the expense of the other half of the width of said street upon the lot or lots fronting on the latter half of the street at such termination.

Alley crossings.

Subdivision Four.—Where any alley or subdivision street crosses a main street the expense of all work done on said crossing shall be assessed on all lots or portions of lots halfway on said alley or subdivision street to the next crossing or intersection, or to the end of each alley or subdivision street, if it does not meet another.

Alley crossings.

Subdivision Five.—The expense of work done on alley or subdivision street crossings shall be assessed upon the lots fronting upon such alley or subdivision streets on each side thereof, in all directions, halfway to the next street, place or court, on either side, respectively, or to the end of such alley or subdivision street, if it does not meet another.

One alley, etc., terminating in another.

Subdivision Six.—Where a subdivision street, avenue, lane, alley, place or court terminates in another street, avenue, lane, alley, place or court, the expense of the work done on one-half of the width of the subdivision street, avenue, lane, alley, place or court opposite the termination, shall be assessed upon the lot or lots fronting on such subdivision street, avenue, lane, alley, place or court so terminating, according to its frontage thereon, halfway, on each side, respectively, to the next street, avenue, lane, alley, place or court or to the end of such street, avenue, lane, alley, place or court, if it does not meet another, and the other one-half of the width upon the lots fronting such termination.

Work on one side of street.

Subdivision Seven.—Where any work mentioned in this act (manholes, sewers, cess-pools, culverts, crosswalks, piling and capping excepted) is done on one side of the center line of any street, or sewerage or re sewerage is ordered to be done under the sidewalk on only one side of any street for any length thereof, the assessment for the expenses thereof shall be made only upon the lots and lands, fronting nearest upon that side of the street and for intervening intersections only upon the two quarter blocks adjoining and cornering upon that side.

When lots belonging to state, United States or city front on work.

Subdivision Eight.—Whenever any lot, piece or parcel of land belonging to the United States or to the state of California, or any lot, piece or parcel of land belonging to any county, city, public agent, mandatory of the government, school board, educational, penal or reform institution or institution for the feeble-minded or the insane, and being in use in the performance of any public function, fronts upon the proposed work or improvement or is included within the district declared by the city council in the resolution of intention to be the district to be assessed to pay the costs and expenses thereof, the city council may, in its discretion, in the resolution of intention, declare that said lots, pieces or parcels of land so owned and in use, or any of them, shall be omitted from the assessment to be made to cover the costs and expenses of said work or improvement. In the event that said lots, pieces or parcels of land, or any of them, shall, by said resolution be omitted from the assessment, then the total expense of all work done shall be assessed on the remaining lots fronting on the work or improvement or lying within the limits of the assessment district without regard to such omitted lots, pieces or parcels of land. In the event the city council shall, in its resolution of intention, declare that the said lots, pieces or parcels of land so owned and in use, or any of them, shall be included in the assessment, or in the event that no declaration is made respecting such lots, pieces or parcels of land, then such sum or sums as thereafter may be assessed against such lots, pieces or parcels of land, so owned and used, shall be payable by the city out of the general fund, unless the council shall in its resolution of intention designate another fund and the contract for said work or improvement thereafter made shall contain a provision to that effect.

Owners may do grading.

Subdivision Nine.—It shall be lawful for the owner or owners of lots or lands fronting upon any street, the width and grade of which have been established by the city council, to perform, at his or their own expense (after obtaining permission from the

council so to do, but before said council has passed its resolution of intention to order grading inclusive of this), any grading upon said street, to its full width, or to the center line thereof, and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in said grading, and the proportions performed by each owner, and that the same is done to the established width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the superintendent of streets, which certificate the superintendent shall record in a book kept for that purpose in his office, properly indexed. Whenever thereafter the city council orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest, shall be entitled to credit on the assessment upon his or their lots and lands fronting on said streets for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the superintendent of streets shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and lands owned, respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work (except grading) on such street, in front of any block, at his or their own expense, and the city council shall have subsequently ordered any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided, that the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the street superintendent at the time said order is passed.

Diagram of district. Plan of assessment.

Subdivision Ten.—Whenever the resolution of intention declares that the cost and expenses of the work and improvement are to be assessed upon a district, the city council shall direct the city engineer to make a diagram of the property affected or benefited by the proposed work or improvement, as described in the resolution of intention, and to be assessed to pay the expenses thereof. Such diagram shall show each separate lot, piece or parcel of land, the area in square feet of each of such lots, pieces or parcels of land, and the relative location of the same to the work proposed to be done, all within the limits of the assessment district; and when said diagram shall have been approved by the city council, the clerk shall, at the time of such approval, certify the fact and date thereof. Immediately thereafter the said diagram shall be delivered to the superintendent of streets of said city, who shall, after the contractor of any street work has fulfilled his contract to the satisfaction of said superintendent

of streets or city council, on appeal, proceed to estimate upon the lands, lots or portions of lots within said assessment district, as shown by said diagram, the benefits arising from such work, and to be received by each such lot, portion of such lot, piece, or subdivision of land, and shall thereupon assess upon and against said lands in said assessment district the total amount of the costs and expenses of such work, and in so doing shall assess said total sum upon the several pieces, parcels, lots, or portion of lot, and subdivisions of land in said assessment district benefited thereby, to wit: Upon each respectively, in proportion to the estimated benefits to be received by each of said several lots, portions of lots or subdivisions of land. In other respects the assessment shall be as provided in the next section.

Railroad subject to assessment.

Subdivision Eleven.—The terms lot, lots, lands, piece or parcel of land wherever mentioned in this act, shall be deemed to include and shall include property owned or controlled by any person, firm or corporation as a railroad, street or interurban railroad, right of way, and whenever a railroad, street or interurban railroad right of way shall front or abut on any street improved under the provisions of this act or shall be included within any district to be assessed for the cost of any improvement provided in this act, such railroad right of way (whether the same is owned in fee or as an easement) shall be included in the warrant, assessments, and diagram and shall be assessed in the same manner and with the same effect as other lots, lands or pieces or parcels of land are assessed as provided in this act and such railroad right of way shall be subject to sale for nonpayment of assessments as in this act provided.

Railroads to improve streets between tracks.

Subdivision Twelve.—Whenever any railroad track or tracks of any description exist upon the street or streets upon which the city council of any city has ordered an improvement to be made, and has excepted therefrom the portions used by the track, between the rails and for two feet on each side thereof, and between the tracks if there be more than one, the said order, unless said city council shall by resolution theretofore passed have declared the contrary, shall be deemed to be and constitute a requirement that the person or company having said railroad track or tracks thereon shall improve the said portion with improvements similar in all respects to, with the same materials, under the same specifications and superintendence, and to the like satisfaction as those ordered to be performed by said order ordering the work, and the resolution of intention and notice of proposed improvement shall be construed and are hereby declared to be notice to said person or company of the intention to order the same. Thereupon it shall be the duty of said person or company having such track or tracks on such street or streets to notify in writing the superintendent of streets if such person or company elects to perform such work at its own charge and expense and under its own direction; said notice must be delivered to the superintendent of streets within ten days after the first publication of notice or award of contract. The omission or neglect to make such election shall be construed as constituting the superintendent of streets the agent of the owner of said track or tracks, with authority to enter into a contract made in accordance with the provisions of this section for making the said improvements. Said superintendent of streets shall advertise for bids for the improvement of said portions of street or streets lying between the rails and for two feet on each side thereof, and between the tracks, if there be more than one. It shall be the duty of said city council to award the contract for the making of said improvements to the lowest regular responsible bidder. Such bidding and awarding of contracts shall be made in the same manner hereinbefore provided for the awarding of contracts for improvements, excepting that no notice of award shall be published. Immediately upon the award, the superintendent of streets shall enter into a contract with the

person to whom said contract was awarded for the making of said improvement or improvements upon the portions of the street or streets described in said notice inviting bids, and at the price stated in said bid. The contractor shall execute bonds in the manner required for the execution of contracts for improvements. Upon the completion of the work and its acceptance, the street superintendent shall make a certificate of such completion together with a statement of the amount due under the terms of said contract for the performance of said work. Such certificate shall be countersigned by the mayor of said city, and shall be recorded in the office of said superintendent of streets. The contractor shall thereupon be entitled to payment of the full amount of said contract price, and the recording of such certificate shall be sufficient notice to the owner of such track or tracks that said contract price is due and payable. In the event that such amount is not paid within thirty days from the date of the recording of said certificate, the contractor may file a sworn statement to that effect with the superintendent of streets, who shall record the same in his office in the book in which the certificate of acceptance has been recorded. Said contractor shall thereupon have a cause of action against said person or company owning said track or tracks for the amount of said contract, together with a reasonable attorney's fee, and shall also have as security for the recovery of such amount a first lien upon the track and franchises of said person or company, between whose rails or tracks the said work has been performed, contained within the corporate limits of the said city. In such suit, the certificate of the superintendent of streets, hereinbefore mentioned, shall be and constitute prima facie evidence of the regularity of all proceedings, and of the right of the contractor to recover judgment against said person or company. Execution may be taken out upon the entry of judgment, and levied upon any property of said person or company subject to execution. In the event that said person or company shall file the written election to perform such work at its own cost and expense and under its own direction, no further proceedings shall be taken in the matter unless such person or company neglects or fails for thirty days, or for such further time as the city council may grant, to make said improvement. In the event that the improvement of the portions of the street or streets above described, between the rails and for two feet on each side thereof, and between the tracks if there be more than one, shall not be made with diligence, or in all respects similar to the improvement of the rest of the street, or with the same materials or under the same specifications, and to the satisfaction of the superintendent of streets, the city council of said city may, by resolution entered in its minutes, prescribe such terms and conditions as to it may seem fit and proper before permitting the said person or company to continue with the said improvement. If the said person or company shall, after three days' notice of the adoption of said resolution, fail to comply with the terms and conditions so prescribed, the said city council may declare said person or company to have forfeited its privilege of performing such work under its own direction. Whereupon the street superintendent shall advertise for bids for the performance of such work, or such portions thereof as may remain uncompleted, and the contract therefor shall be awarded and entered into in the same manner hereinbefore provided for the awarding and execution of contracts where said person or company has not elected to make the improvement under its own direction; and upon the completion of the improvement, the contractor to whom such contract may be awarded, or his assigns, shall be entitled to a certificate from the street superintendent similar to that hereinbefore provided for, and shall have the right to collect from said person or company by suit the amount specified in such certificate in all respects the same as is hereinbefore provided where the contract is let for such improvement in the first instance.

Council may include different kinds of work in its order.

Subdivision Thirteen.—The said council may include in one resolution of intention and order any of the different kinds of work mentioned in this act, and may include any number of streets and rights of way or portion thereof in one proceeding and one contract, and it may expect therefrom any of said work already done upon the street to the official grade. The lots and portions of lots fronting upon said accepted work already done shall not be included in the frontage assessment for the class of work from which the exception is made; provided, that this shall not be construed so as to affect the special provisions as to grading contained in this act. [Amendment approved April 5, 1911, Stats. 1911, p. 627.]

This section was also amended March 14, 1889, Stats. 1889, p. 163; and March 31, 1891, Stats. 1891, p. 201.

Superintendent to make assessment for work. Assessment, how made and what to show.

§ 8. After the contractor of any street work has fulfilled his contract to the satisfaction of the street superintendent of said city, or city council on appeal, the street superintendent shall make an assessment to cover the sum due for the work performed and specified in said contract (including any incidental expenses), in conformity with the provisions of the preceding section according to the character of the work done; or, if any direction and decision be given by said council on appeal, then in conformity with such direction and decision, which assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to be paid therefor, together with any incidental expenses, the rate per front foot assessed, if the assessment be made per front foot, the amount of each assessment, the name of the owner of each lot, or portion of a lot (if known to the street superintendent); if unknown the word "unknown" shall be written opposite the number of the lot, and the amount assessed thereon, the number of each lot or portion or portions of a lot assessed, and shall have attached thereto a diagram exhibiting each street or street crossing, lane, alley, place, or court, on which any work has been done, and showing the relative location of each district lot, or portion of lot to the work done, numbered to correspond with the numbers in the assessments, and showing the number of feet fronting, or number of lots assessed, for said work contracted for and performed. [Amendment approved March 14, 1889, Stats. 1889, p. 166.]

Form of warrant. Record of warrant. To be delivered to contractor. Course to be pursued in case of error.

§ 9. To said assessment shall be attached a warrant, which shall be signed by the superintendent of streets, and countersigned by the mayor of said city. The said warrant shall be substantially in the following form:

FORM OF THE WARRANT.

By virtue hereof, I (name of the superintendent of streets), of the city of, county of (or city and county of), and state of California, by virtue of the authority vested in me as said superintendent of streets, do authorize and empower (name of contractor), (his or their) agents or assigns, to demand and receive the several assessments upon the assessment and diagram hereto attached, and this shall be (his or their) warrant for the same.

(Date)

.... (name of superintendent of streets.)

Countersigned by (name of mayor).

Said warrant, assessment, and diagram, together with the certificate of the city engineers, shall be recorded in the office of said superintendent of streets. When so recorded, the several amounts assessed shall be a lien upon the lands, lots, or portions of lots assessed, respectively, for the period of two years from the date of said recording, unless sooner discharged; and from and after the date of said recording of any warrant, assessment, diagram and certificate, all persons mentioned in section 11 of

this act shall be deemed to have notice of the contents of the record thereof. After said warrant, assessment, diagram, and certificate are recorded, the same shall be delivered to the contractor, or his agent, as assigns, on demand, but not until after the payment of the said superintendent of streets of the incidental expenses not previously paid by the contractor, or his assigns; and by virtue of said warrant said contractor, or his agent or assigns, shall be authorized to demand and receive the amount of the several assessments made to cover the sum due for the work specified in such contracts and assessments. Whenever it shall appear by any final judgment of any court of this state that any suit brought to foreclose the lien of any sum of money assessed to cover the expense of said street work done under the provisions of this act has been defeated by reason of any defect, error, informality, omission, irregularity, or illegality in any assessment hereafter to be made and issued, or in the recording thereof, or in the return thereof made to or recorded by said superintendent of streets, any person interested therein may, at any time within three months after the entry of said final judgment, apply to said superintendent of streets who issued the same, or to any superintendent of streets in office at the time of said application, for another assessment to be issued in conformity to law; and said superintendent shall, within fifteen days after the date of said application, make and deliver to said applicant a new assessment, diagram, and warrant in accordance with law; and the acting mayor shall countersign the same as now provided by law, which assessment shall be a lien for the period of two years from the date of said assessment, and be enforced as provided in section 7 of this act. [Amendment approved March 31, 1891, Stats. 1891, p. 205.]

This section was also amended March 14, 1889, Stats. 1889, p. 166.

Demand for payment of assessment. Return of warrant to superintendent of streets.

Failure to return warrant. Extension of time. Interest on assessment overdue.

§ 10. The contractor, or his assigns, or some person in his or their behalf, shall call upon the persons assessed, or their agents, if they can conveniently be found, and demand payment of the amount assessed to each. If any payment be made, the contractor, his assigns, or some person in his or their behalf, shall receipt the same upon the assessment in presence of the person making such payment, and shall also give a separate receipt if demanded. Whenever the person so assessed, or his agent, can not conveniently be found, or whenever the name of the owner of the lot is stated as "unknown" on the assessment, then the said contractor, or his assigns, or some person in his or their behalf, shall publicly demand payment on the premises assessed. The warrant shall be returned to the superintendent of streets within thirty days after its date, with a return indorsed thereon, signed by the contractor, or his assigns, or some person in his or their behalf, verified upon oath, stating the nature and character of the demand, and whether any of the assessments remain unpaid, in whole or in part, and the amount thereof. Thereupon the superintendent of streets shall record the return so made, in the margin of the record of the warrant and assessment, and also the original contract referred to therein, if it has not already been recorded at full length in a book to be kept for that purpose in his office, and shall sign the record. The said superintendent of streets is authorized at any time to receive the amount due upon any assessment list and warrant issued by him, and give a good and sufficient discharge therefor; provided, that no such payment so made after suit has been commenced, without the consent of the plaintiff in the action, shall operate as a complete discharge of the lien until the costs in the action shall be refunded to the plaintiff; and he may release an assessment upon the books of his office, on the payment to him of the amount of the assessment against any lot with interest, or on the production to him of the receipt of the party or his assigns to whom the assessment and warrant were issued; and if any contractor shall fail to return his warrant within the time and in the form provided in this section, he shall thenceforth have no lien upon the property assessed; provided, however, that in case any warrant is

lost, upon proof of such loss a duplicate can be issued, upon which a return may be made, with the same effect as if the original had been so returned; provided, further, that the street superintendent may for cause shown on written petition from the contractor or his assigns filed in his office prior to the expiration of said thirty days from the date of the warrant, extend the time for the making of said return for a period not to exceed thirty days additional, which extension shall, with its date, be noted on the warrant. After the return of the assessment and warrant as aforesaid, all amounts remaining due thereon shall draw interest at the rate of ten per cent per annum until paid. [Amendment approved June 6, 1913, Stats. 1913, p. 407. In effect August 10, 1913.]

Owners may object to warrant. Hearing and appeal.

§ 11. The owners, whether named in the assessment or not, the contractor, or his assigns, and all other persons directly interested in any work provided for in this act, or in the assessment, feeling aggrieved by any act or determination of the superintendent of streets in relation thereto, or who claim that the work has not been performed according to the contract in a good and substantial manner, or having or making any objection to the correctness or legality of the assessment or other act, determination, or proceedings of the superintendent of streets, shall, within thirty days after the date of the warrant, appeal to the city council, as provided in this section, by briefly stating their objections in writing, and filing the same with the clerk of said city council. Notice of the time and place of the hearing, briefly referring to the work contracted to be done, or other subject of appeal, and to the acts, determinations, or proceedings objected to or complained of, shall be published for five days. Upon such appeal, the said city council may remedy and correct any error or informality in the proceedings, and revise and correct any of the acts or determinations of the superintendent of streets relative to said work; may confirm, amend, set aside, alter, modify, or correct the assessment in such manner as to them shall seem just, and require the work to be completed according to the directions of the city council; and may instruct and direct the superintendent of streets to correct the warrants, assessment, or diagram in any particular, or to make and issue a new warrant, assessment, and diagram, to conform to the decisions of said city council in relation thereto, at their option. All the decisions and determinations of said city council, upon notice and hearing as aforesaid, shall be final and conclusive upon all persons entitled to appeal under the provisions of this section, as to all errors, informalities, and irregularities which said city council might have remedied and avoided; and no assessment shall be held invalid, except upon appeal to the city council, as provided in this section, for any error, informality, or other defect in any of the proceedings prior to the assessment, or in the assessment itself, where notice of the intention of the city council to order the work to be done, for which the assessment is made, has been actually published in any designated newspaper of said city for the length of time prescribed by law, before the passage of the resolution ordering the work to be done.

Contractor may sue on overdue assessment. Attorney's fees. Demand in writing prerequisite. Proof of service. Consolidation of actions. Evidence of regularity. Redemption.

§ 12. At any time after the period of thirty-five days from the day of the date of the warrant as herein provided or if an appeal is taken to the city council as provided in section eleven of this act, or an extension of time is granted to the contractor in which to make his return as provided in section ten of this act, at any time after five days from either the decision of said council or the expiration of said extension or the return of the warrant or assessment, after the same may have been corrected, altered or modified as provided in said section eleven (but not less than thirty-five

days from the date of the warrant), the contractor or his assignee may sue, in his own name, the owner of the land, lots, or portions of lots, assessed on the day of the date of the recording of the warrant, assessment, and diagram, or any day thereafter during the continuance of the lien of said assessment, and recover the amount of any assessment remaining unpaid, with interest thereon at the rate of ten per cent per annum until paid. And in all cases of recovery under the provisions of this act, where suit has been brought after one year from the date of the assessment or after personal demand has been made on the owner as hereinafter provided, the plaintiff shall recover the sum of fifteen dollars, in addition to the taxable costs as attorney's fees, but not any percentage upon said recovery; but no suit shall be brought for the recovery of any such assessment and no attorney's fees or costs shall be recovered until a demand in writing has been served personally on the owner of the lot or parcel of land assessed and such owner has failed to pay such assessment before the expiration of ten days after the service of such demand, or unless one year has elapsed from the date of the assessment. Proof of service of such demand shall be made by affidavit in like manner as proof of service of summons in a civil action. If the contractor or his agent or any person acting in behalf of the contractor shall, prior to the filing of a complaint for the recovery of any assessment as herein provided, make any written demand upon or present any bill or notice in writing to such owner, demanding, requesting or notifying such owner to pay or that there is due, attorney's fees or court costs in connection with the collection of such assessment, then the contractor shall forfeit to such owner the amount of such assessment and the superintendent of streets is authorized, upon written demand of such owner, accompanied by the affidavit of such owner, that such written demand, bill or notice for the payment of attorney's fees, and costs, or either thereof, prior to the commencement of suit, to mark said assessment "paid," and such assessment shall thereby be deemed to be paid and the lien thereof released. When the ownership of two or more lots or parcels of land on which assessments in the same proceeding have not been paid is identical, one action may be brought to collect the assessments on all of said lots or parcels of land, and in case more than one action is brought against the owner of more than one lot or parcel of land where the ownership is identical, as aforesaid, the court shall, upon the motion of such owner or owners, consolidate such actions, and in the event of such consolidation of actions and recovery therein, only fifteen dollars as attorney's fee shall, unless otherwise ordered by the court, be recovered; and when suit has been brought as in this section provided, the plaintiff shall be entitled to have and recover said attorney's fee, and taxable costs, notwithstanding that the suit may be settled or a tender may be made before a recovery in said action, and he may have judgment therefor. Suit may be brought in the superior court within whose jurisdiction the city is in which said work has been done, and in case any of the assessments are made against lots, portions of lots, or lands the owners of which cannot, with due diligence, be found, the service of summons in each of such actions may be had in such manner as is prescribed in the codes and laws of this state. The said warrant, assessment, certificate, and diagram, with the affidavit of service of demand and nonpayment shall be held prima facie evidence of the regularity and correctness of the assessment and of the prior proceedings and acts of the superintendent of streets and city council upon which said warrants, assessment and diagram are based, and like evidence of the right of the plaintiff to recover in the action. The court in which said suit shall be commenced shall have power to adjudge and decree a lien against the premises assessed, and to order such premises to be sold on execution, as in other cases of the sale of real estate by the process of said court; and on appeal, the appellate courts shall be vested with the same power to adjudge and decree a lien and to order such premises to be sold on execution or decree as is conferred on the court from which an appeal is taken. Such

premises, if sold, may be redeemed as in other cases. In all suits now pending, or hereafter brought to recover street assessments, the proceedings therein shall be governed and regulated by the provisions of this act, and also, when not in conflict herewith, by the codes of this state. This act shall be liberally construed to effect the ends of justice. [Amendment approved June 6, 1913, Stats. 1913, p. 408. In effect August 10, 1913.]

This section was also amended March 14, 1889, Stats. 1889, p. 168.

New assessments and bonds, when old have been declared invalid. Duty of court to point out irregularity. Court to order new assessment. City council may set aside assessment. Procedure.

§ 12 1/4. Whenever any assessment made and issued under the provisions of this act, or whenever any bond or bonds issued to represent the amount of any such assessment in accordance with the provisions of "An act to provide a system of street improvement bonds to represent certain assessments for the costs of street work and improvement with municipalities, and also for the payment of such bonds," approved February 27, 1893, and all acts supplementary thereto or amendatory thereof, have been set aside by any court of competent jurisdiction, or such court has refused to enforce any assessment, or has decreed any bond or bonds issued under the above mentioned statute approved February 27, 1893, not to constitute valid and subsisting liens against the lots, pieces or parcels of land upon which the assessments represented by them have been levied, then the superintendent of streets shall cause a new assessment to be made for the same purpose for which the former assessment was made, whether any of the assessments have been paid or not, and new bonds shall in regular course thereafter issue in the event that bonds were issued under or provided for in the original assessment. It is hereby made the duty of any court of competent jurisdiction in rendering its judgment holding invalid any assessment or assessments hereafter made or issued, or of any bond or bonds hereafter made or issued to represent the amount or amounts of any such assessment, to make a finding as to whether or not the issuing of such assessment was entirely without the power of the said city to issue, and if not, then what omission, irregularity, illegality, informality or noncompliance with the requirements of the statute of which this is amendatory has occurred in the proceedings upon which said assessment or assessments and bonds rest, and what effect shall be given to them in making the re-assessment. In the event that the court shall find that the work, the expenses of which are represented by said assessment or bonds, was done in good faith under the contract made pursuant to a resolution of the city council providing for such improvement to be paid for by a special assessment, it shall be the duty of the said court to order the making of a new assessment, which assessment shall be delivered to the contractor or his assigns, or the holder or holders of the bonds representing the assessments, as the case may be. The city council may, at the request of the contractor, his assigns or the holder of the bonds representing the assessments, by resolution duly passed, set aside any assessment or assessments and bond, as the case may be, and order a new assessment or assessments and bonds, to be made and issued without any decree having been obtained of or from any court regarding said matter, if in its opinion the assessment be invalid, and it may take all necessary steps and make and pass all necessary orders or ordinances to re-assess and re-levy such assessment, and may re-assess and re-levy the same with the same force and effect as an original levy. Such re-assessment, whether made after decree of court has been rendered, or pursuant to a resolution of the council, shall be based upon the special and peculiar benefit of the work or improvement to the respective lots, pieces or parcels of land assessed at the time of the making of the re-assessment, and its total amount shall not exceed the total amount of the original assessments. Such re-assessment so made shall become a charge upon the property upon which

the same is levied, notwithstanding any omission, failure or neglect of any officer, body or person to comply with the provisions of this statute, relating to or connected with the improvement and the issuing of the assessment or the bonds, and notwithstanding the fact that the proceedings of the city council, board of public works or any officer of the city or agent of the contractor or other person connected with such work, may have been irregular, illegal, informal, or defective, or not in full conformity with the requirements of this statute. It is hereby declared to be the true intent and meaning of this section to make the cost and expense of all local improvements actually made in the attempted exercise of the powers conferred upon municipalities under this statute, payable by the real estate benefited by such improvement by making a re-assessment therefor which shall equitably apportion to each lot, piece or parcel of land thereby benefited the amount of the actual benefits derived from said improvement, notwithstanding that the proceedings of the city council and other officers or agents of the city, or of the contractor, may have been irregular, illegal or defective, or not in full conformity with the requirements of this statute. Such re-assessment shall be made without a repetition of the proceedings had prior to the issuance of the assessment and shall be made and issued in the following manner: The superintendent of streets shall, upon the entering of a decree of court directing the re-assessment, or upon the passage of a resolution of the city council directing a re-assessment, proceed at once to make a re-assessment in accordance with the said decree of court, or said resolution of the city council. Such re-assessment shall be made upon the property fronting on the improvement or upon the district described in the resolution of intention for said work or improvement, as the case may be, and in the event that there shall have been informalities, uncertainties or ambiguities in the description of the limits of said district, then upon the district which the court or council shall find to be that actually benefited by said improvement, but in so finding said court or council shall follow the lines described in the resolution of intention so far [as] the same can be ascertained, and in all cases of uncertainty or ambiguity they shall give regard to the lines described and make such a determination as to the lines where there is any uncertainty or ambiguity in the resolution of intention as may be just and equitable. In the event that a portion of the work or improvement has been found to have been entirely without the power of said city to order done, then said assessment shall be for the remainder of the work or improvement only, and the benefits arising from the work entirely without the jurisdiction of the city to order shall not be considered in making the re-assessment. Upon the completion of the re-assessment it shall be presented to the city council and a day of hearing shall be fixed by it which shall be at least twenty (20) days after the filing of the re-assessment. The city clerk shall then advertise the fact of said filing by publishing a notice in the newspaper in which the notice of award of contract was published, or in such other paper as the council may direct, by five (5) insertions if the paper be a daily, or by two (2) insertions if it be a weekly or semi-weekly newspaper, stating the fact that the re-assessment has been filed with him and that objections to said re-assessment will be heard at the time specified by the city council. At the time fixed for said hearing, or at such time or times to which the same may be thereafter adjourned, the city council shall consider the objections to said re-assessment and in its discretion revise, correct and modify such re-assessment in such manner as is most equitable, and it shall thereupon pass a resolution approving and confirming such re-assessment and such decision shall be a final determination of all matters relating to the actual benefits derived from the improvement by the respective lots, pieces and parcels of land enumerated in the re-assessments. Said re-assessment shall thereupon be recorded by the street superintendent and it shall in all respects have the same effect and weight as the original assessment, and shall be enforced in the same manner. All payments made upon the original assessment shall be credited upon the re-assessment and in the event that the

re-assessment in any instance is less than the amount of the original assessment, the excess shall be payable to the owner by the contractor. [New section approved June 10, 1913, Stats. 1913, p. 409. In effect August 10, 1913.]

City council may use discretion in completion of improvements.

§ 12½. The city council, instead of waiting until the completion of the improvement, may, in its discretion, and not otherwise, upon the completion of two blocks or more of any improvement, order the street superintendent to make an assessment for the proportionate amount of the contract completed, and thereupon proceedings and rights of collection of such proportionate amount shall be had as in sections 8, 9, 10, 11, and 12 of the act of which this is amendatory is provided. [New section approved March 14, 1889, Stats. 1889, p. 169.]

Repairs. Contract for repairs may be let. Contractor may sue owners. Penalties for neglecting repairs.

§ 13. When any portion of any street, alley or public place in said city shall be out of repair or needing reconstruction, or in a condition to interfere with the public convenience in the use thereof, it shall be the duty of the superintendent of streets to notify the owner of any lot or portion of a lot, fronting on the portion of such street, alley, or public place, so out of repair or needing reconstruction, to repair or reconstruct such portion of said street, alley, or public place, to the center line of said street, alley, or public place, in front of the property of which he is the owner, or to repair the sidewalk in front of such property in case such sidewalk shall need repair or reconstruction, and he shall state in such notice what work is required to be done, and what materials shall be used in said work and how the same shall be done. If said repairs or reconstruction be not commenced within ten days after notice given, as aforesaid, and prosecuted to completion diligently, the said superintendent of streets may under authority from said city council let a contract for the performance of such work. He shall post notice at his office for two days inviting bids for the doing of said work of repair or reconstruction, and the contract shall be awarded by him to the lowest bidder, and a contract in writing shall be entered into with the successful bidder. Upon the completion of said repairs or reconstruction to the satisfaction of said superintendent of streets, he shall make and deliver to said contractor a certificate to the effect that said repairs or reconstruction, or both, have been properly made, and state what amount is payable by each owner for the same, which certificate shall be recorded in the office of said superintendent of streets in a book kept for that purpose, and all owners of property in front of which such improvement shall have been performed, shall be deemed to have notice of the contents of the record thereof. The contractor may make demand for the amount due by serving written notice upon the owners referring to the certificate so recorded, and if the contractor be not paid on demand, he shall have the right to sue each owner for the amount due and payable from each respectively, and the said certificate of the superintendent of streets shall be prima facie evidence of the amount claimed for the work and materials and of the right of the contractor to recover for the same in such action, and the amount so due any payable shall be a first lien upon the respective lots, pieces or parcels of land against which it may be charged and shall have the same effect as the lien hereinbefore provided for in section 9 of this act and may be enforced in the same manner.

In addition, the city council shall have power by ordinance to prescribe the penalties that shall be incurred by any owner for neglecting or refusing to make repairs when required, which penalties shall be recovered for the use of the city by prosecution in the name of the people of the state of California, in the court having jurisdiction thereof, and may be applied, if deemed expedient, by the said city council in the payment of the expense of any such repairs not otherwise provided for. [Amendment approved April 5, 1911, Stats. 1911, p. 633.]

This section was also amended March 14, 1889, Stats. 1889, p. 169.

Certificate of superintendent, prima facie evidence, etc.

§ 14. If the expenses of the work and material for such improvements after the completion thereof, and the delivery to said contractor of said certificate, be not paid to the contractor so employed, or his agent or assignee, on demand, the said contractor, or his assignee, shall have the right to sue such owner, tenant, or occupant for the amount contracted to be paid; and said certificate of the superintendent of streets shall be prima facie evidence of the amount claimed for said work and materials, and of the right of the contractor to recover for the same in such action. Said certificate shall be recorded by the said superintendent of streets in a book kept by him in his office for that purpose, properly indexed, and the sum contracted to be paid shall be a lien, the same as provided in section 9 of this act, and may be enforced in the same manner.

Penalties.

§ 15. In addition, and as cumulative to the remedies above given, the city council shall have power, by resolution or ordinance, to prescribe the penalties that shall be incurred by any owner or person liable, or neglecting, or refusing to make repairs when required, as provided in section (13) thirteen of this act, which fines and penalties shall be recovered for the use of the city by prosecution in the name of the people of the state of California, in the court having jurisdiction thereof, and may be applied, if deemed expedient by the said council, in the payment of the expenses of any such repairs not otherwise provided for.

Who deemed to be the "owner."

§ 16. The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lots and lands, by deeds duly recorded in the county recorder's office of each county, or the person in possession of lands, lots, or portions of lots or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated, and deemed to be the "owner" (for the purpose of this law), according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

Tenants or lessees.

§ 17. Any tenant or lessee of the lands or lots liable may pay the amount assessed against the property of which he is the tenant or lessee under the provisions of this act, or he may pay the price agreed on to be paid under the provisions of section 13 of this act, either before or after suit brought, together with costs, to the contractor, or his assigns, or he may redeem the property, if sold on execution or decree for the benefit of the owner, within the time prescribed by law, and deduct the amount so paid from the rents due and to become due from him, and for any sums so paid beyond the rents due from him, he shall have a lien upon and may retain possession of the said land and lots until the amount so paid and advanced be satisfied, with legal interest, from accruing rents, or by payment by the owner.

Records of superintendent of streets.

§ 18. The records kept by the superintendent of streets of said city, in conformity with the provisions of this act, and signed by him, shall have the same force and effect as other public records, and copies therefrom, duly certified, may be used in evidence with the same effect as the originals. The said records shall, during all office hours, be open to the inspection of any citizen wishing to examine them, free of charge.

Notices, how served.

§ 19. Notices in writing which are required to be given by the superintendent of streets, under the provisions of this act, may be served by any person, with the permission of the superintendent of streets, and the fact of such service shall be verified by the oath of the person making it, taken before the superintendent of streets, who for that purpose, and for all other purposes, and in all cases where a verification is required under the provisions of this act, is hereby authorized to administer oaths, or other person authorized to administer oaths, or such notices may be delivered to the superintendent of streets himself, who must also verify the service thereof, and who shall keep a record of the fact of giving such notices, when delivered by himself personally, and also of the notices and proof of service when delivered by any other person. [Amendment approved March 14, 1889, Stats. 1889, p. 170.]

City to keep streets in repair.

§ 20. [Repealed April 5, 1911, Stats. 1911, p. 635.]

Superintendent's office. Cleaning of sewers duty of superintendent.

§ 21. The superintendent of streets shall keep a public office in some convenient place within the municipality, and such records as may be required by the provisions of this act. He shall superintend and direct the cleaning of all sewers, and the expense of the same shall be paid out of the street or sewer fund of said city.

Duties of superintendent. Bond.

§ 22. It shall be the duty of the superintendent of streets to see that the laws, ordinances, orders, and regulations relating to the public streets and highways be fully carried into execution, and that the penalties thereof are rigidly enforced. He shall keep himself informed of the condition of all the public streets and highways, and also of all public buildings, parks, lots, and grounds of said city, as may be prescribed by the city council. He shall, before entering upon the duties of his office, give bonds to the municipality, with such sureties and for such sums as may be required by the city council; and should he fail to see the laws, ordinances, orders, and regulations relative to the public streets or highways carried into execution, after notice from any citizen of a violation thereof, he and his sureties shall be liable upon his official bond to any person injured in his person or property in consequence of said official neglect.

City not liable for damages. Who liable.

§ 23. If, in consequence of any graded street or public highway improved under the provisions of this act, being out of repair and in condition to endanger persons or property passing thereon, any person, while carefully using said street or public highway, and exercising ordinary care to avoid the danger, suffer damage to his person or property, through any such defect therein, no recourse for damages thus suffered shall be had against such city; but if such defect in the street or public highway shall have existed for the period of twenty-four hours or more after notice thereof to the said superintendent of streets, then the person or persons on whom the law may have imposed the obligations to repair such defect in the street or public highway, and also the officer or officers through whose official negligence such defect remains unrepaired, shall be jointly and severally liable to the party injured for the damage sustained; provided, that said superintendent has the authority to make said repairs, under the direction of the city council, at the expense of the city.

May construct sewers, manholes, etc., provide for cleaning same and for drainage purposes. Remonstrance.

§ 24. The city council of such city shall have full power and authority to construct sewers, gutters, and manholes, and provide for the cleaning of the same, and culverts or cesspools, or cross-walks, or sidewalks, or any portion of any sidewalk, upon or in

any street, avenue, lane, alley, court, or place in such city; and also for drainage purposes, over or through any right of way obtained or granted for such purposes, with necessary and proper outlet or outlets to the same, of such materials, in such a manner, and upon such terms as it may be deemed proper. None of the work or improvements described in this section shall be stayed or prevented by any written or any other remonstrance or objection, unless such council deems proper. [Amendment approved March 11, 1893, Stats. 1893, p. 173.]

This section was also amended March 14, 1889, Stats. 1889, p. 170; and March 31, 1891, Stats. 1891, p. 206.

Duty of city council to repair and water. Street contingent fund. Work, how done.

§ 25. The city council may, in its discretion, repair and water streets that shall have been graded, curbed, and planked, paved, or macadamized, and may build, repair, and clean sewers, and shall provide a street contingent fund at the same time and in the same manner as other funds are provided, out of which to pay the costs and expenses of making said repairs, and watering said streets, and building, repairing, and cleaning said sewers; but whenever any unaccepted street or part of a street requires regrading, recurbing, repiling, repaving, replanking, regravelling, or remacadamizing, or requires new culverts, or new cross-walks, or new sidewalks, or new sewers, the work shall be advertised and let out by contract, and the costs and expenses thereof shall be assessed upon the property affected or benefited thereby, the same as in the first instance.

May designate what fund to be used. Remainder to be assessed proportionately.

§ 26. The city council may, in its discretion, order, by resolution, that the whole or any part of the cost and expenses of any of the work mentioned in this act be paid out of the treasury of the municipality from such fund as the council may designate. Whenever a part of such cost and expenses is so ordered to be paid, the superintendent of streets, in making up the assessment heretofore provided for such cost and expenses, shall first deduct from the whole cost and expenses such part thereof as has been so ordered to be paid out of the municipal treasury, and shall assess the remainder of said cost and expenses proportionately upon the lots, parts of lots, and lands fronting on the streets where said work was done, or liable to be assessed for such work, and in the manner heretofore provided. [Amendment approved March 31, 1891, Stats. 1891, p. 206.]

This section was also amended March 14, 1889, Stats. 1889, p. 170.

PART II.

Sewers, construction of. Assessment for.

§ 27. Whenever the city council deem it necessary to construct a sewer, then the said council may, in its discretion, determine to construct said sewer, and assess the cost and expenses thereof upon the property to be affected or benefited thereby, in such manner and within such assessment district as it shall prescribe, and the lien therefor upon said property shall be the same as is provided in section 9 of this act, or said council may determine to construct said sewer and pay therefor out of the street contingent fund.

Election to incur indebtedness. Tax to pay interest.

§ 28. If, at any time, the city council shall deem it necessary to incur any indebtedness for the construction of sewers, in excess of the money in the street contingent fund applicable to the construction of such sewers, they shall give notice of a special election by the qualified electors of the city, to be held to determine whether such indebtedness shall be incurred. Such notice shall specify the amount of indebtedness proposed to be incurred, the route and general character of the sewer, or sewers to be constructed, and the amount of money necessary to be raised annually by taxation for an interest and sinking fund as hereinafter provided. Such notice shall be published for at least three weeks in some newspaper published in such city, and no other

question or matter shall be submitted to the electors at such election. If, upon a canvass of the votes cast at such election, it appear that not less than two-thirds of all the qualified electors voting at such election shall have voted in favor of incurring such indebtedness, it shall be the duty of the city council to pass an ordinance providing for the mode of creating such indebtedness, and of paying the same; and in such ordinance provision shall be made for the levy and collection of an annual tax upon all the real and personal property subject to taxation, within such city, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within a period of not more than twenty years from the time of contracting the same. It shall be the duty of the city council in each year thereafter, at the time when other taxes are levied, to levy a tax sufficient for such purpose, in addition to the taxes authorized to be levied for city purposes. Such tax, when collected, shall be kept in the treasury as a separate fund, to be inviolably appropriated to the payment of the principal and interest of such indebtedness.

Bonds, denomination. Signing and sealing. Coupons.

§ 29. If bonds are issued under the provisions of the last section, said bonds shall be in sums of not less than one hundred dollars nor more than one thousand dollars, shall be signed by the mayor and treasurer of the city, and the seal of the city shall be affixed thereto. Coupons for the interest shall be attached to each bond, signed by the mayor and treasurer. Said bonds shall bear interest, to be fixed by the city council, at the rate of not to exceed five per cent per annum.

Bonds, sale of.

§ 30. Before the sale of said bonds, the council shall, at a regular meeting, by resolution, declare its intention to sell a specified amount of said bonds, and the day and hour of such sale, and shall cause such resolution to be entered in the minutes, and shall cause notice of such sale to be published for fifteen days in at least one newspaper published in the city in which the bonds are issued, and one published in the city and county of San Francisco, and in any other newspaper in the state, at their discretion. The notice shall state that sealed proposals will be received by the council for the purchase of the bonds on the day and hour named in the resolution. The council, at the time appointed, shall open the proposals and award the purchase of the bonds to the highest bidder, but may reject all bids.

Bonds not sold less than par.

§ 31. The council may sell said bonds, at not less than par value, without the notice provided for in the preceding section.

Proceeds of sale of bonds deposited in city treasury. Sewer fund.

§ 32. The proceeds of the sale of the bonds shall be deposited in the city treasury, to the account of the sewer fund, but no payment therefrom shall be made, except to pay for the construction of the sewer or sewers, for the construction of which the bonds were issued, and upon the certificate of the superintendent of streets and the city engineer that the work has been done according to the contract; provided, that after the completion of the sewers, for the construction of which said bonds were issued, if there be any money of said fund left in the treasury, the same may be transferred to the general fund, for general purposes. [Amendment approved March 15, 1887, Stats. 1887, p. 148.]

Plans and specifications. Advertisements. Bids.

§ 33. Whenever said council shall determine to construct any sewer, and pay therefor out of the street contingent fund, or by the issuance of bonds, as above provided,

then said council shall cause to be prepared plans and specifications of said work in sections, and shall advertise for twenty days in at least one newspaper published in the city in which the sewer is to be constructed, and one in the city and county of San Francisco, for sealed proposals for constructing said sewer. The work may be let in sections, and must be awarded to the lowest responsible bidder, the council having the right to reject any and all bids. The work shall be done and the materials furnished under the supervision and to the satisfaction of the superintendent of streets and the city engineer.

City engineer to do surveying. Definitions.

§ 34. First. The city engineer, or where there is no city engineer, the county, or city and county surveyor, shall be the proper officer to do the surveying and other engineering work necessary to be done under this act, and to survey and measure the work to be done under contracts for grading and macadamizing streets, and to estimate the costs and expenses thereof; and every certificate signed by him in his official character shall be prima facie evidence in all courts in this state of the truth of its contents. He shall also keep a record of all surveys made under the provisions of this act, as in other cases. In all those cities where there is no city engineer the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of city engineer, and all the provisions hereof applicable to the city engineer shall apply to such person so appointed. Said city council is hereby empowered to fix his compensation for such services.

Second. The words "work," "improve," "improved" and "improvement," as used in this act, shall include all work mentioned in this act, and also the construction, reconstruction and repairs of all or any portion of said work.

Third. The term "incidental expenses," as used in this act, shall include the compensation of the city engineer for work done by him; also the cost of printing and advertising, as provided in this act, and not otherwise; also the compensation of the person appointed by the superintendent of streets to take charge of and superintend any of the work mentioned in section 35 of this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses mentioned in this subdivision shall be presented to the street superintendent by itemized bill, duly verified by oath of the demandant.

Fourth. The notices, resolutions, orders or other matter required to be published by the provisions of this act, and of the act of which this is amendatory, shall be published in a daily newspaper, in cities where such there is, and where there is no daily newspaper, in a semi-weekly or weekly newspaper, to be designated by the council of such city, as often as the same is issued, and no other statute shall govern or be applicable to the publications herein provided for; provided, however, that only in case there is no daily, semi-weekly or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semi-weekly or weekly newspaper, in three of the most public places in such city. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher or clerk of the newspaper, or of the poster of the notice. No publication or notice, other than that provided for in this act, shall be necessary to give validity to any of the proceedings provided for therein.

Fifth. The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes.

Sixth. The words "paved" or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadamizing, or of bituminous rock or asphalt, or of iron, wood or other material, whether patented or not, which the city council shall by ordinance adopt.

Seventh. The word "street," as used in this act, shall be deemed to, and is hereby declared to, include avenues, highways, lanes, alleys, crossings, or intersections, courts and places, and the term "main street" means such actually opened street or streets as bound a block; the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

Eighth. The terms "street superintendent" and "superintendent of streets," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any city. In all those cities where there is no street superintendent or superintendent of streets, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of street superintendent or superintendent of streets; and all provisions hereof applicable to the street superintendent or superintendent of streets shall apply to such person so appointed.

Ninth. The term "city council" is hereby declared to include any body or board which, under the law, is the legislative department of the government of any city.

Tenth. In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees, or other chief executive officer of the municipality.

Eleventh. The term "clerk" and "city clerk," as used in this act, is hereby declared to include any person or officer who shall be clerk of the said city council.

Twelfth. The term "quarter block," as used in this act as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street half way from such intersection to the next main street, or, when no main street intervenes, all the way to a boundary line of the city.

Thirteenth. The term "one year," as used in this act, shall be deemed to include the time beginning with January first and ending with the thirty-first day of December of the same year.

Fourteenth. References in certain sections, by number, to certain other sections of "this act" refer to the number of the sections of the original act, as heretofore amended, unless it appears from the context that the reference is to the section of this amendatory act, when it shall be construed according to the context. [Amendment approved March 23, 1907, Stats. 1907, p. 1000. In effect immediately.]

This section was also amended March 14, 1889, Stats. 1889, p. 171; and March 31, 1891, Stats. 1891, p. 206.

Superintendent of construction. Compensation.

§ 35. The superintendent of streets shall, when in his judgment it is necessary, appoint a suitable person to take charge of and superintend the construction and improvement of each and every sewer constructed or improved under the provisions of this act, and of piling and capping sidewalks, or of the paving of whatever character heretofore mentioned, in whole or in part, of one block or more, whose duty it shall be to see that the contract made for the doing of said work is strictly fulfilled in every respect, and in case of any departure therefrom to report the same to the superintendent of streets. Such person shall be allowed for his time actually employed in the discharge of his duties such compensation as shall be just, but not to exceed five dollars per day. The sum to which the party so employed shall be entitled shall be deemed to be incidental expenses, within the meaning of those words as defined by this act. [Amendment approved April 5, 1911, Stats. 1911, p. 634.]

This section was also amended March 14, 1889, Stats. 1889, p. 173; March 31, 1891, Stats. 1891, p. 207; and March 6, 1903, Stats. 1903, p. 88.

Act repealed.

§ 36. The act entitled "An act to provide for the improvement of streets, lanes, alleys, courts, places, and sidewalks, and the construction of sewers within municipalities," approved March sixth, eighteen hundred and eighty-three, is hereby repealed; provided, that any work or proceedings commenced thereunder prior to the passage of this act shall in no wise be affected hereby, but shall in all respects be finished and completed under said act of March sixth, eighteen hundred and eighty-three, and said repeal shall in nowise affect said work or proceedings.

Time of taking effect on prior statutes or proceedings.

§ 37. That said act shall take effect and be in force immediately upon its passage, and all acts and parts of acts in conflict with this act are hereby repealed; and provided, however, that any work or proceeding of the city council commenced under the act of which this is amendatory shall in nowise be affected thereby, but shall in all respects be finished and completed thereunder. [Amendment approved March 11, 1893, Stats. 1893, p. 173.]

This section was also amended March 14, 1889, Stats. 1889, p. 173; and March 31, 1891, Stats. 1891, p. 209.

PART III.**How changes or modifications of grades of streets are made.**

§ 38. The city council is hereby empowered to change or modify the grade of any public street, lane, alley, place, or court, and to regrade or repave the same, so as to conform to such modified grade, in the manner as hereinafter provided. Before any change of grade is ordered the city council shall pass an ordinance or resolution of intention to make such change or modification of grade, and it shall have power at the same time and in the same ordinance or resolution to provide for the actual cost of performing the work of regrading, repaving, sewerage, sidewalking, or curbing of said street or portion of street, with the same or other material with which it was formerly graded, paved, sewerage, sidewalked, or curbed; and that the cost of the same shall also be assessed upon the same district which is declared to be benefited by such changed or modified grade. One or more streets or blocks of streets may be embraced in the same ordinance or resolution. Such ordinance or resolution shall be published in the newspaper in which the official notices of the city council are usually printed and published; and such newspaper is to be designated in such ordinance or resolution. Such publication shall be made in every regular issue of such paper for not less than ten days, and shall describe the proposed change or modification of grade or regrading, and shall designate and establish the district to be benefited by such change or modification of grade or regrading, and to be assessed for the cost of the same. Within five days after the first publication of the ordinance or resolution of intention, the superintendent of streets shall cause to be conspicuously posted within the district designated in the ordinance or resolution, notice of the passage of said resolution. Said notices shall be the same in all requirements of contents and posting as the "Notices of Street Work" provided for in section 3 of the original act to which this is amendatory. If no objection to said proposed change or changes, or modifications of grade, shall be filed with the clerk of the council within thirty days from the first publication of the ordinance or resolution of intention hereinbefore mentioned, the city council shall have power to declare such grades to be changed and established in conformity to said ordinance or resolution; provided, that no change of an established grade shall be ordered except on petition of the owners of a majority of the property affected by the proposed change of grade. [Amendment of March 9, 1893, Stats. 1893, p. 89.]

This section was added March 17, 1891, Stats. 1891, p. 116; repealed February 27, 1893, Stats. 1893, p. 38, except as to proceedings hitherto commenced. A new section of the same number was added March 31, 1891, Stats. 1891, p. 461.

Petition showing damage through change of grade.

§ 39. Within thirty days after the first publication of said notice, any person owning property fronting upon said portions of the street or streets where such change of grade is made, may file a petition with the clerk of the city council showing the fact of such ownership, the description and situation of the property claimed to be damaged, its market value, and the estimated amount of damages over and above all benefits which the property would sustain by the proposed change if completed. Such petition shall be verified by the oath of the petitioners or their agents. [Amendment of March 9, 1893, Stats. 1893, p. 90.]

This section was added March 17, 1891, Stats. 1891, p. 116; repealed February 27, 1893, Stats. 1893, p. 38, except as to proceedings hitherto commenced. A new section of the same number was added March 31, 1891, Stats. 1891, p. 461.

Mayor, surveyor and superintendent of streets compose commission.

§ 40. Whenever such petition or petitions have been filed, the mayor, surveyor, and superintendent of streets of the city, or city and county, acting as a board of commissioners, shall assess the benefits, damages, and costs of the proposed change of grade upon each separate lot of land situated within such assessment district, as said lot appears of record upon the last city, or city and county assessment-roll. [Amendment of March 9, 1893, Stats. 1893, p. 90.]

This section was added March 17, 1891, Stats. 1891, p. 117; repealed February 27, 1893, Stats. 1893, p. 38, except as to proceedings hitherto commenced. A new section of the same number was added March 31, 1891, Stats. 1891, p. 462.

Oath to be taken.

§ 41. The commissioners shall be sworn to make the assessments of benefits and damages to the best of their judgment and ability, without fear or favor. [Amendment of March 9, 1893, Stats. 1893, p. 90.]

This section was added March 17, 1891, Stats. 1891, p. 119; repealed February 27, 1893, Stats. 1893, p. 38, except as to proceedings hitherto commenced. A new section of the same number was added March 31, 1891, Stats. 1891, p. 462.

Witnesses may be subpoenaed.

§ 42. The commissioners shall have power to subpoena witnesses to appear before them to be examined under oath, which any one of said commissioners is authorized to administer. [Amendment of March 9, 1893, Stats. 1893, p. 90.]

This section was added March 17, 1891, Stats. 1891, p. 119; repealed February 27, 1893, Stats. 1893, p. 38, except as to proceedings hitherto commenced. A new section of the same number was added March 31, 1891, Stats. 1891, p. 462.

Damages to be assessed upon the several lots benefited. Report to city council.

§ 43. The commissioners having determined the damage which would be sustained by each petitioner, in excess of all benefits, shall proceed to assess the total amount thereof, together with the costs, charges, and expenses of the proceedings, upon the several lots of land benefited within the district of assessment, so that each of the lots shall be assessed in accordance with its benefits caused by such work or improvement; and during the progress of their work shall make a report to such city council as often as it may be required. [Amendment of March 9, 1893, Stats. 1893, p. 90.]

This section was added March 17, 1891, Stats. 1891, p. 119; repealed February 27, 1893, Stats. 1893, p. 38, except as to proceedings hitherto commenced. A new section of the same number was added March 31, 1891, Stats. 1891, p. 463.

What report must contain. Majority report. Diagram to be attached.

§ 44. The commissioners shall make their report, in writing, and shall subscribe to the same and file with the city council. In their said report they shall describe separately each piece of property which will sustain damage, stating the amount of damages each will sustain over and above all benefits. They shall also give a brief description of each lot benefited within said assessment district, the name of the owner, if known, and the amount of benefits in excess of damages assessed against the same. In case the three commissioners do not agree, the award agreed upon by any two of them shall be sufficient. In designating the lots to be assessed, reference may be had

to a diagram of the property in the district affected; such diagram to be attached to and made a part of the report of the commissioners. [Amendment of March 9, 1893, Stats. 1893, p. 90.]

This section was added March 17, 1891, Stats. 1891, p. 121; repealed February 27, 1893, Stats. 1893, p. 38, except as to proceedings hitherto commenced. A new section of the same number was added March 31, 1891, Stats. 1891, p. 463.

Unknown owners. Errors. Filing of report to be published. Confirmation of report.

§ 45. If in any case the commissioners find that conflicting claims of title exist, or shall be in ignorance or doubt of the ownership of any lot or land, or any improvement thereon, or any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any land or improvements, or particulars of their interest, shall not affect the validity of the assessment. On the filing of said report, the clerk of said city council shall give notice of such filing by the publication of at least ten days in one or more daily newspapers published and circulated in said city; or if there be no daily newspaper, by three successive issues in a weekly or semi-weekly newspaper so published and circulated; and said notice shall require all persons interested to show cause, if any, why such report should not be confirmed, before the city council, on a day to be fixed by the city council and stated in said notice, which day shall not be less than twenty days from the first publication thereof. [Amendment approved March 9, 1893, Stats. 1893, p. 91.]

This section was added March 31, 1891, Stats. 1891, p. 463.

Objections to be filed in writing. Hearing. New assessment. Advertising for bids. Proceedings. Awards.

§ 46. All objections shall be in writing and filed with the clerk of the city council, who shall, at the next meeting after the date fixed in the notice to show cause, lay the said objections, if any, before the council, which shall fix a time for hearing the same, of which time the clerk shall notify the objectors in the same manner as are notified objectors to the original resolution of intention. At the time set, or at such other time as the hearing may be adjourned, the city council shall hear such objections and pass upon the same, and at such time shall proceed to pass upon such report, and may confirm, correct, or modify the same, or may order the commissioners to make a new assessment, report, and plat, which shall be filed, notice given and had, as in the case of an original report. In case the ordinance or resolution of intention also provides for the assessing upon the district the cost of regrading or repaving such street or streets to such changed or modified grade, after the report of the commissioners as to the damages caused by such change of grade has been passed upon by the city council, it shall then advertise for bids to perform the work of regrading, repaving, sewerage, sidewalking, or curbing such street or streets with the same or other material with which the same had been formerly graded, paved, sewerage, sidewalked, or curbed; first causing a notice, with specifications, to be posted conspicuously for five days on or near the council chamber door, inviting sealed proposals for bids for doing such work, and shall also cause notices of said work, inviting said proposals and referring to the specifications posted or on file, to be published two days in a daily, semi-weekly, or weekly newspaper published and circulated in said city, and designated by the city council for that purpose, and in case there is no newspaper published in the city, then it shall be posted as provided in section 3 of the original act to which this is amendatory. All proposals or bids offered shall be accompanied by a check, payable to the order of the mayor of the city, and certified by a responsible bank for that amount, which shall not be less than ten per cent of the aggregate of the proposals; or by a bond for said amount, signed by the bidder and two sureties, who shall justify under oath in double said amount over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said city council, and said council shall in open session, examine and publicly declare the same; provided, however, that

no proposal or bid shall be considered unless accompanied by a check or a bond satisfactory to the council. The city council may reject any and all bids, and may award the contract to the lowest responsible bidder, which award shall be approved by the mayor or the three-fourths vote of the city council. If not approved by the mayor or the three-fourths vote of the city council, the city council may readvertise for proposals or bids for the performance of the work, as in the first instance, and thereafter proceed in the manner in this section provided. All checks accompanying bids shall be held by the clerk until the bearer has entered into a contract, as herein provided; and in case he refuses so to do, then the amount of his certified check shall be declared forfeited to the city, and shall be collected and paid into its general fund, and all bonds so forfeited shall be prosecuted, and the amount thereon collected paid into such fund. Notice of the awards of the contracts shall be published and posted in the same manner as hereinbefore provided for the posting of proposals for said work. [Amendment approved March 9, 1893, Stats. 1893, p. 91.]

This section was added March 31, 1891, Stats. 1891, p. 463.

City clerk to certify contract. Cost of work to be assessed.

§ 47. After such contract has been awarded and entered into, the clerk of the city council shall certify to the city council that fact, together with the total amount of the cost of the same, whereupon the city council shall cause to be forwarded to the commissioners a copy of such certificate; whereupon such commissioners shall proceed to assess the cost of doing such work upon all the lots and land lying within the district to be assessed, distributing the same so that each lot will be assessed for its proportion of the same, according to the benefits it receives from the work, and in the same manner in which the damages caused by the change of grade were assessed upon the same. Such commissioners, in making such assessment, shall show the total amount for which each lot or tract is assessed, in excess of all benefits, for the total cost of changing and modifying the grade of the street, as well as the regrading, repaving, sewerage, sidewalking, and curbing of the same, and costs or damages connected therewith. The provisions of the act to which this is amendatory in regard to the mode or manner of the assessment of the cost of such work shall not apply to the work herein contemplated; neither shall the provisions of the same in regard to the issuing of bonds to represent the cost of the same, nor the provisions in regard to the right of protest against the work. [Amendment approved March 9, 1893, Stats. 1893, p. 92.]

This section was added March 31, 1891, Stats. 1891, p. 464.

City clerk to certify copy of report to superintendent of streets. Lien.

§ 48. The clerk of said city council shall forward to the street superintendent of the city a certified copy of the report, assessment, and plat, as finally confirmed and adopted by the city council. Such certified copy shall thereupon be the assessment-roll, the cost of which shall be provided for by the commissioners, as a portion of the cost of the proceedings therein. Immediately upon receipt thereof by the street superintendent, the assessment therein contained shall become due and payable, and shall be a lien upon all the property contained or described therein. [Amendment approved March 9, 1893, Stats. 1893, p. 93.]

This section was added March 31, 1891, Stats. 1891, p. 464.

Notice that assessment due. Payment of. Delinquency. Publication. Sale. Deed. Redemption. Fund to be created by treasurer.

§ 49. The superintendent of streets shall thereupon give notice, by publication for ten days in one or more daily newspapers published and circulated in said city, or city and county, or two successive insertions in a weekly or semi-weekly newspaper so published and circulated, that he has received said assessment-roll, and that all sums levied and assessed in said assessment-roll are due and payable immediately, and that the payment of said sums is to be made to him within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement

that all assessments not paid before the expiration of said thirty days will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of such delinquent assessment, together with the cost of advertising each delinquent assessment will be added thereto. When payment of any assessment is made to said superintendent of streets, he shall write the word "paid" and the date of payment opposite the respective assessment so paid, and the name of the persons by or for whom said assessment is paid, and shall give a receipt therefor. On the expiration of said thirty days, all assessments then unpaid shall be and become delinquent, and said superintendent of streets shall certify such fact at the foot of said assessment-roll, and shall add five per cent to the amount of each assessment so delinquent. The said superintendent of streets shall, within five days from the date of such delinquency, proceed to advertise the various sums delinquent, and the whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece, or parcel of land separately assessed, by the sale of the assessed property in the same manner as is or may be provided for the collection of state and county taxes; and after the date of said delinquency, and before the time of such sale herein provided for, no assessment shall be received, unless at the same time the five per cent added to as aforesaid, together with the costs of advertising then already incurred, shall be paid therewith. Said list of delinquent assessments, with a notice of the time and place of sale of the property affected thereby, shall be published daily for five days, in one or more daily newspapers published and circulated in such city, or by at least two insertions in a weekly newspaper so published and circulated before the day of sale for such delinquent assessment. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment-list, and the place must be in or in front of the office of said superintendent of streets. All property sold shall be subject to redemption for one year, and in the same manner as in sales for delinquent state and county taxes; and the superintendent of streets shall, if there is no redemption, make and deliver to the purchaser at such sale a deed conveying the property sold, and may collect for each certificate fifty cents, and for each deed one dollar. All provisions of the law in reference to the sale and redemption of property for delinquent state and county taxes, in force at any given time, shall also then, as far as the same are not in conflict with the provisions of this act, be applicable to the sale and redemption of property for delinquent assessments hereunder, including the issuance of certificates and execution of deeds. The deed of the street superintendent, made after such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings hereunder, and of title in the grantee. The superintendent of streets shall from time to time pay over to the city treasurer all moneys collected by him on account of any such assessments. The city treasurer shall, upon receipt thereof, place the same in a separate fund, designating each fund by the name of the street, square, lane, alley, court, or place for the change of grade for which the assessment was made. Payments shall be made from said fund to the parties entitled thereto, upon warrants signed by the commissioners or a majority of them. [Amendment approved March 9, 1893, Stats. 1893, p. 93.]

This section was added March 31, 1891, Stats. 1891, p. 464.

How notice of payment of damages to be made.

§ 50. When sufficient money is in the hands of the city treasurer, in the fund voted for the proposed work or improvement, to pay the total cost for damages, as well as for the cost of doing the work, and all other expenses connected therewith, it shall be the duty of the commissioners to notify the owner, possessor, or occupant of the premises damaged, and to whom damages have been awarded, that a warrant has been drawn for the payment of the same, which can be received at the office of such commissioners. Such notification may be made by depositing a notice, postage paid, in the postoffice, addressed to his last known place of residence. If, after the expiration

of three days after the service or deposit of the notice in the postoffice, he shall not have applied for such warrant, the same shall be drawn and deposited with the city treasurer, to be delivered to him upon demand. [Amendment approved March 9, 1893, Stats. 1893, p. 94.]

This section was added March 31, 1891, Stats. 1891, p. 466.

Condemnation of premises. Precedence of proceedings. Deficiency, how paid. Priority of warrants.

§ 51. If the owner of any premises damaged neglects or refuses, for ten days after the warrant has been placed in the hands of the city treasurer, subject to his demand, to accept the same, the city council may cause proceedings to be commenced, in the name of the city, to condemn said premises, as provided by law under the right of eminent domain. The ordinance or resolution of intention shall be conclusive evidence of the necessity of the same. Such proceedings shall have precedence, so far as the business of the court will permit, and any judgment for damages therein rendered shall be payable out of the special fund in the treasury for that purpose. At any time after the trial and judgment entered, or pending appeal, the court may order the city treasurer to set apart in the city treasury a sufficient sum from said fund to answer the judgment, and thereupon may authorize or order the municipality to proceed with the proposed work or improvements. In case of a deficiency in said fund to pay the whole assessed judgment and damages, the city council may, in its discretion, order the balance thereof to be paid out of the general fund of the treasury, or to be distributed by the commissioners over the property assessed by a supplementary assessment; but in the last named case, in order to avoid delay, the city council may advance such balance out of any available fund in the treasury, and reimburse the same from the collection of assessments. The treasurer shall pay such warrants in the order of their presentation; provided, that warrants for damages and for costs of performing the work shall have priority over warrants for charges and expenses, and the treasurer shall see that sufficient money remains in the fund to pay all warrants of the first class before paying any of the second. The provisions of section 1251 of the Code of Civil Procedure, requiring the payment of damages within thirty days after the entry of judgment, shall not apply to damages rendered in proceedings under this act. [Amendment approved March 9, 1893, Stats. 1893, p. 95.]

This section was added March 31, 1891, Stats. 1891, p. 466.

Application of other provisions of original act. Work in progress to be continued.

Ratification of subsequent proceedings.

§ 52. All other provisions contained in the act to which this is amendatory, and which provisions are not in conflict herewith, shall apply to all matters herein contained. All proceedings in any work or improvement, such as is provided for in this act, already commenced and now in progress under another act now in force, or by virtue of an ordinance or resolution of intention heretofore passed, may, from any stage of such proceedings already commenced and now in progress, be continued under this act by resolution of the city council. The said work or improvement may then be conducted under the provisions of this act, with full force and effect in all respects from the stage of such proceedings at and from which such resolution or ordinance shall declare the intention to have such work done or improvement cease under such other acts or ordinances and continued under this act; and from such election so made all proceedings theretofore had are hereby ratified, confirmed, and made valid, and it shall be unnecessary to renew or conduct over again any proceedings prior to the passage of this act. [Amendment approved March 9, 1893, Stats. 1893, p. 95.]

This section was added March 31, 1891, Stats. 1891, p. 466.

Act liberally construed.

§ 53. This act shall be liberally construed to the end that its purpose may be effected. No error, irregularity, informality, and no neglect or omission of any officer

of the city, in any proceedings taken hereunder which does not directly affect the jurisdiction of the city council to order the work or improvement, shall avoid or invalidate such proceedings or any assessment for the cost of work done thereunder. The exclusive remedy of any person affected or aggrieved thereby shall be by appeal to the city council as herein provided. [Amendment approved April 5, 1911, Stats. 1911, p. 634.]

This section was added March 31, 1891, Stats. 1891, p. 466; and also amended March 9, 1893, Stats. 1893, p. 96.

Council fixes time and place of hearings.

§ 54. Whenever in proceedings hereunder the time and place for hearing by the city council is fixed and from any cause the hearing is not then and there held or regularly adjourned to a time and place fixed, the power of the city council in the premises shall not thereby be divested or lost. The city council may fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semi-weekly or weekly newspaper published and circulated in said city and designated by the council for that purpose, such publication to be at least five days before the date of the hearing, and thereupon the city council shall have power to act as in the first instance. [New section approved April 5, 1911, Stats. 1911, p. 634.]

Description by reference sufficient.

§ 55. In all resolutions, notices, orders and determinations subsequent to the resolution of intention a description of the assessment district by reference to the resolution of intention shall be sufficient, and in all resolutions, notices, orders, and determinations subsequent to the "notice of street work" a description of the work by reference to the resolution of intention shall be sufficient. [Amendment approved June 10, 1913, Stats. 1913, p. 412. In effect August 10, 1913.]

This section was added April 5, 1911, Stats. 1911, p. 635.

City may become contractor. Proceedings.

§ 56. When the work prescribed by the resolution of intention is exclusively sidewalk or curbing work with or without such grading as is incidentally necessary to the doing of such sidewalk or curbing work, and no proposals or bids for doing the work are delivered to the clerk, as invited by the notice inviting the same, as provided for in section 5 of this act, the city council may, in its discretion, by a vote of three-fourths of its members in the affirmative, direct that a proposal or bid in the name and on the part of the city be filed, whereupon the contract for doing the work shall be awarded to the city, and the city shall thus be and become the "contractor" within the meaning of this act. And when the time has expired within which, as provided in said section 5 of this act the owners may elect to take the contract, shall have expired, and such owners have not so elected, the city shall be deemed to have undertaken to do and complete the work, at the price named, in such bid or proposal, within ninety days after the time when as aforesaid it is to be deemed to have undertaken the same, and to begin such work within fifteen days after said time. The city need not enter into a contract with the superintendent of streets, as provided in section 6 of this act, nor give any check or bond either upon bidding or to secure the performance of the work or payment for labor or materials. The warrant provided for in section 9 of this act shall be delivered to the clerk of the city council, and such clerk is hereby authorized to make on the part of the city the demand provided for in section 10 of this act. Except as in this section expressly provided otherwise, all and singular the provisions of this act shall apply in the case where the city, under the provisions of this section, becomes the contractor, that is to say, undertakes to do the work. And all the rights, dues and remedies of the "contractor," under the provisions of this act, shall accrue to the city in its character of one undertaking to

do the work, as provided in this section. [New section approved March 18, 1909, Stats. 1909, p. 399. In effect immediately.]

The act adding this section is said to be unconstitutional on the authority of *Ex parte Sohncke*, 148 Cal. 262, 113 Am. St. Rep. 236, 7 Ann. Cas. 475, 2 L. R. A. (N. S.) 813, 82 Pac. 956.—*Los Angeles v. Leland*, 11 Cal. App. 302, 104 Pac. 717.

Public work in unincorporated territory. Terms interchangeable.

§ 57. The public work provided to be done under this act may be performed under the provisions of this act in unincorporated territory in counties, and all of the provisions of this act shall apply with equal force to such work subject to the definitions and modifications hereinafter contained. Wherever the words "municipality," "municipalities" or "city" shall appear in this act, they shall be and are hereby defined as including cities, cities and counties and counties, and are hereby expressly declared to be interchangeable with any or either of these terms. Wherever the terms "city council" or "council" shall appear in this act, they shall be and are hereby defined as including the board of supervisors of a county, and are hereby expressly declared to be interchangeable with these terms; and all of the provisions of this act extending authority to or imposing duties or obligations upon the city council or council shall apply with equal force to the board of supervisors. Wherever the term "city engineer" shall appear in this act, it shall be and is hereby defined as including the county surveyor of a county, and is hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the city engineer shall apply with equal force to the county surveyor. Wherever the term "city clerk," "clerk of the city council," "clerk of the council," or "clerk" shall appear in this act, they shall be and are hereby defined as including the county clerk of the county, and are hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the city clerk, clerk of the city council, clerk of the council or clerk shall apply with equal force to the county clerk. Wherever the terms "city treasury" or "municipal treasury" shall appear in this act, they shall be and are hereby defined as including the county treasury, and are hereby expressly declared to be interchangeable with any or either of these terms. Wherever the terms "treasurer" or "city treasurer" shall appear in this act, they shall be and are hereby defined as including the county treasurer of a county, and are hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the treasurer or city treasurer shall apply with equal force to the county treasurer. Wherever the terms "mayor" or "mayor of said city" shall appear in this act, they shall be and are hereby defined as including the chairman of the board of supervisors of a county, and are expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the mayor or mayor of said city shall apply with equal force to the chairman of the board of supervisors. [New section approved May 30, 1913, Stats. 1913, p. 353. In effect August 10, 1913.]

County street superintendent. Compensation.

§ 58. The board of supervisors of any county in which it is desired to perform work under the provisions of this act shall be and they are hereby authorized to appoint a person to be known as the street superintendent of the said county who shall have all of the authority and perform all of the duties and obligations herein imposed upon the street superintendent, and shall be considered as designated wherever the words "street superintendent" or "superintendent of streets" are used in this act; and the board of supervisors may appoint as many deputies for the said street superintendent of the county as in their judgment may be proper and necessary, the said street superintendent to receive a compensation of six dollars per day and his deputies to receive a compensation of four dollars per day for their time actually expended. The office of the street superintendent shall be the office of the county surveyor, and, at any

time when no work is actually being conducted under the provisions of this act, or when the street superintendent shall not be in his office, the county surveyor shall have charge of the records in the street superintendent's office and perform such duties as are herein imposed upon the street superintendent, and have such other authority as is herein granted to the street superintendent; and all of the provisions of this act extending authority to or imposing duties or obligations upon the street superintendent or superintendent of streets shall apply with equal force to the superintendent of streets appointed by the board of supervisors. [New section approved May 30, 1913, Stats. 1913, p. 354. In effect August 10, 1913.]

Phraseology of bonds changed.

§ 59. In any bonds provided to be issued under the terms of this act, the phraseology of the said bonds shall be changed to conform to the designation of a county instead of city, and the officers hereinbefore mentioned on the part of the county shall be and they are hereby authorized to perform all of the duties herein by the provisions of this act or the provisions of the said bond specified to be performed. [New section approved May 30, 1913, Stats. 1913, p. 354. In effect August 10, 1913.]

Payment from general fund.

§ 60. If the board of supervisors shall determine that the whole or any part of the cost and expenses of the work mentioned in this act shall be paid out of the treasury of the county, such payment, or any part of the same, may be made from the general fund of the county or general road fund of the county, or from the road district fund of the road district in which the said improvement shall be constructed. [New section approved May 30, 1913, Stats. 1913, p. 355. In effect August 10, 1913.]

Highway lighting system. Ordinance to describe district. Tax for maintenance.

§ 61. If any public highway lighting system shall be installed under the provisions of this act, the board of supervisors may, by ordinance, provide, at any time before, after or during the proceedings under this act, that the cost of maintaining the said public highway lighting system, including the cost of necessary repairs, replacements, fuel, current, care and other items of like nature, shall be paid, either partly or wholly, by the district upon which the assessment shall be levied to pay the cost of the installation of the same. The ordinance shall contain a description of the district to be assessed to pay for the installation of the said lighting system and to be assessed to pay for the maintenance thereof, and also shall contain a designation or name of the said district by which it may be referred to in all subsequent proceedings, and a copy of the said ordinance shall be filed in the office of the county assessor. The county assessor shall thereafter, in making up the assessment-roll, segregate the property included within the district described in the said ordinance on the assessment-roll under the designation contained in the said ordinance. The board of supervisors shall thereafter, in each year prior to the time of fixing the county tax rate, estimate the cost of maintaining the said public highway lighting system during the ensuing year, and shall decide whether or not the cost of the same shall be borne wholly or partially by the said assessment district, and shall, in addition to all other taxes, fix a special tax rate for the property within said assessment district sufficient to raise an amount of money to cover all of the portion of the expense of maintaining the said public highway lighting system to be borne by said district as the board of supervisors may determine. [New section approved May 30, 1913, State. 1913, p. 355. In effect August 10, 1913.]

Names for roads.

§ 62. The board of supervisors of any county are hereby authorized by ordinance to adopt a name for any road, highway, avenue or other public way in the county for which a name has not been provided under the provisions of section two thousand six hundred and thirty-six of the Political Code, and are hereby authorized by ordinance

to establish the official grade of any road, highway, avenue or other public way in the county for which no official grade has theretofore been established by ordinance. [New section approved May 30, 1913, Stats. 1913, p. 355. In effect August 10, 1913.]

Act not affected.

The amendatory act of 1913 contained the following section:

§ 2. This act shall not be construed as amending or repealing the provisions of an act of the legislature, entitled, "An act relating to the liability of public officers for damages resulting from defects and dangers in streets, highways, public buildings, public work or property"; nor as in any way limiting, modifying or qualifying the operation of the provisions thereof.

The act of March 6, 1909, which repealed the sidewalk provisions of the Vrooman act, was itself repealed in the following language:

"The repeal of said act shall revive each and every portion and provision of the act entitled "An act to provide for work upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities," approved March 18, 1885, and the several acts amendatory thereof and supplementary thereto, relating to sidewalks, and the construction thereof, and to the assessments to be made, and the enforcement of payments for the expense of the construction of such sidewalks, and all other provisions thereof repealed expressly or by implication by the act hereby repealed, together with the provisions of all acts and parts of acts repealed expressly or by implication by the act hereby repealed. Proceedings under the act hereby repealed, commenced prior to the taking effect of this act, may be continued to completion under the provisions thereof with the same force and effect as if said act were not hereby repealed and such proceedings and assessments levied therein shall be valid and such assessments may be enforced and collected under the provisions thereof." [§ 1 of act of April 5, 1911, Stats. 1911, p. 618.]

- I. CONSTITUTIONAL LAW.
- II. CONSTRUCTION.
- III. JURISDICTION AND POWERS.
- IV. JURISDICTIONAL FACTS.
 - a. Resolution of intention.
 - b. Publication and posting of resolution of intention.
 - c. Posting and publication of notice of resolution of intention.
 - d. Plans and specifications.
 - e. Protests.
 - f. Resolution ordering work.
 - g. Resolution calling for sealed proposals.
 - h. Bond accompanying bid.
 - i. Opening bids.
 - j. Award.
- V. CONTRACT.
- VI. COMPLETION AND ACCEPTANCE OF WORK.
- VII. WARRANT.
- VIII. ASSESSMENT.
 - a. Front-foot method.
 - b. District plan.
- IX. BONDS.
- X. APPEALS.
- XI. LIEN.
- XII. ACTIONS.
 - a. To enforce lien.
 - b. Injunction.
 - c. Action to recover bidder's deposit.
 - d. Action on bond of superintendent of streets.
- XIII. SALES.
- XIV. MISCELLANEOUS.

- I. CONSTITUTIONAL LAW.
 - 1, 1a. Constitutionality—Upheld.
 - 1b. Levy of assessment before contract made — Invalid constitutional amendment.
 - 2. Same—Section 19, article XI, constitution.
 - 3, 4. The act is a general law.
 - 5, 6. Due process.
 - 7. Same—Title sufficiently expresses subject of act.
 - 8. Same—Abuse of power.
 - 9. Same—Rule as to due process.
 - 10. Same—Want of notice and hearing.
 - 10a. Same—Posting and publication of resolution of intention and notice sufficient to give due process.
 - 11. Same—Certificate of searcher.
 - 12. Case distinguished.
 - 13. Assessment of corner lots—Method not invalid.
 - 14. Front-foot method of assessment valid.
 - 15. Determination of question of benefits is for the legislature.
 - 16. Delegation of authority to collect assessments to contractor.
 - 17. Delegation of power to street superintendent.
 - 18. Uniform operation — Los Angeles charter.
 - 19. Los Angeles charter—Conflicting provisions annulled by Vrooman act—Not reinstated by 1896 amendment to section 6, article XI, constitution.

20. No equities can prevail where jurisdiction lacking.
21. Title of bond act amendment of 1891.
22. Amendment of 1911 to section 4 of the bond act—Due process.
23. Amendment without referring to previous amendment of same section.
24. Bond act of 1891—Not an amendatory act within section 24, article IV, constitution.
25. Section 6½ amendment.
26. Amendment of 1891, subdivision 12, section 7.
27. General force in sixth-class cities.

I. CONSTITUTIONAL LAW.

1. Constitutionality — Upheld.—The act is constitutional, as settled by the decision in *Cohen v. Alameda*, 124 Cal. 506; *Reid v. Clay*, 134 Cal. 207, 66 Pac. 262.

1a. Same—Same.—The act is held constitutional on the authority of *Hadley v. Dague*, 130 Cal. 207, 62 Pac. 500, and *Frenah v. Barber, etc., Co.*, 181 U. S. 324, 45 L. Ed. 879, 21 Sup. Ct. Rep. 625; *Belser v. Allman*, 134 Cal. 399, 66 Pac. 492.

1b. Levy of assessment before contract made—Invalid constitutional amendment.—The act is invalid, so far as it authorized a levy and collection of an assessment before making a contract for the work, it being held that the amendment of 1884 to section 19, article XI of the constitution was not constitutionally adopted, because it was not entered at large on the journals of the legislature.—*Thomason v. Ruggles*, 69 Cal. 465, 11 Pac. 20; *Oakland Paving Co. v. Hilton*, 69 Cal. 479, 11 Pac. 3; but see *Oakland Paving Co. v. Tompkins*, 72 Cal. 5, 10 Am. St. Rep. 17, 12 Pac. 801.

2. Same—Section 19, article XI, constitution.—The provision of section 19, article XI of the constitution providing that no contract for street work should be entered into until levy of assessment, collection thereof and payment of same into the treasury, was repealed by the amendment to that section adopted in 1884.—*Thomason v. Ashworth*, 73 Cal. 73, 14 Pac. 615.

3. The act is a general law.—The Vrooman act is a general law, within the meaning of the constitution.—*Thomason v. Ruggles*, 69 Cal. 465, 11 Pac. 20.

4. Same—Same.—The act is a general law within the meaning of section 6, article II of the constitution.—*Thomason v. Ashworth*, 73 Cal. 73, 14 Pac. 615.

5. Due process.—The procedure provided by the act constitutes due process of law, within the requirement of the constitution.—*Chase v. Trout*, 80 Cal. 81, 146 Pac. 350.

6. Due process.—When an assessment is attacked on the ground that the local board failed to acquire original jurisdiction, the owner may vest in the constitutional guaranty that his property may not be taken without due process of law.—*Beck v. Ransome-Crummey Co.* (Cal. App.), 184 Pac. 431.

7. Same—Title sufficiently expresses subject of act.—The title of the bond act amendment of 1891 sufficiently discloses the purpose and scope of the act.—*Hellman v.*

Shoulders, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057.

8. Same—Abuse of power.—The formation of an assessment district for a public improvement under the Vrooman act is not in violation of the constitutional inhibition as to taking private property without compensation, merely because the local legislative body, by the corrupt abuse of the power conferred by the act, may include in such district property not actually benefited.—*Banaz v. Smith*, 133 Cal. 102, 65 Pac. 309.

9. Same—Rule as to due process.—Where a statute requires as the initial step in the process of depriving a man of his property the performance of a specifically defined act, unless that act be performed substantially no jurisdiction—power—exists for further action in that proceeding against him.—*Beck v. Ransome-Crummey Co.* (Cal. App.), 184 Pac. 431.

10. Same—Want of notice and hearing.—The legislature has no power to confer upon a city council, or other local body, the authority to create assessment districts for payment of the cost of local improvements, without some provision as to notice and a hearing as to the limits of the district and the exclusion of property therefore if it is found not to be benefited by such improvement, and an act assuming to do so unconstitutional and void.—*Brookes v. Oakland*, 160 Cal. 423, 117 Pac. 433.

10a. Same—Posting and publication of resolution of intention and notice sufficient to give due process.—The publication and posting of the resolution of intention and the publication of the notice of street work required by section 3 is sufficient notice, and the failure to post notices along the line of the proposed work is not fatal to the validity of proceedings.—*Beale v. Santa Barbara*, 32 Cal. App. 235, 162 Pac. 657.

11. Same—Certificate of searcher.—The provision of section 4 of the bond act of 1893 (33) as amended, 1899-41, requiring the property owner to present the certificate of a searcher of records that he is the owner of the property, is not unreasonable, and not unconstitutional as a taking property without due process of law.—*Schaffer v. Smith*, 169 Cal. 764, 767, 147 Pac. 976.

12. Case distinguished.—The act is constitutional and valid, and prior decisions of the court distinguishing *Norwood v. Baker*, 172 U. S. 269, 43 L. ed. 443, 19 Sup. Ct. Rep. 187, affirmed.—*Chapman v. Ames*, 135 Cal. 246, 67 Pac. 1125.

13. Assessment of corner lots—Method not invalid.—There is no inequality or injustice in the method provided by the Vrooman act for assessment of corner lots, and that method is constitutional and valid.—*Ross v. Barber, etc., Co.*, 158 Cal. 37, 109 Pac. 883.

14. Front-foot method of assessment valid.—There can no longer be any question as to the validity of the general method provided by the Vrooman act for assessing property for street improvements according to the frontage of the property on the line of the improvement.—*Ross v. Barber, etc., Co.*, 158 Cal. 37, 109 Pac. 883.

15. Determination of question of benefits is for the legislature.—Whether the property in a sewer assessment district will be benefited in proportion to the burden is a question for the legislature.—*Banaz v. Smith*, 133 Cal. 102, 65 Pac. 309.

16. Delegation of authority to collect assessments to contractor.—The contractor is merely the agent or servant of the city, for the purpose of collecting the assessments, and the act does not violate section 13, article XI of the constitution forbidding the delegation of a municipal function.—*Banaz v. Smith*, 133 Cal. 102, 65 Pac. 309.

17. Delegation of power to street superintendent.—An assessment is not vitiation as an unlawful delegation of power to the street superintendent, where he is merely given a certain discretion in matters of minute detail.—*Banaz v. Smith*, 133 Cal. 102, 65 Pac. 309.

18. Uniform operation — Los Angeles charter.—The Vrooman act provides a complete scheme or procedure for street work, and so far as it goes governs, and the Los Angeles charter can make no different procedure by requiring more or less, otherwise there would not be a uniform operation of the law for all cities of a class.—*Hellman v. Shoulters*, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057.

19. Los Angeles charter—Conflicting provisions annulled by Vrooman act—Not reinstated by 1896 amendment to section 6, article XI, constitution.—The provisions of the 1889 Los Angeles charter, in conflict with the Vrooman act, were annulled thereby, and were not reinstated by the amendment of 1896 to section 6, article XI of the constitution.—*Banaz v. Smith*, 133 Cal. 102, 65 Pac. 309.

20. No equities can prevail where jurisdiction lacking.—If jurisdiction is lacking, no equities asserted by the contractor can prevail.—*Beck v. Ransome-Crummey Co.* (Cal. App.), 184 Pac. 431.

21. Title of bond act amendment of 1891.—The effect of the bond act amendment of March 17, 1891, was to add an additional part to the Vrooman act in relation to a system of street improvement bonds, and its title is not violative of section 24, article IV of the constitution.—*Hellman v. Shoulters*, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057.

22. Amendment of June 26, 1911, to section 4 of bond act—Due process.—The amendment of June 26, 1911 (1204) to section 4 of the bond act as to conclusiveness of regularity by issue of bonds does not operate to make the issuance of the bonds conclusive evidence of the regularity of the performance of such steps in the proceedings as are necessary to constitute due process of law, or to comply with other constitutional requirements, as for example, uniformity of assessment or apportionment.—*Schaffer v. Smith*, 169 Cal. 764, 770, 147 Pac. 976.

23. Amendment without referring to previous amendment of same section.—Section 24 of the Vrooman act, authorizing the construction of sewers on the streets of a city, was probably amended so as to allow the

construction of sewers on rights of way over private property, by the act of 1893 (Stats. 1893, p. 172) although the amending act did not refer to the amendment of 1889 (Stats. 1889, p. 157), authorizing the construction of cesspools, notwithstanding section 24, article IV of the constitution.—*Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658.

24. Bond act of 1891—Not amendatory act within section 24, article IV, constitution.—The bond act of March 17, 1891, purporting to amend the Vrooman act is not an amendment within the meaning of section 24, article IV, of the constitution, which does not apply to amendments by implication, such as this.—*Hellman v. Shoulters*, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057.

25. Section 6½ amendment.—Section 6½ of the Vrooman act requiring a bond to enure to the benefit of laborers and materialmen on street work is constitutional.—*Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 185, 191, 138 Pac. 742.

26. Amendment of 1891, subdivision 12, section 7.—Subdivision 12 of section 7, as amended in 1891, is not unconstitutional on the ground that it did not prescribe the precise mode of assessing benefits.—*Greenwood v. Morrison*, 128 Cal. 350, 60 Pac. 971.

27. General law in force in sixth-class cities.—The Vrooman act is a general law, and in force in cities of the sixth class.—*Redondo Beach v. Cate*, 136 Cal. 146, 68 Pac. 586.

II. CONSTRUCTION.

28. Act repealed as to sidewalk provisions—Provisions re-enacted.
29. Repealed—Section 771 municipal incorporation act.
30. Section 5 did not supersede or repeal section 628 of the municipal incorporation act.
31. Amendment of 1893—Section 24—Failure to mention amendment of 1889.
32. Repeal by implication—Does not arise from mere duplication of section numbers.
33. In force in San Francisco.
34. Same—Superseded the consolidation act.
- 35, 36. San Jose charter—In case of inconsistency charter prevails.

II. CONSTRUCTION.

28. Act repealed as to sidewalk provisions—Provisions re-enacted.—This act was repealed, in so far as it related to sidewalks, by the act of March 9, 1909, Stats. 1909, p. 167. See Act 4953. The repealing act of 1909 was itself repealed in 1911, Stats. 1911, p. 618, and the repealing act expressly revived the provisions of this act relating to sidewalks. See, post, Act 4953.—*Los Angeles v. Leland*, 11 Cal. App. 302, 104 Pac. 717.

29. Repealed—Section 771 municipal incorporation act.—Section 771 of the general municipal incorporation act must be regarded as repealed by the Vrooman act in so far as inconsistent therewith.—*Millsap v. Balfour*, 154 Cal. 303, 97 Pac. 668.

30. Section 5 did not supersede or repeal section 628 of the municipal incorporation

act.—Section 5 of the Vrooman act did not supersede or repeal section 628 of the municipal incorporation act.—*Capron v. Hitchcock*, 98 Cal. 427, 33 Pac. 431.

31. Amendment of 1893—Section 24—Failure to mention amendment of 1889.—Notwithstanding the failure of the amendatory act of 1893 to refer to the amendment of 1889, that act amended section 24, so as to authorize sewers for drainage purposes over rights of way over private property granted or obtained for the purpose.—*Fleacher v. Prather*, 102 Cal. 413, 36 Pac. 658.

32. Repeal by implication—Does not arise from mere duplication of section numbers.—The implication of a repeal of the bond act amendment of March 17, 1891, which was sections 38 to 44 of the Vrooman act does not arise from the fact that the change of grade amending act of March 31, 1891, added sections 38 to 53 to the Vrooman act, thus duplicating sections in the same act.—*Hellman v. Shoulters*, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057.

33. In force in San Francisco.—The Vrooman act was in force in San Francisco when the case arose.—*Thomasson v. Ruggles*, 69 Cal. 465, 11 Pac. 20; also, *Thomasson v. Ashworth*, 73 Cal. 73, 14 Pac. 615.

34. Same—Superseded the consolidation act.—The Vrooman act superseded the consolidation act and became the governing law, as to all matters provided for by it, in the city and county of San Francisco.—*Anderson v. De Urioste*, 96 Cal. 404, 31 Pac. 266.

35. San Jose charter.—In case of inconsistency, charter prevails.—In view of the provisions of the San Jose charter (Stats. 1897, p. 592) making the Vrooman act a part thereof, where not inconsistent with its express provisions, where there is an inconsistency or a conflict the charter prevails.—*Ransom-Crummey Co. v. Bennett*, 177 Cal. 560, 563, 171 Pac. 304.

36. Same—Same.—The charter of San Jose relating to street improvements supersedes the Vrooman act in that city, whenever there is a conflict.—*Barber Asphalt Paving Co. v. Costa*, 171 Cal. 138, 141, 152 Pac. 296.

III. JURISDICTION AND POWERS.

37. Proceedings statutory—Rights and obligations exist and are determined by the statute.

38. Same—Statute must be strictly pursued.

39. Validity of proceedings—Does not depend upon record of, but actual notices and awards.

40. Determination of public interest or convenience, conclusive.

41. Jurisdiction of city council—Functions can not be delegated.

42. Same—Same—Supervision.

43. Power of municipality can not be surrendered or impaired.

44. Jurisdiction in street improvements limited and must be found in the statute.

45. Jurisdiction of city council can not be ousted by private contracts of the property owner with the contractor.

46. Disqualifications of members of city council through ownership of property.

47. General rules as to materials and manner of doing work—Section 6—Not jurisdictional.

48. Jurisdiction of board to order grading previously done—Credit given for work already done.

49. Same—But not to order grading already done to the satisfaction of the street superintendent.

50. Work “already done”—Question of fact for determination of street superintendent subject to appeal to council.

51. Improvement of accepted streets—Must be at city’s expense.

52. Same—Same—Section 20 subordinate to section 2.

53. Same—Expense of property owners—Must be under provisions of act.

54. Unaccepted streets—Improvement of macadamized street authorized.

55. Street crossings—Triangular lot.

56. Same—Termination of streets in others—Provisions as to “crossings” do not apply.

57. Sidewalk is part of street.

58. Inclusion of several streets—Overthrown only for fraud.

59. Same—Power of city council.

60. Same—Question committed primarily to city council.

61. Same—Same—Vrooman act same as act of 1872.

62. Same—Difference in width of streets does not affect power of city council.

63. Same—Jurisdiction of council to treat work as entirety.

64. Sewer construction—Liability of municipality.

65. Same—May be made by either district or front foot plan.

66. Same—Acts of council administrative.

67. Construction—Work to which applicable.

68. Improvement of two blocks separately—Intervening between graded blocks.

69. Viaduct across private right of way—Not authorized.

70. “Bridge”—“Viaduct”—Authorized under act.

71. “Tunnel”—Definition—Drainage and sewer purposes only.

72. Same—When not part of street.

73. Subgrade—Act authorizes grading to subgrade.

74. Repairs—Pavement of accepted street—Street never paved before.

III. JURISDICTION AND POWERS.

37. Proceedings statutory—Rights and obligations exist and are determined by the statute.—Proceedings for street improvement are purely statutory, and the rights and obligations of the parties must be determined under the terms of the statute, and the right of assessment and a lien exist solely by virtue of the statute.—*Ede v. Cuneo*, 126 Cal. 167, 58 Pac. 538.

38. Same—Statute must be strictly pursued.—All proceedings for work upon

streets, etc., in the municipalities of this state, under the Vrooman act, are purely statutory, and can only be conducted in the cases and after the manner provided in the statute, and the authority conferred thereby must be strictly pursued.—*Kelso v. Cole*, 121 Cal. 121, 53 Pac. 353.

39. Validity of proceedings—Does not depend upon record of, but actual notices and awards.—The validity of street work procedure, unless made mandatory by law, does not depend upon whether proof was made matter of record, but upon the fact that due notices and awards were in fact properly made.—*Stanwood v. Carson*, 169 Cal. 640, 147 Pac. 562.

40. Determination of public interest or convenience, conclusive.—The determination of the board of supervisors that the public interest or convenience requires the paving with bituminous rock of an unaccepted street already macadamized and in good order, is conclusive in the absence of fraud.—*San Francisco, etc., Co. v. Egan*, 146 Cal. 635, 80 Pac. 1076.

41. Jurisdiction of city council—Functions can not be delegated.—The function of the city council under the act to determine the general nature and character of the work can not be delegated.—*Haughawout v. Hubbard*, 131 Cal. 675, 63 Pac. 1078.

42. Same—Same—Supervision.—The function of the council is supervision, and the ultimate determination of the cost of the work and the amount of the tax to be assessed, but the performance of this function does not involve the necessity of determining of describing the details of the construction.—*Haughawout v. Hubbard*, 131 Cal. 675, 63 Pac. 1078.

43. Power of municipality can not be surrendered or impaired.—The power of a municipality to improve its streets is a delegated governmental power, which the municipality, either by ordinance or contract, can neither surrender nor impair.—*McNell v. South Pasadena*, 166 Cal. 153, 155, 135 Pac. 32, 48 L. R. A. (N. S.) 138.

44. Jurisdiction in street improvements limited, and must be found in the statute.—The jurisdiction of governing bodies of municipalities to adopt ordinances in relation to street improvements which either impose the burden of taxation upon the owners of property along the lines of such streets, or which are intended to relieve such owners from liability for such burdens, is a limited jurisdiction, and must be found within the terms of the act or acts investing such bodies with power in the matter.—*Raisch Improvement Co. v. Bonslett*, 28 Cal. App. 649, 153 Pac. 747.

45. Jurisdiction of city council can not be ousted by private contracts of the property owners with the contractor.—The jurisdiction of the city council can not be ousted by private contracts between the contractor and property owners, nor could the contractor be prevented thereby from enforcing an assessment for work done under the contract with the municipality.—*San Francisco Paving Co. v. Dubois*, 2 Cal. App. 42, 83 Pac. 72.

46. Disqualifications of members of city council through ownership of property.—Ownership of property subject to assessment does not disqualify a member of the city council from voting for the adoption of a resolution of intention to form an assessment district.—*Beale v. Santa Barbara*, 32 Cal. App. 235, 162 Pac. 657.

47. Rules as to materials and manner of doing work—Section 6—Not jurisdictional.—The provisions of section 6 are permissive, and not mandatory, and the prescribing of general rules as materials and manner of doing work is not a condition preceded to the jurisdiction of the city council to order street work when the materials and manner of doing the work is sufficiently specified in the order and contract.—*Santa Cruz, etc., Co. v. Heaton*, 105 Cal. 162, 38 Pac. 693.

48. Jurisdiction of board to order grading previously done—Credit given for work already done.—The board of supervisors are empowered under the act to order grading previously done by private contract, and the effect of its sanction is to allow the owner credit for the grading done.—*De Haven v. Berendes*, 135 Cal. 178, 67 Pac. 786.

49. Same—But not to order grading already done to the satisfaction of the street superintendent.—The board has no jurisdiction to order grading already done to the satisfaction of the street superintendent, or to include the cost thereof in the assessment.—*De Haven v. Berendes*, 135 Cal. 178, 67 Pac. 786.

50. Work "already done"—Question of fact for determination of street superintendent subject to appeal to council.—In a proceeding to do street work on a certain street except where already done, the question as to what is already, if any, is a question of fact to be determined by the superintendent of streets, subject to appeal to the council.—*San Francisco Paving Co. v. Dubois*, 2 Cal. App. 42, 83 Pac. 72.

51. Improvement of accepted streets—Must be at city's expense.—Accepted streets must be improved at the city's expense, and the property owners can not be assessed for new construction.—*Barber, etc., Co. v. Abrahamson*, 38 Cal. App. 109, 175 Pac. 490.

52. Same—Same—Section 20 subordinate to section 2.—The city council retains jurisdiction to order the improvement of an accepted street whenever the public interest or convenience may require, and the provision in section 20 of the act, requiring the city to make the improvement of accepted streets at the public expense is subordinate to this jurisdiction.—*Flickinger v. Fay*, 119 Cal. 590, 51 Pac. 855.

53. Same—Expense of property owners—Must be under provisions of act.—When the improvement of an accepted street is done at the expense of the property owners on the ground of public interest or convenience the work must be done under the provisions of the act.—*Flickinger v. Fay*, 119 Cal. App. 590, 51 Pac. 855.

54. Unaccepted streets—Improvement of macadamized street authorized.—The act authorizes the paving of a street with bituminous rock, even though already macadamized, and in good order, where the

street had not been accepted as a completed and fully constructed street.—San Francisco, etc., Co. v. Egan, 146 Cal. 635, 80 Pac. 1076.

55. Street crossings—Triangular lot.—The triangular block, having a frontage of one hundred and fifty feet on an intersecting street and cornering with an acute angle on the street to be improved was properly assessed for the improvement of the crossing of said last named street with the first named street.—Martin v. Wagner, 120 Cal. 623, 63 Pac. 167.

56. Same—Termination of streets in others—Provisions as to "crossings" do not apply.—Where streets terminate in other streets and do not cross the provisions of the act as to assessments for work on street "crossings" does not apply.—San Francisco Paving Co. v. Dubois, 2 Cal. App. 42, 83 Pac. 72.

57. Sidewalk is part of street.—A sidewalk is a part of the street.—Martinovich v. Wooley, 128 Cal. 141, 60 Pac. 760.

58. Inclusion of several streets—Overthrown only for fraud.—The determination of the city council with reference to the inclusion of several streets in one improvement will not be overthrown except for fraud or abuse of discretion.—Remillard v. Blake & Bilger Co., 169 Cal. 277, 284, 146 Pac. 634, Ann. Cas. 1916D, 451.

59. Same—Power of city council.—Under the Vrooman act municipal authorities have discretionary power to improve, under one general improvement, by the front-foot assessment plan, several streets.—Remillard v. Blake & Bilger Co., 169 Cal. 277, 146 Pac. 634, Ann. Cas. 1916D, 451.

60. Same—Question committed primarily to city council.—Whether or not one or more streets should form a unit for improvements is a question committed primarily to the discretion of the city council.—Remillard v. Blake & Bilger Co., 169 Cal. 277, 284, 146 Pac. 634, Ann. Cas. 1916D, 451.

61. Same—Same—Vrooman act same as act of 1872.—Section 2 of the Vrooman act is substantially the same in effect, so far as the discretionary power of the city authorities to improve several streets by one award and contract is concerned, as the street law of 1872 (Stats. 1872, p. 804).—Remillard v. Blake & Bilger Co., 169 Cal. 277, 281, 146 Pac. 634, Ann. Cas. 1916D, 451.

62. Same—Difference in width of streets does not affect power of city council.—The fact that some of the streets are wider than the others does not affect the power of the council to order the work done upon several streets under one contract.—Remillard v. Blake & Bilger Co., 169 Cal. 277, 284, 146 Pac. 634, Ann. Cas. 1916D, 451.

63. Same—Jurisdiction of council to treat work as entirety.—If the various streets, or, rather, the portions thereof to be improved, are so related that the improvement of them as a whole may fairly be deemed to be a benefit to all the property fronting upon such parts, the council does not exceed its jurisdiction by treating the work on the several streets as an entirety, and including it as a single proceeding.—Remillard v.

Blake & Bilger Co., 169 Cal. 277, 283, 146 Pac. 634, Ann. Cas. 1916D, 451.

64. Sewer construction—Liability of municipality.—Under the Vrooman act the city is liable for sewer construction only when it has specially contracted to pay therefor out of its funds, or when the assessment upon any lot is in excess of fifty per cent of its assessed value, in which case, it is liable for the excess.—McBean v. San Bernardino, 96 Cal. 183, 31 Pac. 49.

65. Same—May be made by either district or front-foot plan.—Under the Vrooman act sewer construction may be either by district or front-foot plan.—White v. Harris, 103 Cal. 528, 37 Pac. 502.

66. Same—Acts of council administrative.—In providing a system of sewers for a district, or in letting the contract, or in providing for such supervision as will insure proper performance the council acts in an administrative capacity, not judicially.—Belser v. Hoffschneider, 104 Cal. 455, 38 Pac. 312.

67. Construction—Work to which applicable.—The Vrooman act applies to any contract for doing any work authorized by the act, irrespective of the character of the street, or of the mode of paying for the work.—Santa Cruz, etc., Co. v. Broderick, 113 Cal. 628, 45 Pac. 863.

68. Improvement of two blocks separately—Intervening between graded blocks.—A city council is empowered under the act to order the improvement of one of two ungraded blocks intervening between graded blocks, against the protest of a majority of the property owners, and is not compelled to improve both ungraded blocks in the same proceeding, but may do so separately.—Smith v. Hazard, 110 Cal. 145, 42 Pac. 465.

69. Viaduct across private right of way—Not authorized.—The Vrooman act does not authorize the construction, at the expense of a local assessment district, of a viaduct over a private right of way to connect two public streets.—Bailey v. Hermosa Beach, 30 Cal. App. Dec. 959.

70. "Bridge"—"Viaduct"—Authorized under act.—A viaduct for the purpose of carrying a street across a ravine is authorized under the Vrooman act, and being in fact a "bridge" it is immaterial that it was called a "viaduct" in the improvement proceeding, the two terms being almost exact equivalents.—Bailey v. Hermosa Beach (Cal.), 192 Pac. 712.

71. "Tunnel"—Definition—Drainage and sewer purposes only.—The word "tunnel" employed in the Vrooman act and the amendments thereto refers to such as are intended for drainage or sewer purposes, and that act does not authorize a municipality to construct a tunnel under a public street solely for purposes of public travel.—Thompson v. Hance, 174 Cal. 572, 575, 163 Pac. 1021.

72. Same—When not part of street.—A tunnel which has no immediate connection between its terminal portals with the surface above and does not follow the lines of a street throughout its entire length is not

a part of the street within the purview of the Vrooman act.—Thompson v. Hance, 174 Cal. 572, 577, 163 Pac. 1021.

73. Subgrade—Act authorizes grading to subgrade.—The act does not preclude the establishment of a subgrade, and when such subgrade has been established it is the official grade for the purposes of street work under the act.—Palmer v. Burnham, 120 Cal. 364, 52 Pac. 644, 1080.

74. Repairs—Pavement of accepted street —Street never paved before.—The pavement of an accepted street, never paved before, is not a repair of the street within the meaning of section 25 of the act, but is an original improvement within the general terms of the act.—Santa Cruz, etc., Co. v. Broderick, 113 Cal. 628, 45 Pac. 863.

IV. JURISDICTIONAL FACTS.

a. Resolution of intention.

- 75. Initial step in proceedings.
- 76. Basis of jurisdiction of city council.
- 77. Resolution is jurisdictional—Not necessary when city does work.
- 78. Resolution is basis of jurisdiction to order work—Description of work.
- 79. Need not declare necessity of work.
- 80. District plan—Declaration that work is more than local and ordinary benefit—Sufficient.
- 81. Recital as to necessity of work and manner of assessment not required.
- 82. Single improvement.
- 83. Same—Work of various kinds on other streets.
- 84. Work not included, not authorized.
- 85, 85a. Description of work.
- 86, 87. Same—Materials for curbs and gutters.
- 88. Not fatally defective for failure to describe the kind of wood to be used in bridges.
- 89. Triangular space at intersection of three streets — Resolution insufficient to support assessment.
- 90. Work must be defined with common certainty.
- 91-93. Sufficient description of work.
- 94-96. Insufficient description of work.
- 97. Same—Improper delegation of power.
- 98. Description of work—Certain exceptions—Not a delegation of power to the superintendent.
- 99. Exception as to work already done.
- 100. Street railroad tracks.
- 101. "Describing" the work.
- 102. Same—Description need not be minute and precise as in the plans and specifications.
- 103. Recital of names of trustees voting for it not required.
- 104. Waiver of irregularities.
- 105. Same—Five per cent reduction sufficient consideration.
- 106. Approval.

b. Publication and posting of resolution of intention.

- 107. Publication jurisdictional.
- 108. Publication—Construction of section 34.

II Gen. Laws—89

- 109. Posting and publication by the clerk precedent to posting and publication of notice by the street superintendent.
- 110. Publication for two consecutive days sufficient.
- 111. Date of passage need not be published.
- 112. Same—Misprint immaterial.
- 113. Designation of newspaper.
- 114. Newspaper other than that named by the city council.
- 115. "Publication"—Place of.
- 116. Same—Same—Place on line between adjoining cities.
- 117. Publication and posting, proof of.
- 118. Posting—"On or near the chamber door" of council chamber.
- 119. Same—Same—Significance and effect of use of word "near."

c. Posting and publication of notice of resolution of intention.

- 120. Posting and publication by street superintendent sufficient.
- 120a. Notices along line of improvement—Distances measured longitudinally.
- 120b. Posting notices—Three must be posted on block one hundred feet long or less.
- 120c. Same—Not cured by showing of regularity of proceeding.
- 120d. Same—Need not be posted where no work.
- 120e. Same—Street crossings disregarded.
- 120f. Same—Exceptions as to work already done.
- 120g. "Thereupon"—Defined and construed.
- 121. Obscurities not material.
- 121a. Failure to refer to the resolution for further particulars.

d. Plans and specifications.

- 122. Description of work must be consistent with resolution of intention.
- 123. General plans and specifications attempted to be adopted by resolution.
- 124. May be adopted by ordinance.
- 125. Must be accompanied by estimate.
- 126. Not invalidated because assuming that sidewalk grades have been established.
- 127. Not containing unwarranted delegation of power.
- 128. Authority of street superintendent as to contents and mixing of concrete.
- 129. Need not be set out at length in resolutions—References to same on file sufficient.
- 130. Work to be done to the satisfaction of city trustees—Specifications not invalidated by condition.
- 131. Not invalidated—Certain provisions in the specifications.
- 132. Estimate of work not required except where bonds are to be issued.

- 133. Diagram—Time to be made and filed.
- 134. Same—Filed in time.

e. Protests.

- 135. Time of filing—May be filed before completion of publication.
- 136. Same — Premature filing — Protestants can not complain.
- 137. Effect of.
- 138. Allowed — Unimproved blocks — Jurisdiction suspended.
- 139. Whether majority sign protest is question for board.
- 140. Same—Unless disallowed, is bar to further proceedings.
- 140a. Six months' bar—Right belongs to majority fronting on work not on street.
- 141. Work ordered after protest is done without jurisdiction.
- 142. Right not affected by later provisions of section.
- 143. Not filed in time gives no jurisdiction.
- 144. Part of work.
- 145. Cotenant may sign.
- 145a. Failure of clerk to file affidavit of mailing under section 3.

f. Resolution ordering work.

- 146. Order for work by resolution, or ordinance equivalent thereto.
- 147. Necessary preliminary to award of contract.
- 148. Jurisdiction of board—Publication and posting of resolution of intention—Time.
- 149. Publication—Certificate of clerk not required.
- 150. Clerk's certificate not required.
- 151. Same—Evidence of passage.
- 152. Premature resolution.

g. Resolution calling for sealed proposals.

- 153. Failure to limit time for proposals —Assessment not invalidated.
- 154. Time fixed by the clerk—Award not invalidated.
- 155. Same—Same—No presumption that any one was prevented from bidding.
- 156. Advertisement for bids—Publication.
- 157. Same—Readvertisement not required unless time for original bids limited.

h. Bond accompanying bid.

- 158. Preliminary bond accompanying bid—Irregularity not jurisdictional.
- 159. Deposit—Recovery where proceedings are illegal.

i. Opening bids.

- 160. Requirement of statute must be complied with—Otherwise assessment is invalid.

j. Award.

- 161. Approval by three-fourths of trustees sufficient without the president's approval.
- 162. Resolution of award—Certificate of clerk not required.
- 163. May be approved either by mayor or three fourths of council.

- 164. Publication of notice of award.
- 165. Same—Compliance with the order jurisdictional.
- 166. Same—Same—Could not be corrected on appeal.
- 167. Same—Same—Same — Assessment could not be validated.

IV. JURISDICTIONAL FACTS.

a. Resolution of intention.

75. Initial step in proceedings.—The resolution of intention is the initial step, and by it alone the council acquires jurisdiction to subsequently make the assessment and order the work done.—Schwiesan v. Mahon, 128 Cal. 116, 60 Pac. 683; McDonald v. Gillon, 134 Cal. 330, 66 Pac. 314; Lambert v. Cummings, 2 Cal. App. 642, 84 Pac. 266.

76. Basis of jurisdiction of city council.—Jurisdiction to proceed under the Vrooman act to improve a street rests on a resolution of intention in due form and properly adopted, and if no such resolution was passed substantially as required by the act the municipal authorities have no power to let a contract, make an assessment or take any of the necessary steps creating a valid lien on property.—Pacific Paving Co. v. Verso, 12 Cal. App. 362, 107 Pac. 590.

77. Resolution is jurisdictional—Not necessary where city does work.—The resolution of intention is jurisdictional and necessary to bind property, but is not necessary where the work is done by the city at its own expense.—Osburn v. Stone, 170 Cal. 480, 150 Pac. 367.

78. Resolution is basis of jurisdiction to order work—Description of work.—The resolution of intention is the basis of the jurisdiction of the city council to proceed to order the work, and the requirement that the resolution shall "describe" the work proposed to be done is for the purpose of enabling the owners of property which would be liable for the cost of the improvement, to determine whether they will file objections and so postpone the work.—Fay v. Reed, 128 Cal. 357, 60 Pac. 927.

79. Need not declare the necessity of the work.—The resolution of intention to construct a sewer need not declare necessity of the work.—Banaz v. Smith, 133 Cal. 102, 65 Pac. 309.

80. District plan—Declaration that work is more than local and ordinary benefit—Sufficient.—A declaration in the resolution of intention that in the opinion of the council the proposed work is of more than local or ordinary public benefit, that an assessment district shall be formed and that the boundaries of the district to be benefited and assessed to pay the cost of such works shall be as described, is a sufficient declaration of the material requirements under the act.—Beale v. Santa Barbara, 32 Cal. App. 235, 162 Pac. 657.

81. Recital as to necessity of work and manner of assessment not required.—The resolution of intention need not declare that the improvement is necessary, nor describe the manner of assessment.—Banaz v. Smith, 133 Cal. 102, 65 Pac. 309.

82. Single improvement.—Certain work described in a resolution of intention to be done on Flower street, Los Angeles, held to be a single improvement, and not two distinct lines of work.—*Pepper v. Neiman*, 4 Cal. App. 55, 87 Pac. 286.

83. Same.—Work of various kinds on other streets.—The fact that a resolution of intention included work of various kinds upon other streets, does not render it invalid.—*San Francisco, etc., Co. v. Egan*, 146 Cal. 635, 80 Pac. 1076. To same effect: *Bates v. Twist*, 133 Cal. 52, 70 Pac. 1023.

84. Work not included, not authorized.—A resolution of intention to order a street macadamized gives no authority to include in the contract a provision for rock gutters.—*Partridge v. Lucas*, 99 Cal. 519, 33 Pac. 1082.

85. Description of work.—The resolution of intention must intelligibly describe the work to be done in all and each of its material parts, and a failure to do so vitiates it, and voids the subsequent contract and assessment.—*Bay Rock Co. v. Bell*, 133 Cal. 150, 65 Pac. 299.

85a. Same.—A resolution of intention which recites that the work to be done consists of the construction of granite or artificial stone curbing in a specified street, is insufficient as a description of the work within the meaning of section 3, and does not confer jurisdiction.—*San Jose, etc., Co. v. Auzares*, 106 Cal. 498, 39 Pac. 859.

86. Same.—Materials for curbs and gutters.—A failure to intelligibly describe or refer to the materials to be used for proposed curbs and gutters voids the resolution, and the same will not support a contract or an assessment, notwithstanding all other parts of the work are properly described.—*Bay Rock Co. v. Bell*, 133 Cal. 150, 65 Pac. 299.

87. Same.—Same.—The failure to describe intelligibly the materials to be used in curbs and gutters is not cured by an actual description in the specifications, where no parts of such description were referred to in the resolution.—*Bay Rock Co. v. Bell*, 133 Cal. 150, 65 Pac. 299.

88. Not fatally defective for failure to describe the kind of wood to be used in bridges.—A resolution of intention provided that "wooden bridges" be constructed at each end of the crosswalks, is not fatally defective for failure to describe the kind of wood.—*Remillard v. Blake & Bilger Co.*, 169 Cal. 277, 286, 146 Pac. 634, Ann. Cas. 1916D, 451.

89. Triangular space at intersection of three streets.—Resolution insufficient to support assessment.—A resolution of intention which limited the work to be done to the intersection of three streets which consisted of a triangular space, insignificant in size compared with the diagram and plat annexed to the assessment, was insufficient to support the latter.—*Pacific Paving Co. v. Verso*, 12 Cal. App. 362, 107 Pac. 590.

90. Work must be defined with common certainty.—The resolution of intention should define the district to be improved at least to a common certainty so that a per-

son of ordinary understanding would know what is proposed to be done.—*Pacific Paving Co. v. Verso*, 12 Cal. App. 362, 107 Pac. 590.

91. Sufficient description of work.—A resolution of intention describing the work as "a pavement (consisting of a one-and-one-half-inch asphalt wearing surface and a cement concrete base)," to be constructed according to plans and specifications on file, to which reference is made for further particulars, the plans and specifications being made a part of the resolution, is sufficient, without specifying the thickness of the concrete base, or the kind of sand, quality of cement, character of rock, and proportions of the mixture.—*Beale v. Santa Barbara*, 32 Cal. App. 235, 162 Pac. 657.

92. Same.—The decision of the court in *Haughwout v. Raymond*, 148 Cal. 311, 83 Pac. 53, as to the extent the court will go in declaring the resolution of intention void for insufficiency of description of the work proposed to be done approved and followed in the present case.—*Barber, etc., Co. v. Crist*, 21 Cal. App. 1, 130 Pac. 435.

93. Same.—The description of the work in the resolution of intention in the present case was held sufficient, on the authority of *Haughwout v. Hubbard*, 131 Cal. 675, 63 Pac. 1078.

94. Insufficient description of work.—A resolution of intention to sewer certain streets which does not mention the material to be used or the number of branch sewers, or the character of the "automatic flushing apparatus," confers no jurisdiction to order the work.—*Williamson v. Joyce*, 137 Cal. 107, 69 Pac. 854.

94a. Same.—A resolution of intention to do certain street work including "suitable drains and inlets are to be constructed at all intersecting street crossings, to carry the surface water of intersecting streets and of Market street into the main branch sewer running along said Market street," without specifying the number or size or character or kind of such drains or inlets, is fatally defective for want of such a description of the work as the act requires.—*Fay v. Reed*, 123 Cal. 357, 60 Pac. 927.

95. Same.—A resolution of intention to sidewalk and curb a specified street within stated limits, without specifying the kind of materials to be used, is insufficient as to the description of the work, is void, and a complaint in an action to foreclose the assessment lien in such case, based on such void resolution of intention fails to state a cause of action.—*Crouse v. Barrows*, 156 Cal. 154, 103 Pac. 894.

96. Same.—The description of the work held, in this case, insufficient in failing to prescribe the kind or quality of the rock to be used.—*Lambert v. Cummings*, 2 Cal. App. 642, 84 Pac. 266.

97. Same.—Improper delegation of power.—A resolution of intention which describes the work to be done as the work according to plans and profile in the office of the city engineer and specifications on file in the office of the city clerk, which specifications

provided for culverts, without specifying the material, "as the street superintendent shall direct," is both an insufficient description and an improper delegation of power to the street superintendent.—*Grant v. Barber*, 135 Cal. 188, 67 Pac. 127.

98. Description of work.—Certain exceptions.—Not a delegation of power to the superintendent.—A resolution of intention to do work described except "where not already" so done, and excepting work required by law to be done by a street railroad occupying the street with its tracks, leaves nothing to the discretion of the street superintendent, and is not invalid as an unlawful delegation of power to him.—*Reid v. Clay*, 134 Cal. 207, 66 Pac. 262.

99. Exception as to work already done.—The resolution of intention is not invalid because it excepts portions of the street already done by work of the same class by the abutting property owner.—*San Francisco, etc., Co. v. Egan*, 146 Cal. 635, 80 Pac. 1076.

To the same effect: *McDonald v. Conniff*, 99 Cal. 386, 34 Pac. 71; *Perine v. Erzgraber*, 102 Cal. 234, 36 Pac. 585; *Dowling v. Hibernia, etc., Soc.*, 143 Cal. 425, 77 Pac. 141.

100. Street railroad tracks.—A resolution of intention is not defective because it excepts the portion of the street which the street railroad is required by law to be kept in order.—*San Francisco, etc., Co. v. Egan*, 146 Cal. 635, 80 Pac. 1076.

101. "Describing" the work.—The requirement as to "describing" the work applies to all and each of its material parts.—*Fay v. Reed*, 128 Cal. 357, 60 Pac. 927.

102. Same.—Description need not be minute and precise as in the plans and specifications.—The description of the improvements in the resolution of intention is not required to be so minute and precise as would be proper in plans and specifications.—*Fay v. Reed*, 128 Cal. 357, 60 Pac. 927.

103. Recital of names of trustees voting for it not required.—The act does not require publication of names of trustees voting for it in resolution of intention as posted.—*King v. Lamb*, 117 Cal. 401, 49 Pac. 561.

104. Waiver of irregularities.—A defense to a street assessment based upon illegality in the proceedings under the resolution of intention may be waived.—*Remillard v. Blake & Bilger Co.*, 169 Cal. 277, 283, 146 Pac. 634, Ann. Cas. 1916D, 451.

105. Same.—Five per cent reduction sufficient consideration.—An agreement of property owners with a contractor of street work waiving irregularities in the proceedings in consideration of a five per cent reduction of the total amount, provided payment of the assessment is made in ninety days, is held to be a sufficient consideration for the waiver, and that the failure of the property owners to make payment as agreed so as to obtain the reduction, did not impair the consideration for the waiver.—*Remillard v. Blake & Bilger Co.*, 169 Cal. 277, 285, 146 Pac. 634, Ann. Cas. 1916D, 451.

106. Approval.—The approval of the mayor is not required where the resolution of intention is passed by a three-fourths vote of the board.—*McDonald v. Dodge*, 97 Cal. 112, 31 Pac. 909.

b. Publication and posting of resolution of intention.

107. Publication jurisdictional.—The publication of the resolution of intention is jurisdictional, and a condition precedent to ordering the work.—*Gay v. Engebretsen*, 158 Cal. 21, 109 Pac. 876.

108. Publication.—Construction of section 34.—Section 34 of the act is to be construed to require publication of the resolution in every consecutive issue of the newspaper, and no more, for the specified time, whether such newspaper is daily, semi-weekly or weekly, and a failure to publish on an intervening Sunday is not required where the newspaper was not issued on Sunday.—*Perine v. Lewis*, 128 Cal. 236, 60 Pac. 422.

109. Posting and publication by clerk condition precedent to posting and publication of notice by street superintendent.—The publication and posting of the resolution of intention by the clerk for the time named in section 3 of the Vrooman act, is a condition precedent to the authority of the superintendent of streets to post and publish the notices required.—*Porphyry Paving Co. v. Ancker*, 104 Cal. 340, 37 Pac. 1050.

To same effect: *California Improvement Co. v. Reynolds*, 123 Cal. 88, 55 Pac. 802.

110. Publication for two consecutive days sufficient.—A resolution of intention published on two consecutive days is sufficient.—*Smith v. Hazard*, 110 Cal. 145, 42 Pac. 465.

111. Date of passage need not be published.—The date of the passage of the resolution of intention is not a part of the resolution, and is not required to be published therewith.—*Vincent v. Pacific Grove*, 102 Cal. 405, 36 Pac. 773.

112. Same.—Misprint immaterial.—It is immaterial that the true date of passage of the resolution of intention was misprinted in the publication thereof, where both the resolution of intention and the resolution ordering work both, in fact, showed the true date of passage.—*Vincent v. Pacific Grove*, 102 Cal. 405, 36 Pac. 773.

113. Designation of newspaper.—It is sufficient if the resolution of intention itself designates the newspaper in which it is to be published, and a separate order is not necessary.—*King v. Lamb*, 117 Cal. 401, 49 Pac. 561.

114. Newspaper other than that named by the city council.—Publication of the resolution of intention in a newspaper other than that named by the city council is, in effect, no publication, and can not give jurisdiction to order the work.—*Chase v. Treasurer*, 122 Cal. 540, 55 Pac. 414.

115. "Publication"—Place of.—Where the place of publication of the official newspaper is on the boundary line between two cities, the presses being in the city

where the street work is done, and the business office in the adjoining city, it is held that for the purposes of the act, "publication" is made in the proper city.—*Stanwood v. Carson*, 169 Cal. 640, 147 Pac. 562.

116. Same—Same—Place on the line between adjoining cities.—The fact that the newspaper in which notices of street improvement were published, was printed in a building partly in the city and partly in one adjoining, the offices and editorial rooms being in the latter and the presses in the former, is held not to have invalidated such publication, the newspaper being widely circulated in the city where the work was done.—*Stanwood v. Carson*, 169 Cal. 640, 147 Pac. 562.

117. Publication and posting, proof of.—The introduction in evidence of the assessment, diagram, warrant and engineer's certificate made prima facie evidence of the regularity and correctness of the proceedings, including the proper publication and posting of the resolution of intention, disregarding the affidavit of such publication and posting.—*California Improvement Co. v. Reynolds*, 123 Cal. 88, 55 Pac. 802.

118. Posting—"On or near the chamber door" of council chamber.—The provisions of the Vrooman act are fully complied with in the matter of posting the resolution of intention and notice "on or near the chamber door" of the city council, by posting on the board used for the purpose, in plain view in a portico leading to and about twenty feet from the main entrance to the city hall in which was the council chamber.—*Haughwout v. Percival*, 161 Cal. 491, Ann. Cas. 1913D, 115, 119 Pac. 647.

119. Same—Same—Significance and effect of use of word "near."—The use by the legislature of the word "near" necessarily left to the officials conducting the posting a measure of latitude.—*Haughwout v. Percival*, 161 Cal. 491, Ann. Cas. 1913D, 115, 119 Pac. 467.

c. Posting and publication of notice of resolution of intention.

120. Posting and publication by street superintendent sufficient.—Where resolution of intention was published and posted and published on the tenth and eleventh of September, commencement of publication and posting by the superintendent on the eleventh was premature, but where it was published on the twelfth, it will be deemed to have commenced on that date, and when publication was continued to and including the seventeenth, it was sufficient, and the fact that it was not published on an intervening Sunday, when no publication of the newspaper was made, its sufficiency was not impaired, publication on six separate days not being required.—*California Improvement Co. v. Reynolds*, 123 Cal. 88, 55 Pac. 802.

120a. Notices along line of improvement—Distance measured longitudinally.—The provision as to posting notices along the line of the improvement are construed so

as to require the distance to be measured longitudinally, and when the improvement alternates along each side of the roadway the diagonal measurements more than one hundred feet apart are not to be considered.—*Pepper v. Neiman*, 4 Cal. App. 55, 87 Pac. 286.

120b. Posting notices—Three must be posted on block one hundred feet long or less.—Under the Vrooman act the posting of at least three notices along the line of improvement of a single city block was a jurisdictional prerequisite to the validity of the contract, even though the block were only one hundred feet or less in length, and a complaint to enforce the assessment lien alleging the posting of only two notices fails to state a cause of action.—*Barber, etc., Co. v. Costa*, 171 Cal. 138, 152 Pac. 296.

120c. Same—Not cured by showing regularity of proceedings.—Failure to post the notices required by the act is not cured by allegations showing regularity of proceedings, section 12 creating a mere rule of evidence, and not of pleading, and not obviating the necessity of alleging the facts necessary to give the council jurisdiction.—*Barber, etc., Co. v. Costa*, 171 Cal. 138, 152 Pac. 296.

120d. Same—Need not be posted where no work.—The requirement as to posting notice of street work along street to be improved is clearly to give interested persons a chance to know what was being done and enable them to appear and object, if they desired to do so, and it would be idle to put up notices where none were entitled to object, and this is not required.—*Sacramento Paving Co. v. Anderson*, 1 Cal. App. 672, 82 Pac. 1069.

120e. Same—Street crossings disregarded.—Where the work is the grading of a street for several blocks it is sufficient that notices be posted at intervals of three hundred feet, regardless of street crossings.—*Miller v. Mayo*, 88 Cal. 568, 26 Pac. 364.

120f. Same—Exceptions as to work already done.—The line of a proposed improvement, within the meaning of the act, is precisely the same as if an exception as to "granite curbs, where not already laid," and paving the roadway "with bituminous rock, where not already so paved," had not been made, and the posting of notices along such line at the statutory intervals was proper and sufficient, notwithstanding such exceptions.—*Dowling v. Hibernia, etc., Soc.*, 143 Cal. 425, 77 Pac. 141.

To the same effect: *San Francisco, etc., Co. v. Egan*, 146 Cal. 635, 80 Pac. 1076.

120g. "Thereupon"—Defined and construed.—The word "thereupon" in the act requiring the posting of notices along the line of the proposed improvement is not to be construed so as to require such posting immediately after publication of the resolution of intention.—*Porphyry Paving Co. v. Ancker*, 104 Cal. 340, 37 Pac. 1050.

121. Obscurities not material.—Obscurities in the notice posted by the street su-

perintendent, not misleading, are not material.—*Warren v. Russell*, 129 Cal. 381, 62 Pac. 75.

121a. Failure to refer to the resolution for further particulars.—Where the notice as published set out the resolution in full, with its date and the fact of its passage, it is not defective because it omits to refer to the resolution for further particulars.—*Schmidt v. Market, etc., Co.*, 90 Cal. 37, 27 Pac. 61; *Perine v. Erzgraber*, 102 Cal. 234, 36 Pac. 585.

d. Plans and specifications.

122. Description of work must be consistent with resolution of intention.—If plans and specifications are ordered and prepared the description of the work therein must conform to and be consistent with that in the resolution of intention.—*Fay v. Reed*, 128 Cal. 357, 60 Pac. 927.

123. General plans and specifications attempted to be adopted by resolution.—The board of trustees are empowered under the act to adopt as special plans and specifications the general plans and specifications theretofore attempted to be adopted by resolution and not by ordinance.—*Burnham v. Abrahamson*, 21 Cal. App. 248, 131 Pac. 338.

124. May be adopted by resolution.—Plans and specifications may be adopted by resolution, and need not be by ordinance.—*Santa Cruz, etc., Co. v. Heaton*, 105 Cal. 162, 38 Pac. 693.

125. Must be accompanied by estimate.—The jurisdiction of the council to order the work is not affected by any defects in the specifications prepared by the engineer if the latter has complied with the essential condition that they must be accompanied by an estimate definitely determining the amount of the cost.—*Haughwout v. Hubbard*, 131 Cal. 675, 63 Pac. 1078.

126. Not invalidated because assuming that sidewalk grades have been established.—Specifications for sidewalks are not invalidated because they assume that the sidewalk grades have been established, there being no showing in the record that the truth is otherwise.—*Burnham v. Abrahamson*, 21 Cal. App. 248, 131 Pac. 338.

127. Not containing unwarranted delegation of power.—Specifications not invalid as containing an unwarranted delegation of power to the superintendent of streets.—*Burnham v. Abrahamson*, 21 Cal. App. 248, 131 Pac. 338.

128. Authority of street superintendent as to contents and mixing of concrete.—The fact that the street superintendent was authorized in the specifications with reference to the concrete to change the proportions of sand and rock and determine the number of revolutions of the drum for mixing each batch of concrete, did not invalidate the proceedings.—*Thorts v. Byxbee*, 34 Cal. App. 226, 167 Pac. 166.

129. Need not be set out at length in resolutions.—Reference to same on file sufficient.—It is not necessary to set out at

length the specifications in the resolution of intention or the resolution ordering the work, and it is sufficient if reference is made therein to such specifications on file in the clerk's office, and to the ordinance prescribing the same.—*McQuiddy v. Worwick, etc., Co.*, 160 Cal. 9, 116 Cal. 67.

To the same effect: *Chase v. Trout*, 146 Cal. 367, 80 Pac. 81.

130. Work to be done to satisfaction of city trustees.—Specifications not invalidated by condition.—A provision in the specifications that the work was to be done to the satisfaction of the city trustees instead of to the satisfaction of the street superintendent, as the act provides, does not invalidate the assessment, when the contract contains the proper provision, and the street superintendent actually performed the proper supervision.—*Los Angeles, etc., Co. v. Los Angeles, etc., Co.*, 181 Cal. 685, 186 Pac. 593.

131. Not invalidated.—Certain provisions in the specifications of a street improvement held not to invalidate a contract for the work.—*Stanwood v. Carson*, 169 Cal. 640, 649, 147 Pac. 562.

132. Estimate of work not required except where bonds are to be issued.—The Vrooman act makes no provision for an estimate of the cost of the work to be made prior to the adoption of the resolution of intention, except when serial bonds are to be issued.—*Sacramento Paving Co. v. Anderson*, 1 Cal. App. 672, 82 Pac. 1069.

133. Diagram — Time to be made and filed.—The fact that the diagram of the district was not made and approved before the letting of the contract and the doing of the work does not show a violation of the statute, where the district was described in the resolution of intention, and the diagram was made in time for the assessment.—*Banaz v. Smith*, 133 Cal. 102, 65 Pac. 309.

134. Same.—Filed in time.—When the district was described in the resolution of intention and the diagram was on file in time for the assessment, the fact that it was not made and approved before the letting of the contract and doing of the work does not show violation of the act.—*Banaz v. Smith*, 133 Cal. 102, 65 Pac. 309.

e. Protests.

135. Time of filing.—May be filed before completion of publication.—The act is to be construed as limiting the time to file protests to the ten day period stated, and not as prohibiting the filing of the protest at any time before the expiration of such period, even before the completion of the publication.—*Thomason v. Carroll*, 132 Cal. 148, 64 Pac. 262.

136. Same — Premature filing.—Protestants can not complain.—Where a protest has been received and acted upon, the owners can not be heard to say that they filed the protest too soon, nor can the board be heard to dispute the binding force of their act.—*Thomason v. Carroll*, 132 Cal. 151, 64 Pac. 262.

137. Effect of.—The effect of the filing of the protest and objection of the owners of a majority of the frontage is not only to suspend the jurisdiction of the board to proceed with the work for six months, but to end such jurisdiction altogether, and require the passage and publication of a new resolution of intention to regain it.—*Pacific Paving Co. v. Gray*, 136 Cal. 373, 68 Pac. 1028.

138. Allowed—Unimproved blocks—Jurisdiction suspended.—In the case provided for in section 3 that the protest shall not stay the proceedings unless the council shall deem proper, where there are not more than two unimproved blocks on the street, the allowance of the protest has the same effect as if no exception had been made, and the board loses jurisdiction to proceed without a new resolution of intention.—*Pacific Paving Co. v. Sullivan Estate Co.*, 137 Cal. 261, 70 Pac. 86.

139. Whether majority sign protest is question for board.—Whether the objection and protest was signed by a majority of the frontage is a question for the board to determine.—*Pacific Paving Co. v. Gray*, 136 Cal. 373, 68 Pac. 1028.

140. Unless disallowed is bar to further proceedings.—Unless the objection be disallowed by the board, because, in the judgment of the board it is not signed by the owners of a majority of the frontage, further proceedings are barred.—*Pacific Paving Co. v. Gray*, 136 Cal. 373, 68 Pac. 1028.

140a. Six months' bar—Right belongs to majority fronting on work, not on street.—The Vrooman act does not give to the owners of a majority of the frontage on a street the right to bar the work for six months, but the right is given the owners of a majority fronting on the work or improvement.—*Remillard v. Blake & Bilger Co.*, 169 Cal. 277, 285, 146 Pac. 634, Ann. Cas. 1916D, 451.

141. Work ordered after protest is done without jurisdiction.—Work done after protest, without new resolution of intention, is done without jurisdiction and creates no liability against property owners.—*Pacific Paving Co. v. Gray*, 136 Cal. 373, 68 Pac. 1028.

142. Right not affected by later provisions of section.—The right to protest is not affected by the later provision of the section that the council may, under certain circumstances, disregard the objections.—*Thomason v. Carroll*, 132 Cal. 151, 64 Pac. 262.

143. Not filed in time gives no jurisdiction.—A protest not filed within the statutory ten days is of no consequence, and gives no jurisdiction in the premises to the board of supervisors.—*Warren v. Russell*, 129 Cal. 381, 62 Pac. 75.

144. Part of work.—A protest against part of the work is sufficient as to that part, although it does not include all the work.—*Los Angeles, etc., Co. v. Los Angeles*, 106 Cal. 156, 39 Pac. 535.

145. Cotenant may sign.—A cotenant of abutting property is impliedly authorized

to sign a protest against a proposed street improvement.—*Los Angeles, etc., Co. v. Los Angeles*, 106 Cal. 156, 39 Pac. 535.

145a. Failure of clerk to file affidavits of mailing under section 3.—The objection that the city clerk did not file the affidavits of mailing required by section 3 until long after the termination of the proceedings is trivial, in view of the provision that his failure to mail at all does not invalidate the proceedings.—*Bailey v. Hermosa Beach*, (Cal.) 192 Pac. 712.

f. Resolution ordering work.

146. Order for work by resolution or ordinance equivalent thereto.—The city council may order the work by simple resolution, or by ordinance having the effect of a resolution.—*Mulberry v. O'Dea*, 4 Cal. App. 385, 88 Pac. 367.

147. Necessary preliminary to award contract.—The resolution ordering the work is a necessary preliminary to the awarding of the contract.—*Gay v. Engebretson*, 158 Cal. 21, 109 Pac. 876.

148. Jurisdiction of board—Publication and posting of resolution of intention—Time.—Under the act the city council has jurisdiction to order an improvement fifteen days after the first posting of the resolution of intention, and ten days after the full period of publication thereof.—*Oakland Bank v. Sullivan*, 107 Cal. 428, 40 Pac. 546.

149. Publication—Certificate of clerk not required.—The posting and publication of the resolution ordering the work without having thereon the clerk's certificate as to its passage, and the omission of the clerk to sign the certificate until after such posting and publication, was not a legal requirement, such certificate being merely evidence on the minutes of the passage of the resolution.—*Schaeffer v. Smith*, 169 Cal. 764, 147 Pac. 976.

150. Clerk's certificate not required on.—The Vrooman act does not require a resolution ordering work done to bear the clerk's certificate, and it is not material to the validity of such resolution that the clerk did not sign the certificate until after posting and publication.—*Schaeffer v. Smith*, 169 Cal. 764, 766, 147 Pac. 976.

151. Same—Evidence of passage.—The certificate of the clerk to the resolution ordering the work done is evidence on the minutes of the fact that the resolution passed, and it is nothing more.—*Schaeffer v. Smith*, 169 Cal. 764, 766, 147 Pac. 976.

152. Premature resolution.—A resolution ordering work done passed before the expiration of the twenty-day period prescribed for publication of resolution of intention is without jurisdiction and a nullity and the lien based thereon is void.—*Mulberry v. O'Dea*, 4 Cal. App. 385, 88 Pac. 367.

g. Resolution calling for sealed proposals.

153. Failure to limit time for proposals—Assessment not invalidated.—Section 5 of the act does not require the council to limit the time within which proposals may be delivered to its clerk, or to fix the day

or hour at which will open or consider them; nor is it required to direct the clerk to designate in his notice inviting proposals any day or hour before or at which they shall be delivered to him, and its failure to do so has no tendency to impair the validity of the assessment, where it strictly complied with all the provisions of the section on the subject.—Beckett v. Morse, 4 Cal. App. 228, 87 Pac. 408.

154. Time fixed by the clerk—Award not invalidated.—The act of the clerk in fixing in the notice of award the time within which the receipt of bids was limited, if without authority, does not invalidate the award where it is not shown that any one was prevented from bidding.—Belser v. Allman, 134 Cal. 399, 66 Pac. 492.

155. Same—Same—No presumption that any one was prevented from bidding.—It will not be presumed that any one was prevented from bidding, and, if the clerk's action was unauthorized, it is assumed that all persons knew it.—Belser v. Allman, 134 Cal. 399, 66 Pac. 492.

156. Advertisement for bids—Publication.—Where the original advertisement for bids under section 5 was published under an order directing such publication in a specified paper, subsequent orders directing the clerk to readvertise for bids are to be construed as referring to the original order, and the newspaper need not be designated.—Ellis v. Witmer, 134 Cal. 249, 66 Pac. 301.

157. Same — Readvertisement not required unless time for original bids limited.—Section 5 makes no provision for readvertisement, except in the special case provided for.—Ellis v. Witmer, 134 Cal. 249, 66 Pac. 301.

h. Bond accompanying bid.

158. Preliminary bond accompanying bid—Irregularity not jurisdictional.—An irregularity in the preliminary bond accompanying the bid is not jurisdictional.—Greenwood v. Morrison, 128 Cal. 350, 60 Pac. 971.

159. Deposit—Recovery where proceedings are illegal.—The provision for the forfeiture of the successful bidder's certified check if he fails to enter into a contract contemplates a contract based on legal proceedings, but where the proceedings are illegal, he may recover the amount of the deposit by action at law, and he is not estopped or bound by a mere naked promise without consideration.—Perine, etc., Co. v. Pasadena, 116 Cal. 6, 47 Pac. 777.

i. Opening bids.

160. Requirement of statute must be complied with—Otherwise assessment is invalid.—The act requires that the bids be examined and publicly declared in open session of the board, and where the evidence shows that this was not done the assessment can not be upheld.—Edwards v. Berlin, 123 Cal. 544, 56 Pac. 432.

j. Award.

161. Approval by three-fourths of board of trustees sufficient without the president's

approval.—An award made by three-fourths of the board of trustees does not require the approval of the president of the board.—Stanwood v. Carson, 169 Cal. 640, 147 Pac. 562.

162. Resolution of award—Certificate of clerk not required.—The law does not require that the resolution of award should bear the certificate of the clerk.—Stanwood v. Carson, 169 Cal. 640, 147 Pac. 562.

163. May be approved by either mayor or three-fourths of council.—The award may be approved either by the mayor or by a three-fourths vote of the city council, and it is optional which approves it, and it is not required that it should be presented in the first instance to the mayor for his approval before it may be approved by the council.—Greenwood v. Morrison, 128 Cal. 350, 60 Pac. 971.

164. Publication of notice of award.—Where the council designates the newspaper in which the notice is to be published, it is not a compliance with the order to publish in another newspaper, although previously designated as the official newspaper.—California Imp. Co. v. Moran, 128 Cal. 373, 60 Pac. 969.

165. Same—Compliance with the order jurisdictional.—In order to give the council jurisdiction publication in the newspaper named in the order for publication must be made.—California Imp. Co. v. Moran, 128 Cal. 373, 60 Pac. 969.

166. Same—Same—Could not be corrected on appeal.—The publication in the newspaper named in the order being jurisdictional it could not be corrected on appeal so as to confer jurisdiction which it had failed to acquire.—California Imp. Co. v. Moran, 128 Cal. 373, 60 Pac. 969.

167. Same — Same — Same — Assessment could not be validated.—The assessment being void for want of jurisdiction to make it, it could not be validated by a resolution of a subsequent council confirming it.—California Imp. Co. v. Moran, 128 Cal. 373, 60 Pac. 969.

V. CONTRACT.

168. Absence of competition.
169. Refusal of street superintendent to enter into, with successful bidder—Mandamus.
170. Same—Same—Demand not necessary.
171. Same—Same—Parties interested.
172. Must be in writing signed by the contractor.
173. Not a compliance with the statute.
174. Can not be made until ten days after posting notice of award.
175. Letting not premature.
176. Delay in making—Not invalid when delay due to holiday, and not to fault of contractor.
177. Time—Section 5 is mandatory.
178. Same—Same—Assessment is void.
179. Same—Same—Same—Failure to appeal does not validate.
180. Same—Same—Same—Can not be cured on appeal.

181. Contracts are between city and contractor—Owners have no interest unless conditions affect price.
182. Void provision as to contractor's liability.
- 183, 184. Invalid clause.
185. Rule modified.
186. Private contract without bids—San Francisco city lots.
187. Indemnity against street superintendent — Invalid provision in bond of contractor.
188. Improper provision — Contract not invalidated.
189. Provision as to work to be done at the expense of a street railroad company.
190. Additional work — Not departure from general plan.
191. Same—Same—Remedy of property owner.
192. Stipulation for eight hours' labor does not invalidate.
193. Contract for "asphalt macadam pavement" authorized by power of attorney calling for "asphalt pavement."
194. Clause making the contractor liable for his own negligence.
195. Same—Cases distinguished.
- 195a. Same—Damages during progress of work.
196. Several streets may be included in one contract.
197. Contractor charged with knowledge of the limitations of the power to make the contract — City estopped.
198. Sewer construction contract — Section 653c, Penal Code, not applicable.
199. Contract delegating powers of city council—Assessment void.
- 199a. Same—Void contract.
200. Delegation of powers to street superintendent.
201. Same—Allowance to increase or diminish the cost of the work.
202. Liability of contractor for damages not within rule of *Blochman v. Spreckels*.
- 203, 204. Separate parts of streets to be improved—Single contract.
205. Unsatisfactory performance of work—Dismissal of employee.
206. Change can not be made after execution under assessment acts.
207. Contract signed by minor assistant street superintendent upheld.
208. Assignment of contract — *Prima facie* evidence.
209. Same—Rights of assignee — Warrant need not be in name of original contractor.
210. Same—Warrant—Assignee may demand and enforce assessment.
211. Same—Consent of city officials not required.
212. Same—Assignee may foreclose lien.
213. Same—Prior to completion of work.
214. Non-collusive affidavit.
215. Bond—Section 6½—Repeal of public works lien law of 1897.
216. Same—Same — Filing statement with street superintendent required.
217. Same—Same—Time to file claims.
218. Same—Same—Same — Running of time.
219. Same—Section 6½—Bond is independent contract.
220. Same—Same—Bond not affected—Unauthorized extensions of time.
221. Same—Same—Purpose of bond.
222. Election of owners to do the work —Time.
223. Same — Contract with abutting property to improve street at his own expense.
224. Time to commence and complete work—Must be completed in time—If completed after expiration of time no valid assessment can be made.
225. Same—Provision of section 6 is mandatory.
- 225a. Same—Same—Non-compliance renders contract invalid.
226. Same—Same—When duty may be performed.
227. Same—Same—Time may be fixed by outgoing superintendent.
228. Same — Matter for superintendent of streets—Not for agreement.
229. Same—Same—Contract made in view of superintendent's power to fix time.
230. Same—Same—Indorsement on contract.
231. Same—Same—Same—Signature of contractor.
232. Same—Not matter of agreement.
- 233-235. Same—Time of commencement of work.
236. Same—Same—"Day" need not be specified.
237. Same—Same—No specific date need be named.
- 237a. Same—Same—Sufficiently fixed.
238. Abandonment of work before completion—Contract extinct — No jurisdiction to levy assessment.
239. Same—Time for completion of work—Suspended by an appeal after acceptance—Jurisdiction of council to extend time.
240. Same—Same—No date fixed.
241. Same—Same—Suspended by appeal.
242. Same—Extension of time for completion—Power of board as to time and number not limited.
243. Same — Same — Showing of diligence.
244. Same—Same — Time extension begins to operate.
245. Same—Same—Invalid extension.
246. Same—Same—Operative by action of council—Certificate of extension.
247. Same—Same—Description of work in resolution.
248. Same—Same—Certificate of clerk to resolution not required.

- 249. Same—Same—Notice — Misnaming contractor.
- 250. Delegation of power to street superintendent — Resolution calling for work "where not already done."
- 251. Same—To increase cost of work illegal.
- 252. Same—Decision as to minor details must be left to officer in charge.
- 253. Street superintendent—Intent of act.
- 254. Same—Same—Contract does not contain improper delegation of power.
- 255. Supervision by inspector—Provision immaterial when disregarded.

V. CONTRACT.

168. Absence of completion.—A contract for the improvement of an accepted street let without inviting bids and without an opportunity for competition is in excess of the jurisdiction of the supervisors, and therefore void, and the city is not liable thereunder.—*Santa Cruz, etc., Co. v. Broderick*, 113 Cal. 628, 45 Pac. 863.

169. Refusal of street superintendent to enter into, with successful bidder—Mandamus.—Mandamus will lie at the instance of a property owner to compel the superintendent of streets to enter into a contract with the successful bidder for street work under the Vrooman act.—*Thoits v. Byxbee*, 34 Cal. App. 226, 167 Pac. 166.

170. Same—Same—Demand not necessary.—The duty of the superintendent to execute the contract is a public duty and no demand is necessary as a prerequisite to the right of a property owner to writ of mandate to compel the performance of such duty.—*Thoits v. Byxbee*, 34 Cal. App. 226, 167 Pac. 166.

171. Same—Same — Parties interested.—Owners of property to be improved under the contract are beneficially interested and have a right to the writ.—*Thoits v. Byxbee*, 34 Cal. App. 226, 167 Pac. 166.

172. Must be in writing signed by the contractor.—The statute requires the contract to be in writing and signed by the contractor.—*Schwiesan v. Mahon*, 110 Cal. 543, 42 Pac. 1065.

173. Not a compliance with the statute.—The contract in the present case held not to be in compliance with the statute.—*Schwiesan v. Mahon*, 110 Cal. 543, 42 Pac. 1065.

174. Can not be made until ten days after posting notice of award.—The superintendent has no authority to enter into a contract with the original bidder until the expiration of ten days after the first posting of the notice of award, and a contract so entered into is void and the assessment invalid.—*Manning v. Den*, 90 Cal. 610, 27 Pac. 435.

175. Letting not premature.—A contract is not prematurely let on the nineteenth of the month when the first publication of notice was on the eighth of the same month.—*Banaz v. Smith*, 133 Cal. 102, 65 Pac. 309.

176. Delay in making—Not invalid when delay due to holiday and not to fault of contractor.—The provisions of section 5 relating to the making of the contract within fifteen days after first publication of notice of award are mandatory; but where a delay beyond the statutory period is not due to the fault of the contractor but to intervening special holidays, the contract is not invalidated by the delay.—*Ralph Rogers Co. v. Workman*, 10 Cal. App. 612, 103 Pac. 154.

177. Time—Section 5 is mandatory.—The provision of section 5 as to the time within which the contract shall be made, is mandatory.—*Perine v. Forbush*, 97 Cal. 305, 32 Pac. 226.

178. Same—Same—Assessment is void.—Where the contract is not made within the statutory time the assessment is void.—*Perine v. Forbush*, 97 Cal. 305, 32 Pac. 226.

179. Same—Same—Same—Failure to appeal does not validate.—The failure of the property owner to appeal, for the failure to make the contract within the statutory time, does not have the effect of validating it.—*Perine v. Forbush*, 97 Cal. 305, 32 Pac. 226.

180. Same—Same—Same — Can not be cured on appeal.—An appeal to the board could not have provided the security by a written contract, and sureties for its performance, where there was no binding contract.—*Schwiesan v. Mahon*, 110 Cal. 543, 42 Pac. 1065.

181. Contracts are between city and contractor—Owners have no interest unless conditions affect price.—Contracts for street paving are between the city and the person or corporation agreeing to do the work, and objections to the conditions therein regarding labor or compensation are not available to the owner of the assessed property unless the conditions affected the price paid.—*Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 185, 190, 138 Pac. 742.

182. Void provision as to contractor's liability.—A provision in the contract requiring the contractor to assume liability for loss or damage resulting from the nature of the work or from unforeseen obstructions or difficulties, or from the action of the elements or from encumbrances on the line of the work, renders it invalid.—*Mulberry v. O'Dea*, 4 Cal. App. 385, 88 Pac. 367; *Glassel v. O'Dea*, 7 Cal. App. 472, 95 Pac. 44; *Charters v. Stansbury*, 10 Cal. App. 192, 101 Pac. 418.

183. Invalid clause.—A provision in a contract that "all loss or damage arising from the nature of the work to be done under these specifications shall be sustained by the contractor" looked to damage which might arise out of and subsequent to the completed work and is void.—*Blochman v. Spreckels*, 135 Cal. 662, 57 L. R. A. 213, 67 Pac. 1061.

184. Same—Same.—The law does not authorize a municipality to escape its liability by shifting it to the shoulders of the contractor, and in attempting to do so by imposing conditions in the contract that would

naturally tend to increase the cost of the work.—*Blochman v. Spreckels*, 135 Cal. 662, 57 L. R. A. 213, 67 Pac. 1061.

185. Rule modified.—The early tendency toward a rigid strictness in the matter of the inclusion of certain conditions in street work contracts [*Blochman v. Spreckels*, 135 Cal. 664, 57 L. R. A. 213, 67 Pac. 1061] has been much relaxed in later decisions, and it is held in the present case that the conditions included in the contract, not being unduly oppressive, they will be sustained.—*Stanwood v. Carson*, 169 Cal. 640, 147 Pac. 562.

186. Private contract without bids.—San Francisco city lots.—The Vrooman act does not empower the city and county of San Francisco to enter into a private contract, without competitive bids, for street work in front of lands owned by it, the cost of which is to be paid out of city funds.—*City Improvement Co. v. Broderick*, 125 Cal. 139, 57 Pac. 776.

187. Indemnity against street superintendent.—Invalid provision in bond of contractor.—A contract for the construction of a sewer is not void because it "guaranteed the street superintendent and his sureties and bondsmen immunity from liability," has no effect to prevent a property owner, injured by the acts of the superintendent, from recovery against the latter and his bondsmen.—*Rauer v. Lowe*, 107 Cal. 229, 40 Pac. 337.

188. Contract.—Improper provision.—Contract not invalidated.—A provision in a street work contract purporting to relieve the superintendent of streets and his sureties "for any delinquency on his part," while probably void, as between the parties to the contract, on the ground of public property, and was improperly inserted in the contract, does not affect or prejudice the rights of the property owners, and does not render the contract void as to them.—*McDonald v. Mezes*, 107 Cal. 492, 40 Pac. 808.

189. Provision as to work to be done at the expense of a street railroad company.—A contract to do the work specified in the resolution of intention is not invalidated by a provision exempting the part to be done by a street railroad from the assessment, and requiring the contractor to accept pay for this part of the work from the street railroad company.—*Perine v. Forbush*, 97 Cal. 305, 32 Pac. 226.

190. Additional work.—Not departure from general plan.—A contract for street work, otherwise valid, is not invalidated by the inclusion of work therein not included in the plans and specifications attached thereto, where such extra work did not constitute an entire departure from the plan as described in the resolution of intention.—*Perine v. Forbush*, 97 Cal. 305, 32 Pac. 226.

191. Same.—Same.—Remedy of property owner.—The remedy of the property owner for such erroneous action, without rendering the contract void, is by an appeal, and if he fails to appeal can not urge the objection in defense of an action to foreclose

the lien.—*Perine v. Forbush*, 97 Cal. 305, 32 Pac. 226.

192. Stipulation for eight hours' labor does not invalidate contract.—A stipulation in a street paving contract for not more than eight hours' labor per day, except in cases of extraordinary emergency, does not invalidate the contract.—*Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 185, 190, 138 Pac. 742.

193. Contract for "asphalt macadam pavement" authorized by power of attorney calling for "asphalt pavement."—Where it appears, though upon conflicting evidence, that the term "asphalt pavement" was the general designation within which the specific name "asphalt macadam pavement" was properly included, a power of attorney to sign a contract for "asphalt pavement," was sufficient to authorize the signing of a contract for "asphalt macadam pavement."—*Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 185, 189, 138 Pac. 742.

194. Clause making contractor liable for his own negligence.—There is no impropriety in making the contractor liable for the consequences of his own negligence, and a provision in a street-work contract which in effect does this, adds nothing to his liability in this respect, and does not render the contract void under the rule in *Blochman v. Spreckels*, 135 Cal. 662, 57 L. R. A. 213, 67 Pac. 1061, and other cases, which are distinguished.—*Gay v. Engebretsen*, 158 Cal. 121, 109 Pac. 876.

195. Same.—Cases distinguished.—The following cases were distinguished from the instant case: *Goldtree v. Spreckels*, 135 Cal. 666, 57 L. R. A. 212, 67 Pac. 106; *Wool-lacott v. Meakin*, 151 Cal. 701, 91 Pac. 612; *Van Loenen v. Gillispie*, 152 Cal. 222, 96 Pac. 87; *Hatch v. Nevills*, 7 Cal. Unrep. 341, 95 Pac. 43; *Stansbury v. Poindexter*, 154 Cal. 709, 129 Am. St. Rep. 190, 99 Pac. 182; *Gay v. Engebretsen*, 158 Cal. 21, 109 Pac. 876.

195a. Same.—Damages during progress of work.—The clause in the present case refers to damages occurring during the progress of the work, and those occurring afterward.—*McQuiddy v. Worswick, etc., Co.*, 160 Cal. 9, 116 Pac. 67.

196. Several streets may be included in one contract.—Several streets may be improved under a single contract.—*Blake & Bilger Co. v. Chappel*, (Cal. App.) 186 Pac. 823.

197. Contractor charged with knowledge of the limitations of the power to make contract.—City not estopped.—A contractor who contracts with the city for street work is charged with knowledge of the limitations of the power of the board of supervisors to enter into the particular contract, and the city is not estopped to deny the validity of the contract.—*Santa Cruz, etc., Co. v. Broderick*, 113 Cal. 628, 45 Pac. 863.

198. Sewer construction contract.—Section 653c, Penal Code, not applicable.—The provisions of section 653c, Penal Code, do not apply to a contract for a sewer construction under the Vrooman act, where such sewer construction was to be paid for

out of assessments on the property fronting thereon, and not out of the municipal treasury.—*Genilla v. Hanley*, 6 Cal. App. 614, 92 Pac. 752.

199. Contract delegating powers of city council, void—Assessment void.—A contract for street work delegating duties which the city council alone can perform is void and an assessment for the work is also void.—*Chase v. Treasurer*, 122 Cal. 540, 55 Pac. 414.

199a. Same—Void contract.—A contract which provides that the superintendent of streets shall have power to determine whether more or less work shall be done by the contractor, what materials shall be used in certain events, and whether or not the right quality and quantity of material has been used, and if he decides against the contractor, the latter must do the work all over again, is an illegal delegation of power to the street superintendent, and the contract is void.—*Stansbury v. White*, 121 Cal. 433, 53 Pac. 940.

200. Delegation of power to street superintendent.—The city council can not shift the burden of its duties and responsibilities to other shoulders, under a contract which delegated to the superintendent of streets powers and duties imposed on the city council by the act is void.—*Chase v. Scheerer*, 136 Cal. 248, 68 Pac. 768.

201. Same—Allowance to increase or diminish the cost of the work.—The city council may require the street superintendent to inspect the work, ascertain if the work and the materials conform to contract, but it can not delegate to that officer the power to determine the amount of an allowance to increase or diminish the cost.—*Chase v. Sheerer*, 136 Cal. 248, 68 Pac. 768.

202. Liability of contractor for damages—Not within rule of *Blochman v. Spreckels*.—The clause in the resolution of intention and resolution ordering work, in the present case, relating to the liability of the contractor for certain damages, were held not to be within the rule of *Blochman v. Spreckels*, 135 Cal. 662, 67 Pac. 1061, 57 L. R. A. 213, and other similar cases.—*McQuiddy v. Worswick, etc., Co.*, 160 Cal. 9, 116 Pac. 67.

203. Separate parts of streets to be improved—Single contract.—The letting of the work may be by single contract where separate parts of a street are to be improved.—*Sacramento Paving Co. v. Anderson*, 1 Cal. App. 672, 82 Pac. 1069.

204. Same.—The amendment of 1884 to section 19, article XI, of the constitution was properly enrolled, authenticated, deposited with the secretary of state, submitted to the people and adopted by them, and the Vrooman act is constitutional under its provisions.—*Sacramento Paving Co. v. Anderson*, 1 Cal. App. 672, 82 Pac. 1069.

205. Dismissal of employee—Unsatisfactory performance of work.—A clause in a contract for street work which requires the contractor to discharge an employee for unsatisfactory performance of work, which does not give the city the power to arbitrarily dismiss an employee, is not im-

proper.—*McQuiddy v. Worswick, etc., Co.*, 160 Cal. 9, 116 Pac. 67.

206. Change can not be made after execution under assessment acts.—Contracts for street work under assessment acts can not be materially changed after they have been let in accordance with the act.—*McQuiddy v. Worswick, etc., Co.*, 160 Cal. 9, 116 Pac. 67.

207. Contract signed by minor as assistant street superintendent—Upheld.—A contract for street work signed by a minor as assistant street superintendent who was a de facto officer, being in charge of the office of the street superintendent, who was on leave of absence, was valid.—*Page v. Mintzer*, (Cal. App.) 184 Pac. 690.

208. Assignment of contract—Prima facie evidence.—Under section 12 of the Vrooman act the assessment roll, the diagram, the certificate of the city engineer, the affidavit of demand and non-payment, and the warrant of the street superintendent, are prima facie evidence of the assignment, and of assignee's right to recover.—*Schmidt v. Santa Monica, etc., Co.*, 39 Cal. App. 85, 178 Pac. 315.

209. Same—Rights of assignee—Warrant need not be in name of original contractor.—The act recognizes the assignee of the contractor as one who succeeds to all the rights and privileges of the contract and it is not essential to the validity of the assessment that the name of the original contractor should appear in the warrant.—*Berkeley, etc., Co. v. Marx*, 10 Cal. App. 410, 102 Pac. 278.

210. Same—Warrant—Assignee may demand and enforce assessment.—The contractor may assign the contract before completion, and the warrant may run in the name of the assignee, and the assignee may demand and enforce the assessment.—*Hadley v. Dague*, 130 Cal. 207, 62 Pac. 500.

211. Same—Consent of city officials not required.—The consent of the city officials is not required to validate an assignment of a street-work contract.—*Anderson v. De Urioste*, 96 Cal. 404, 31 Pac. 266.

212. Same—Assignee may foreclose lien.—If the assignee of a contract for street work finishes the work according to contract he may foreclose a lien for an unpaid assessment, whether the assignment was consented to by the city officials or not.—*Anderson v. De Urioste*, 96 Cal. 404, 31 Pac. 266.

213. Same—Prior to completion of work.—The right of the contractor to assign the contract prior to the completion of the work is recognized in many portions of the act.—*Berkeley, etc., Co. v. Marx*, 10 Cal. App. 410, 102 Pac. 278.

And by the supreme court.—*Anderson v. De Urioste*, 96 Cal. 404, 31 Pac. 266.

214. Non-collusive affidavit.—The provisions of the charter of San Jose requiring the filing of the non-collusive affidavit prior to the making of the street assessment, has reference solely to a private agreement with some property owners with relation to some contemplated improvement under the

street law, and not an agreement for doing street work directly for a private individual.—*Ransome-Crummey Co. v. Coulter*, 177 Cal. 574, 576, 171 Pac. 304.

215. Bond—Section 6½—Repeal of public works lien law of 1897.—The adoption of section 6½ of the act repealed the act of 1897 (Stats. 1897, p. 201) requiring mechanics seeking to recover on the contractor's bond to file a statement of their claims with the board of trustees, in so far as the same applied to work done under the Vrooman act was concerned.—*San Dimas, etc., Co. v. American Surety Co.*, 30 Cal. App. 3, 157 Pac. 548.

216. Same—Same—Filing statement with street superintendent required.—A claimant seeking to recover on a contractor's bond under section 6½ for materials furnished on the work is required to file his statement with the street superintendent, and this requirement is not satisfied by filing the statement with the board of trustees, without delivery to the street superintendent, although addressed to both the board and the superintendent.—*San Dimas, etc., Co. v. American Surety Co.*, 30 Cal. App. 3, 157 Pac. 548.

217. Same—Same—Time to file claims.—The provision in section 6½ as to the time within which a material man may file a verified statement of his claim fixes a maximum limit only and claimants need not wait the completion of the work, but may file statements as their claims become due.—*Pacific, etc., Co. v. United States, etc., Co.*, 32 Cal. App. Dec. 186.

218. Same — Same — Same — Running of time.—The thirty days begins to run from the date of actual completion.—*Pacific, etc., Co. v. United States, etc., Co.*, 32 Cal. App. Dec. 186.

219. Same—Section 6½—Bond is independent contract.—The bond given under the provisions of section 6½ of the Vrooman act is an independent contract and does not depend upon the validity of the street improvement contract, or faithful performance by the contractor.—*Los Angeles Stone Co. v. National Surety Co.*, 178 Cal. 247, 250, 173 Pac. 79.

220. Same—Bond not affected.—Unauthorized extensions of the time for the completion of a contract for a street improvement under the Vrooman act, do not affect the liability of the surety on the bond given under the provisions of section 6½.—*Los Angeles Stone Co. v. National Surety Co.*, 178 Cal. 247, 251, 173 Pac. 79.

221. Same—Same—Purpose of bond.—The purpose of the bond given under the provisions of section 6½ of the Vrooman act was to protect those who furnish labor or materials for the work of the contract for the street improvement, and should not be limited under the rule of *strictissimi juris* to those only who supply labor or materials directly to the contractor, but should be liberally construed to effect the purpose of the act.—*Los Angeles Stone Co. v. National Surety Co.*, 178 Cal. 247, 252, 173 Pac. 79.

222. Election of owners to do work—Time.—A contract let on the nineteenth of the month is not prematurely let where the first publication of the notice of award was made on the eighth of the same month, the time allowed the owners to make their election to do the work beginning to run from the date of publication and not from the day following.—*Banaz v. Smith*, 133 Cal. 102, 65 Pac. 309.

223. Same—Contract with abutting property owner to improve street at his own expense.—A municipality did not surrender or impair its power under the Vrooman act to improve a street, by contracting with the owner of abutting property to improve the same at his own expense.—*McNeil v. South Pasadena*, 166 Cal. 153, 155, 135 Pac. 32, 48 L. R. A. (N. S.) 138.

224. Time to commence and complete work—Must be completed in time—If completed after expiration of time, no valid assessment can be made.—The contract for street work must be fulfilled within the time specified therein, or within such further time as may have been given the contractor during the life of the contract, or no assessment can be levied, and if, after the expiration of the limited time, an extension is granted and the work is completed it forms no foundation for a valid assessment.—*Kelso v. Cole*, 121 Cal. 121, 53 Pac. 353.

225. Same — Provision of section 6 is mandatory.—The provisions of section 6 requiring the street superintendent to fix the time of commencement and completion of the work is mandatory, and imposes upon him an official duty requiring authentication by his signature, and is not matter of agreement between him and the contractor, whose signature is not required. — *Buckman v. Ferguson*, 108 Cal. 33, 40 Pac. 1057.

225a. Section 6 mandatory — Non-compliance renders contract invalid.—The requirement as to fixing the time of commencement and completion of the work in section 6 is mandatory, and non-compliance therewith renders the contract invalid. *Libbey v. Elsworth*, 97 Cal. 316, 32 Pac. 228.

226. Same — Same — When duty may be performed.—The street superintendent may perform this duty at any time after the contract which will enable him to designate a time of commencement not more than fifteen days from the date of the contract, and the contract is inchoate, even if signed by the contractor, and is not fully executed until the time is fixed.—*Buckman v. Ferguson*, 108 Cal. 33, 40 Pac. 1057.

227. Same—Same—Time may be fixed by outgoing superintendent.—The time may be fixed by a superintendent whose term of office expires after the date of the contract and before the expiration of fifteen days thereafter.—*Buckman v. Ferguson*, 108 Cal. 33, 40 Pac. 1057.

228. Same—Matter for superintendent of streets, not for agreement.—The street superintendent may fix the time for the commencement and the completion of the work, within the limits fixed by the act,

and the matter is not left to agreement between him and the contractor.—*Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658.

229. Same—Same—Contract made in view of superintendent's power to fix time.—In making his bid for the work the contractor does so in view of the power of the superintendent of streets, under the act, to fix the time for the commencement and completion of the work, and it is necessary only that that time should be definitely fixed within the contractor's knowledge.—*Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658.

230. Same—Same—Endorsement on contract.—The time for the commencement and completion of the work may be fixed in the body of the contract, or endorsed thereon, with the contractor's knowledge, authenticated by the superintendent of streets.—*Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658.

231. Same—Same—Same—Signature of contractor.—When the time for the commencement and completion of the work is endorsed on the contract, with the contractor's knowledge, authenticated by the signature of the street superintendent, the contractor's signature is not required.—*Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658.

232. Same—Not matter of agreement.—The matter of fixing the time for the commencement and completion of the work is exclusively within the power of the street superintendent, and is not a subject for agreement between him and the contractor.—*Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658.

233. Same—Time of commencement of work.—When the contract provided that the work should be commenced within fourteen days from its date, the effect would be as though the fourteenth day had been definitely fixed, and sufficiently fixes the date of the commencement to satisfy the requirements of the act.—*McDonald v. Mezes*, 107 Cal. 492, 40 Pac. 808.

234. Same—Same.—It is necessary that the time should be fixed to the knowledge of the contractor, and when so fixed enters into and becomes a part of the contract.—*Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658.

235. Same—Same.—The time thus fixed may either be stated in the body of the contract or endorsed on it with the contractor's knowledge, and authenticated by the signature of the superintendent.—*Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658.

236. Same—Same—"Day" need not be specified.—It is sufficient that the time of commencement of the work is fixed within a specified number of days from the date of the contract, and it is not necessary to fix a specified "day."—*Williams v. Bergin*, 127 Cal. 578, 60 Pac. 164.

237. Same—Same—No specific date need be named.—In fixing the time for the commencement of the work it is not necessary to name a particular date; but it is suffi-

cient to require commencement "within fifteen days."—*White v. Harris*, 103 Cal. 528, 37 Pac. 502.

237a. Same—Same—Sufficiently fixed.—A contract which provided that "the work to be commenced within fourteen days from the date of the contract," sufficiently fixes the date of commencement of the work.—*Rauer v. Lowe*, 107 Cal. 229, 40 Pac. 337.

238. Abandonment of work before completion—Contract extended—No jurisdiction to levy assessment.—When the time for completion of the contract has expired, and the work has not been performed, the contract ceases to have any vitality, and jurisdiction to extend it or to levy an assessment thereon becomes extinct.—*Lelso v. Cole*, 121 Cal. 121, 53 Pac. 353. To same effect: *Kelso v. Gillette*, 136 Cal. 603, 69 Pac. 296.

239. Same—Time for completion of work—Suspended by an appeal after acceptance—Jurisdiction of council to extend time.—The time for the completion of the work is suspended by an appeal after the acceptance of the work as completed, and the city council has jurisdiction to extend the time.—*Hadley v. Dague*, 130 Cal. 207, 62 Pac. 500.

240. Same—Same—No date fixed.—Where the superintendent fixed the date of commencement of the work "within fifteen days" from the date of the contract, and the date of the completion within "one hundred and eighty days thereafter," it must be construed as commencing on the date of the contract, and that no date was fixed for the completion.—*Palmer v. Burnham*, 120 Cal. 364, 52 Pac. 644, 1080.

241. Same—Same—Suspended by appeal.—*Hadley v. Dague*, 130 Cal. 207, 62 Pac. 500, as to suspension of time of completion during pendency of appeal, and doing work under direction of council, followed and approved.—*Stanwood v. Carson*, 169 Cal. 640, 147 Pac. 562.

242. Same—Extensions of time for completion—Power of board as to time and number not limited.—The act does not limit the power of the board to grant extensions, either as to the time or the number thereof, and additional extensions may be granted before an extension previously granted has taken effect, provided the work is shown to have been prosecuted diligently in accordance with the requirements of the act.—*Buckman v. Cuneo*, 103 Cal. 62, 36 Pac. 1025.

243. Same—Same—Showing of diligence.—It will be presumed that the extension was based upon a proper showing of diligence, in the absence of anything to the contrary.—*Buckman v. Cuneo*, 103 Cal. 62, 36 Pac. 1025.

244. Same—Same—Time extension begins to operate.—An extension of time granted before a previous extension has taken effect begins to operate from the expiration of the previous extension, and not from the date it was granted.—*Buckman v. Cuneo*, 103 Cal. 62, 36 Pac. 1025.

243. Same—Same—Invalid extension.—Where the date of commencement of the work was the date of the contract, and the date of completion to be "one hundred and eighty days thereafter," an extension of time of completion made within one hundred and eighty days after the actual commencement, but after the expiration of one hundred and eighty days from the date of the contract, and no previous extension shown, no lien is created.—*Palmer v. Burnham*, 120 Cal. 364, 52 Pac. 644, 1080.

246. Same—Same—Operative by action of council—Certificate of extension.—Extensions of time in a street improvement proceeding become operative by action of the council duly made, and a form of certification in the resolutions of extensions is not of the essence of the extensions, and the failure of the clerk to observe the formal method indicated, even if a regularity, can not invalidate such extensions.—*Stanwood v. Carson*, 169 Cal. 640, 648, 147 Pac. 562.

247. Same—Same—Description of work in resolution.—Where the description of the work in the resolutions extending the time of completion are sufficient as between the board and the contractor to indicate what contracts it was intended to extend, nothing more is required.—*Edwards v. Berlin*, 123 Cal. 544, 56 Pac. 432.

248. Same—Same—Certificate of clerk to resolutions not required.—The phraseology of resolutions extending the time of completion of work requiring their certification by the clerk are not of the essence of such extensions, and the validity of such extensions does not depend upon the compliance therewith by the clerk.—*Stanwood v. Carson*, 169 Cal. 640, 147 Pac. 562.

249. Same—Same—Notice — Misnaming contractor.—Where an extension of time for the construction of a sewer, granted by the superintendent of streets, referred to the contract by number and specified the streets and work to be done under the contract, it was held not to be invalid because the resolution of the board of supervisors authorizing the extension misnamed the contractor, the resolution specifying the contract and the work sufficiently to identify it.—*Anderson v. De Urioste*, 96 Pac. 404, 31 Pac. 266.

250. Delegation of power to street superintendent—Resolution calling for work "where not already done."—Where the resolution of intention calls for curbing where not already done such resolution leaves nothing to be determined, as to the amount of work, by the street superintendent.—*Edwards v. Berlin*, 123 Cal. 544, 56 Pac. 432.

251. Same—To increase cost of work, illegal.—Where the specifications leave to the superintendent of streets and city engineer the power to designate what extra concrete shall be put in street work, to be paid for pro rata, thus resulting in an increase of the cost of the work, the proceedings are invalid for an unlawful delegation of power.—*Perine, etc., Co. v. Pasadena*, 116 Cal. 6, 47 Pac. 777.

252. Same—Decision as to minor details must be left to officer in charge.—The minor details of the work must necessarily be left to the decision of the officer in charge of the work.—*McQuiddy v. Worswick, etc., Co.*, 160 Cal. 9, 116 Pac. 67. See, also, *McCaleb v. Dreyfus*, 156 Cal. 206, 103 Pac. 924.

253. Street superintendent — Intent of act.—The purpose of the Vrooman act in declaring that all street work must be done under the direction and to the satisfaction of the street superintendent, was to invest that officer with a certain discretion as to details not explicitly determined by the contract.—*Haughwout v. Hubbard*, 131 Cal. 675, 63 Pac. 1078.

254. Same — Same — Contract does not contain improper delegation of power.—The contract in the present case does not contain any improper delegation of power.—*Haughwout v. Hubbard*, 131 Cal. 675, 63 Pac. 1078.

255. Supervision by inspector—Immaterial when disregarded and supervision made by superintendent of streets.—Where the work is done under the direction of the superintendent of streets, as required by section 6, it is immaterial whether the provision of the specifications requiring the work to be done under the supervision of an inspector appointed by the superintendent of streets have no legal effect, the same having manifestly been disregarded in the prosecution of the work.—*Burnham v. Abrahamson*, 21 Cal. App. 248, 131 Pac. 338.

VI. COMPLETION AND ACCEPTANCE OF THE WORK.

256. Declaration of superintendent that work is fully performed is final, except on appeal to council.

257. City engineer — Certificate after completion of work not required.

258. Same—Only certificate required.

259. Same—Same—Certificate in any other case is for the purpose of assisting the superintendent.

260. Same—When required — When authorized.

261. Same—If satisfactory to superintendent its contents are immaterial.

262. Same—When authorized, omission to enumerate documents recorded, does not invalidate record.

263. Same—Clerical error in recording.

264. Same—After work is completed.

265. Same—Person in office may make—Use of official date.

266. Acceptance of street—Facts tending to invalidate must be proved.

267. Same—Creates status.

268. Same—Degree of "satisfaction" required.

269. Same—Omission of recital that the street was "in good condition throughout."

270. Same—Absence of datum plane.

- 271. Same—Section 20 should be read in connection with section 498, Civil Code—Exception of tracks of street railroad.
- 272. Same—Purpose of section 20.
- 273. Same—Street railroad track zone not bound to be kept in repair by city.
- 274. Same—Effect of repeal of section 20 on local ordinance.
- 275. Same—Acceptance of improved street under section 20, void.
- 276. Same—Same—Does not deprive a subsequent board of jurisdiction for further improvements.
- 277. Same—Acceptance of street in acceptance of curb.

VI. COMPLETION AND ACCEPTANCE OF THE WORK.

256. Declaration of superintendent that work is fully performed is final, except on appeal to council.—The omission from the assessment of some of the lots fronting along the improvement was, in effect, a declaration that the work was fully performed to his satisfaction, and is not open to controversy in any tribunal except the city council on appeal.—San Francisco, etc., Co. v. Dubois, 2 Cal. App. 42, 83 Pac. 72.

257. City engineer — Certificate after completion of work not required.—The act does not require the city engineer to make any certificate after the completion of the work.—O'Dea v. Mitchell, 144 Cal. 374, 77 Pac. 1020.

258. Same—Only certificate required.—The only certificate required by the act to be made by the city attorney is that provided for in subdivision 10 of section 7 (Stats. 1889, p. 164), where the owner may himself do certain street work at his own expense.—O'Dea v. Mitchell, 144 Cal. 374, 77 Pac. 1020.

259. Same — Same — Certificate in any other case is for the purpose of assisting superintendent.—A certificate made by the city engineer in any case other than that required by subdivision 10, section 7, is simply for the purpose of assisting the superintendent of streets, and its contents are immaterial to the validity of the lien.—O'Dea v. Mitchell, 144 Cal. 374, 77 Pac. 1020.

260. Same—When required—When authorized.—A certificate of the engineer is not required by the act except in the case provided in subdivision 10 of section 5 of the act; although he is empowered in section 34 to make a certificate of the work done, when required, and this certificate must be recorded; but this provision (section 9) must be construed as requiring record only when made.—Reid v. Clay, 134 Cal. 207, 66 Pac. 262.

261. Same—If satisfactory to superintendent, its contents are immaterial.—Where the certificate is made, except when made under subdivision 10 of section 7 of the act, it is simply for the purpose of assisting the superintendent of streets, and if satisfactory to him, its contents are im-

material.—Reid v. Clay, 134 Cal. 207, 66 Pac. 262.

262. Same—When authenticated, omission to enumerate documents recorded does not invalidate the record.—The omission by the superintendent in his certificate of the documents recorded, of the engineer's certificate does not invalidate the authentication of the record actually made or impair the lien of the assessment.—Greenwood v. Chandon, 130 Cal. 467, 62 Pac. 736.

263. Same—Clerical error in recording.—Where the assessment, diagram, warrant and engineer's certificate were correctly recorded, except for a clerical error in the last named, and the error did not affect the substantial rights of the property owner, such record is held to be a substantial compliance with the statute.—Moffitt v. Jordan, 127 Cal. 622, 60 Pac. 173.

264. Same—After work is completed.—The city council may require the city engineer to make an estimate of the costs and expenses of the work before passing any resolution for an improvement, but the engineer is not required to state those items in the certificate which he gives after the work is completed.—San Francisco Paving Co. v. Dubois, 2 Cal. App. 42, 83 Pac. 72.

265. Same—Person in office may make—Use of official data.—The person in office as city engineer is the proper person to the certificate at the completion of the work, and where he succeeded to the office after such completion, he may use the official data found in his office for the purpose of making the certificate.—Hornung v. McCarthy, 126 Cal. 17, 58 Pac. 303.

266. Acceptance of street—Facts tending to invalidate must be proved.—When the existence of an ordinance accepting a street, preserved in the city's official records as the true and genuine act of its common council, has been proved in the usual manner, facts tending to invalidate such ordinance must be proved by the city or the person seeking to deny the city's liability.—Barber Asphalt Paving Co. v. Jurgens, 170 Cal. 273, 279, 149 Pac. 560.

267. Same—Creates status.—The acceptance of a street under section 20 of the Vrooman act creates a status, upon which the sovereign power of the state operates through the act to create an exemption, and neither section 6, article XI, of the constitution, nor freeholder charters, whereby cities and towns were freed from general laws in municipal affairs, had the effect of extinguishing such exemption.—Barber Asphalt Paving Co. v. Jurgens, 170 Cal. 273, 284, 149 Pac. 560.

268. Same—Degree of "satisfaction" required.—"Satisfaction" sufficient to cause the councilmen to vote to accept the street must be regarded as full satisfaction for all practical purposes, and it is not important, in reciting the fact in the ordinance, that the word "fully" is omitted before the word "satisfaction," and that the recital does not, to that extent, conform to the re-

quirement of section 20 of the Vrooman act.—*Barber Asphalt Paving Co. v. Jurgens*, 170 Cal. 273, 279, 149 Pac. 560.

269. Same—Omission of recital that the street was "in good condition throughout."—Section 20 of the Vrooman act does not require that an ordinance accepting a street should recite that it was "in good condition throughout," and the omission of that recital from the ordinance did not nullify its force and effect.—*Barber Asphalt Paving Co. v. Jurgens*, 170 Cal. 273, 280, 149 Pac. 560.

270. Same—Absence of datum plane.—The absence of a datum plane or official grade is entirely immaterial to the force and validity of an ordinance accepting a street under section 20 of the Vrooman act.—*Barber Asphalt Paving Co. v. Jurgens*, 170 Cal. 273, 281, 149 Pac. 560.

271. Same—Section 20 should be read in connection with section 498, Civil Code—Exception of tracks of street railroad.—Section 20 of the act should be read in connection with section 498 of the Civil Code, and so read an ordinance which accepts a roadway is not invalid because it includes an exception of the portion required by law to be kept in repair by a street railroad company occupying the same.—*Barber, etc., Co. v. Abrahamson*, 38 Cal. App. 109, 175 Pac. 490.

272. Same—Purpose of section 20.—Section 20 of the Vrooman act was evidently drawn with the intention of specifying curbing as a part of the roadway, and the curbing is, therefore, for the purposes of the act, included within the definition of the term "roadway," and an acceptance of the "roadway" in compliance with the section is an acceptance of the whole of the roadway, including the curbing.—*Barber Asphalt Paving Co. v. Jurgens*, 170 Cal. 273, 280, 149 Pac. 560.

273. Same—Street railroad track zone not bound to be kept in repair by the city.—In view of section 498, Civil Code, with which section 20 of the Vrooman act must be read, for the purposes of a street assessment, the zone which a street railroad is bound to keep in repair is not a part of the roadway, and the exception of that part from the ordinance did not make it a nullity.—*Barber Asphalt Paving Co. v. Jurgens*, 170 Cal. 273, 280, 149 Pac. 560.

274. Same—Effect of repeal of section 20 on local ordinance.—An ordinance as to the acceptance and future repair of a street adopted prior to the repeal of section 20 of the Vrooman act in 1911, which act had been adopted in its street improvement law was rendered ineffective by the repeal of the act.—*Ransome-Crummey Co. v. Coulter*, 33 Cal. App. Dec. 619.

275. Same — Acceptance of improved street under section 20, void.—Where an improved street was accepted after improvement under section 20 of the Vrooman act, under an ordinance reciting the sewer mains and gas and water pipes had been laid, when in fact such mains and pipes had not been laid, the ordinance of accept-

ance was void, there being no provision therein for acceptance conditionally or that said mains and pipes were unnecessary.—*Raisch Improvement Co. v. Bonslett*, 28 Cal. App. 649, 153 Pac. 747.

276. Same—Does not deprive a subsequent board of jurisdiction for further improvement.—Such an ordinance does not deprive a subsequent board of jurisdiction to enact a new ordinance to clear the way for further proceedings for the reimprovement of the street.—*Raisch Improvement Co. v. Bonslett*, 28 Cal. App. 649, 153 Pac. 747.

277. Same—Acceptance of street is acceptance of curb.—The acceptance of a street includes the acceptance of the curb, which is a part of the street within the meaning of the Vrooman act.—*Barber, etc., Co. v. Abrahamson*, 38 Cal. App. 109, 175 Pac. 490.

VII. WARRANT.

278. Form.

279. Record of warrant, diagram and assessments—Signature of street superintendent.

280. Record—Omission of signature of president of board.

281. Record of return—Signed by superintendent of streets before ceasing to be city engineer.

VII. WARRANT.

278. Form.—The form of the warrant which is prescribed in the act in terms authorizes and empowers the contractor, his agents and assigns, to demand and receive the several assessments, and the act declares that the warrant shall be "substantially" in this form.—*Hadley v. Dague*, 130 Cal. 207, 62 Pac. 500.

279. Record of warrant, diagrams and assessments—Signature of street superintendent.—There is no reason why a street superintendent, newly appointed to the office and acting as such, should not sign the certificate to the record of warrants, diagrams and assessments, following upon the contractor's return thereof, even though he had not yet relinquished the office of city engineer, and was certifying to acts which had been done by him as such.—*Shaffer v. Smith*, 169 Cal. 764, 767, 147 Pac. 976.

280. Record — Omission of president's signature not fatal.—Where the original warrant was signed by the president of the board of trustees, it is not fatal to its validity that his signature was omitted from the record of it.—*Schaeffer v. Smith*, 169 Cal. 764, 147 Pac. 976.

To same effect: *Gillis v. Cleveland*, 87 Cal. 214, 25 Pac. 351.

281. Record of return—Signed by superintendent of streets before ceasing to be city engineer.—The warrant is not invalid because the street superintendent signed the certificate of record of return, before he had ceased to be city engineer, thus certifying an act done by him as such city engineer.—*Schaeffer v. Smith*, 169 Cal. 764, 147 Pac. 976.

VIII. ASSESSMENT.

a. Front-foot method.

282. Action of superintendent judicial—Can not be changed.
283. Front-foot method of assessment based on benefits.
284. Assessment limited to one-half assessed value of property.
285. Same—Assessment for other work in same year.
286. Assessment is a contract—Statutes in force are a part.
287. Same—Same—Where statute shows character of work.
288. Compliance with act required.
289. Statutory provisions must be substantially complied with.
290. Compliance with statute required, as to notice and other jurisdictional steps.
291. Same—Same—Particularly if property owner is benefited.
- 292, 293. Description of property held sufficient.
294. Method approved.
295. Premature issue—Power of council.
296. Same—Same—Effective date of reissued assessment.
297. Same—Same—No power to rescind former action.
298. Revision—Must be in mode prescribed.
299. Can not be imposed on frontage of one side of street only.
300. On one side of street only.
301. Same—Assessment must be made on frontage of both sides of street.
302. Sidewalk—Cost assessed on property on opposite side of street.
303. Excessive assessment—Sale remedy is appeal to city council.
304. Error in assessment—Failure to include lot—Remedy is by appeal to council.
305. Error in amount—Failure to appeal to council—Not available to defendant on foreclosure.
306. Assessment void on face—May be resisted without appeal to council.
- 307, 308. Omission of lots from assessment does not render it void on its face.
309. Assessment to "unknown owners."
310. Same—Certificate of street superintendent conclusive.
311. Same—Lot partly owned by known owner.
312. Void, can not be validated by failure to file remonstrance, or appeal.
313. Materials of culvert and gutter not named in resolution of intention.
314. Same—Not aided by specifications and order for work.
315. Assessment is entirety—Void in part, void as whole.
316. Double assessment of corners for work at intersection—No appeal necessary.
317. Single assessment does not cease to be such by apportionment.
318. Work excepted from provisions of act.
319. Separate contracts for single improvement—Void.
320. Clause requiring bond to keep in repair—Assessment invalid.
321. Failure to apportion assessment—Railroad right of way.
- 321a. Railroad right of way subject to assessment—Stats. 1911, p. 742.
322. Sidewalk—Based on number of square feet, is void.
323. Same—Same—No lien.
324. Not void because contract contemplates damage to private property without compensation.
325. Same—Contractor's rights grow out of power of taxation.
326. Same—Same—Claim can not be used as set off.
327. Assessment for work not included in resolution of intention.
328. Street work in excess of that called for by the resolution of intention is unauthorized.
329. Lot fronting wholly on extra work can not be assessed.
330. Same—Lot fronting wholly or partly on unauthorized work not void.
331. Same—Cost estimated by linear foot.
332. Same—Same—Correction by appeal to city council.
333. Same—Same—Same—Failure to appeal.
334. Same—Same—Same—Owner need not appeal.
335. Same—Same—Same—Illegal assessment creates no lien.
336. Separate assessment for additional work.
337. Uniformity—Cost of sidewalks and curbing assessed only on lots not already curbed and sidewalked.
338. Assessment of railroad right of way prior to 1911 void.
339. Same—City without power to assess and sell unless specially authorized.
340. Lands of street railroad subject to assessment.
341. School building not subject to assessment.
342. Railroad right of way not subject to assessment.
343. Homestead subject to assessment.
344. Advance of incidental expenses by contractor—Waiver.
345. Same—Provision for benefit of city, street superintendent, and persons to whom payment is due.
346. Same—Waiver by failure to appeal.
347. Same—Improper inclusion in assessment—Remedy is appeal.
348. Same—Sewer construction—Waiver.
349. Cost of street work can not be paid out of ordinary municipal revenues.

- 350. Acts of contractor and errors of superintendent of streets.
- 351. Proportional assessment—Section 12½ does not apply to dead contract.
- 352. Same—After abandonment of contract.
- 353. New assessment—Amendment of 1889 to section 9—Purpose.
- 354. Same—Conditions.
- 355. Same—Absence of engineer's certificate—No lien created.
- 356. Same—Same—Same—Not entitled to second assessment.
- 357. Same—If assessment valid, superintendent of streets not required to make another.
- 358. Same—Failure to return warrant not an error or defect under section 9.
- 359. Same—Vacation—Directions to contractor to complete work and superintendent to issue new warrant.
- 360. Same—Final judgment.
- 361. Same—Same—Abandonment of appeal.

b. District plan.

- 362. Sufficiency of plat or map.
- 363. Determination of council as to special benefits final and conclusive.
- 364. Filing of map mandatory and jurisdictional.
- 365. Assessment for benefits, valid—Omission of railroad right of way.
- 366. Same—Same—Assessed as other property in district.
- 367, 368. "May" defined.
- 369. Size of district not jurisdictional.
- 370. Section 3 not mandatory
- 371. Omission of lots from assessment.
- 372. Objection to extent of district should be made to council.
- 373. Inequality of assessments—Not considered for want of foundation in record.

VIII. ASSESSMENT.

a. Front-foot method.

282. Action of superintendent judicial—Can not be changed.—The act of the superintendent of streets in making an assessment is in the nature of a judgment by a tribunal of special and limited jurisdiction, and after its judgment has once been exercised its power is exhausted, in the absence of statutory authority for its revision, and its judgment can not be changed.—*Williams v. Bergin*, 108 Cal. 166, 41 Pac. 287.

283. Front-foot method of assessment based on benefits.—Improvement of streets by the front-foot method of assessment is not based upon the view that each owner shall pay the cost of so much of the improvement as is made on the street opposite his lot, but upon the theory of a benefit to his property from the improvement, and this benefit is measured by the frontage of the lot.—*Remillard v. Blake & Bilger Co.*,

169 Cal. 277, 284, 146 Pac. 634, Ann. Cas. 1916D, 451.

284. Assessment limited to one-half assessed value of property.—The act does not authorize an assessment for more than half the value of the property by the last tax assessment, whether the work is done under a single contract or is split up in separate contracts and assessments.—*Kreling v. Muller*, 86 Cal. 465, 25 Pac. 10.

285. Same—Assessment for other work in same year.—Under the Vrooman act a lot may be assessed to the extent of one-half of its assessed valuation notwithstanding it has already, during the same year, been assessed for other street work.—*Warren v. Postel*, 99 Cal. 294, 33 Pac. 930.

286. Assessment is a contract—Statutes in force are a part.—A street assessment is a contract, and the provisions of the statute in force at the time prescribing the manner of its enforcement are a part of such a contract.—*Chapman v. Jocelyn*, 182 Cal. 294, 187 Pac. 962.

287. Same—Same—Where statute shows character of work.—Where the statute shows the character of the work to be done it is sufficient that the resolution of intention follows the language of the statute; otherwise it must show the nature of the materials to be used.—*Schwiesan v. Mahon*, 123 Cal. 114, 60 Pac. 683.

Limited.—This decision limits the effect of *Emery v. San Francisco*, 28 Cal. 376.

288. Compliance with act required.—It is necessary to strictly conform to the requirements of the act in the matter of adopting plans and specifications, otherwise the contract and the assessments will be void.—*Henry Cowell, etc., Co. v. Williams*, 59 Cal. Dec. 499, 189 Pac. 839.

289. Statutory provisions must be substantially complied with.—The proceedings upon which a street assessment is based being in invitum the statute must be substantially complied with, or the assessment will be void.—*San Diego, etc., Co. v. Shaw*, 129 Cal. 273, 61 Pac. 1082.

290. Compliance with statute required, as to notice and other jurisdictional steps.—Street assessment proceedings are in invitum and must, in order to charge the property of the owner, be based upon a compliance with the provisions of the statute authorizing the assessment, in so far, at least, as those provisions have to do with the giving of notice or other steps precedent to the jurisdiction of the board to order the work done.—*Haughwout v. Percival*, 161 Cal. 491, Ann. Cas. 1913D, 115, 119 Pac. 649.

291. Same—Same—Particularly if property owner is benefited.—It is a fundamental principal that, in proceedings to charge private property for the expense of street work, every requirement of the statute which has a semblance of benefit to the owner must be observed, in order to give to the municipality jurisdiction.—*Dehail v. Morford*, 95 Cal. 457, 30 Pac. 593; *Haughwout v. Percival*, 161 Cal. 491, Ann. Cas. 1913D, 115, 119 Pac. 647.

292. Description of property held sufficient.—The description of the property in the assessment held sufficient on the authority of *Hewes v. Reis*, 40 Cal. 261.—*Stanwood v. Carson*, 169 Cal. 640, 651, 147 Pac. 562.

293. Same.—Under the rule adopted in *Hewes v. Reis*, 40 Cal. 261, it is held that the description in the present case was sufficient.—*Stanwood v. Carson*, 169 Cal. 640, 147 Pac. 562.

294. Method approved.—The method followed by the street superintendent in this case is that approved in *Creed v. McCombs*, 146 Cal. 449, 80 Pac. 679.—*Stanwood v. Carson*, 169 Cal. 640, 147 Pac. 562.

295. Premature issue—Power of council.—The issue of an assessment before the work is fully completed is premature, and the council is empowered on appeal to set it aside, and require the work to be completed according to its own directions and direct the superintendent of streets either to correct the assessment already made, or to make and issue a new one.—*Creed v. McCombs*, 146 Cal. 449, 80 Pac. 679.

296. Same—Same—Effective date of reissued assessment.—In the event of a reissue of the old assessment its effective date is the date of reissue, and it can not be made effective as of the date of original issue.—*Creed v. McCombs*, 146 Cal. 449, 80 Pac. 679.

297. Same—Same—No power to rescind former action.—The council has no power to reverse its action sustaining the appeal and treat it as never made, and confirm the assessment as valid from the beginning, and the proceeding is held to be still pending thereafter on appeal.—*Creed v. McCombs*, 146 Cal. 449, 80 Pac. 679.

298. Revision—Must be in mode prescribed.—The mode which the act prescribes for the revision of assessments is the measure of the power, and, unless that mode is followed, any attempted revision will be nugatory.—*Creed v. McCombs*, 146 Cal. 449, 80 Pac. 679.

299. Can not be imposed on frontage of one side of street only.—The expenses incurred in doing street work under the Vrooman act can not be assessed on the property fronting one side of the street only.—*San Diego, etc., Co. v. Shaw*, 129 Cal. 273, 61 Pac. 1082.

300. On one side of street only.—An assessment on a lot on one side of a street is proper where the assessment and diagram showed that the work was to be done on one side only, and in front of the lot.—*Perine v. Erzgraber*, 102 Cal. 234, 36 Pac. 585.

301. Same—Assessment must be made on frontage of both sides of street.—The Vrooman act is to be construed as authorizing an assessment to pay the cost of street work thereunder on the frontage of both sides of the street, without regard to whether more work is done on one side than the other.—*San Diego, etc., Co. v. Shaw*, 129 Cal. 273, 61 Pac. 1082.

302. Sidewalk—Cost assessed on property on opposite side of street.—The cost of constructing a sidewalk may be assessed on the property fronting on the opposite side of the street, even though the latter have constructed a sidewalk on their side of the street at their own expense.—*Mill-sap v. Balfour*, 154 Cal. 303, 97 Pac. 668.

303. Excessive assessment—Sole remedy is appeal to city council.—The sole remedy for an excessive assessment is by appeal to the city council, and, in the absence of such an appeal, the amount of the assessment is not open to question in a subsequent and collateral proceeding.—*Empire Securities Co. v. Matthews*, 179 Cal. 239, 176 Pac. 160.

304. Error in assessment—Failure to include lot—Remedy is by appeal to council.—If an error in failing to assess a lot that should have been assessed is committed the remedy is by appeal to the council.—*Ahlman v. Barber, etc., Co.*, 40 Cal. App. 395, 181 Pac. 238.

305. Error in amount—Failure to appeal to council—Not available by defendant in foreclosure.—The objection that the street superintendent assessed a lot for a greater amount than it should have been is, where the assessment for a uniform rate per front foot, is an objection to an assessment not void on its face, and was one subject to correction on appeal to the council, and failing to appeal therefrom the owner can not complain of the error in an action to foreclose the lien therefor.—*Bates v. Hadamson*, 2 Cal. App. 574, 84 Pac. 51.

306. Assessment void on face—May be resisted without appeal to council.—An owner may resist the enforcement of an assessment void on its face, without appealing to the council.—*Kenny v. Kelly*, 113 Cal. 364, 45 Pac. 699.

307. Omission of lots from assessment does not render it void on its face.—The mere omission from the assessment of one or more lots fronting along the improvement does not, of itself, render the assessment void on its face.—*San Francisco Paving Co. v. Dubois*, 2 Cal. App. 42, 83 Pac. 72.

308. Same.—A street paving assessment is not void on its face because all the pieces of property involved in the proceeding had been assessed to unknown owners.—*Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 185, 189, 138 Pac. 742.

309. Assessment to "unknown owners."—In an action to recover a street paving assessment, where the street superintendent had made a certificate that the ownership was unknown, and had assessed all of the pieces of property involved in the proceeding to "unknown" owners, the trial court committed no error in refusing to admit evidence in the shape of records from the auditor's office showing the names of the owners to whom the various pieces of property were assessed.—*Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 185, 189, 138 Pac. 742.

310. Same—Certificate of street superintendent conclusive.—When the superintendent of streets makes his certificate that the

ownership of a particular piece of property is unknown to him, such certificate is conclusive of the fact so certified, and may not be collaterally attacked.—*Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 185, 188, 138 Pac. 742.

311. Same—Lot partly owned by known owner.—One who admittedly owns part of a lot but demands that it be assessed as a whole may not complain if the superintendent of streets assess it to "unknown" owners.—*Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 185, 189, 138 Pac. 742.

312. Void, can not be validated by failure to file remonstrance or appeal.—Where the assessment is void the lack of power of the board of supervisors can not be supplied or the assessment validated by the failure of the property owners to avail themselves of the petition of remonstrance or appeal.—*DeHaven v. Berendes*, 135 Cal. 178, 67 Pac. 786.

313. Assessment—Materials of culvert and gutter not named in resolution of intention.—Under the Vrooman act an assessment for the construction of curbs and gutters can not be enforced where the resolution of intention did not name the materials to be used in such construction.—*Schwiesan v. Mahon*, 128 Cal. 114, 60 Pac. 683.

314. Same—Not aided by specifications and order for work.—The defect in the resolution is not aided by specifications and the order for doing the work and inviting proposals.—*Schwiesan v. Mahon*, 128 Cal. 114, 60 Pac. 683.

315. Assessment is entirety—Void in part, void as whole.—An assessment is an entirety, and if a part is for expenses not authorized under the act, it is wholly void.—*Ryan v. Altschul*, 103 Cal. 174, 37 Pac. 339.

316. Double assessment of corners for work on intersection—No appeal necessary.—A double assessment of two quarter blocks cornering at a street intersection for the expense of the work done on the intersection is void on its face, and the case is not within the rule requiring an appeal to the city council.—*Kenny v. Kelly*, 113 Cal. 364, 45 Pac. 699; *Perine v. Lewis*, 128 Cal. 236, 60 Pac. 422.

317. Single assessment does not cease to be such by apportionment.—An assessment does not cease to be a single assessment by reason of an apportionment in separate amounts to the several portions of the territory chargeable therewith in accordance with their relative position, as required by the act.—*Beckett v. Morse*, 4 Cal. App. 228, 87 Pac. 408.

318. Work excepted from provisions of the act.—An assessment for work excepted from the provisions of the act, as it was prior to the amendment of 1889, is invalid for all purposes.—*Ryan v. Altschul*, 103 Cal. 174, 37 Pac. 339.

319. Separate contracts for single improvement—Void.—The act does not give the city council power to award separate contracts for a single improvement, and an attempt to do so is void, confers no au-

thority to levy an assessment for the cost of the work.—*Treanor v. Houghton*, 103 Cal. 53, 36 Pac. 1081.

320. Clause requiring bond to keep in repair—Assessment invalid.—A clause in a contract for street work under the Vrooman act requiring the contractor to give bond to keep the street in repair for five years, vitiates the assessment.—*Brown v. Jenks*, 98 Cal. 10, 32 Pac. 701.

321. Failure to apportion assessment—Railroad right of way.—Failure to apportion the assessment against lands of a railroad right of way fronting on the street renders the assessment against the other lands on the street void, and the bonds are void, and a property owner is not required to make an appeal to the council as the Vrooman act (section 11) requires.—*Schaffer v. Smith*, 169 Cal. 764, 771, 147 Pac. 976.

321a. Railroad right of way subject to assessment—Stats. 1911, p. 742.—While the abutting land of a railroad company might be assessed for street improvements, there was no authority, prior to the amendment of 1911 (Stats. 1911, p. 742, § 20, subd. 11), to sell, in foreclosure of the lien of such assessment, both the fee and the right to operate the railroad.—*Wilson v. Pacific Electric Ry. Co.*, 176 Cal. 248, 253, 168 Pac. 128.

322. Sidewalk—Based on number of square feet constructed, is void.—An assessment for sidewalk and curb construction under the act of 1909 (Stats. 1909, p. 167) based on the proportion between the number of square feet of sidewalk constructed in front of each lot and the number of square feet in the entire area constructed is void.—*City Securities Co. v. Harvey*, 176 Cal. 682, 683, 169 Pac. 380.

323. Same—Same—No lien.—A void assessment for sidewalk and curb construction under the act of 1909, constitutes no lien upon the property, and the owner is not required under section 10 to seek correction by appeal to the city council, but may rely for his defense upon its invalidity.—*City Securities Co. v. Harvey*, 176 Cal. 682, 684, 169 Pac. 380.

324. Not void because contract contemplated damage to private property without compensation.—A street work assessment and contract are not void on the ground that the contract contemplated damaging the property owner's land for public use "without just compensation having been first made to, or paid into court for, the owner," within the meaning of section 14, article I, of the constitution, the contractor being ignorant that compensation had not been made or paid, and the owner never having objected to the work or taken any step to prevent it.—*Hornung v. McCarthy*, 126 Cal. 17, 58 Pac. 303.

325. Same—Contractor's rights grow out of power of taxation.—The contractor's rights in such a case grow out of the governmental power of taxation; and the consideration that the property owner may have some cause of action founded upon

rights reserved by that part of the constitution which deals with the exercise of the power of eminent domain, does not make the assessment proceeding void.—*Hornung v. McCarthy*, 126 Cal. 17, 58 Pac. 303.

326. Same—Same—Claim can not be used as set off.—The property owner's right of action for damages can not be used as a set off or counterclaim to a cause of action on the assessment.—*Hornung v. McCarthy*, 126 Cal. 17, 58 Pac. 303.

327. Assessment for work not included in the resolution of intention is wholly void.—*Partridge v. Lucas*, 99 Cal. 519, 33 Pac. 1082.

328. Street work in excess of that called for by the resolution of intention is unauthorized.—Street work done by a contractor in excess of that called for by the resolution of intention is done without authority, even though provided for in the plans and specifications, and he is not entitled to an assessment for the excess.—*Frick v. Morford*, 87 Cal. 576, 25 Pac. 764.

329. Same—Lot fronting wholly on extra work can not be assessed.—If a lot wholly fronts on the work not authorized, the assessment against it is void.—*Frick v. Morford*, 87 Cal. 576, 25 Pac. 764.

330. Same—Lot fronting wholly or partly on unauthorized work not void.—Where a lot fronts wholly or partly on the unauthorized work the assessment is not void on the ground that the lot is not within the limits prescribed by the resolution of intention.—*Frick v. Morford*, 87 Cal. 576, 25 Pac. 764.

331. Same—Cost estimated by linear foot.—Where the cost was estimated by the linear foot the whole assessment is not invalid, and the additional cost may be segregated.—*Frick v. Morford*, 87 Cal. 576, 25 Pac. 764.

332. Same—Same—Correction by appeal to the city council.—The unauthorized portion of the assessment may be corrected on appeal to the city council.—*Frick v. Morford*, 87 Cal. 576, 25 Pac. 764.

333. Same—Same—Same—Failure to appeal.—The failure to appeal to the city council is conclusive upon both contractor and property owner.—*Frick v. Morford*, 87 Cal. 576, 25 Pac. 764.

334. Same—Same—Same—Owner need not appeal.—The owner need not appeal to the city council to correct an unauthorized assessment.—*Frick v. Morford*, 87 Cal. 576, 25 Pac. 764.

335. Same—Same—Same—Illegal assessment creates no lien.—An illegal assessment creates no lien upon the property.—*Frick v. Morford*, 87 Cal. 576, 25 Pac. 764.

336. Separate assessment for additional work.—An assessment for the work described in the resolution of intention was not vitiated by the inclusion of additional work in the contract, for which a separate assessment was made.—*McDonald v. Mezes*, 107 Cal. 492, 40 Pac. 808.

337. Uniformity—Cost of sidewalks and curbing assessed only on lots not already curbed and sidewalked.—Curbing and sidewalking may be confined to the portion of

the street not already curbed and sidewalked, and the assessment is none the less equal and uniform, because the cost of the improvement was not distributed over all the property within the assessment district, but only on the portions where the sidewalk and curbing was not done.—*McSherry v. Wood*, 102 Cal. 647, 36 Pac. 1010.

338. Assessment of railroad right of way prior to 1911, void.—Prior to the 1911 amendment to the Vrooman act the assessment of a railroad right of way for street improvements was void, and the lien could not be enforced.—*Wilson v. Pacific Electric Ry. (Cal.)*, 168 Pac. 128.

339. Same—City without power to assess and sell unless specially authorized.—Unless specially authorized by the legislature, in clear and unambiguous language, a city has no power to levy an assessment on the right of way of a railroad company for a portion of the cost of constructing a bulkhead and sidewalk, or sell such right of way to satisfy an assessment for that purpose.—*San Pedro, etc., Co. v. Pillsbury*, 23 Cal. App. 675, 139 Pac. 669, 671.

340. Lands of street railroad subject to assessment.—Lands of a railroad right of way fronting on a street are subject to assessment from a street improvement, but the easement held for right of way purposes should be excluded from the assessment.—*Schaffer v. Smith*, 169 Cal. 764, 769, 147 Pac. 976.

341. School building not subject to assessment.—A school building occupied and used as subject is not subject to the lien of an assessment for street work.—*Witter v. Mission School District*, 121 Cal. 350, 66 Am. St. Rep. 33, 53 Pac. 905.

342. Railroad right of way not subject to assessment.—A railroad right of way is not subject to assessment for street improvements fronting thereon.—*Southern, etc., Co. v. Workman*, 146 Cal. 80, 2 Ann. Cas. 583, 79 Pac. 586, 82 Pac. 79.

343. Homestead—Subject to assessment.—A homestead is liable to assessment for street work.—*Perine v. Forbush*, 97 Cal. 305, 32 Pac. 226.

344. Advance of incidental expenses by contractor—Waiver.—The failure of the contractor for sewer construction to advance incidental expenses as required by section 5 of the act does not invalidate the contract, where all those entitled to receive such expenses waive payment in writing.—*Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658.

345. Same—Provision for benefit of city street superintendent and persons to whom payment is due.—The provision of section 5 of the act requiring a contractor to advance incidental expenses is intended for the benefit of those to whom such expenses are to be paid, the street superintendent and the city, and the property owners can not complain upon the contractor's failure to advance such expenses.—*Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658.

346. Same—Waiver of, by failure to appeal.—An objection to an assessment on the

ground that it included an amount, as incidental expenses, for engineering and printing, is waived by failure to appeal.—*Boyle v. Hitchcock*, 66 Cal. 129, 4 Pac. 1143.

347. Improper inclusion in assessment—Remedy is appeal.—If incidental expenses incurred by the city and not by the contractor are included in the assessment the remedy is by an appeal to the city trustees.—*Los Angeles, etc., Co. v. Los Angeles, etc., Co.*, 181 Cal. 685, 186 Pac. 593.

348. Same—Sewer construction—Waiver.—The advancement of incidental expenses by the contractor is for the benefit of those to whom the same is payable, and may be waived by them in writing, and such waiver does not affect the property owners, and they can not object.—*Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658.

349. Cost of street work can not be paid out of ordinary municipal revenues.—Under the Vrooman act the cost of grading and opening streets must be assessed against the lots fronting on same, or on the land of a defined district, and in no event can be made a charge on the municipal revenues.—*Redondo Beach v. Cate*, 136 Cal. 146, 68 Pac. 586.

350. Acts of contractor and errors of superintendent of streets.—None of the acts of the contractor or errors of the superintendent of streets render the assessment and lien void; but all these matters may be corrected on appeal to the council under section 11 of the act.—*Oak Hill Water Co. v. Gillette*, 13 Cal. App. 605, 110 Pac. 316.

351. Proportional assessment — Section 12½ does not apply to a dead contract.—Section 12½ applies only to an existing contract and was not intended to give new life to a dead contract, and the board of supervisors are without jurisdiction to order a proportional assessment, after the abandonment by the contractor of a portion of the work and the time for completion has expired.—*Kelso v. Cole*, 121 Cal. 121, 53 Pac. 353.

352. After abandonment of contract.—This case is the same as that of *Kelso v. Cole*, 121 Cal. 121, 53 Pac. 353, and the decision of the court was the same.—*Kelso v. Gillette*, 136 Cal. 603, 69 Pac. 296.

353. New assessment — Amendment of 1889 to section 9—Purpose.—The purpose of the amendment of 1889 to section 9 was to prescribe the conditions and limit the time for making a new assessment.—*Ede v. Cuneo*, 126 Cal. 167, 58 Pac. 538.

354. Same—Conditions.—Unless the final judgment to enforce the prior assessment was defeated by some defect in the assessment, the recording or in some matter connected with the return of the warrant, no new assessment is authorized under the 1889 amendment to section 9 of the act.—*Ede v. Cuneo*, 126 Cal. 167, 58 Pac. 538.

355. Same—Absence of engineer's certificate—No lien created.—The 1889 amendment to section 9 of the act does not authorize a new assessment where the plaintiff was defeated in the suit or the prior assessment by the absence of the engineer's

certificate and the record thereof, or on the ground that no lien had been created.—*Ede v. Cuneo*, 126 Cal. 167, 58 Pac. 538.

356. Same—Same—Same—Not entitled to second assessment.—The contractor is not required to accept incomplete or defective documents from the superintendent of streets, and if a document is presented lacking the certificate of the engineer he may enforce the issuance of another meeting the requirements of the statute, and if he does not do so, and his lien is defeated, he can not have a second assessment, in a case not falling within the amendment of 1889 to section 9.—*Ede v. Cuneo*, 126 Cal. 167, 58 Pac. 538.

357. Same—If assessment is valid, superintendent of streets not required to make another.—If the assessment is a valid one, the superintendent of streets can not be required to make another.—*Frick v. Morford*, 87 Cal. 576, 25 Pac. 764.

358. Same—Failure to return warrant not an error or defect under section 9.—The failure of the contractor to return the warrant within the statutory period operates to deprive him of his lien, and is not an error or defect in the return, within the meaning of section 9, which entitles him to a new assessment after judgment against him in an action to enforce the assessment.—*City Street Imp. Co. v. Emmons*, 138 Cal. 297, 71 Pac. 332.

359. Vacation—Directions to contractor to complete work and to superintendent to issue new warrant.—When the city council vacated the original assessment and directed the contractor to perform the work required by it "under the direction of the said city council," and that when so done the superintendent should accept the work and issue a new warrant, assessment and diagram, such directions were in strict accordance with the provisions of section 11 of the act, and the indorsement of the street superintendent is not inconsistent therewith.—*Hadley v. Dague*, 130 Cal. 207, 62 Pac. 500.

360. Same—Final judgment.—A judgment of the superior court, final in its nature, declaring an assessment void for informality, et cetera, is clearly within the meaning of the street law, where the words used are "any final judgment of any court of this state."—*Hornung v. McCarthy*, 126 Cal. 17, 58 Pac. 303.

361. Same—Same—Abandonment of appeal.—A judgment of the superior court declaring an assessment void for informality, et cetera, is certainly a final judgment within the meaning of the act, where the plaintiff in the suit, instead of appealing, has substantially abandoned his appeal by the act of applying for a new assessment.—*Hornung v. McCarthy*, 126 Cal. 47, 58 Pac. 303.

b. District plan.

362. Sufficiency of plat or map.—The map or plat, referred to in the resolution of intention containing a legend that the property colored in red was the property affected was not insufficient on the ground

such legend was not a declaration that other property included in the boundaries of the district was not benefited and would not be assessed.—*Thoits v. Byxbee*, 34 Cal. App. 226, 167 Pac. 166.

363. Determination of council as to special benefits final and conclusive.—The determination of the council that the property of the district will be specially benefited, is final and conclusive in the absence of fraud and mistake.—*Beale v. Santa Barbara*, 32 Cal. App. 235, 162 Pac. 657.

364. Filing of map mandatory and jurisdictional.—The requirement that when the proposed improvement is made under the district plan a map of the district shall be on file before the street superintendent proceeds to post and publish notices of work is mandatory and jurisdictional.—*Beck v. Ransome-Crummey Co.*, (Cal. App.) 184 Pac. 431.

365. Assessment for benefits valid—Omission of railroad right of way.—A district assessment, based on benefits, is valid, in the absence of fraud, unless appealed from, and, if approved on appeal, was valid as finally approved by the legislative body of the city; and the fact that in such an assessment the right of way of a railroad was omitted, does not invalidate.—*Bailey v. Hermosa Beach*, (Cal.) 192 Pac. 712.

366. Same—Same—Assessed as other property in district.—The statute requires that when a railroad right of way lies within the exterior boundaries of an assessment district, it shall be assessed as other property therein is assessed, according to benefits.—*Bailey v. Hermosa Beach*, (Cal.) 192 Pac. 712.

367. "May" defined.—The word "may" in the phrase may make the expense of the work chargeable on a district, confers a discretionary power, and is not mandatory.—*Ostrander v. Richmond*, 155 Cal. 468, 101 Pac. 452.

368. Same.—Under the Vrooman act the council may adopt the district assessment plan in those cases where, under the front-foot plan, more than half the assessed value of the lot will have to be taken to pay the expenses of the improvement, or it may follow the front-foot plan even to the extent of taking all the lots fronting on the proposed improvement.—*Ostrander v. Richmond*, 155 Cal. 468, 101 Pac. 452.

369. Size of district not jurisdictional.—Where the district plan is adopted the size of the district is not jurisdictional.—*O'Dea v. Mitchell*, 144 Cal. 374, 77 Pac. 1020.

370. Section 3 not mandatory.—The provision of section 3 which authorizes the formation of a district, when the contemplated work is of more than local or ordinary public benefit, is not mandatory, requiring the city council to establish a district larger than the lots fronting on the streets.—*O'Dea v. Mitchell*, 144 Cal. 374, 77 Pac. 1020.

371. Omission of lots from assessment.—The mere omission of lots from the assessment does not make it void.—*O'Dea v. Mitchell*, 144 Cal. 374, 77 Pac. 1020.

372. Objection to extent of district should be made to council.—The remedy for objections to the extent of the district is by protest and objections to the council, and if not taken the property owner can not be heard in an action to foreclose the lien of the assessment to make the same objection.—*O'Dea v. Mitchell*, 144 Cal. 374, 77 Pac. 1020.

373. Inequality of assessments—Not considered for want of foundation in record.—Objections on constitutional grounds to the alleged inequality of district assessments because of the omission of lots which should have been included in the district, can not be considered where the record contains nothing on which to base such objections.—*O'Dea v. Mitchell*, 144 Cal. 374, 77 Pac. 1020.

IX. BONDS.

374. Date antedated.

IX. BONDS.

374. Date—Antedated.—The law requires that the bonds shall be issued after the expiration of thirty days from the date of the warrant, and where the issue of bonds was delayed on account of delay in the performance of ministerial acts by the city treasurer, it was proper that the bonds should bear the date they are required to be issued.—*Ellis v. Witmer*, 134 Cal. 249, 66 Pac. 301.

X. APPEALS.

375. Action of council judicial.

376. Same—Determination conclusive.

377, 378. Protest treated as.

379. "Remonstrance"—Section 3.

380. "Remonstrance" and "appeal" distinguished.

381. Same—"Appeal."

382. Objections to whole work suspends proceedings against all property owners until heard.

383. Same—No request for action necessary.

384. Jurisdiction lost—Effect of majority protests—New resolution necessary.

385. Publication of notice is imperative.

386. Same—Jurisdictional.

387. Same—Same—Sole manner of giving notice.

388. Where applicable.

389. Same—Not applicable to void acts.

390. Assessment void on its face.

391. Defect in street at acceptance—Appeal only remedy.

392. Same—Same—Not available in action for assessment

393. Objection that work was not fully completed.

394. Work not included in resolution of intention.

395. Performance of work—Street superintendent's determination conclusive, except on appeal.

396. Same—No work or work not completed.

397. Same—Power of city council on appeal.

398. Same—Collateral attack, when,

399. Search of title to ascertain exact frontage—Can not be questioned in absence of appeal.
400. Description of work—Defense to action for enforcement of assessment.
401. Waiver of error by failure to take.
402. Disproportionate assessment—Failure to appeal is waiver.
403. Defects not curable—Failure to appeal not waiver.
404. Subjects—Section 11 has no application where no provision for appeal is made.
405. Incurable defects—Section 11 does not apply.
406. Same—Same—Property owner not estopped by denial of appeal
407. Same—Same—Resolution of intention void on its face.
408. Failure to appeal—Effect of, upon objection that work was not according to contract.
409. Irregularity—Failure of property owner to appeal.
410. Exceptions to rule as to assessments—Appeal to city council.
411. Ground of.
412. Appeal from assessment—Time.
413. Notice—Process to acquire jurisdiction.
414. Same—Appeal by contractor to increase assessment.
415. Same—Same—Insufficient notice.
416. Effect of.
417. Form of notice approved.
418. Same—Notice eo nomine to person affected.
419. Section 11 contemplates—Only one appeal.
420. Same—No second appeal after appeal sustained.
421. Same—Same—Reissue of assessment proper.
422. Same—Same—Completion of contract in time
423. Order sustaining can not be vacated or rescinded.
424. Same—No new trial or rehearing provided for.
425. Petition of remonstrance—Applicable only to acts and proceedings within the power of the council.
426. Same—Conclusiveness of decision of council, section 3 does not apply to void contract.
427. Demand for payment of assessment—By assignee.
428. Same—By contractor after assignment.

X. APPEALS.

375. Action of council judicial.—The action of the city council in the matter of appeals is clearly judicial.—*Belser v. Hoffschneider*, 104 Cal. 455, 38 Pac. 312.

376. Same.—The council acts judicially on an appeal on the ground that the work was not fully completed, and its determination is conclusive.—*Lambert v. Bates*, 137 Cal. 676, 70 Pac. 777.

377. Protest treated as.—Where a written protest to the council by persons interested, on such a ground, is understood and acted upon by the council and all parties concerned as an appeal from the action of the street superintendent in accepting the work and issuing an assessment, warrant and diagram therefor, and no one is misled to his prejudice thereby, it will be deemed an appeal.—*Creed v. McCombs*, 146 Cal. 449, 80 Pac. 679.

378. Same.—Protests stating objections in writing, filed with the clerk, constitute an appeal within the meaning of section 11, although the protestants do not say that they thereby appealed from the assessment.—*Belser v. Hoffschneider*, 104 Cal. 455, 38 Pac. 312.

379. "Remonstrance"—Section 3.—A letter to city trustees, while the work was in progress, by a property owner, asking permission to take samples, and stating that he had been informed that the work was not being done according to specifications, is not a "remonstrance" within the meaning of section 3 of the act.—*Los Angeles, etc., Co. v. Los Angeles, etc., Co.*, 181 Cal. 685, 186 Pac. 593.

380. "Remonstrance" and "appeal"—Distinguished.—A "remonstrance" is made before assessment to the acts or proceedings of the council, and an "appeal" is made after the assessment, and relates to the acts of the street superintendent in accepting work not done as required by contract, or other acts of his specified in the statute.—*Girvan v. Simon*, 127 Cal. 491, 59 Pac. 945.

381. Same—"Appeal."—A paper addressed to the city council by a property owner distinctly pointing his objections to the acts of the street superintendent in accepting work not done according to the specifications of the contract, is an appeal, though the word "remonstrance" is used.—*Girvin v. Simon*, 127 Cal. 491, 59 Pac. 945.

382. Objections to whole work—Suspends proceedings against all property owners until heard.—Where an appeal is based on objections to the whole work its filing, though by one only, suspends all proceedings to collect any of the assessments until it is heard, after statutory notice has been given, and it is only such hearing upon notice that binds any of the parties assessed, and they are not bound by a decision of the council, without notice or hearing, that the appeal was insufficient.—*Girvin v. Simon*, 127 Cal. 491, 59 Pac. 945.

383. Same—No request for action necessary.—The statutory direction to the city council was imperative, and the applicant and all other parties, might rest safely until due notice was given, and no request for action is required.—*Girvin v. Simon*, 127 Cal. 491, 59 Pac. 945.

384. Jurisdiction lost—Effect of majority protests—New resolution necessary.—When the owners of a majority of the frontage on a proposed street improvement, within ten days after the expiration of the time of posting and publication of the resolution of intention and notice, filed protests and ob-

jections to the improvement the jurisdiction of the board is suspended for six months, and a new resolution is required to regain it.—*City, etc., Co. v. Babcock*, 123 Cal. 205, 55 Pac. 762.

Order to do work without new resolution invalid.—*Thomason v. Carroll*, 132 Cal. 148, 64 Pac. 262; *Pacific Paving Co. v. Gallett*, 137 Cal. 174, 69 Pac. 985; *Pacific Paving Co. v. Sullivan Estate Co.*, 137 Cal. 261, 70 Pac. 87.

385. Publication of notice is imperative.—Publication of the notice of appeal taken to the city council is imperative, and the defendant in an action to recover a street assessment is not estopped to urge the failure of such publication by appearing before the council and urging his appeal without objecting to such failure.—*Southern, etc., Co. v. Howells*, 21 Cal. App. 330, 131 Pac. 756.

386. Same—Jurisdictional.—The council can not take jurisdiction to hear and determine the appeal until all interested property owners, whether parties to the appeal or not, have been given notice of the hearing.—*Southern, etc., Co. v. Howells*, 21 Cal. App. 330, 131 Pac. 756.

387. Same — Same — Sale — Manner of giving notice.—The act provides that the notice shall be published for five days, and no other manner of giving notice is provided.—*Southern, etc., Co. v. Howells*, 21 Cal. App. 330, 131 Pac. 756.

388. Where applicable.—Appeal is given only to parties aggrieved by the acts of the street superintendent, and has no application to the precedent acts of the council or board.—*DeHaven v. Berendes*, 135 Cal. 178, 67 Pac. 786.

389. Same—Not applicable to void acts.—Section 11 of the act has no application to void acts.—*DeHaven v. Berendes*, 135 Cal. 178, 67 Pac. 786.

390. Assessment void on its face.—No appeal to the board of supervisors is necessary where the assessment is void on its face.—*Ryan v. Altschul*, 103 Cal. 174, 37 Pac. 339.

391. Defect in street at acceptance—Appeal only remedy.—The only remedy for acceptance of the street by the superintendent incomplete as to a narrow strip left ungraded by the contractor, is by appeal to the council.—*Smith v. Hazard*, 110 Cal. 145, 42 Pac. 465.

392. Same—Same—Not available in action for assessment.—Where such attenuated defect was afterwards graded by the owner of the lot it was not available in an action to recover the assessment.—*Smith v. Hazard*, 110 Cal. 145, 42 Pac. 465.

393. Objection that work was not fully completed.—An objection that the work was not fully performed can be presented only on appeal to the city council, and can not be again presented in defense of an action to foreclose a street assessment lien.—*Lambert v. Bates*, 137 Cal. 676, 70 Pac. 777.

394. Work not included in resolution of intention.—No appeal to the council necessary in case of work not included in reso-

lution of intention.—*Partridge v. Lucas*, 99 Cal. 519, 33 Pac. 1082.

395. Performance of work—Street superintendent's determination conclusive, except on appeal.—It is the duty of the street superintendent to determine whether the work has been done according to contract, and his determination is final and conclusive, except on appeal to the city council, which is the exclusive remedy; and if a property owner fails to take such appeal, the street superintendent's determination is not subject to attack in any other tribunal.—*McLaughlin v. Knoblock*, 161 Cal. 676, 120 Pac. 27.

396. Same—No work or work not completed.—An appeal is required to be taken whether the objection is based upon the fact that no work at all was done or that it was not fully performed, the council having ample power to afford relief in either case.—*McLaughlin v. Knoblock*, 161 Cal. 676, 120 Pac. 27.

397. Same—Power of city council on appeal.—If, on appeal, the council finds that the street superintendent's decision was erroneous, or that no work at all had been done on the contract the council is empowered to set aside the assessment and require the work to be done according to contract.—*McLaughlin v. Knoblock*, 161 Cal. 676, 120 Pac. 27.

398. Same—Collateral attack, when.—It is only when the assessment appears on its face to be absolutely void that no appeal is required and the property owner may collaterally assail it.—*McLaughlin v. Knoblock*, 161 Cal. 676, 120 Pac. 27.

399. Search of title to ascertain exact frontage—Can not be questioned in absence of appeal to council.—A property owner can not question the assessment on the ground that the expense of a search of title to show the exact frontage of the lots, had been added to the assessment, where he did not present the objection on appeal to the city council.—*Ahlman v. Barber, etc., Co.*, 40 Cal. App. 395, 181 Pac. 238.

400. Description of work—Defense to action for enforcement of assessment.—A property owner is not required to appeal to the council, as a condition to defending an action for the enforcement of an assessment, on the ground that the resolution of intention contains an insufficient description of the work, and failed to confer jurisdiction for further proceedings.—*San Jose, etc., Co. v. Auzeais*, 106 Cal. 498, 39 Pac. 859.

401. Waiver of error by failure to take.—Where an assessment is fully authorized the mistake of the superintendent in assessing it for a sum exceeding its proportion was merely an error in the exercise of questionable power, which error might have been corrected by an appeal to the board of supervisors, and the failure to take such appeal operated as a waiver of the error.—*Dowling v. Conniff*, 103 Cal. 75, 36 Pac. 1034.

402. Disproportionate assessment—Failure to appeal is waiver.—If a lot is assessed for more than its lawful proportion of the cost of the work, whether by reason of an

erroneous computation, or an improper distribution of the cost upon the lands assessable therefor, the error is waived by the failure of the owner to appeal to the council.—Beckett v. Morse, 4 Cal. App. 228, 87 Pac. 408.

403. Defects not curable—Failure to appeal not waiver.—Where the defects in the proceedings are such as can not be corrected by the city council the property owner does not waive them by a failure to appeal.—Manning v. Den, 90 Cal. 610, 27 Pac. 435.

404. Subjects—Section 11 has no application where no provision for appeal is made.—Section 53 does not add to the subjects of appeal to the city council as defined in section 11, and the provision of the latter that "no assessment shall be held invalid except upon appeal to the city council," has no application to a case in which an appeal is not authorized.—Schmidt v. Santa Monica, etc., Co., 39 Cal. App. 85, 178 Pac. 315.

405. Incurable defects—Section 11 does not apply.—Section 11 does not apply to incurable defects in the proceedings.—Manning v. Den, 90 Cal. 610, 27 Pac. 435.

406. Same—Same—Property owner not estopped by denial of appeal.—The denial of an appeal to the council based on incurable defects in the proceedings does not estop the property owner to defend an action to enforce the lien in court on the ground of such defects.—Manning v. Den, 90 Cal. 610, 27 Pac. 435.

407. Same—Same—Resolution of intention void on its face.—If the invalidity of the initial resolution of intention is apparent on its face, no appeal to the council need be taken, and the owner may stand on his rights whenever any attempt is made to assert a claim based on an assessment void on its face.—Beck v. Ransome-Crummey Co., (Cal.) 184 Pac. 431.

408. Failure to appeal—Effect of upon objection that work was not according to contract.—When the property owner fails to appeal under section 11, he is precluded from attacking the assessment on the ground that the work was not done according to contract.—Petaluma Paving Co. v. Singley, 136 Cal. 616, 69 Pac. 426.

409. Irregularity—Failure of property owner to appeal.—An irregularity will not be corrected on appeal where the property owner failed to appeal to the city council for such irregularity.—McSherry v. Wood, 102 Cal. 647, 36 Pac. 1010.

410. Exceptions to rule as to assessments—Appeal to city council.—If defendant's case came within any of the exceptions to the rule in regard to assessments contained in the act, it devolved upon him to make it known by objection to the assessment made, by appeal to the city council under section 11.—Treanor v. Houghton, 103 Cal. 53, 36 Pac. 1081.

411. Ground of.—"That the work has not been performed according to the contract in a good and substantial manner" is a ground of appeal to the city council under

the Vrooman act.—Creed v. McCombs, 146 Cal. 449, 80 Pac. 679.

412. Appeal from assessment—Time.—The thirty-day period for appeal from the assessment is to be counted from the date of record of the warrant, not its actual date, if different.—Cotton v. Watson, 134 Cal. 422, 66 Pac. 490.

413. Notice—Process to acquire jurisdiction.—The notice required by section 11, is in the nature of process by which the board of supervisors may acquire jurisdiction to act upon the appeal and the assessment.—Williams v. Bergin, 108 Cal. 166, 41 Pac. 287.

414. Same—Appeal by contractor to increase assessment.—In the case of an appeal by the contractor for the purpose of increasing an assessment, the notice is the only means which the law provides to warn the owner of the proposed increase, and the provisions of the act must be followed in order to give jurisdiction to make the increase.—Williams v. Bergin, 108 Cal. 166, 41 Pac. 287.

415. Same—Same—Insufficient notice.—On such an appeal a notice requiring all "appellants" to appear at the hearing, can not be held to extend to others equally interested, and is insufficient to confer jurisdiction to act on the appeal.—Williams v. Bergin, 108 Cal. 166, 41 Pac. 287.

416. Effect of.—The effect of an appeal from an assessment made by the street superintendent is to suspend all action thereon, and the contractor could not sue upon such assessment until after its confirmation on appeal.—Williams v. Bergin, 108 Cal. 166, 41 Pac. 287.

417. Form of notice approved.—The form of notice of appeal by the contractor to the city council from a street assessment in the present case was approved.—Williams v. Viselich, 121 Cal. 314, 53 Pac. 807.

418. Same—Notice eo nomine to the person affected.—A notice of appeal by the contractor from the assessment need not be directed eo nomine to the persons affected.—Williams v. Viselich, 121 Cal. 314, 53 Pac. 807.

419. Section 11 contemplates only one appeal.—Section 11 of the Vrooman act contemplates only one appeal, and after an appeal has been sustained on the ground of improper and faulty construction, and the contractor is required to do additional work and does it, and the work is finally accepted, disaffected property owners can not file a second appeal.—Stanwood v. Carson, 169 Cal. 640, 147 Pac. 562.

420. Same—No second appeal after appeal sustained.—When property owners appeal to the board of trustees against the acceptance of the work, and the appeal is sustained, and further work is ordered done, and is done to the satisfaction of the board, and the work is accepted, the board has no jurisdiction to entertain a second appeal against acceptance (§ 11, Vrooman act).—Stanwood v. Carson, 169 Cal. 640, 147 Pac. 562.

421. Same—Same—Reissue of assessment proper.—After the council, on appeal from acceptance sustained had ordered further work done in a specified time, and such requirement was fully complied with, it was proper for the superintendent to reissue the old assessment, diagram, and warrant. —*Stanwood v. Carson*, 169 Cal. 640, 648, 147 Pac. 562.

422. Same—Same—Completion of contract in time.—Where in a street improvement on appeal to the council it was decreed that the work had not been done in accordance with the contract, and further work was ordered to be done within a fixed time, and it was done, it is held that the contract was completed within the time fixed in the contract and its legal extensions. —*Stanwood v. Carson*, 169 Cal. 640, 649, 147 Pac. 562.

423. Order sustaining can not be vacated or rescinded.—The city council, after it sustains an appeal taken in pursuance of section 11 of the Vrooman act, has no power thereafter to rescind its action, and if it does so, its action is ineffectual and void. —*Creed v. McCombs*, 146 Cal. 449, 80 Pac. 679.

424. Same—No new trial or rehearing provided for.—The final judgment of the city council on appeal can not be vacated, and no provision is made for a new trial or a rehearing. —*Belser v. Hoffschneider*, 104 Cal. 455, 38 Pac. 312.

425. Petition of remonstrance—Applicable only to acts and proceedings within the power of the council.—The provision authorizing a petition of remonstrance against the acts and proceedings of the city council was intended to be applicable only to acts and proceedings within the power of the council. —*DeHaven v. Berendes*, 135 Cal. 178, 67 Pac. 786.

To same effect: *Capron v. Hitchcock*, 98 Cal. 427, 33 Pac. 431.

426. Same—Conclusiveness of decision of council—Section 3 does not apply to void contract.—The provision of section 3 as to remonstrance of property owner, and conclusiveness of decision of council thereon has no application to a void contract. —*Capron v. Hitchcock*, 98 Cal. 427, 33 Pac. 431.

427. Demand for payment of assessment—By assignee.—It is immaterial whether the assignee of the contractor makes the demand for payment of the assessment in person or in the name of the contractor, and the taxpayer would not be injured in either case. —*Banaz v. Smith*, 133 Cal. 102, 65 Pac. 309.

428. Same—By contractor after assignment.—A demand made by the contractor after he has made an assignment is not invalid [*Taylor v. Palmer*, 31 Cal. 240]. —*Stanwood v. Carson*, 169 Cal. 640, 147 Pac. 562.

XI. LIEN.

429. Failure of street superintendent to insist upon verified demands for incidental expenses.

430. Can not be created except by full compliance with act.

431. Paramount to prior mortgage lien.

432. Record of assessment, diagram and warrant creates.

433. Same—Recordation prior to attaching lien not required.

434. Recording engineers certificate prerequisite to creation.

435. Same—Diagram on back referred to in certificate.

436. Same—Method of recordation.

437. Engineer's certificate signed by mere clerk.

438. Warrant must be filed before delivery to contractor.

439. Record of return of warrant—Signature of street superintendent is required.

440. Not a personal liability.

441. Liability of each lot separate and independent.

442. Property of street railroad.

443. Continues for two years only.

444. Assessment based on benefits does not create.

445. May be paid in any kind of money.

446. Lien an entirety—Payment of portion does not release lien from remainder.

XI. LIEN.

429. Failure of street superintendent to insist upon verified demands for incidental expenses incurred by the city and not by the contractor did not invalidate the lien. —*Los Angeles, etc., Co. v. Los Angeles, etc., Co.*, 181 Cal. 685, 186 Pac. 593.

430. Can not be created except by full compliance with the act.—A street assessment lien can not be put upon the property of a citizen save by a substantial compliance with all the provisions of the statute and in no way can such a lien be created against those provisions. —*Ryan v. Altschul*, 103 Cal. 174, 37 Pac. 339.

431. Paramount to prior mortgage lien.—A lien for public taxes and assessments is paramount to all liens acquired by personal contract, including that of a mortgage prior to a street-work assessment. —*O'Dea v. Mitchell*, 144 Cal. 374, 77 Pac. 1020.

432. Record of assessment, diagram and warrant creates.—The record of the assessment, diagram and warrant creates the lien, and it follows that the lot owners will be protected by such record, and that they will be entitled to a release of the lien upon payment to the person who, on the face of the warrant is entitled to receive the money. —*Berkeley, etc., Co. v. Marx*, 10 Cal. App. 410, 102 Pac. 278.

433. Same—Recordation prior to attaching of lien not required.—The failure to record the contract prior to the attaching of the lien does not invalidate the lien. —*Los Angeles, etc., Co. v. Los Angeles, etc., Co.*, 181 Cal. 685, 186 Pac. 593.

434. Recording engineer's certificate prerequisite to creation.—The amendment of March 14, 1889, made the recording of the engineer's certificate as a prerequisite to the creation of the lien. —*Buckman v. Cuneo*, 103 Cal. 62, 36 Pac. 1025; *Rauer v. Lowe*, 107 Cal. 229, 40 Pac. 337.

435. Same—Diagram on back referred to in certificate.—A diagram on the back of the engineer's certificate, showing the extent of the progress of the work, and referred to in the certificate is a material part thereof, and must be recorded along with the certificate, and if not so recorded, no valid lien will attach.—*Buckman v. Cuneo*, 103 Cal. 62, 36 Pac. 1025.

436. Same—Method of recordation.—The act contemplates the recordation in one record of the warrant, assessment, diagram and engineer's certificate, and where the first three are recorded in a separate book of assessment records, and the last in a small book, kept in the office, but not with the assessment records, and not referred to in such records, such record is invalid and creates no lien.—*Rauer v. Lowe*, 107 Cal. 229, 40 Pac. 337.

437. Engineer's certificate signed by mere clerk.—An engineer's certificate, not signed in person or by deputy, but by a mere clerk, adding his own initials, is not the certificate of the engineer, is not admissible in evidence in an action to recover an assessment, and the recordation thereof creates no valid lien.—*Rauer v. Lowe*, 107 Cal. 229, 40 Pac. 337.

438. Warrant must be filed before delivery to contractor.—The warrant of assessment must be recorded in the office of the superintendent of streets before delivery to the contractor or his assigns, in order to create the lien allowed.—*Gillis v. Cleveland*, 87 Cal. 214, 25 Pac. 351.

439. Record of return of warrant—Signature of street superintendent required.—The failure of the street superintendent to sign the record of the return of the warrant is fatal to plaintiff's cause of action to foreclose a street assessment lien.—*Witter v. Bachman*, 117 Cal. 318, 49 Pac. 202.

440. Not a personal liability.—The lien given by the act is not a personal liability, but is a charge upon the property benefited.—*Gillis v. Cleveland*, 87 Cal. 214, 25 Pac. 351.

441. Liability of each lot separate and independent.—Each lot or portion of a lot is liable for its share of the cost of the improvement, and its liability is separate and independent, and the foreclosure of the lien given by the act, as to one lot, is not a bar to an action for the foreclosure of the lien upon another lot owned by the same person.—*Gillis v. Cleveland*, 87 Cal. 214, 25 Pac. 351.

442. Property of street railroad.—The acceptance of a franchise is equivalent to an express agreement on the part of a street railroad company to pay its proportion of the cost of a street improvement, whether made under existing law or subsequent act, and this agreement also includes the manner provided for collecting such cost.—*Schmidt v. Market, etc., Co.*, 90 Cal. 37, 27 Pac. 61.

443. Continues for two years only.—The lien of a street assessment continues for two years only from its date, a purchaser who takes the title without notice of the

commencement of the action, takes it discharged from the lien after the lapse of two years.—*Page v. Chase Co.*, 145 Cal. 578, 79 Pac. 278.

444. Assessment based on benefits does not create.—An assessment made "on property benefited by such street improvement," instead of being "assessed upon the lots fronting thereon . . . in proportion to the frontage," creates no lien.—*Miller v. Mayo*, 88 Cal. 568, 26 Pac. 364.

445. May be paid in any kind of money.—Lien of street assessment may be paid in any kind of money notwithstanding the board of supervisors provided the assessment should be paid in gold.—*Perine, etc., Co. v. Quackenbush*, 104 Cal. 684, 38 Pac. 533.

446. Lien an entirety—Payment of portion does not relieve lien for remainder.—If a portion of the amount assessed was paid between the making of the demand, and the return thereof, it was proper to so state in the return, but the payment did not release any part of the lot assessed from the lien for the amount unpaid, the lien being an entirety.—*Williams v. Bergin*, 127 Cal. 578, 60 Pac. 164.

XII. ACTIONS.

a. To enforce lien.

- 447. Proceeding not in rem.
- 448. Complaint—Must show compliance with statute.
- 448a. Same—Same—Only void contracts may be pleaded.
- 449. Same—Must show valid contract.
- 449a. Same—Time of entering into contract.
- 450. Same—Defective allegation cured by verdict.
- 451. Same—Allegation as to uniformity of assessment.
- 452, 453. Same—Completion of work.
- 454. Same—Failure to allege non-collusive affidavit.
- 454a. Same—San Jose charter.
- 455. Same—Need not set forth each statutory step—General allegations sufficient.
- 456. Same—Allegations as to posting and publishing resolution of intention.
- 457. Same—Time of commencement and completion of work must be alleged.
- 458. Same—"Conspicuously" posted.
- 459. Same—Posting notices—Allegation insufficient.
- 460. Same—Specifications need not be set out in extenso.
- 461. Same—Sufficient averment as to doing the work.
- 462. Same—Delay in entering into contract.
- 463. Same—Date of commencement and completion of work.
- 464. Prima facie case.
- 465, 465a. Same—When made.
- 465b. Same—Same—Recording of documents to be recorded included.
- 466-467a. Same—Burden of proof.

- 468. Same—Same—Negative allegation.
- 468a. Same—May be overturned—Evidence of no contract admissible.
- 468b. Same—Same—How overturned.
- 468c. Same—Same—Not overcome.
- 469. Same—Not rebutted—Record of passage of resolution of intention.
- 470. Same—Not impeached—Finding.
- 471. Same—Allegations admitted.
- 472. Same—Not prima facie evidence of regularity of subsequent steps.
- 473. Same—Case not made out.
- 474. Same—Plaintiff entitled to judgment.
- 475. Proper party defendant.
- 476. Joinder of actions against the owners of several lots in common.
- 477. Foreclosure against parts of lots held by separate owners.
- 478. Foreclosure of liens on several separate lots in one suit.
- 479. Separate lien gives separate cause of action on each lot.
- 480. Consolidation of actions does not deprive plaintiff of right to costs and attorney's fees in each action.
- 481. Insufficient answer—Conclusion of law.
- 482. Grading to proposed change in official grade.
- 483. Protest disregarded—Evidence of city clerk.
- 484. Same—Same—Contract to grade to official grade.
- 485. Courts frown on defenses based on technicalities without substance.
- 486. No unreasonable delay in posting notice.
- 487. Same—Question depends on circumstances.
- 487a. Statute of limitations—Void resolution of intention.
- 488. Return of summons.
- 489. Failure to dispose of owner's appeal.
- 490. Lis pendens.
- 491. Attorney's fee—Part of judgment.
- 492. Same—One only for each action.
- 493. Same—Allowed against each lot.

b. Injunction.

- 494. Action to enjoin sale under bond act amendment of 1891—Burden to show defective proceedings on plaintiff.
- 495, 496. Same—Same—Proof of notice.
- 497. Same—Same—Same—Assessment prima facie proof of notice.
- 498. Injunction to restrain sale.
- 499. Injunction against assessment—Complaint—Failure to set out official capacity, and capacity as municipal corporation.
- 500. Injunction will not issue to restrain a void sale, except where invalidity does not appear on the face of the assessment or deed.
- 500a. Same—Injunction will issue when street assessment not void on its face.

- 501. Same—Prima facie validity of assessment.
- 502. Injunction—Void bond assessment.
- 503. Same—Same—Sale would be a cloud on title.
- 504. Same—Same—Appeal to city council not required.
- 505. Same—Same—Void assessment—Tender—Equitable relief.

c. Action to recover bidder's deposit.

- 506. Establishment of street grades—Invalidity of proceedings.

d. Action on bond of superintendent of streets.

- 507. Section 11 not exclusive remedy for damages sustained from his negligence.

XII. ACTIONS.

a. To enforce lien.

447. Proceeding not in rem.—An action to foreclose a street assessment lien is not a proceeding in rem, and a judgment for the sale of the property is not binding upon the world and can only affect the owner made a party to the action and having notice.—Page v. Chase, Co., 145 Cal. 578, 79 Pac. 278.

448. Complaint—Must show compliance with statute.—The complaint in an action upon a street assessment must show, by general and special averment full compliance with the act as to all the steps required to be taken.—Perine v. Forbush, 97 Cal. 305, 32 Pac. 226.

448a. Same—Same—Only void contracts may be pleaded.—It is only when the contract included work which the city had no jurisdiction to order, because not described in the resolution of intention, that such an objection can be urged in an action to foreclose the lien.—Perine v. Forbush, 97 Cal. 305, 32 Pac. 220.

449. Same—Must show valid contract.—The complaint in an action on a street assessment must show a valid contract, and must show, either in hæc verba, or in legal effect, that it contained everything necessary to make it a valid contract.—Libbey v. Elsworth, 97 Cal. 316, 32 Pac. 228.

449a. Same—Time of entering into contract.—A complaint which shows that the contract was not entered into within fifteen days after the first posting of the notice of award, as the act requires, and does not allege that the delay was occasioned by no fault of the contractor is fatally defective.—Perine v. Forbush, 97 Cal. 305, 32 Pac. 226.

450. Same—Defective allegation cured by verdict.—While subject to special demurrer, a complaint in an action to enforce an assessment, where the street was divided into sections, and the work let on separate contracts, which alleged "that all the work ordered to be done was completed pursuant to the contracts within the time given by the commissioner of streets in the contracts," contains an inference that the contracts specified the time for completion of

the work, although not specifically alleged, and the defect is cured by the verdict.—*Treanor v. Houghton*, 103 Cal. 53, 36 Pac. 108.

451. Same—Allegation as to uniformity of assessment.—An allegation that the "commissioner of streets made in the manner and form required by law, an assessment upon the lots and lands fronting thereon, each lot or portion of a lot being separately assessed in proportion to the frontage at a rate per front foot sufficient to cover the total expense of the work," is a sufficient allegation that the assessment was equal and uniform.—*Treanor v. Houghton*, 103 Cal. 53, 36 Pac. 1081.

452. Same—Completion of work.—Allegations in a complaint to recover a street assessment on a paving contract are held to sufficiently show completion of the work within the time named in the contract and a valid extension thereof, in the absence of a special demurrer, although a mistake in writing, "September" for "October" in the indorsement of the extension by the superintendent of streets apparently shortened the time of the extension thirty days less than the extension actually allowed, making it expire before the completion of the work.—*Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 185, 187, 138 Pac. 742.

453. Same—Same.—The right to recover a street paving assessment depends upon the completion of the work within the time limited by the contract, or a valid extension thereof. — *Barber Asphalt Paving Co. v. Bancroft*, 167 Cal. 185, 187, 138 Pac. 742.

454. Same—Failure to allege non-collusive affidavit.—A complaint to foreclose a street assessment lien which fails to allege the affidavit required by the charter to accompany the contractor's bid, and the affidavit negating any private agreement to accept a rebate or less than the contract price, before making the assessment, as also required by the charter, does not state facts sufficient to constitute a cause of action, although such affidavits are not required by the Vrooman act.—*Ransome-Crummey Co. v. Bennett*, 177 Cal. 560, 563, 171 Pac. 304.

454a. Same—San Jose charter.—The filing of the affidavit required by section 8, chapter 1, article VIII of the San Jose charter is a condition precedent to the making of a street assessment, and in action to foreclose a lien for an assessment for a street improvement, the complaint must allege such filing.—*Barber Asphalt Paving Co. v. Costa*, 171 Cal. 138, 142, 152 Pac. 296.

455. Same—Need not set forth each statutory step—General allegation sufficient.—A complaint in an action to foreclose a street improvement lien need set forth the steps required by statute to be done, but it is sufficient to allege that the city council "duly gave and made its determination to order the work done."—*Pacific, etc., Co. v. Bolton*, 97 Cal. 8, 31 Pac. 625.

456. Same—Allegation as to posting and publishing resolution of intention.—A com-

plaint alleging publication for the time provided by the city council is not defective because it does not also allege posting.—*Washburn v. Lyons*, 97 Cal. 314, 32 Pac. 310.

457. Same—Time of commencement and completion of work must be alleged.—A complaint which fails to allege that the contract fixed the time for the commencement and completion of the work is insufficient.—*Washburn v. Lyons*, 97 Cal. 314, 32 Pac. 310.

458. Same — "Conspicuously" posted. — Where the complaint in an action to enforce an assessment alleged posting and publication in appropriate phrases, it is not fatally defective because it failed to allege "conspicuously" posting and publication.—*California Improvement Co. v. Reynolds*, 123 Cal. 88, 55 Pac. 802.

459. Same—Posting notices — Allegation insufficient.—A complaint to enforce a lien for assessments for improvement of a single city block under the Vrooman act, which alleges the posting of only two notices along the line of the work, instead of three as required by section 3, of that act as it stood in October, 1911, fails to state a cause of action.—*Barber Asphalt Paving Co. v. Costa*, 171 Cal. 138, 139, 152 Pac. 296.

460. Same—Specifications need not be set out in extenso.—It was not necessary to set out the specifications in the complaint at length any more than to set out the contract in extenso, the specifications being a part of the contract, and it is sufficient to allege the execution of the contract to do the work according to the specifications therein in order to show the right to receive the assessment for doing the work.—*California Improvement Co. v. Reynolds*, 123 Cal. 88, 55 Pac. 802.

461. Same—Sufficient averment as to doing the work.—It is sufficient to allege in the complaint "that the plaintiff did all the work in said contract mentioned and duly performed on its part in every respect said work according to the specifications and the terms of the contract."—*California Improvement Co. v. Reynolds*, 123 Cal. 88, 55 Pac. 802.

462. Same—Delay in entering into contract.—A complaint in an action on a street assessment which shows that the contract was not entered into within fifteen days after the first publication of the notice of award is fatally defective without an allegation that the delay was not caused by the neglect, failure or refusal of the contractor.—*Libbey v. Elsworth*, 97 Cal. 316, 32 Pac. 228.

463. Same—Date of commencement and completion of work.—A complaint to enforce a street work lien should contain definite allegations that the superintendent of streets fixed the time for the commencement of the work at not more than fifteen days from the date of the contract, and for its completion.—*Palmer v. Burnham*, 120 Cal. 364, 52 Pac. 644, 1080.

464. Prima facie case.—Under section 12 of the act, the warrant, assessment certificate, and diagram, with the affidavit of

demand and non-payment were admissible as prima facie evidence of the regularity and correctness of the assessment and of the prior proceedings and acts of the superintendent of streets and city council, upon which the warrant, assessment and diagram were based, and also that they shall be prima facie evidence of the right of the plaintiff to recover, and whether, in an action to foreclose an assessment lien, they are admissible for other purposes need not be determined.—Reid v. Clay, 134 Cal. 207, 66 Pac. 262.

465. Same—When made.—A prima facie case is made in a suit to foreclose a street work lien by the introduction in evidence of the assessment, diagram, warrant, return, and engineer's certificate.—Dowling v. Hibernia, etc., Soc., 143 Cal. 425, 77 Pac. 141.

465a. Same—Same.—Under section 12 of the Vrooman act in an action to enforce an assessment lien the assessment, warrant and diagram are prima facie evidence of the regularity of prior proceedings.—Owens v. Dudley, 162 Cal. 422, 426, 122 Pac. 1087.

465b. Same—Same—Recording of documents to be recorded, included.—The prima facie character given the warrant, assessment, diagram and engineer's certificate, includes the proper recording of those instruments, if there is no evidence to the contrary.—Hadley v. Dague, 130 Cal. 207, 62 Pac. 500.

466. Same—Burden of proof.—Where the complaint in an action to foreclose the lien of a street assessment set up a prima facie case which was admitted by the answer, the defendant was not entitled to a nonsuit when plaintiff rested without producing the documents set out in his complaint, but the burden was upon him to introduce evidence showing the irregularity of the prior proceedings and this overcome the prima facie case presented by the complaint.—Raisch v. Hildebrandt, 146 Cal. 721, 81 Pac. 21.

467. Same—Same.—The plaintiff in an action to foreclose an assessment lien is entitled to judgment on his prima facie case made by averments in the complaint and evidence of the making and recording of the assessment warrant and diagram, with the affidavit of demand and non-payment, and the burden is upon the defendant to show defect in the prior proceedings sufficient to overcome such prima facie case.—Beckett v. Morse, 4 Cal. App. 228, 87 Pac. 408.

467a. Same—Same.—In an action upon a street assessment the production at the trial of the assessment with the documents connected therewith, and the affidavit of demand and non-payment, makes a prima facie case for recovery, and the burden is on the defendant to allege and prove errors, defects or irregularities subsequent to the ordering of the work.—Belser v. Allman, 134 Cal. 399, 66 Pac. 492.

468. Same—Same—Negative allegations.—In an action to enforce an assessment it does not devolve upon the plaintiff to prove his negative allegation that "plans and specifications and careful estimates of the

costs and expenses of the work had not been required . . . to be furnished . . . by the city engineer," or that "any special specifications were furnished by the city engineer," and its prima facie case was sufficient.—Petaluma Paving Co. v. Singley, 136 Cal. 616, 69 Pac. 426.

468a. Same—Same—May be overturned—Evidence of no contract admissible.—The prima facie case made by the introduction in evidence of the award, assessment, diagram, and affidavit of demand and non-payment, may be overcome by the property owner, and documentary proof from the office of the street superintendent showing that the contract was prepared for execution by both parties, and was not signed by the street superintendent, that the bond on file did not show the names of the obligors or the penalty or any contract for specific work, and bore no date, is admissible as showing that no contract had been entered into.—Manning v. Den, 90 Cal. 610, 27 Pac. 435.

468b. Same—Same—How overturned.—In an action to foreclose a street assessment lien the plaintiff's prima facie case, established by the evidence, referred to in section 12 of the act, could not be overcome otherwise than by proof of the non-existence of such facts.—Reid v. Clay, 134 Cal. 207, 66 Pac. 262.

468c. Same—Same—Not overcome.—Defendant's proof in the present case did not have the effect of overcoming the present case.—Dowling v. Hibernia, etc., Soc., 143 Cal. 425, 77 Pac. 141.

A similar case was decided in the same way in Edwards v. Berlin, 123 Cal. 544, 56 Pac. 432.

469. Same—Not rebutted—Record of passage of resolution of intention.—The prima facie case in the present instance held not to have been rebutted.—Edwards v. Berlin, 123 Cal. 545, 56 Pac. 432.

470. Same—Not impeached—Finding.—In an action to foreclose the street assessment lien the introduction of evidence of the warrant, assessment, certificate and diagram, with the affidavit of demand and non-payment, make a prima facie case, and if the defendant fails to impeach such case, a finding for plaintiff is justified.—Perine v. Erzgraber, 102 Cal. 234, 36 Pac. 585.

And the effect of such evidence is to cast upon defendant the burden of proof.—Oakland Bank v. Sullivan, 107 Cal. 428, 40 Pac. 546.

471. Same—Allegations admitted.—And if the complaint sets out such a case and the allegations are admitted in the answer, plaintiff need not offer the documents in evidence.—Oakland Bank v. Sullivan, 107 Cal. 428, 40 Pac. 546.

472. Same—Not prima facie evidence of regularity of any subsequent step.—The assessment, warrant, diagram, certificate and affidavit of demand and non-payment, are not prima facie evidence of the regularity of any subsequent step in the proceedings.—Witter v. Bachman, 117 Cal. 318, 49 Pac. 202.

473. Same—Case not made out.—When the return of the warrant shows on its face that the record was not signed by the superintendent of streets, and there results an obvious failure to prove the fact of such signature, alleged in the complaint, a prima facie case is not made, notwithstanding proof of the assessment, warrant, diagram, certificate and affidavit of demand and non-payment.—*Witter v. Bachman*, 117 Cal. 318, 49 Pac. 202.

474. Same—Plaintiff entitled to judgment.—When the defendant in an action on a street assessment introduces no evidence, the plaintiff is entitled to judgment on his prima facie case established by the introduction of the warrant, assessment, etc.—*Dowling v. Conniff*, 103 Cal. 75, 36 Pac. 1034.

475. Proper party defendant.—The holder of the apparent record title under a deed absolute which is really a mortgage, is a proper party to a foreclosure suit.—*Wilson v. California Bank*, 121 Cal. 630, 54 Pac. 119.

476. Joinder of actions against owners of several lots in common.—The decision of the court in *McCaleb v. Dreyfus*, 156 Cal. 204, 103 Pac. 924, as to the joinder of several causes of action for the foreclosure of liens on several lots in a single action against the owner of all, approved, and applied to a case where the lots were owned by several owners in common.—*Barber, etc., Co. v. Crist*, 21 Cal. App. 1, 130 Pac. 435.

477. Foreclosure against parts of lot held by separate owners.—Where the assessment is per front foot and the total may be segregated into parts belonging to separate owners, the lien may be foreclosed against the part of each owner in the proportion of each.—*McSherry v. Wood*, 102 Cal. 647, 36 Pac. 1010.

478. Foreclosure of liens on several separate lots in one suit.—A plaintiff is expressly authorized under subdivision 8 of section 427 of the Code of Civil Procedure, to unite several actions against the same owner to foreclose the street improvement lien under the Vrooman act, on several separate lots, and he may do so, but he is not required to do so.—*Realty, etc., Co. v. Superior Court*, 165 Cal. 543, 546, 132 Pac. 1048.

479. Separate lien gives separate cause of action on each lot.—Under the Vrooman act, a separate lien accrues upon each lot improved under a single proceeding, and a separate cause of action arises from each upon failure to pay the assessment.—*Realty, etc., Co. v. Superior Court*, 165 Cal. 543, 546, 132 Pac. 1048.

480. Consolidation of actions does not deprive plaintiff of right to costs and attorney's fees in each action.—The consolidation of actions under section 1048, Code of Civil Procedure, would not have the effect, in the case of actions for the foreclosure of separate liens on separate lots for street improvements under the Vrooman act, of depriving the plaintiff, if successful, of his right under section 12 of that act to recover legal costs and attorney's fees in each action.—*Realty, etc., Co. v. Superior Court*, 165 Cal. 543, 547, 132 Pac. 1048.

481. Insufficient answer—Conclusion of law.—An averment in an answer in an action to foreclose a street assessment lien that the street superintendent did not make the assessment in the manner and form required by law, with any particulars as to defects, states a mere conclusion of law and is ineffective as a defense.—*Beckett v. Morse*, 4 Cal. App. 228, 87 Pac. 408.

482. Grading to proposed change in official grade.—An action to foreclose a street assessment lien can not be defended on the ground that the grading, required by the contract to be done to the official grade, had been done to the line of a proposed change in such grade, where the work had been approved and accepted by the superintendent of streets, and no appeal taken.—*Warren v. Riddell*, 106 Cal. 352, 39 Pac. 781.

483. Protest disregarded—Evidence of city clerk.—In an action to enforce an assessment where, after protest by the owners of a majority of the frontage, the work was ordered without a new resolution of intention, the evidence of the city clerk that the original resolution was the only one ever passed by the board was admissible.—*Pacific Paving Co. v. Gallett*, 137 Cal. 174, 69 Pac. 985.

484. Same—Same—Contract to grade to official grade.—Whether an assumption on the part of city officials and the contractor that the official grade of a street had been changed resulted from error or ignorance, it is immaterial to the validity of a contract to grade such street to the official grade.—*Warren v. Riddell*, 106 Cal. 352, 39 Pac. 781.

485. Courts frown on defenses based on technicalities without substance.—The supreme court discloses an inclination in its later decisions to frown upon defenses interposed to the enforcement of liens in street assessment cases based on technicalities having no substance behind them.—*Burnham v. Abrahamson*, 21 Cal. App. 248, 131 Pac. 338.

486. No unreasonable delay in posting notice.—Where the resolution of intention was posted and published as required by the act in January and the notices required to be posted by the street superintendent along the line of the proposed improvement were so posted March 26, it is held that the delay was not unreasonable.—*Porphyry Paving Co. v. Ancker*, 104 Cal. 340, 37 Pac. 1050.

487. Same—The question depends on circumstances.—The question as to whether a delay is reasonable or not depends on circumstances, and a delay from January to March on account of inclemency of weather is not unreasonable.—*Porphyry Paving Co. v. Ancker*, 104 Cal. 340, 37 Pac. 1050.

487a. Statute of limitations—Void resolution of intention.—A complaint in an action to enforce a street assessment lien which shows on its face that the lien has lapsed because of the expiration of the two-year period after the record of the warrant, etc., and that the resolution of intention was void for insufficient description of the work, is insufficient to state a cause of

action.—*Williamson v. Joyce*, 140 Cal. 669, 74 Pac. 290.

488. Return of summons.—The time of return of summons in actions to foreclose street work liens is fixed by the code.—*Ransome-Crummey Co. v. Wood*, 40 Cal. App. 355, 180 Pac. 951.

489. Failure to dispose of owner's appeal.—The completion of street work imposes a lien upon the property of the defendant, notwithstanding the failure of the board of trustees to dispose of his appeal, thereafter taken, but such lien is subject to the disposition of such appeal.—*Los Angeles, etc., Co. v. Los Angeles, etc., Co.*, 181 Cal. 685, 186 Pac. 593.

490. Lis pendens.—Section 409, Code of Civil Procedure, providing for the filing of a lis pendens notice, applies to an action to foreclose a street assessment lien.—*Page v. Chase Co.*, 145 Cal. 578, 79 Pac. 278.

491. Attorney's fee—Part of judgment.—The act authorizes the recovery of an attorney's fee, and must be construed as entitling him to its recovery as part of the judgment, which is exclusively for the lien.—*Reed v. Clay*, 134 Cal. 207, 66 Pac. 262.

492. Same—Only one for each action.—In such an action only one attorney's fee will be allowed, following the decision in *Hughes v. Alsip*, 112 Cal. 587, 44 Pac. 1027.—*Barber, etc., Co. v. Crist*, 21 Cal. App. 1, 130 Pac. 435.

493. Same—Allowed against each lot.—The attorney's fee allowed by the act may be charged against each lot, although one of several owned by the same person.—*Gillis v. Cleveland*, 87 Cal. 214, 25 Pac. 351.

b. Injunction.

494. Action to enjoin sale under bond act amendment of 1891—Burden to show defective proceedings on plaintiff.—In an action to enjoin a sale under the bond act amendment, the act being valid, it was incumbent on the plaintiff to show that the proceedings were so defective that there was no valid lien, and that the city had no right to sell the land.—*Hellman v. Shoulters*, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057.

495. Same—Same—Proof of notice.—Where the validity of the procedure did not depend upon the fact that proof was made a matter of record, but upon the fact that due notice was given, then the onus is on the plaintiff to prove that no notice was given, or, if given, that it was insufficient.—*Hellman v. Shoulters*, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057.

496. Same—Same—Same.—The fact and not its record evidence of the fact that notice as required by the act was given gives jurisdiction to make an assessment, and the absence of such record evidence does not shift the burden to show that no notice was given from the plaintiff.—*Hellman v. Shoulters*, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057.

497. Same—Same—Same—Assessment prima facie proof of notice.—The assessment itself is prima facie proof that notice was given as required by the act.—*Hellman v.*

Shoulters, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057.

498. Injunction to restrain sale.—No injunction will lie to restrain a sale of property to pay an assessment for street work on the ground of mere errors or irregularities in the proceedings, even though such errors or irregularities would render the sale void.—*Hellman v. Shoulters*, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057.

499. Injunction against assessment—Complaint—Failure to set out official capacity and capacity as municipal corporation.—A complaint to enjoin an assessment for street improvements the caption of which shows that it was brought against the city, mayor, trustees, city engineer and street superintendent, is not insufficient because of the failure to allege that the city was a municipal corporation, or to allege the official capacity of the mayor and trustees.—*Owens v. Dudley*, 162 Cal. 422, 122 Pac. 1087.

500. Injunction will not issue to restrain a void sale, except where invalidity does not appear on the face of the assessment or deed.—Injunction will not issue to restrain a sale of property where the sale is void on its face by reason of a void assessment, or from recitals in the deed; but the rule does not apply where there is nothing on its face to show the invalidity of the assessment or extraneous evidence must be resorted to show invalidity of assessment or deed.—*Owens v. Dudley*, 162 Cal. 422, 122 Pac. 1087.

500a. Same—Injunction will issue where street assessment not void on its face.—Where there is nothing on the face of a street assessment under the Vrooman act made and delivered to a contractor under the act, disclosing its invalidity and the party seeking to defeat the assessment lien must resort to extraneous evidence to accomplish it, equity will interpose to prevent the making of the assessment or the foreclosure of the assessment lien.—*Owens v. Dudley*, 162 Cal. 422, 426, 122 Pac. 1087.

501. Same—Prima facie validity of assessment.—The assessment, warrant and diagram are, under the act, prima facie evidence of the regularity of the prior proceedings, and the property owner is required to resort to extraneous evidence to show invalidity, with which evidence the assessment would cast a cloud upon his title, and the court will restrain the same.—*Owens v. Dudley*, 162 Cal. 422, 122 Pac. 1087.

502. Injunction—Void bond and assessment.—An injunction will lie to restrain the sale of property under a void bond and assessment.—*Chase v. Treasurer*, 122 Cal. 540, 55 Pac. 414.

503. Same—Same—Sale would be cloud on title.—A sale under a void bond and assessment would be a cloud on the owner's title, since the deed is made by the act prima facie evidence of due assessment and conclusive evidence of regularity of proceedings, thus forcing plaintiff to resort to extraneous evidence to test the right to in-

voke the interposition of a court of equity.—*Chase v. Treasurer*, 122 Cal. 540, 55 Pac. 414.

504. Same—Same—Appeal to city council not required.—An appeal to the city council is not necessary as a condition of equitable relief from a sale under a void assessment.—*Chase v. Treasurer*, 122 Cal. 540, 55 Pac. 414.

505. Same—Same—Void assessment—Tender—Equitable relief.—Tender is not necessary as a condition of equitable relief from a sale under a void assessment.—*Chase v. Treasurer*, 122 Cal. 540, 55 Pac. 414.

c. Action to recover bidder's deposit.

506. Establishment of street grade—Invalidity of proceedings.—In the absence of evidence to the contrary a statement in the resolution of intention that the official grade of the street in question was established by resolution of the board on a date specified, will be accepted as true, in an action to recover a deposit made by a bidder for the work, based on the invalidity of the proceedings by reason of the fact that such official grade had not been established.—*Vincent v. Pacific Grove*, 102 Cal. 405, 36 Pac. 773.

d. Action on bond of superintendent of streets.

507. Section 11 not exclusive remedy for damages sustained from his negligence.—A person damaged by reason of the street superintendent's negligence in the matter of performing his official duties may bring an action on his bond under section 22 of the act, and the remedy by appeal given in section 11, is not exclusive.—*Goodsell v. Ashworth*, 96 Cal. 394, 31 Pac. 261.

XIII. SALES.

508. Can not be annulled in equity without payment of amount due.

509. Sale for principal and interest to date of sale not excessive.

510. Notice of sale defective.

511. Place of sale.

512. Compliance strictly with statutory provisions required.

513. Authority to sell is exercise of taxing power.

514. Deed—Evidence that notice to redeem was given.

515. Same—Property sold must be same as property assessed.

516. Same—If more property was sold than was assessed, deed is void.

517. Right of redemption is a substantial right.

XIII. SALES.

508. Sale—Can not be annulled in equity without payment of amount due.—Where the assessment and bond are valid equity will not annul the sale under a delinquent bond on the grounds that the amount for which the land was sold was excessive, the

notice of sale insufficient, the place of sale not as prescribed by law, and the certificate of sale defective, without payment of the amount due on the bond.—*Ellis v. Witmer*, 134 Cal. 249, 66 Pac. 301.

509. Same—Sale for principal and interest to date of sale not excessive.—A sale of property on a delinquent bond for principal and interest is not for an excessive amount.—*Ellis v. Witmer*, 134 Cal. 249, 66 Pac. 301.

510. Same—Notice of sale defective.—A notice of sale of property on a delinquent bond not in accordance with the requirements of section 41 of the act and section 3764 of the Political Code, and which does name the delinquent persons, is fatally insufficient.—*Ellis v. Witmer*, 134 Cal. 249, 66 Pac. 301.

511. Same—Same.—The failure to name the delinquent persons in the notice of sale is not excused by the fact that such names could not be obtained, since they could be ascertained from the proper records.—*Ellis v. Witmer*, 134 Cal. 249, 66 Pac. 301.

511a. Same—Place of sale.—The place of sale is, under section 3768, Political Code, "in front of the court house, or in front of the tax collector's office," as the board of supervisors shall direct, but the board can not authorize the sale to be made "in the tax collector's office."—*Ellis v. Witmer*, 134 Cal. 249, 66 Pac. 301.

512. Compliance strictly with statutory provisions required.—Proceedings to enforce tax liens are in invitum, and a failure to strictly comply with the statutory provisions renders the sale invalid.—*Los Angeles, etc., Ass'n v. Pozzi*, 167 Cal. 454, 456, 140 Pac. 581.

513. Authority to sell is exercise of taxing power.—The authority conferred in street improvement acts subjecting property to liens for delinquent assessments is from the taxing power and the same general principles apply as in ordinary tax liens.—*Los Angeles, etc., Ass'n v. Pozzi*, 167 Cal. 454, 456, 140 Pac. 581.

514. Deed—Evidence that notice to redeem was given.—A deed containing the recitals required by the statute is primary evidence of the regularity of all proceedings preceding its execution, including notice to redeem, if such notice is essential to its validity.—*Chapman v. Jocelyn*, 182 Cal. 294, 187 Pac. 962.

515. Same—Property sold must be same as property assessed.—The tax deed must show that the property conveyed is the same as that assessed, and if it purports to convey other lands, it is not valid.—*Los Angeles, etc., Ass'n v. Pozzi*, 167 Cal. 454, 457, 140 Pac. 581.

516. Same—If more property was sold than was assessed, deed is void.—A deed to property sold to enforce a tax lien that includes more land than was assessed, is void.—*Los Angeles, etc., Ass'n v. Pozzi*, 167 Cal. 454, 457, 140 Pac. 581.

517. Right of redemption is a substantial right.—The right of redemption given by subdivision of section 4 of the act of 1899 (40) is a substantial right, and it can only be secured to the delinquent owner by a strict compliance with the terms of the act, whereby the quantity of land, and no more, impressed by the lien is sold.—*Los Angeles, etc., Ass'n v. Pozzi*, 167 Cal. 456, 458, 140 Pac. 581.

XIV. MISCELLANEOUS.

518. Referendum — Street improvement proceedings not subject to.

XIV. MISCELLANEOUS.

518. Referendum — Street improvement proceedings not subject to.—Notwithstanding the legislative character of the acts, street improvement proceedings are not subject to referendum.—*Chase v. Kalber*, 28 Cal. App. 561, 153 Pac. 397.

“LOCAL IMPROVEMENT ACT OF 1919.”

ACT 4948a—An act to provide for local improvements in or upon streets, avenues, lanes, alleys, courts, places, public ways, property, or rights of way within or belonging to municipalities, and providing for the issuance and payment of bonds to represent assessments levied for such improvements.

History: Approved May 16, 1919. In effect July 22, 1919. Stats. 1919, p. 527.

Municipality empowered to do work on streets, etc. Definitions.

§ 1. All streets, avenues, lanes, alleys, places, or courts in the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and be held to be open public streets, lanes, alleys, places, or courts, for the purpose of this act; and the city council of any municipality is hereby empowered to establish and change the grades of said streets, lanes, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in section two of this act, under the proceedings hereinafter described.

The word “street,” as used in this act, shall be deemed, and is hereby declared, to include avenues, highways, lanes, alleys, crossings, or intersections, courts and places, which have been dedicated and accepted according to law or in common and undisputed use by the public for a period of not less than five years next preceding; and the term “main street” means such actually opened street or streets as bound a block; and the word “blocks,” whether regular or irregular, means such blocks as are bounded by main streets, or partially by a boundary line of the city.

Work which may be ordered done. Different kinds of work in one proceeding. “City council.”

§ 2. Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to order the whole or any portion or portions, either in length or width of any one or more of the streets, avenues, lanes, alleys, courts, places, public ways, property, or rights of way, of any such city graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized, or remacadamized, graveled or regreveled, piled or repiled, capped or recapped, oiled or reoiled; and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings and parkways; sewers, ditches, drains, conduits and channels for sanitary and drainage purposes or either or both thereof, with outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, and other appurtenances; pipes, hydrants and appliances for fire protection, or for the service of water for domestic or sanitary uses; viaducts, conduits and subways, breakwaters, levees, bulkheads and walls of rock or other material; tunnels or subterranean avenues for public travel; poles, posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting said streets, avenues, lanes, alleys, courts, places or public ways; the planting of trees thereon, and any work which shall be deemed necessary to improve the whole or any portion of such streets, avenues,

sidewalks, lanes, alleys, courts, places, or public ways or property or rights of way, of such city.

The city council may include in one proceeding and order, any of the different kinds of work mentioned in this act, and may include such work on any number of streets, property and rights of way, or any portion thereof, contiguous or otherwise, in one proceeding or one contract, or both, and may except therefrom any of said work already done to the official grade, and which may be in good condition and repair.

The term "city council" is hereby declared to include any body or board, which, under the law, is the legislative department of the government of any city.

Resolution. Report of engineer.

§ 3. Before ordering any work done or improvement made, which is authorized by section two of this act, the city council shall pass a resolution referring the proposed work to the city engineer, if there be one, and, if not, to some civil engineer employed by them for the purpose and named in the resolution, instructing him to make them a report in writing containing his recommendations as to the best method of doing said work or making said improvement, together with the following:

(a) A statement of the nature of the proposed work or improvement, with plans and specifications therefor;

(b) A description of the district or districts which, in his opinion, would be benefited by the proposed work or improvement and should be assessed to pay the cost thereof, excepting and excluding therefrom any lot or portions of said district or districts which would not be benefited by the proposed work. Said district or districts, may be described by the exterior boundaries thereof or by giving the numbers of the lots and blocks, according to the official or recorded map or maps, or by any other method which will clearly indicate the lots and lands intended to be included therein;

(c) An estimate of the cost of said improvement;

(d) The assessed value of all the real property included within said district or districts and proposed to be assessed for the work, exclusive of buildings or other improvements, according to the last equalized assessment roll used for purposes of taxation by said city;

(e) A plat showing said district or districts and the subdivisions of property therein, as shown by the last equalized assessment roll.

The engineer may submit a number of districts, which, according to his estimate, would be benefited in different degrees by the proposed improvement, in which case he shall specify the proportion of benefit which each district would receive.

Adoption of report. Resolution of intention.

§ 4. Upon receipt of the report from the engineer, the city council shall consider and act upon the same, and may adopt the report as submitted or as they may modify the same. After adoption, the city council shall pass a resolution of intention, briefly describing the proposed work or improvement, referring to the plans and specifications therefor, and briefly describing the district or districts which would be benefited by and assessed for the proposed work or improvement, and the proportion of benefit said district or districts would derive therefrom. The resolution shall contain a declaration to the effect that serial bonds, bearing interest at a rate therein to be determined, but not to exceed six per cent per annum, will be issued to represent the unpaid assessments. The resolution shall also contain a notice of the day, hour, and place, when and where any persons having any objections to the proposed work or improvement may appear before the city council and show cause, if any they have, why the proposed work or improvement should not be carried out in accordance with said resolution, which time shall not be less than fifteen nor more than forty days from the day of the passage of said resolution.

Where cost paid in part by municipality.

The city council may, in its discretion, order, that any part of the cost and expenses of any of the work mentioned in this act be paid out of the treasury of the municipality from such fund as the council may designate, in which case it shall be so stated in the resolution of intention.

Whenever a part of such cost and expenses is so ordered to be paid, the superintendent of streets, in making up the assessment heretofore provided for such cost and expenses, shall first deduct from the whole cost and expenses such part thereof as has been so ordered to be paid out of the municipal treasury, and shall assess the remainder of said cost and expenses proportionately upon the lots and lands liable to be assessed for such work, and in the manner hereinafter provided.

Property omitted from assessment.

Whenever any lot, piece or parcel of land belonging to the United States, or to the state of California, or any lot, piece or parcel of land belonging to any county, city, public agent, mandatory of the government, school board, educational, penal or reform institution, or institution for the feeble-minded or the insane, and being in use in the performance of any public function, shall be included within the district or districts declared by the city council in its resolution of intention to be the district or districts to be assessed to pay the cost and expenses thereof, said city council may, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the cost and expenses of said work or improvement, in which case the total cost and expenses shall be assessed on the remaining lots and lands in the assessment district or districts; provided, that such part of the cost and expenses may be paid out of the municipal treasury as hereinbefore provided.

Grade established.

§ 5. The council may, in the resolution of intention, by reference to the plans and specifications or otherwise, fix and establish the grade at which the work is to be done, which grade so fixed and established may be either the first establishment of such grade or the changing of an existing official grade.

In such case the plans adopted for the proposed work shall show the existing official grade, if any, and the grade at which the proposed work is to be done.

In the event the proposed work is to be done at a grade other than an existing official grade, the resolution of intention and the notices of improvement shall recite the fact and refer to the plans and specifications for further particulars as to such proposed grade.

Objections to grade.

Any property owner whose property is to be assessed to pay the costs and expenses of the proposed improvement, may at the time fixed in the resolution of intention for the hearing of objections to the proposed work or improvement, appear before the city council and make objections to the grade so established or changed in said resolution of intention.

Failure to make such objections shall be deemed to be a waiver of all objections to such grade, and shall operate as a waiver of all claims for damages and shall constitute a bar to any subsequent action looking either to the prevention of the work or the recovery of damages or compensation on account of the performance of the work to such grade.

Publication and posting of resolution of intention.

§ 6. The city clerk shall cause said resolution of intention to be published twice in one or more daily or weekly newspapers published and circulated within said city. The

street superintendent shall cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than three hundred feet in distance apart, but not less than three in all, notices of the passage of said resolution, briefly describing the district or districts to be benefited and assessed, and containing an announcement that serial bonds, bearing interest at a rate not to exceed six per cent per annum, will be issued to represent the unpaid assessments. Said notices shall be headed "notice of improvement," in letters of not less than one inch in length; and shall, in legible characters, state the fact of the passage of the resolution of intention, its date, and briefly, the work or improvement proposed, and shall refer to the resolution of intention for further particulars. Said notices shall also contain a notice of the day, hour, and place fixed for hearing objections as above mentioned.

Notice to property owners.

§ 7. The city clerk shall, immediately upon the passage of said resolution of intention, mail, postage prepaid, to each property owner whose property is to be assessed to pay the cost and expenses of said work and improvement, at his last known address as the same appears upon the tax rolls of said city, or when no address so appears, to the general delivery of the United States post office in said city, a postal card containing a notice which shall be in substantially the following form (filling blanks):

"You are hereby notified that on the day of the city council of the city of, California, passed a resolution of intention providing for the improvement of street between street and street. You are hereby referred to the said resolution for further particulars. Property belonging to you is to be assessed for this improvement.

..... City Clerk."

If any lots or parcels of land in the assessment district or districts be assessed to "unknown owners" on the tax rolls of said city, no postal cards containing such notice need be mailed to the owners thereof. The city clerk shall, upon the completion of the mailing of said postal cards, file in his office an affidavit setting forth the time and manner of the compliance with this requirement; provided, that the failure of the city clerk to mail said cards, or the failure of the property owners to receive the same shall in nowise affect the validity of the proceedings or prevent the city council from acquiring jurisdiction to order the work.

Bids.

§ 8. The city council shall cause notice of said work inviting sealed proposals or bids for doing the work and referring to the plans and specifications on file, to be published twice in a daily or weekly newspaper, published and circulated in said city, and provide that the same will be received and opened on the same day, hour, and place fixed for hearing objections as aforementioned. All proposals or bids offered shall be accompanied by a check payable to the city, certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of the proposal.

Objections against work.

§ 9. At any time not later than the hour set for receiving proposals and hearing objections to the proposed work or improvement, any owner of property liable to be assessed for said work or improvement may make written protests or objections against the work or improvement or against the district or districts, to be assessed, or both, or make any objection of any character to said work. Said objections or protests must be delivered to the clerk of the city council prior to the hour set for the hearing, and no other protests or objections shall be considered by said council.

Opening of bids. Hearing of objections.

At the time fixed for said hearing and the opening of bids as aforementioned, the city council shall first cause all the bids received to be publicly opened and publicly

declared, after which the same shall be temporarily laid upon the table while the council proceeds to hear and consider objections, if any there be. The council may continue the hearing from time to time and postpone final consideration of the proposals or bids submitted. The decision of the council on all protests or objections shall be final and conclusive; provided, that where the council finds that the objections or protests filed have been made by a majority of the property owners of the district, or of all the districts if there be more than one district, and that they are also the owners of more than one-half of the area of the property within the district or districts to be assessed for the proposed work or improvement, no further proceedings shall be taken for a period of six months from the date of the finding of the council as to the sufficiency of the protest.

If no protests or objections in writing have been delivered to the clerk up to the hour set for the hearing, or if protests have been heard and overruled, thereupon the city council shall be deemed to have acquired jurisdiction to order the work and award the contract.

Nothing herein contained shall be deemed to prevent the council from sustaining any objection filed, or to abandon the proceedings for the work or improvement prior to the awarding of the contract.

Award of contract.

§ 10. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder on the plans and specifications selected at the prices named in his bid. No contract shall be awarded on any proceeding, if more than one year has elapsed since the passage of the resolution of intention for such proceeding, but in such case a new proceeding will have to be instituted. If the bids are rejected or no bids received, the city council may within six months thereafter readvertise for and receive proposals or bids for the performance of the work as in the first instance, without further proceedings. The checks accompany the accepted proposals or bids shall be held by the city clerk until the contract for doing said work has been entered into, but if said bidder fails, neglects or refuses to enter into the contract to perform said work or improvement, as hereinafter provided, then the certified check accompanying his bid and the amount therein mentioned shall be forfeited to said city and shall be collected by it and paid into the general fund.

Failure of bidder to enter into contract.

§ 11. If the original bidder neglects, fails or refuses to enter into the contract within fifteen days after the same has been awarded to him, then the city council, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and award the contract for said work to the lowest regular responsible bidder. Should no bids be received in response to his second call, the council may again advertise for and receive bids under the same proceedings, at any time within six months from the time set for the last reception of bids, and let the contract to the then lowest bidder, and such delay shall in no way affect the validity of any of the proceedings, unless such delay is contrary to the provisions of section ten hereof.

Bond of contractor.

§ 12. All contractors shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the superintendent of streets of said city, with two or more sureties, payable to such city, in a sum equal to twenty-five per

cent of the contract price, conditioned for the faithful performance of the contract; and the sureties shall justify before any person competent to administer an oath in double the amount mentioned in said bond, over and above all statutory exemptions. Before being entitled to a contract, the bidder to whom the award was made, must advance to the superintendent of streets, for payment by him, all incidental expenses already incurred by the city for said work or improvements. In case the work is abandoned by the city before the letting of the contract, the incidental expenses incurred previous to such abandonment shall be paid out of the city treasury.

“Incidental expenses.”

The term “incidental expenses” as used in this act, shall include the compensation of the city engineer, or street superintendent, for work done by him; also, the cost of printing, advertising, posting and mailing, legal expenses incurred and the compensation of the person appointed by the superintendent of streets to take charge of and superintend or inspect any of the work. All demands for incidental expenses mentioned in this subdivision shall be presented to the street superintendent by itemized bill, duly verified by oath of the demandant.

Bond of contractor to protect persons furnishing materials or labor.

§ 13. Every contractor, person, company, or corporation to whom is awarded any contract under this act, shall, before executing said contract, file with the superintendent of streets a good and sufficient bond, approved by the mayor, or other chief executive, in a sum not less than one-half of the total amount payable by the terms of said contract; such bond shall be executed by the principal and at least two sureties, who shall qualify for double the sum specified in said bond, and said bond shall be made to inure to the benefit of any and all persons, companies, or corporations who perform labor on, or furnish materials to be used in the said work or improvement, and shall provide that if the contractor, person, company, or corporation to whom said contract was awarded fails to pay for any materials so furnished for the said work or improvement, or for any work or labor done thereon of any kind, then the sureties will pay the same, to an amount not exceeding the sum specified in said bond. Any materialman, person, company, or corporation, furnishing materials to be used in the performance of said work specified in said contract, or who performed work or labor upon the said improvement, whose claim has not been paid by the said contractor, company or corporation, to whom the said contract was awarded, may, within sixty days from the time said improvement is completed, file with the superintendent of streets a verified statement of his or its claim, together with a statement that the same, or some part thereof, has not been paid, whereupon the amount of said claim shall be withheld from payment for a period of ninety days or until settled. Within ninety days after the filing of such claim, the person, company, or corporation, filing the same or their assigns must commence an action on said bond for the recovery of the amount due thereon.

Power of superintendent of streets.

§ 14. The superintendent of streets is hereby authorized in his official capacity to make all written contracts, and receive all bonds authorized by this act, and to do any other act, either express or implied, that pertains to the street department under this act.

Said contract shall contain an express notice that, in no case, except where it is otherwise provided by law or the city charter will the city or any officer thereof be liable for any portion of the expense or for any delinquency of persons or property assessed.

Time in which work must be done.

The superintendent of streets shall fix the time for the commencement of the work, which shall not be more than fifteen days from the date of the contract, and for the completion thereof; and the work shall be prosecuted with diligence from day to day thereafter to completion. He may extend the time so fixed from time to time, under the direction of the city council. All applications for such extensions must be in writing and be filed in his office before the expiration of the original time fixed in the contract, or of the time theretofore granted by extension, as the case may be. The work must be done in accordance with the plans and specifications and under the direction and to the satisfaction of the street superintendent; provided, however, the city council may, by resolution provide that the work shall be done under the supervision and to the satisfaction of the city engineer instead of the street superintendent.

Payments during work.

Nothing herein contained, will be deemed to prohibit the city council from making payments to the contractor from time to time as the work progresses.

Assessment of property.

§ 15. After the contractor has fulfilled his contract to the satisfaction of the street superintendent or city engineer, as the case may be, such officer shall make an assessment on the lots and lands within the district or districts to cover the sum due for the work performed and specified in the contract, including all incidental expenses, excluding therefrom any lot or portion of said district or districts which have heretofore been declared not to be benefited by the work or improvement, which assessments shall be in proportion to the assessed value of all the real property in the district or districts liable to assessment therefor, exclusive of improvements, in the proportional amount of benefit which each district will derive from the proposed work, as provided in section three hereof. Such assessment shall be filed by the street superintendent with the tax collector of said city.

Notice that payments are due.

Upon satisfactory completion of the work, the street superintendent or city engineer, as the case may be, shall cause a notice of such completion to be published twice in a daily or weekly newspaper published and circulated in said city, notifying all owners of real property within the said district or districts that assessments to pay for the cost of said work and improvement will be due and payable at the office of the tax collector within thirty days from the date of the first publication of said notice, and that unless said assessments are paid on or before said date, (stating the time), serial bonds will be issued to represent such unpaid assessments, as aforestated in section four hereof.

Action to contest validity of assessment.

§ 16. Any action to contest the validity of an assessment levied under the provisions of this act, or of any proceeding of the city council, or any act of any municipal officer under the provisions of this act, must be commenced within sixty days after the adoption by the city council of the resolution awarding the contract, or within sixty days after the commission or omission of the act complained of, as the case may be; and any appeal taken from a final judgment in such action shall be perfected within sixty days after the entry thereof.

Notice of unpaid assessments. Bonds.

§ 17. After the full expiration of thirty days from the date of the first publication of the notice mentioned in section fifteen hereof, the tax collector shall make and file with the clerk of the city council a complete list of all assessments unpaid, together

with an identifying number of each lot and block, according to the engineer's plat, and the assessed value thereof. The city council shall then cause bonds to be issued for the amount of the aggregate of the unpaid assessments.

Identifying number for proceeding.

For the purposes of identification and recordation each proceeding taken under this act shall be given a different identifying number, and the property assessed therefor shall be known as "local improvement district number," specifying the number thereof. The city council shall prescribe the denominations of said bonds, which shall be in convenient amounts not necessarily equal. Said bonds shall be dated the thirty-first day after the first publication of said notice aforementioned.

The city council shall prescribe the form of said bonds, and of the interest coupons attached thereto. Said bonds shall be payable in the following manner:

Manner of payment.

A part, to be determined by the city council, which shall not be less than one-twentieth part of the whole amount of such indebtedness, shall be payable each and every year, on a day and date, and at a place to be fixed by said council and designated in such bonds, together with the interest on all sums unpaid on such date, until the whole of said indebtedness shall have been paid.

Denomination. Interest.

The bonds shall be issued in such denomination as said council may determine, except that no bond shall be of a greater denomination than one thousand dollars, and shall be payable on the day and at the place fixed in such bonds, and with interest at the rate specified in such bonds, which rate shall not be in excess of six per centum per annum, and shall be paid semiannually; said bonds shall be signed by the chief executive of the municipality, or by such other officer thereof as the city council shall, by resolution adopted by a two-thirds vote of all its members, authorize and designate for that purpose, and also signed by the treasurer thereof, and shall be countersigned by the city clerk. The interest coupons on said bonds shall be numbered consecutively, and signed by the treasurer of such municipality or by his engraved or lithographed signature. In case any officer whose signature or countersignature appears on the bonds or coupons shall cease to be such officer before the delivery of such bonds to the purchaser, such signature or countersignature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until the delivery of the bonds.

Form of bond.

§ 18. Said bonds shall be conclusive evidence of the validity of all proceedings leading up to their issuance.

They shall be substantially in the following form:

\$.....

IMPROVEMENT BOND.

City (or town) of

No.]

Under and by virtue of the act of the legislature of the state of California, known as the local improvement act of 1919, the of of said state, will pay to the bearer, out of the fund hereinafter designated, at the office of the treasurer of said on the day of, 19.., dollars, in gold coin of the United States of America, with interest thereon in like gold coin, at the rate of per cent per annum, payable semiannually on the day of and of each year from the date hereof, upon presentation and surrender of the proper interest coupons hereto attached, as they respectively become due.

This bond is issued pursuant to the constitution and statutes of the state of California, and to the ordinances, resolutions, and proceedings of said duly adopted and taken. It is one of a series of bonds of like date and effect issued in behalf of improvement district number, of said, and is payable out of the redemption fund provided for said improvement district, exclusively.

It is hereby certified, recited and declared that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of this bond have existed, happened and been performed in time, form and manner as required by law, and that provision has been made as required by the provisions of said act for the collection of an assessment to pay the interest on this bond as it falls due and also provisions to constitute a sinking fund for the payment of the principal of this bond on or before maturity.

In witness whereof, said of has caused this bond to be executed under its corporate seal, signed by its chief executive and treasurer, and countersigned by its clerk and has caused the interest coupons hereto attached to be signed by the engraved or lithographed signature of its treasurer, and this bond to be dated the day of, 19.....
Countersigned.

.....
Clerk of the of Mayor (or other title).
.....
Treasurer of the of

Registration of bonds.

§ 19. Said bonds may be surrendered by the holder to the treasurer for registration in accordance with the provisions of any law applicable to the registration of the municipal bonds of the city, and thereafter the principal and interest thereon shall be paid to the proper registered owner thereof.

Sale of bonds. Assessment to pay principal and interest.

§ 20. The city council may issue and sell the bonds, of such district, authorized as hereinabove provided, at not less than par value, and all the proceeds of the sale of such bonds shall be placed in the treasury of such municipality to the credit of the proper district fund and shall be applied exclusively to the work or improvement for which the contract was awarded.

If all bids for said bonds are rejected or if no bids are received, the council shall authorize the city treasurer to deliver said bonds to the contractor, in which case such delivery shall constitute full satisfaction of the sum due him on said contract.

The city council shall, at the time of fixing the general tax levy, and in the manner for such general tax levy provided, exclusive, however, of any assessments on improvements, levy and collect an assessment each year on the property in such district or districts sufficient to pay the interest on such bonds for that year, and such portion of the principal thereof as will become due before the time for making the next general tax levy; each annual assessment for the payment of the interest and principal shall be based on the assessed value of each respective parcel or lot, at the time the work or improvement was ordered, and in the degree of benefits received, as shown on the assessment list hereinbefore mentioned. Said assessments levied and collected shall be paid into the treasury of said city and be used for the payment of the principal and interest of such bonds and for no other purpose.

Delinquent assessments. Sale of property. Action to collect delinquent tax.

§ 21. The said assessments shall be payable and become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties

after delinquency as the general municipal taxes on real property. Upon default in payment, the lands securing such assessments shall be sold in the same manner in which real property in such city is sold, for the nonpayment of general municipal taxes, and be subject to redemption in the same manner as such real property is redeemed from such delinquent sale, and upon failure or redemption shall in like manner pass to the purchaser. The city may be the purchaser at any delinquent sale in like manner in which it becomes or may become the purchaser of property sold for nonpayment of the general municipal property tax, and in the event of its so becoming the purchaser shall pay and transfer into said redemption fund the amount of the delinquent assessments. In cases where the municipal property tax is collected by the county or city and county officials, and sales for nonpayment of such taxes are made to the state, the state shall be the purchaser at any such sale, but shall hold the title acquired at such sale upon behalf of the city and shall account to the city for any moneys received upon redemption or from the sale of such property, the city for such purposes of this act being deemed the real purchaser. In other cases where under the law, the city is not always the purchaser at sales for delinquent municipal taxes, the city shall become such purchaser at any delinquent sale hereunder where there is no such purchaser; provided, that the city council may, in its discretion, order certain lots or lands not to be sold, and order and direct the city attorney to commence an action in the name of the city against the owner or owners of such lots or lands so delinquent, to recover the amount of such delinquent tax, together with the interest thereon, and for costs of suit and a penalty of twenty-five per cent on the amount of such delinquent assessment.

All the owners of property delinquent as aforesaid may be joined as defendants in one action; provided, however, the complaint in such case shall set forth the amount due on each lot or parcel of land separately assessed, together with the name of the owner or owners thereof.

Special tax to pay for lands purchased.

§ 22. The city council may, at the time of fixing the annual rate and levying the taxes to be collected for general municipal purposes, levy a special tax upon the taxable property in the city for the purpose of paying for the lands purchased or to be purchased at such tax sales, but not to exceed ten cent on each one hundred dollars of assessable property. Such special tax shall be in addition to all other taxes levied for municipal purposes, and shall be computed, entered and collected in the same manner, and by the same persons, and at the same time and with the like penalties as other municipal taxes of said city. In the event of a surplus remaining in the redemption fund after payment of all said bonds and the interest thereon, the same shall first be applied to repayment to said city of any special taxes so levied, less its recovery on the lands purchased at delinquent sale, and also of any costs incurred by it hereunder.

Deed for land sold.

§ 23. In the event of sale by the tax collector of any lot or parcel of land for nonpayment of any assessment thereon levied pursuant to the provisions of this act, then any certificate of such sale and deed issued pursuant thereto, shall be prima facie evidence of the regularity of all proceedings theretofore had, and such deed shall constitute a conveyance to the grantee of the absolute title to the lots or lands described therein, free of all incumbrances, except the lien for other state, county and municipal taxes.

Payment of unpaid assessment.

§ 24. After bonds have been issued as herein provided, any interested property owner may release his property and pay up the unpaid assessment against the same by depositing with the city treasurer the total unpaid balance of his assessment due,

together with the total amount of the interest which would become due semiannually on his proportion of the assessment, in which case the treasurer shall deposit such payment into the fund provided for the redemption of said bonds, and the city clerk shall record the release of such property on the records of his office.

“Owner.”

§ 25. The person owing the fee, or the person in whom, on the day the proceeding or action is commenced, appears the legal title to the lots and lands, by deed duly recorded in the county recorder's office, or the person in possession of the land, lots, or portions of lots or building under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian, of the owner, shall be regarded, treated, and deemed to be the “owner” (for the purpose of this act), according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

Title. Alternate system.

§ 26. This act shall be known and may be referred to as the “local improvement act of 1919.” It shall in nowise affect any other existing acts relating to street work or local improvements within municipalities, but is intended to and does provide an alternate system of proceedings for public improvements, and it shall be discretionary with the legislative body of any municipality to proceed in making such improvement either under the provisions of this act or under the provisions of other said acts.

LOCAL IMPROVEMENT ACT OF 1901.

ACT 4949—An act to provide for local improvements upon streets, lanes, alleys, courts, places, and sidewalks, and for the construction of sewers within municipalities, such act to be known as “The Local Improvement Act of 1901.”

History: Became a law under constitutional provision, without governor's approval, February 26, 1901, Stats. 1901, p. 34. Amended, amendment became a law under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915. Stats. 1915, p. 378.

Municipality empowered to do work upon streets, lanes, etc.

§ 1. All streets, lanes, alleys, places, or courts in the municipalities of this state, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and be held to be open public streets, lanes, alleys, places, or courts, for the purposes of this act, and the legislative body of each municipality is hereby empowered to establish and change the grades of said streets, lanes, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in section 2 of this act, under the proceedings hereinafter described.

Cities may improve streets, etc.

§ 2. Whenever the public interest or convenience may require, the legislative body of any municipality is hereby authorized and empowered to order the whole, or any portion, either in length or width, of any one or more of the public streets, avenues, lanes, alleys, courts, places, or public ways of such municipality graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regreveled, piled or repiled, capped or recapped, oiled or reoiled; and the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings and parkways, sewers, ditches, drains, conduits and channels for sanitary and drainage purposes, or either or both thereof, with outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, connecting sewers, ditches,

drains, conduits, channels and other appurtenances, pipes, hydrants, and appliances for fire protection, tunnels, viaducts, conduits, and subways, breakwaters, levees, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water; and the erection or re-erection, construction or reconstruction of poles, posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting the same; and the planting or replanting of trees on said streets; and the construction or reconstruction in, over or through property or rights of way owned or acquired by such municipality, of tunnels, sewers, ditches, drains, conduits, and channels, for sanitary and drainage purposes, or either or both thereof, with necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, connecting sewers; pipes, hydrants and appliances for fire protection; and the construction or reconstruction of breakwaters, levees, bulkheads, and walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, bridges, and other public property in any such municipality from overflow by water; and any work to be done which shall be deemed necessary to improve the whole or any part of such streets, avenues, lanes, alleys, courts, places, public ways, bridges, sidewalks, or property or rights of way of such municipality.

Different kinds of work in one proceeding.

The said legislative body may include in one proceeding and order any of the different kinds of work mentioned in this act, and may include therein such work on any number of streets and rights of way, or any portion thereof, in one proceeding and one contract, and may except therefrom any of said work already done to the official grade, and which may be in good condition and repair. [Amendment became a law, under constitutional provision without governor's approval, May 7, 1915. In effect May 7, 1915. Stats. 1915, p. 378.]

Resolution.

§ 3. Before ordering any work done or improvement made, which is authorized by section two of this act, the legislative body shall pass a resolution containing a general description of the proposed improvement, and referring the same to the city engineer or board of public works or commissioner of public works, if there be one; if not, to some civil engineer employed by them for the purpose and named in the said resolution, and instructing such engineer or board or commissioner to make a report in writing to the legislative body, containing his recommendations as to the best method of making said improvements, to which report shall be attached the exhibits hereinafter referred to. [Amendment became a law, under constitutional provision without governor's approval, May 7, 1915. In effect August 8, 1915. Stats. 1915, p. 379.]

Report of engineer.

§ 4. Thereafter, the said engineer, or board of public works, or commissioner of public works, shall file with the clerk of the municipality the report called for by section three above, and there shall be annexed thereto the following exhibits, to wit:

General description.

1. A general description of the work to be done, excepting therefrom any work to be done by any person, firm or corporation having railroads on any of the streets, lanes, alleys, courts or places within said municipality.

Boundaries.

2. A description of the exterior boundaries of the district of lands which will be benefited by the proposed improvement, the lots and lands within which should be specially assessed, according to benefits, if any, they may receive, to pay the costs and expenses of the improvement.

Plans.

3. Plans, profiles, cross-sections, and specifications for making the proposed improvement.

Cost.

4. An estimate of the total cost of said improvement, including incidental expenses likely to be incurred, in connection therewith, including clerical, engineering, inspection, printing, advertising, and all other expenses.

Map.

5. A map showing the district above referred to, giving the subdivisions of the property therein, as nearly as can be ascertained by said engineer or board or commissioner, with the dimensions thereof, as ascertained by said engineer, or board, or commissioner, each of which subdivisions shall be given a red ink number upon said map, which red ink number shall in all of the subsequent proceedings be a sufficient description of such land when given or referred to in connection with a reference to said map. But any error in the description, or in the dimensions of any lot or lands appearing on said map shall not invalidate the assessment or the proceedings herein provided for.

List of owners.

6. A list, referring to said subdivisions upon said map by the respective red ink numbers thereon, and giving the names of the owners, if known, otherwise designating them as unknown; but any error in the name of the owner of any lot or lands shall in no way invalidate the proceedings, or the assessment levied against such lot or lands. The list shall include an estimate of the benefits, if any, which each lot or parcel of land within said district will receive from the proposed improvement.

Number of the proceedings.

7. The number of the proceedings, which shall be the number under which all subsequent action shall be taken in said proceeding, and thereafter a reference to such number shall be sufficient to identify any record or action thereunder. [Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915. Stats. 1915, p. 378.]

Power to adopt for reject report. Resolution adopting report.

§ 5. After the report of the engineer or board or commissioner, provided for in section four, has been filed with the clerk of the municipality, the legislative body shall consider the same, and shall have power, by resolution, to adopt it as filed by said engineer or board of commissioner, and to levy the assessments according to the estimated benefits given by said engineer or board or commissioner; or said body may reject said report or any part thereof, or order it to be modified in any respect and may adopt the same as modified; or it may order a new and different report, which may be adopted, rejected, modified or altered as in the first instance; but the same shall not constitute a lien until all of the owners of the lots and lands within the district described therein shall have had an opportunity to be heard thereon, as hereinafter provided.

In the resolution adopting said report, said legislative body shall:

1. Levy said assessment in accordance with the benefits to the lots and lands within the district and in accordance with the report of the engineer adopted and approved.

2. Determine whether or not serial bonds shall issue in the manner and form as hereafter provided.

3. The rate of interest to be allowed on said bonds, and on deferred payments hereinafter mentioned, which shall not be less than six per cent per annum, nor more than ten per cent per annum.

4. The time and place, when and where, all property owners within said district may appear before said legislative body, and show cause, if any they have, why said improvement should not be made as provided for in said report, and why said assessment should not become a lien upon the property in said district as assessed thereon. [Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915. Stats. 1915, p. 380.]

Notice of hearing. Time of posting. Notice in newspaper.

§ 6. After the adoption of the resolution mentioned in section five of this act, there shall be posted along all streets, lanes, alleys, courts and places or public ways within said assessment district, at distances not more than three hundred feet apart (but not less than three in all) notices of the hearing provided for in section five of this act, which notices shall be headed "Notice of Local Improvement" in letters of not less than three-fourths of an inch in height, and shall state the fact and date of the adoption of said resolution mentioned in said section five, briefly describe the improvement proposed, give a description of the exterior boundaries of said district, and shall refer to said resolution, and the report of the engineer or board for further particulars.

And said notice shall state the time and place, for which the hearing provided for by section five, has been set, and it shall be posted as aforesaid at least ten days prior to the time set for said hearing; and it shall notify all owners or persons interested in any real property within said district to then and there show cause, if any they have, why said improvement proposed should not be made and the proceedings carried out in accordance with the said report and resolution, and the assessment levied should not become a lien upon the lots and lands within said district.

A notice similar in substance shall be published at least once in some newspaper of general circulation published and circulated in such municipality, if there be one so published therein. If there be no newspaper of general circulation published and circulated in such municipality, then the notice by posting as hereinbefore provided shall be sufficient. [Amendment became a law, under constitutional provision, May 7, 1915. In effect August 8, 1915. Stats. 1915, p. 381.]

Affidavit of posting notice and of publication. Hearing of objections.

§ 7. At the time named in the notice hereinbefore provided for for said hearing there shall be filed with the legislative body an affidavit that the notice has been posted as hereinbefore provided for, and an affidavit of the printer or publisher of the newspaper in which said notice has been published that the same has been published as hereinbefore provided for, and the legislative body, before proceeding with said hearing, shall have entered upon the minutes of the meeting an order reciting that notice of said hearing has been posted and published according to law, and such recitals shall be conclusive evidence of the facts therein recited, and the legislative body shall thereupon proceed with the hearing of any objections which shall have been made in writing and filed with the clerk of the municipality not later than the hour for hearing named in said notice, and no other objections shall be considered. Said hearing may be continued from time to time by the legislative body, and all parties interested shall be deemed to have notice of said continuances. All objections must be in writing, must contain a description of the property in which the objector is interested, and set forth the nature of his title thereto or interest therein, and must state the objector's grounds of opposition, and must be signed and verified by the objector himself, or his attorney in fact, and objections which do not comply with these requirements shall not be considered by the said legislative body.

Legislative body may modify, etc., report. Assessments lien on property.

§ 8. At the hearing, provided for in the preceding section, the said legislative body shall have power by resolution to set aside, alter, modify, or confirm said report, and

may order the said engineer or board or commissioner to alter or modify said report in any particular, and may thereafter, by resolution, confirm the same as modified, and where the same is confirmed, the lien of the assessments provided for and theretofore levied and as adopted and confirmed, shall immediately attach to the respective parcels of land within said district in accordance therewith. And the said action of the said legislative body upon such objections and assessments shall be final and conclusive in the premises.

All special assessments levied under the provisions of this act, shall, from the date of confirmation thereof as herein provided for, be a lien upon the premises upon which they are imposed, paramount to all other liens, except prior assessments and general taxes, and such lien shall continue thereon until such special assessments are paid and discharged; and all parties shall be presumed to have constructive notice thereof from the date of the adoption of the resolution hereinabove provided for. [Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915. Stats. 1915, p. 381.]

Action to test validity of proceeding.

§ 9. Any action to contest the validity of an assessment levied by the legislative body of any municipality under the provisions of this act or any other proceeding of said legislative body or any act of any municipal officer under the provisions of this act must be commenced within thirty days after the adoption by such legislative body of the resolution provided for in the preceding section or within thirty days after the commission or omission of the act complained of, as the case may be; and any appeal taken from a final judgment in such action shall be perfected within thirty days after the entry thereof. [Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915. Stats. 1915, p. 382.]

Map and list recorded by tax collector. Recording deemed notice.

§ 10. After the adoption of the resolution provided for in section eight hereof, the clerk of said municipality shall transmit to the tax collector of the municipality the map and list provided for in subdivisions five and six respectively of section four hereof, upon receipt of which the said tax collector shall record the same in a substantial book to be kept for that purpose in his office. Said book shall be ruled with appropriate columns in which to place all matters appearing on said list and also a record of the fact of all payments received by him; and the date and amount; or in case of agreements and waivers being signed and bonds being issued as hereinafter provided, a record of that fact; or the fact of the sale of the lots set opposite the number thereof, in case of a sale, and to whom, and for what amount, together with the date thereof, and whether the whole or only a portion of such lot or lands were sold.

From the time of such recording, all persons shall be deemed to have notice of the contents thereof, which record shall have the same force and effect as other public records, and shall be open to inspection during all office hours free of charge. [Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915. Stats. 1915, p. 382.]

Payment of assessments.

§ 11. The said tax collector shall thereupon fix a time, which shall not be more than thirty days thereafter, within which the payments of said assessments shall be made; or agreements and waivers executed as hereinafter provided, for bonds to issue in lieu of such payments, notice of which time shall be given by publication at least once in some newspaper of general circulation published in such municipality, if there be one published therein, otherwise by posting in three public places in said municipality.

All assessments collected shall be noted in the aforementioned record in the proper column thereof, opposite the number of the lot upon which the same has been paid; or if an agreement and waiver has been executed by the owner of any lot or lands for bonds to be issued as hereinafter provided; or said lot is sold for the non-payment of the assessment levied thereon, that fact shall be noted in said record in the proper column. [Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915. Stats. 1915, p. 383.]

Penalty for non-payment of assessments. Sale of lots.

§ 12. At the expiration of said time so fixed by the tax collector for the payment of said assessments as aforesaid, he shall add to each of the assessments which have not been paid or against which agreements and waivers have not been executed, as hereinafter provided, twenty-five per cent of the amount of such assessment. Thereupon he shall proceed to sell all lands and lots covered by such assessments, or so much of each lot, piece or parcel of land as shall be necessary to realize the amount assessed against the same together with said additional twenty-five per cent and interest on the amount of said assessment at the rate fixed by resolution provided for in section five above from the time so fixed by the tax collector for the payment of said assessments as aforesaid to the date of such sale, by giving notice of said sale in conformity with the laws of the state of California, provided for the notice and sale of real property upon execution; provided, however, that the descriptions of the various parcels of land to be sold need not be set out at length therein, but only by the respective red ink numbers of the same shown upon the map and list provided for in section four of this act, which map shall be properly referred to in said notice for further particulars of description; and which notice shall be in one writing, and shall contain all the descriptions of said lands by their respective red ink numbers.

At the time and place fixed for the sale of said property the tax collector shall sell the respective lots, pieces or parcels of land within said district, the assessments against which have not been paid or against which agreements and waivers have not been executed as hereinafter provided, or so much of each lot, piece or parcel of land as shall be necessary to realize the amount assessed against the same, together with said additional twenty-five per cent and interest on the amount of said assessment at the rate fixed by resolution provided for in section five above from the time so fixed by the tax collector for the payment of said assessments as aforesaid to the date of such sale, in the order of their numbers upon said map and list; at such sale the municipality may be a bidder. In case there is no bid on any of said lots, pieces or parcels of land equal to the amount of said assessment with accrued interest and said additional twenty-five per cent, the municipality must buy said property for the amount of said assessment with accrued interest and said additional twenty-five per cent, and it is hereby made the duty of the tax collector of the municipality to bid said sum in such event on behalf of said municipality, and the amount thus bid on behalf of said municipality shall be transferred from the general or other appropriate fund to the local improvement fund of said district; provided, however, that if any lot, piece or parcel of land within said district, the assessment against which has not been paid or against which agreement and waiver has not been executed as hereinafter provided, or against which an agreement and waiver has been executed by some one not the owner of said lot, piece or parcel of land, is omitted from said sale, the tax collector may at any time thereafter sell such lot, piece or parcel of land as herein provided to realize the amount remaining unpaid on said assessment, together with an additional twenty-five per cent and interest on the amount of said assessment at the rate fixed by resolution provided for in section five above from the time so fixed by the tax collector for the payment of said assessments as aforesaid to the date of such sale. [Amendment became a law, under

constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915. Stats. 1915, p. 383.]

Certificate of sale.

§ 13. The said tax collector shall issue for each sale made a certificate of sale, referring to the number of the proceeding under this act, describing the parcel so sold, either by the red ink number appearing upon the said map and list, together with a reference to said map for further particulars of description, or by the red ink number and also metes and bounds or the lot, block and tract number as it may appear on any other map of record, and containing the name of the purchaser, which certificate he shall deliver to said purchaser, after noting the same in the proper column of the aforementioned record; which certificate shall be conclusive evidence of the regularity of all proceedings leading up to the same, and the issuance thereof, under this act, and of the validity of the said lien and sale. Upon the delivery of said certificate of sale to the purchaser, the lien of the assessment shall vest in him, and is only divested by a redemption of the property as provided in this act. [Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915, Stats. 1915, p. 384.]

Redemption of property sold.

§ 14. At any time before the expiration of five years after said sale, any property sold under the provisions of this act may be redeemed by the owner thereof by the payment to the said tax collector of the amount for which the said property was sold, and also any amount which the said purchaser may have paid out for taxes or assessments, a memorandum of which may have been filed with said tax collector, and which shall be noted on said record by him, together with interest at the rate of one per cent per month on all amounts paid by such purchaser; which redemption money shall be paid by the said tax collector to the owner of the certificate of sale, upon the same being delivered up to be canceled, and a receipt given to said tax collector for the amount so paid by him, the fact and date of which redemption together with the amount paid therefor, shall be noted by said tax collector on the margin of said record of assessment. [Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915, Stats. 1915, p. 385.]

Deed to property not redeemed.

§ 15. If the property sold as provided in the above proceedings be not redeemed within five years after the sale, the tax collector shall then issue to the party named in the original certificate, or his assignee, a deed of the property described in said certificate, which said deed shall refer, in general terms, to the proceedings under which the same is issued, and shall contain a description of the property following the description in the certificate; the grantee of such deed is, immediately upon receipt thereof, entitled to possession of the property described therein. [Amendment became a law, under constitutional provision, without the governor's approval, May 7, 1915. In effect August 8, 1915, Stats. 1915, p. 385.]

Bonds may be issued in lieu of cash payments. Installment payments.

§ 16. If, however, the legislative body of said municipality has declared in the resolution provided for in section five hereof, that bonds may issue in lieu of cash payments for said assessments and during the time fixed by the said tax collector for the payment of said assessments, the owner of any lot, piece or parcel of such land so assessed for twenty-five dollars or over, or his duly authorized agent, shall file with the said tax collector an affidavit made before a competent officer, that he is the owner of record of any such lot or land, and shall make, execute and deliver to said tax collector a

written agreement between himself and said municipality waiving all objections to the proceedings therein, and undertaking to pay the amount of said assessment, together with interest as hereinafter provided; then, the same shall not be sold for non-payment of the assessment levied against it, as above provided, but bonds shall issue in lieu of such payment, as hereinafter provided.

The assessments on the various parcels covered by waivers and agreements shall be payable in installments of ten in number, the first of which shall be paid at the time said agreement and waiver is filed, and the remainder of said installments shall be payable annually thereafter, one each year, at the time when the first installment of municipal taxes, within said municipality, is payable. At the time of the payment of the second installment of the assessment, there shall be paid interest on all deferred payments from the date of said agreement to the second day of January following at the rate fixed by the resolution provided for in section five above. At the time of the payment of the third, and all succeeding installments of the assessment, there shall be paid interest on all deferred payments from the second day of January preceding to second day of January following, at the rate fixed by the resolution provided for in section five, above.

Said agreements and waivers shall provide that said assessments shall be paid as above provided by the person executing the same, and said person shall therein waive all objection, of whatsoever kind or nature against the proceedings and the assessment levied therein, and undertake to pay said assessment levied against said lot or lands as above provided.

Said agreements shall be dated the last day for cash payments fixed by the tax collector, and shall bear interest from that day.

Said agreements and waivers shall be taken upon printed form provided by the tax collector of the municipality and shall be kept among the records in his office, the form of which shall be substantially as follows:

Form of agreement and waiver.

AGREEMENT AND WAIVER.

Local improvement district No.

The undersigned, owner of that certain lot, piece or parcel of land situate, lying and being in the city of county of, state of California, and being more particularly described as lot No. marked in red ink on the map of said district, reference to which map is hereby made for further particulars of description, does hereby petition the legislative body of said municipality to be permitted to pay in ten annual installments, together with interest thereon, that certain assessment heretofore levied thereon in said district No. heretofore formed.

In consideration thereof, the undersigned does hereby agree to waive and does hereby waive, all objections of whatsoever kind or nature against said assessment and all proceedings with reference to the same, and the undersigned in consideration thereof does hereby undertake to pay the said assessment on said real property in annual installments of ten in number with interest on all deferred payments at the rate of per cent per annum (insert rate fixed by resolution provided for in section 5 above) payable at the same time as installments of principal, as in said act provided, and does hereby agree to all the provisions of said act.

(Signature of owner.)

.....
(Residence of owner, giving street or
avenue, and city or town, and state.)
.....

Dated

Default in payment of installment.

In case of default in payment of any installment of principal, or interest accrued on deferred payments at the time provided herein, the entire remaining unpaid installments with accrued interest shall become immediately due and payable, together with an additional twenty-five per cent of the total amount still unpaid, and the tax collector of the municipality shall sell the property covered by the delinquent assessment, to realize the unpaid balance of said installments with accrued interest and said additional twenty-five per cent of the total amount still unpaid. At such sale the municipality may be a bidder. In case there is no bid for said property equal to the unpaid balance of said assessment with accrued interest, and said additional twenty-five per cent of the total amount still unpaid, the municipality must buy said property for the amount of said unpaid balance of said assessment with accrued interest, and said additional twenty-five per cent of the total amount still unpaid and it is hereby made the duty of the tax collector of the municipality to bid said sum in such event on behalf of said municipality, and the amount thus bid on behalf of said municipality shall be transferred from the general or other appropriate fund to the local improvement fund of said district.

Said sale shall be made in the manner provided for in section 12 of this act and a certificate of sale shall be issued to the purchaser as provided in section 13 of this act, and the said lots and lands shall be subject to redemption as provided in section 14 of this act; and a deed shall be given, if not redeemed within one year, as provided in section 15 of this act.

Any interested property owner may release and discharge any such unpaid assessment secured by agreement and waiver as herein provided by paying the total amount then due, for principal and interest, together with interest thereon for one year thereafter. [Amendment became a law under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915, Stats. 1915, p. 385.]

Funds to be paid to treasurer.

§ 17. The said funds collected by the tax collector under the proceedings herein provided for, either upon voluntary payment or as the result of sales, shall be paid by said tax collector, as fast as collected, to the treasurer of said municipality, who shall enter the same in a special fund designated by reference to the number of the proceeding, and shall be paid out only for purposes provided for in this act.

Work ordered done. Bids. Certified check. Bids opened. Contracts entered into.

§ 18. At any time after such assessments have been collected either by payment, or by a sale of the lots and lands as above provided, and agreements have been made, executed and delivered providing for bonds to issue and the funds to pay for the work, or any part of such funds are actually in the hands of the treasurer of said municipality, the said legislative body may, by resolution, order the work done or improvement made. Notice inviting sealed proposals or bids for doing the work ordered shall be published in some newspaper published in said municipality for two insertions, or if there be no such newspaper, then by posting in three public places in said municipality. Such notice shall refer to the report of the engineer or board or commissioner for the particulars of the description of the work and plans and specifications thereof. The time and place shall be fixed in said notice for the opening of proposals or bids, and shall not be less than ten days from the time of the first publication or posting of said notice, and bids or proposals may be filed at any time prior to the time so fixed for the openings of proposals or bids. Every bid shall be accompanied by a certified check amounting to ten per cent of the bid, payable to the order of the presiding officer of the legislative body of the municipality, and the same shall be forfeited to the municipality in case the bidder depositing the same does not within ten days after written notice that

the contract has been awarded to him, enter into a contract with the municipality for doing the work, the faithful performance of which shall be secured by a bond in such penal sum as the legislative body shall deem adequate, not exceeding the estimated cost of the work, and with sureties satisfactory to said body; and he shall also give a good and sufficient bond, in such sum as said body shall designate, not to exceed, however, the estimated cost of said work or improvement nor less than fifty per cent of the estimated cost, and approved by said body, which bond shall be made to inure to the benefit of any and all persons, companies and corporations who shall perform labor on, or furnish materials to be used in the performance of said work or improvement, and shall provide that if the contractor, company, or corporation to whom said contract was awarded fails to pay for any materials so furnished for said work or improvement, or for any work or labor done thereon of any kind, that the sureties will pay the same, to an amount not exceeding the sum specified in said bond. The legislative body shall in open session publicly open, examine, and declare the proposals or bids received. The legislative body may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid. The presiding officer of the legislative body shall execute all written contracts under this act on behalf of the municipality. When such contracts and bonds have been entered into, said check shall be returned to the successful bidder; the unsuccessful bidders shall receive their checks upon notice of rejection of their bids. The said contract must provide that the work be done, and the work must be done, strictly in accordance with the plans and specifications provided for in section 4 of this act. And said work must be done under the supervision of the engineer or board of public works or an inspector appointed for that purpose by the said legislative body. [Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915, Stats. 1915, p. 381.]

Payment of deficiency.

§ 19. In case the first assessment levied shall prove insufficient to pay the contract price and the incidental expenses of the proceeding, the municipality may order paid out of any money available in the municipal treasury the deficiency; or the said legislative body may order the deficiency advanced from any available money in the treasury, and thereafter order an additional assessment levied and collected from the lots and lands within the district as hereinafter provided; or the legislative body may, by resolution, order the levy and collection of an additional assessment against said lots and lands, which shall include the additional incidental expenses of levying and collecting the same, and shall order an additional list, according to the red ink numbers given on the map as provided for in subdivision six of section four of this act, prepared and filed, which assessment and list and the collection of said assessment shall follow the same course and proceedings as the original assessment and list as nearly as may be. In case of the advancement of any money from the available funds in the municipal treasury, the same shall be transferred to the proper fund under this act, and thereafter when the additional assessment is collected as hereinabove provided, the same amount must be re-transferred to the fund from which it was borrowed. [Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915, Stats. 1915, p. 388.]

Excess refunded. Abandoning work. Abandonment by contractor. Amount of benefit.

§ 20. If at any time an assessment for any local improvement under the provisions of this act shall realize a larger sum than is necessary for such improvement, the excess

shall be refunded upon warrants on the treasurer, authorized by the legislative body, pro rata, out of the special fund therefor, to the parties by whom it was paid; and, in the case of installment agreements such excess shall be credited on the unpaid installments, beginning with the one due at the latest date.

When there is a failure to receive any bid for doing the work contemplated under the provisions of this act; or when by reason of the abandonment of the work by the contractor before completion and a failure to procure a bidder to complete the work after such abandonment by the contractor; or when by reason of a change in the condition of the ground in, over or along which the improvement is contemplated or is in process of construction under the provisions hereof, caused by the action of the elements; or when for any other reason it becomes impossible or impracticable to construct or complete the improvement under the plans, profiles, cross section and specifications previously adopted by the legislative body in pursuance of proceedings had under this act; then, and in any of such events, said legislative body shall have the right to pass a resolution abandoning said work or improvement.

In the event said work is so abandoned by the municipality prior to letting a contract for the performance of such work, or before any work has been performed, then and in that event, all money raised by assessment for doing said work and in the hands of the treasurer for that purpose (after deducting the incidental expenses actually incurred under such proceedings) shall be refunded upon warrant on the treasurer, authorized by the legislative body, pro rata to the parties by whom it was paid; and in the case of installment agreements, shall be credited on the unpaid installments, beginning with the one due at the latest date.

In the event said work is abandoned by the contractor during the process of construction, and subsequent to letting a contract therefor, and subsequent to the completion and acceptance by the legislative body of some portion of the work contemplated by said proceedings; then, before any pro rata payment of the funds collected for that purpose shall be made, or credits given on the said unpaid installments, a proper amount shall be deducted from said funds so collected in proportion to such collections, and a proper proportion of said installments shall remain uncanceled, sufficient to pay the proper proportion of the cost of the work already done and accepted by the legislative body, together with the incidental expenses actually incurred under the proceedings; and the balance shall be refunded pro rata to the parties paying the same, and credits given on the unpaid installments, in the same manner as hereinbefore provided; except, that there shall be only a pro rata payment made, or credit given on installment agreements to the owners of property assessed therefor, over and above any benefits which their said property shall have received from the portion of the improvement made and accepted, by reason of the work done prior to the said abandonment; provided, that the legislative body shall in the resolution declaring the proceedings abandoned, designate the amount and value of the benefit, if any, received from such partial performance of said contract, by each lot or parcel of land within the district which are not entitled to a full refund, which amount so designated shall be withheld from refund or credit upon the installment agreements. The balance due on said installment agreements shall remain payable, together with interest, in the time and manner stated therein unless sooner paid and canceled as provided in section sixteen of this act; and none of the provisions of this section shall invalidate any of the proceedings under this act prior to the adoption of the resolution declaring the said proceedings abandoned, or invalidate any bonds which shall have been issued and sold under the provisions of this act, which bonds shall remain payable out of any funds to be collected from any unpaid assessment on lots or lands upon which installment agreements have been given. And the maturity of such bonds and interest may be advanced and the same paid and canceled as provided in section twenty-one of this act.

[Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915, Stats. 1915, p. 389.]

Issue of bonds. Denomination of bonds. Interest. Payment from general fund. Signatures.

§ 21. Whenever the legislative body of the municipality shall have determined that bonds shall issue, as provided for in section 5 of this act; and when the owner of any lot or lands assessed for twenty-five dollars or over, shall make, execute and deliver to the tax collector of said municipality an agreement as provided for by section sixteen of this act; then the said tax collector shall make and certify to the legislative body of the municipality the total amount of all assessments unpaid and for which agreements and waivers have been executed. At any time thereafter the legislative body may order bonds issued against the said special local improvement fund to the total amount of the assessments remaining unpaid, or uncanceled as above provided, and which are covered by agreements and waivers. The bonds shall be issued in any one hundred dollar denomination, from one hundred dollars to one thousand dollars; provided that nine bonds in any issue may be for some other denomination. The rate of interest on said bonds shall be the rate of interest fixed by the resolutions provided for in section five of this act. Such bonds shall be numbered from one upwards consecutively, and shall be called in and paid in their numerical order. Said bonds shall give the name and number of the proceedings under this act, and shall bear date the day they are issued, and shall be payable to bearer, and shall be serial bonds. The said bonds and interest shall be payable exclusively from said local improvement fund, and neither the municipality nor any officer thereof shall be holden for payment otherwise of its principal or interest; provided that if at the close of any fiscal year there shall not be sufficient money in any local improvement fund against which said bonds have been issued under the provisions of this act, over and above sufficient for the payment of interest on all unpaid bonds, it is hereby made the duty of the treasurer to pay out of the general fund of the municipality such bonds and interest due at such time as shall not have otherwise been paid. If at any time the treasurer pays any bond out of the general fund of the municipality under the provisions of this act, it is hereby made the duty of the treasurer to reimburse the general fund of the municipality from the moneys thereafter received by him, through proceedings following default in the payment of the installments as herein provided. Said bonds and interest accruing thereon shall be payable out of any moneys in said fund at the date of maturity, in order of presentation; and shall be secured by all agreements and liens provided for by this act. Interest coupons shall be attached to said bonds in sufficient numbers. Said bonds shall be signed by the presiding officer of the municipality, and countersigned by the treasurer thereof, and the seal of the municipality shall be attached thereto. The interest coupons shall be signed by the treasurer of the municipality, and his signature thereto may be made by lithograph.

Said bonds, by their issuance, shall be conclusive evidence of the regularity of all the proceedings leading up to, and the issuance thereof under this act, and of the validity of said lien provided for.

Life of bonds.

The term of said bonds shall be as follows: The term of the first one-ninth numerically of said bonds shall be from the date of the issuance of said bonds to the succeeding second day of January; the term of the second one-ninth numerically of said bonds shall be from the date of the issuance of said bonds to the second succeeding second day of January; the term of the third one-ninth numerically of said bonds shall be from the date of the issuance of said bonds to the third succeeding second day of January; the term of the fourth one-ninth numerically of said bonds shall be from the date of the

issuance of said bonds to the fourth succeeding second day of January; the term of the fifth one-ninth numerically of said bonds shall be from the date of the issuance of said bonds to the fifth succeeding second day of January; the term of the sixth one-ninth numerically of said bonds shall be from the date of the issuance of said bonds to the sixth succeeding second day of January; the term of the seventh one-ninth numerically of said bonds shall be from the date of the issuance of said bonds to the seventh succeeding second day of January; the term of the eighth one-ninth numerically of said bonds shall be from the date of issuance of said bonds to the eighth succeeding second day of January; the term of the ninth one-ninth numerically of said bonds shall be from the date of issuance of said bonds to the ninth succeeding second day of January.

The form of said bonds shall be substantially as follows:

Form of bonds.

LOCAL IMPROVEMENT BOND.

District No.
\$..... No.

“Under and by virtue of an act of the legislature of the state of California, entitled, ‘An act to provide for local improvements upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities, such act to be known as the local improvement act of 1901,’ ” the (here insert the legal name of the municipality) will pay to the bearer the sum of dollars in United States gold coin, with interest thereon in like gold coin at the rate of per cent per annum, all as hereinafter specified, and at the office of the treasurer of said municipality.

This bond is issued to represent the costs and expenses of certain local improvements in local improvement district No. in said municipality representing the assessment, and re-assessment, if any such has been made, upon the lands designated upon the map of said district.

The principal and interest shall be secured by all agreements, waivers and liens provided for by said act and arising out of the improvement to which said fund related.

This serial bond is one of a series of bonds for dollars each, and nine for dollars, which bonds are numbered from one to consecutively. These bonds shall be called in and paid in their numerical order.

This bond is due January 2, 19.., unless sooner paid and canceled, and the interest is payable annually, to wit: the second day of January in each year, upon the presentation of the coupons therefor, the first of which is for the interest from the date of the issuance of said bonds to the succeeding second day of January, and thereafter the interest coupons are for annual interest.

At said of the day of, in the year one thousand hundred and

.....,
(Insert title of presiding officer
of the legislative body.)
.....,
Treasurer of the

[Seal]

Sale of bonds.

Said bonds must be sold at a time to be fixed by the legislative body, and to the highest bidder therefor, but for not less than par and accrued interest, and the proceeds of the sale shall be deposited in the proper fund in the city treasury. If no bids are received or the legislative body determines that the bids received are not satisfactory as to price or responsibility of the bidders, the legislative body may reject all bids received, if any, and may enter into an agreement with the contractor to take the bonds

at par with accrued interest in payment for the work to be performed by him; but the said bonds shall not be delivered to him until payment for said work is due him as hereinafter provided.

Bond register.

Said treasurer shall keep a register in his office which shall show the series, number, date, amount, rate of interest, payee and endorsers of each bond, and the number and amount of each coupon of interest paid by him, and shall cancel and file each bond and coupon so paid.

Where payable.

Said bonds and interest shall be paid at the office of the said treasurer of said municipality from the fund designated by the number of the proceedings given in section 4 of this act, into which fund all moneys received in connection with said proceedings, either from the collection of assessments and interest, sales of property, or otherwise, shall be paid; and from which fund he shall pay the said bonds and the interest due thereon, and it shall be the duty of the said treasurer, on the second day of January of each year, to pay one-ninth of said bonds, together with all interest due on the whole of the issue thereof as hereinabove stated; provided, that if there shall not be sufficient money in any local improvement fund against which said bonds have been issued under the provisions of this act, over and above sufficient for the payment of interest on all unpaid bonds, to pay the bonds due, it is hereby made the duty of the treasurer to pay out of the general or other fund of the municipality such bonds and interest, due at such time, as shall not have otherwise been paid, and it is hereby made the duty of the treasurer to reimburse the said fund of the municipality from the moneys thereafter received by him, through proceedings following default in the payment of installments as in this act provided.

Treasury may advance maturity.

The treasurer may advance the maturity of any bond and pay and cancel the same whenever there shall be surplus moneys in the said fund with which to pay same, by paying a bonus of an additional one-half year interest. He shall give notice of such redemption at least thirty days prior to the second day of January in any year. Such notice may be given in writing, personally, or by registered mail to the holder thereof, or by publication for two weeks in a daily or weekly newspaper published in said city; provided, that if such notice be so given by publication then a copy of same shall be mailed to the last known holder thereof at his last known address at least ten days prior to the next second day of January specified in said notice. In the event of such notice being given, the maturity of such bond shall be advanced and said bond be deemed to mature on the second day of January specified in the notice as the date on which it will mature, at which time the same shall be paid. On said second day of January, if said bond has not been sooner surrendered, the treasurer shall set aside to the credit of the holder or owner of said bond the amount of principal and accrued interest then due on same, and said bond shall then be deemed to have matured, and interest shall thereafter cease to accrue on said bond. The amount so set aside shall on demand be paid the holder of said bond on surrender and cancellation of same. [Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915, Stats. 1915, p. 390.]

Acceptance of work.

§ 22. No part of the work shall be paid for until it has been accepted as fully completed according to the specifications in so far as it has been completed, by the legislative body. Whenever the contractor desires the work, or any part of it to be accepted, he must make a written application to that effect to the legislative body of the munici-

pality. Upon such filing of such application for acceptance, the clerk of the municipality shall cause at least five days' notice to be given by posting along the line of the work asked to be accepted that at a certain time and place to be named in said notice, the legislative body of the municipality will hear and consider any objections to the acceptance of the work or part of the work, for the acceptance of which said contractor has petitioned, and only after such hearing shall any work be accepted. If upon such hearing, objections to the acceptance thereof are made, and are held by the legislative body to be good, said body must require the contractor to take the necessary steps to remedy any defects in the said work, and in the event of his failure so to do, within such time as the legislative body shall prescribe, or an extension thereof, the said body may re-let said portion of the work and charge the contractor the cost thereof, together with all expenses incident to said re-letting and doing said work, and shall retain the same out of any moneys due or to become due to him under the contract, and also hold him and his sureties responsible therefor upon his bonds given. And upon such acceptance the work shall be paid for at the contract price in cash or by the delivery of bonds; provided, that not more than seventy-five per cent of the amount due shall be paid to the contractor upon a partial performance of the work, and the remainder shall be retained until the whole work is completed.

Commencement and completion.

The work must be commenced and completed within such time as the said legislative body shall prescribe, which time may be extended by said body from time to time, by resolution; provided, that the time for the commencement of the work shall not be fixed at a date prior to the date for the sale of the bonds hereinbefore provided for.

Re-letting upon abandonment.

If the contractor shall abandon the work, or shall fail to proceed with the same as rapidly as required by his contract, the said legislative body may re-let the contract for the work or any part of it and pay the costs and expenses of the same out of any funds due or to grow due to the contractor, or by the delivery of any bonds that may be due him, all incidental expenses due to the re-letting of said contract shall be paid by him, and he and his sureties shall be holden therefor for the same upon their or either of their bonds as well as any damage which may result from such neglect or abandonment. [Amendment became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915, Stats. 1915, p. 394.]

Failure to receive bids. May alter plans. Supplemental contract.

§ 22a. That when there is a failure to receive any bid for doing the work contemplated under this act; or when by reason of abandonment of the work by the contractor before completion, and a failure to procure a bidder to complete the work after such abandonment; or when by reason of a change in the condition of the land over or along which the improvement is contemplated, or in process of construction under the provisions hereof, caused by the action of the elements or for any other reason it becomes impossible or impracticable to construct or complete the improvement under the original plans and specifications, the legislative body of the said municipality may by resolution alter such plans or profiles, or cross-sections or specifications, or may adopt new plans, or profiles, or cross-sections, or specifications in the manner provided for in the first instance, so as to meet such changed condition or so as to make the completion of the said improvement practicable or possible, in which event the legislative body shall require the city engineer or board of public works, or commissioner of public works to make an estimate of the total expense of said improvement under the said altered or new plans, profiles, cross-sections, and specifications as the case may be, and if the estimated expense of the work to be done under such altered or new plans

and specifications shall not exceed the amount raised under the first assessment as provided herein, and after all necessary proceedings had under the provisions of sections five, six, seven, and eight of this act, and a new or supplemental contract has been entered into with the contractor and bonds given as in this act provided, to perform said work or improvement as provided for in said new or altered or amended plans, profiles, cross-sections, and specifications, then the work shall proceed under the altered or new plans, profiles, cross-sections, and specifications and shall be paid for out of the funds raised under the first assessment; but if the estimated expense shall exceed the amount raised by the first assessment, a second or additional assessment may be made and recorded in the same manner as provided for in section nineteen of this act as nearly as may be; except, that no protest shall be entertained upon subject matter already decided on the first hearing and which has not been in effect changed. In case said plans, profiles, cross-sections, and specifications are altered or changed during the process of construction and the contractor consents thereto and agrees to do the work under the altered or changed plans, profiles, cross-sections, and specifications at the estimated additional assessed price, if such there be, then a supplemental contract shall be entered into for doing said work for said price under said altered or new plans, profiles, cross-sections, and specifications.

Contractor's refusal deemed abandonment.

But in the event of the refusal of said contractor to continue said work and complete the same under said altered or changed plans and specifications at the said excess price, his refusal so to do shall be deemed an abandonment of the contract and said legislative body shall proceed to advertise for bids for the completion of said work as provided herein for advertising for bids in the first instance. [New section added, became a law, under constitutional provision, without governor's approval, May 7, 1915. In effect August 8, 1915, Stats. 1915, p. 395.]

Improvement of minority frontage; procedure. Legal notice by mail.

§ 23. Whenever the majority of frontage between any two consecutive crossings upon any of the public ways mentioned in section 1 of this act, has been improved, the legislative body may compel the remainder of said frontage between said crossings to be similarly improved without other proceedings than those provided for in this section as follows, to wit: The legislative body shall pass a resolution ordering said work to be done, briefly describing the work and the property in front of which the work is to be done, and fixing a time when objections to the doing of said work will be heard by said legislative body, which said time shall be not less than two weeks nor more than thirty days from the date of the passage of the resolution; at least ten days before the time named in said resolution for said hearing the clerk of the municipality shall mail a copy of said resolution to the person or persons to whom the property in front of which the said work is to be done is assessed upon the last preceding assessment-roll of such municipality, at their addresses if known, otherwise addressed to the care of the United States postoffice in the municipality, shall personally serve upon the person or persons in possession of the premises, if the same be occupied, and shall post a copy of the same in a conspicuous place upon the said premises, and the certificate of said clerk to the effect that said mailing, posting and service has been done shall be filed with the legislative body and entered upon their minutes, and said entry shall constitute conclusive evidence of the facts stated in said certificate; at the time named in said resolution said legislative body shall meet and consider any objections which may be made to the doing of said work; if there are no objections or if the legislative body overrule the same, the legislative body shall then pass a resolution ordering said work to be done; if within ten days after the passage of the last named resolution satisfactory evidence be not produced to the legislative body that the said work is to be

immediately done by private contract the legislative body may advertise for bids for such work by such publication or posting as they shall deem necessary and let the work to the lowest responsible bidder, and pay for the same out of the general fund or any other fund available for the purpose; the entire cost of such work together with the expenses incidental to the proceedings therefor shall be charged against the property in front of which the same has been done; the clerk of the municipality shall immediately upon the completion and acceptance of the work file an itemized statement of said charge with the recorder of the county in which the municipality is located, and thereupon the said charge shall become a lien upon the property affected, which said lien shall relate back to the date of the passage of the original resolution first above mentioned and shall be continued upon such property until the same is paid in full with interest at seven per cent from the date of the record of such statement; and the municipality shall have power to enforce said lien by foreclosure suit and sell said property for the satisfaction thereof.

Title of act.

§ 24. This act shall be known as "The local improvement act of 1901" and shall take effect and be in force upon its passage and approval.

Act does not affect acts of 1885 or 1893.

§ 25. This act shall in no wise affect an act entitled "An act to provide for work upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities," approved March eighteenth, eighteen hundred and eighty-five, or amendments thereto, or an act entitled "An act to provide a system of street improvement bonds to represent certain assessments for the cost of street work and improvement within municipalities, and also for the payment of said bonds," approved February twenty-seventh, eighteen hundred and ninety-three; or any of said acts; but is intended to and does provide an alternate system of proceedings for public improvements, and it shall be within the discretionary power of the legislative body of any municipality to proceed in making such improvements, either under the provisions of this act, or under the provisions of the other said acts, but when any proceedings are commenced under this act the provisions of this act, and such amendments thereto as may hereafter be adopted, and no other, shall thereafter apply to all such proceedings; but any provision contained in said or any other acts in conflict with provisions hereof shall be void as to and of no effect upon proceedings commenced under the provisions of this act.

1. Municipal improvement act of 1901 not repealed by this act.—The local improvement act of 1901 is not repugnant to and does not repeal the municipal improvement act of 1901 passed a few days earlier; and the two statutes should be construed together.—*Mill Valley v. House*, 142 Cal. 698, 76 Pac. 658.

2. Intention of act—Not to authorize inclusion of widely separated sections in the same proceeding.—It was never intended by the authorization to "include one or more streets in the same proceeding, to empower the legislative body of the city to so include in one proceeding street work so widely separated as to result in imposing a portion of the cost of improving a street in one of such sections on property in the other section not benefited thereby.—*Southwick v. Santa Barbara*, 158 Cal. 14, 109 Pac. 610.

3. Same—Same—Applies to improvements constituting an entirety.—The act

does not authorize the inclusion of two separate sections of the city in the same assessment district separated at their nearest points by one-half mile, but the provision as to the inclusion of more than one street was intended to apply to improvements constituting an entirety.—*Southwick v. Santa Barbara*, 158 Cal. 14, 109 Pac. 610.

4. A local improvement district—Meaning of phrase.—A local improvement district under the act means a single portion of the territory of a city set off as being specially benefited by a street improvement to be made therein.—*Southwick v. Santa Barbara*, 158 Cal. 14, 109 Pac. 610.

5. Engineer's report—Filing required before commencement of proceedings.—Substantial compliance with section 4 as to the filing of the engineer's report is necessary.—*Southwick v. Santa Barbara*, 158 Cal. 14, 109 Pac. 610.

6. Same.—Description should be definite.—The description in the engineer's report as to the exterior boundaries of the district should be as certain and definite as possible.—*Southwick v. Santa Barbara*, 158 Cal. 14, 109 Pac. 610.

7. Payment of part of cost out of city treasury—Balance only should be assessed against property of district.—If it is determined by the city that any part of the cost of the improvement is to be paid out of the treasury, the amount should be deducted from the estimates, and the remainder only assessed against the property

of the district.—*Southwick v. Santa Barbara*, 158 Cal. 14, 109 Pac. 610.

8. Injunction—Collection of assessment—Objection to improper inclusion of separate districts.—An objection that separate sections of a city were improperly included in a single district is available to a property owner in a suit to enjoin the collection of an assessment for the improvement, notwithstanding his failure to make the objection before the local legislative body.—*Southwick v. Santa Barbara*, 158 Cal. 14, 109 Pac. 610.

STREET IMPROVEMENT BOND ACT OF 1893.

ACT 4950—An act to provide a system of street improvement bonds to represent certain assessments for the cost of street work and improvements within municipalities, and also for the payment of such bonds.

History: Approved February 27, 1893, Stats. 1893, p. 33. Amended. Amendment became a law under constitutional provision, without governor's approval, March 2, 1899, Stats. 1899, p. 40; April 27, 1911, Stats. 1911, p. 1201; May 30, 1913, in effect August 10, 1913, Stats. 1913, p. 351; June 4, 1913, in effect August 10, 1913, Stats. 1913, p. 845; April 24, 1917, in effect July 27, 1917, Stats. 1917, p. 160.

What "street work act" means. Name of municipal body or officer.

§ 1. Wherever in this act the phrase "street work act" is used, it means, and shall be taken to mean, the act entitled "An act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for construction of sewers within municipalities," approved March eighteenth, eighteen hundred and eighty-five, and all acts amendatory thereof or supplemental thereto; and wherever in this act the name of any municipal body or officer is used, or any word or phrase is used which is not herein expressly defined, it means and shall be taken to mean such municipal body or officer, or word or phrase, as the same is expressly defined in said street work act, and in all acts amendatory thereof or supplementary thereto.

Bonds for street work. Interest. Treasurer's register.

§ 2. The city council of any municipality in this state shall have the power, in its discretion, to determine that serial bonds shall be issued in the manner and form hereinafter provided to represent assessments of twenty-five dollars or more for the cost of any work or improvement authorized by the said street work act. Said serial bonds shall extend over a period not to exceed fifteen years from the second day of January next succeeding the issuance of said bonds, and an even annual proportion of the principal sum thereof shall be payable by coupon on the second day of January every year after their date until the whole is paid; provided, that if the period over which said bonds are to extend exceeds ten years, one-tenth part of the principal sum thereof shall be payable by coupon on the second day of January of each of the last ten years of said period. The interest on said bonds shall be payable semi-annually by coupon on the second days of January and July respectively, of each year, at the rate of not to exceed ten per cent per annum on all sums unpaid, until the whole of said principal and interest is paid. Said bonds and interest thereon shall be paid at the office of the city treasurer of said municipality, who shall keep a fund designated by the name of said bonds, into which he shall receive all sums paid him for the principal of said bonds and the interest thereon, and from which he shall disburse such sums upon the presentation of said coupons; and under no circumstances shall said bonds or the interest thereon be paid out of any other fund. Said city treasurer shall keep a register in his office which shall show the series, number, date, amount, rate of interest, payee

and indorsees of each bond, and the number and amount of each coupon of principal or interest paid by him, and shall cancel and file each coupon so paid. [Amendment approved June 14, 1913, Stats. 1913, p. 846. In effect August 10, 1913.]

This section was also amended March 2, 1899, Stats. 1899, p. 40, and April 27, 1911, Stats. 1911, p. 1201.

Resolution of intention and description of bonds.

§ 3. When said city council shall determine that serial bonds shall be issued to represent the expenses of any proposed work or improvement under said street work act, it shall so declare in the resolution of intention to do said work, and shall specify the rate of interest which they shall bear and the period of time over which they are to extend. A like description of said bonds shall be inserted in the notice of award, and a notice that a bond will issue to represent each assessment of twenty-five dollars or more remaining unpaid for thirty days after the date of the warrant, or such further time as may be thereafter granted by way of an extension, or five days after the decision of the city council upon an appeal, or thirty days after the recording of a reassessment in the event that one be made, and describing the bonds, shall be included in the warrant provided for in section nine of said street work act. [Amendment approved June 14, 1913, Stats. 1913, p. 846. In effect August 10, 1913.]

This section was also amended March 2, 1899, Stats. 1899, p. 40.

Street superintendent to certify unpaid assessments. Sufficient description of land.

§ 4. After the full expiration of thirty days from the date of the warrant, or if an appeal be taken to the city council, or an extension of time be granted the contractor in which to make his return as provided in section ten of said street work act, then five days after the final decision of said city council, or the expiration of the extension, or after the full expiration of thirty days from the recording of a reassessment in the event that such be made, and after the street superintendent shall have recorded the return, and in the event that a reassessment is ordered, after all previous payments have been credited on the reassessment, the street superintendent shall make and certify to the city treasurer a complete list of all assessments unpaid, which amount to twenty-five dollars or over upon any assessment or diagram number; and said treasurer shall thereupon make out, sign and issue to the contractor, or his assigns, payee of the warrant and assessment, a separate bond, representing upon each lot or parcel of land upon said list the total amount of the assessments, or reassessments as the case may be, against the same as thereon shown. And if said lot or parcel of land is described upon said assessment and diagram by its number or block, or both, upon the official map of said municipality, or upon any map on file in the office of the county recorder of the county in which said municipality is situated, then it shall be in said bond a sufficient description of said lot or parcel of land to designate it by said number or block, or both, as it appears on said official or recorded map. Said bond shall be substantially in the following form:

STREET IMPROVEMENT BOND.

Form of bond.

Series (designating it) in the city (or other form of municipality) of (naming it).

\$..... No.

Under and by virtue of an act of the legislature of the state of California (title of said act), I, out of the fund for the above designated street improvement bonds, series, will pay to, or order, the sum of dollars, (\$.....), with interest at the rate of per cent per annum, all as herein-after specified, and at the office of the treasurer of the of, state of California.

This bond is issued to represent the cost of certain street work upon in

the of, as the same is more fully described in assessment No., issued by the street superintendent of said, after acceptance of said work, and recorded in his office (or if there has been a reassessment then the reference shall be to such reassessment). Its amount is the amount assessed in said assessment (or reassessment if such be made) against the lot or parcel of land numbered therein, and in the diagram attached thereto, as No., and which now remains unpaid, but until paid, with accrued interest, is a first lien upon the property affected thereby, as the same is described herein, and in said recorded assessment with its diagram, to wit:

That certain lot or parcel of land in said of county of and state of California, described as follows:

This bond is payable exclusively from said fund and neither the municipality nor any officer thereof is to be holden for payment otherwise for its principal or interest. The term of this bond is years from the second day of January next succeeding its date, and at the expiration of said time the whole sum then unpaid shall be due and payable; but on the second day of January of each year after its date an even annual proportion of its whole amount is due and payable upon presentation of the coupon therefor until the whole is paid (or if said bonds are to extend over a period exceeding ten years from their date, insert in place of the last statement the following: But on the second day of January of each of the last ten years of the term of this bond an even one-tenth part of the whole amount of the principal of said bond shall be due and payable upon presentation of the coupon therefor,) with all accrued interest at the rate of per centum per annum. The interest is payable semiannually, to wit: on the second days of January and July in each year hereafter, upon presentation of the coupons therefor, the first of which is for the interest from date to the next second day of, and thereafter the interest coupons are for semiannual interest. Should default be made in the annual payment upon the principal, or in any payment of interest, by the owner of said lot or parcel of land, or any one in his behalf, the holder of this bond is entitled to declare the whole unpaid amount to be due and payable and to have said lot or parcel of land advertised and sold forthwith, in the manner provided by law.

At said of, this day of in the year one thousand nine hundred

.....,
City treasurer of the of

Amount less than twenty-five dollars. Proceedings to avoid listing by street superintendent. Annual coupons. Semiannual interest coupons. Report of treasurer to street superintendent.

In case the amount of the unpaid assessment or reassessment upon any lot or parcel of land shall be less than twenty-five dollars, then the same shall be collected as is provided in said street work act. If any person, or his authorized agent, shall at any time before the issuance of the bond for said assessment or reassessment upon his lot or parcel of land present to the city treasurer his affidavit made before a competent officer, that he is the owner of a lot or parcel of land in said list, accompanied by the certificate of a searcher of records that he is such owner of record, and shall with such affidavit and certificate notify said treasurer in writing that he desires no bond to be issued for the assessment upon said lot or parcel of land, then no such bond shall be issued therefor and the payee of the warrant, or his assigns, shall retain his right for enforcing collection of said assessment or reassessment as if said lot or parcel of land had not been so listed by the street superintendent. The bonds so issued by said treasurer shall be payable to the party to whom they issue, or order, and shall be serial bonds, as is hereinbefore described, and shall bear interest at the rate specified

in the resolution of intention to do said work. They shall have annual coupons attached thereto, payable in annual order on the second day of January in each year after the date of the bonds until all are paid, or if the term of said bonds be more than ten years, then said coupons shall be payable on the second day of January of each of the last ten years of the term of the bonds; and each coupon shall be for an even annual proportion of the principal of the bond. They shall have semiannual interest coupons thereto attached, the first of which shall be payable upon the second day of January or July, as the case may be, next after its date, and shall be for the interest accrued at that time, and the rest of which shall be for the semiannual interest accruing from the second day of January or July, as the case may be. The owner of, or any person interested in, any lot or parcel of land upon which a bond has been issued, under the terms of this act, may at any time pay off such bond and discharge his land from the lien of the assessment, by paying to the city treasurer for the holder of such bond the amount then unpaid on the principal sum thereof, and all interest thereon which has accrued and is unpaid, together with the semiannual installment of interest which will next become due thereafter, and in addition thereto, interest for six months at the rate specified in the bond upon the unpaid amount of the principal. The treasurer shall thereupon make an entry upon his bond register that such bond has been paid in full. When all the coupons of principal and interest are paid or the bond is surrendered or satisfied, the city treasurer shall report the fact to the street superintendent, who shall forthwith indorse the same on the margin of the record of the assessment to the credit of which the same is paid. The assessment upon which a bond is issued shall be a first lien upon the property affected thereby until the bond issued for the payment thereof and the accrued interest thereon shall be fully paid. Said bonds by their issuance shall be conclusive evidence of the regularity of all proceedings leading up thereto under said street work act and under this act, and of the validity of said lien. [Amendment of April 24, 1917. In effect July 27, 1917. Stats. 1917, p. 160.]

This section was also amended March 2, 1899, Stats. 1899, p. 41; April 27, 1911, Stats. 1911, p. 1202; June 14, 1913, Stats. 1913, p. 847.

Failure to pay interest and principal on bonds as due.

§ 5. Whenever, through the default of the owner of any lot or parcel of land to represent the assessment upon which such bond has been, or may hereafter be, issued, any payment, either upon the principal, or of the interest, has not been, or shall not be, made when the same has become, or shall become due, and the holder of the bond thereupon demands, in writing, that the said city treasurer proceed to advertise and sell said lot or parcel of land as herein provided, then the whole bond or its unpaid remainder, with its accrued interest, as expressed in said bond, shall become due and payable immediately, and on the day following shall become delinquent.

Publication of notice of delinquency.

Subdivision a. Upon the application of the holder of any bond that is now or shall hereafter become delinquent as provided in this section, the said city treasurer shall publish for two weeks in a newspaper of general circulation, to be designated by him, published in the city where his office is situated, a notice which must contain the date, number, and series of the delinquent bond, a description of the property mentioned in said bond and the name of the owner of such property (if known), and if unknown, the fact shall be so stated, the amount due thereon, and a statement that unless the amount of said bond and the interest thereon, together with the cost of publication of such notice are paid, the real property described in said bond will be sold at public auction on a day to be therein fixed, which shall not be less than fifteen nor more than thirty days from the date of the first publication of said notice, and the place of such sale, which must be the office of the said city treasurer.

Affidavit of publication.

Subdivision b. The city treasurer, before the day of sale hereinafter provided for, must file with the city clerk a copy of the publication, with an affidavit of the publisher of such newspaper or some one in his behalf, attached thereto, that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication and the date of each appearance in which the said publication was made, which affidavit is primary evidence of all the facts stated therein.

Cost of publication.

Subdivision c. The city treasurer must collect, in addition to the amount due on such bond, the cost of publication of such notice, and fifty cents for the certificate of sale, as hereinafter provided.

Owner may pay before sale.

Subdivision d. At any time prior to the sale, the owner or person in possession of any real estate offered for sale under the provisions of this act may pay the whole amount of said bond then due, with costs, and such bond shall thereupon be canceled; but in case such payment is not made by such owner, or person in possession, or by someone in behalf of such owner, or person in possession, the property subject thereto shall be sold as herein provided.

Sale of property.

Subdivision e. At the sale, the property described in the bond shall be sold to the purchaser who will take the least amount thereof and pay the amount due on the bond together with penalties and costs.

Record kept by city treasurer.

Subdivision f. The city treasurer, before delivering any certificate, must, in a book kept in his office for that purpose, enter the date, number, and series of the bond, a description of the land sold corresponding with the description of the certificate, the date of sale, purchasers' name, the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection during office hours when not in actual use, and he shall enter on the record of the bond the words "Canceled by sale of the property," giving the date of such sale.

Purchaser vested with lien.

Subdivision g. Immediately on the sale, the purchaser shall become vested with a lien on the property, so sold to him, to the extent of his bid, and is only divested of such lien by the payment to the city treasurer of the purchase money, including costs herein provided for, with interest thereon at the rate of one per cent per month from the date of sale.

Redemption of property.

Subdivision h. A redemption of the property sold may be made by the owner of the property, or any party in interest, within twelve months from the date of purchase, or at any time prior to the application for a deed, as hereinafter provided.

Redemption to be in lawful money. Entry of redemption.

Subdivision i. Redemption must be made in lawful money of the United States, and when made to the city treasurer he must mark the word "Redeemed," the date and by whom redeemed on the margin of the book where the entry of the certificate is made, and credit the amount paid to the purchaser named in the certificate, and pay the same to such purchaser, or his assignee, upon the surrender of the certificate of sale, and upon satisfactory proof of an assignment thereof, if any.

Deed to purchaser. Notice to owner prior to expiration of time. Notice posted. Purchaser's fee for notice.

Subdivision j. If the property is not redeemed within the time allowed by subdivision h hereof for its redemption, the city treasurer, or his successor in office, upon application of the purchaser or his assignee, must make to said purchaser, or his assignee, a deed to the property, reciting in the deed, substantially, the matter contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption; the treasurer shall be entitled to receive from the purchaser two dollars for making said deed, which shall be deposited in the city treasury for the use of the city after payment has been made therefrom for the acknowledgment of said deed; provided, however, that the purchaser of the property, or his assignee must, thirty days prior to the expiration of the time of the redemption, or thirty days before his application for a deed, serve upon the owner or agent of the property purchased, if named in such certificate, and upon the party occupying the property, if the property is occupied, a written notice, stating that said property or a portion thereof, has been sold to satisfy the bond lien, the date of sale, the date number, and series of the bond, the amount then due, and the time when the right of redemption will expire, or when the purchaser will apply for a deed, and the owner of the property shall have the right of redemption indefinitely, until such notice shall have been given and said deed applied for, upon the payment of the fees, penalties and costs in this act required. In case of unoccupied property, a similar notice must be posted in a conspicuous place upon the property at least thirty days before the expiration of the time for redemption, or thirty days before the purchaser applies for a deed; and no deed to the property sold, in accordance with the provisions of this act, shall be issued by the city treasurer to the purchaser of such property, until such purchaser shall have filed with such treasurer an affidavit showing that the notice hereinbefore required to be given has been given as herein required, which said affidavit shall be filed and preserved by the said treasurer as other records kept by him in his office. Such purchaser shall be entitled to receive the sum of fifty cents for his service of such notice and the making of said affidavit, which sum of fifty cents shall be paid by the redemptioner at the time and in the same manner as the other sums, costs and fees are paid.

Deed evidence of regularity.

Subdivision k. The deed, when duly acknowledged or proved, is primary evidence of the regularity of all proceedings theretofore had, and conveys to the grantee the absolute title to the lands described therein, as of the date of the expiration of the period for redemption, free of all encumbrances, except the lien for state, county and municipal taxes. [Amendment approved June 14, 1913, Stats. 1913, p. 849. In effect August 10, 1913.]

This section was also amended March 2, 1899, Stats. 1899, p. 43.

Provision in regard to railroad tracks.

§ 6. Whenever any railroad track or tracks of any description exist upon any street or streets on which the city council has ordered work to be done or improvements made, excepting therefrom such portions as is [are] required by law to be kept in order or repair, by any person or company having railroad tracks thereon, the said council may, at any time thereafter, order such person or company to perform upon said excepted portion the work or improvements, similar in all respects to that already ordered to be performed under the same specifications and superintendence, with the same materials, within the same time, and to the like satisfaction and acceptance. Thereupon it shall be the duty of the clerk of said council to deliver immediately a copy of such order, certified by him, to such person or company, and to make and

preserve in his office a certificate of such delivery, its date, and upon whom made. Should such person or company, for thirty days, or within such extension of time as the city council may grant, thereafter refuse or neglect to make or have made such work or improvement in the manner or time ordered, it shall be the duty of the city council to have such work or improvement performed, and such refusal or neglect punished in the manner provided by law. Within fifteen days after receiving the certified copy of said order, such person or company may file with the clerk of said council a written assumption of the performance of said work or improvement, according to the order, or a request to the council to have such work or improvement performed, for and at the expense of such person or company, in the manner herein provided. The failure to file such instrument within said time shall be taken and deemed to be a refusal to comply with the order. Upon reception of said assumption of the direct performance of said work or improvement, the city council shall take no further proceedings in the matter, unless such person or company neglects or fails for thirty days, or such further time as the council may grant, to comply with the provisions of the order. But if such person or company files the said request that the said council have such work or improvement performed, or fails to perform said work within thirty days, or within such further time as the council may grant, then said city council may pass an ordinance of intention to perform said work, which ordinance shall specify the work to be performed, and a statement that unless within thirty days after the recording of the return of the warrant, or within five days after the final decision of the council on an appeal, the said person or company shall pay the cost of said work, or the street superintendent of said city shall issue bonds to represent the cost of said work, stating also that the cost of said work, in case bonds shall issue, shall be paid in ten yearly installments, and also the rate of interest (not to exceed ten per cent per annum) that the same shall bear. The subsequent procedure shall be as provided by the "Street Work Act." A similar statement shall also be incorporated in all notices required to be posted or published by the provisions of the "Street Work Act"; also in the ordinance or resolution ordering the work, advertisement for proposals, and in the contract. Whenever the person or company owning any such railroad shall not have, within thirty days after the recording of the return of the warrant, or within five days after the final decision of the council on an appeal, paid the cost of such work, the street superintendent shall issue to the contractor, or to his assigns, bonds for the amount of such cost, which shall describe the franchise, tracks, and roadbed along or between which said work has been performed, and describing the same as upon the assessment and diagram, giving its assessment number. Such bonds shall also describe the work performed, giving the total amount of the cost of such work, the name of the owner of said railroad, the number of installments in which the cost of the work is to be paid, and the rate of interest which the deferred payments shall bear. Said bonds shall be in sums of not less than one hundred dollars or more than one thousand dollars, and shall recite that the total amount of the cost of such work, together with the interest thereon, as represented in said bonds, is, except state, county, and municipal taxes, a first lien upon all the track, roadbed, switches, and franchises of said railroad lying within the corporate limits of the city or town, on any part of which said work has been performed. Said street superintendent shall also keep a record of such bonds, as required by section 18 of the "Street Work Act." Whenever bonds have been issued, as herein provided, the same, together with the cost of such work and the interest thereon, shall be, except state, county, or municipal taxes, a first lien upon all the tracks, roadbed, switches, and franchises of said railroad within the corporate limits of the city or town, on any part of which said work has been performed. Sections 4 and 5 of this act, regarding the form, issuance, and foreclosure of street bonds, and

the sale of property described therein, shall apply thereto, except that the work required to be performed by the treasurer by said sections shall be performed by the street superintendent, in so far as the bonds for the paving of railroads are concerned. None of the provisions of the "Street Work Act" in regard to a protest against the work shall apply to any work contemplated in this section. All provisions of the "Street Work Act" not inconsistent with the provisions hereof shall apply hereto.

What "city treasurer" means.

§ 7. The term "city treasurer," as used in this act, shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the municipality.

Repeal of act of 1891.

§ 8. The act entitled "An act to amend an act entitled 'An act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for construction of sewers within municipalities,' approved March eighteenth, eighteen hundred and eighty-five, by adding thereto an additional part, numbered 4, consisting of sections 38, 39, 40, 41, 42, 43, and 44, relative to a system of street improvement bonds," approved March seventeen, eighteen hundred and ninety-one, is hereby repealed, except as to any and all proceedings hitherto commenced thereunder, which proceedings may be completed and have full force as is therein provided.

§ 9. This act shall take effect and become of force from and after its passage.

Public work in unincorporated territory. Terms interchangeable.

§ 10. The public work provided to be done under the act may be performed under the provisions of this act in unincorporated territory in counties, and all of the provisions of this act shall apply with equal force to such work subject to the definitions and modifications hereinafter contained. Wherever the words "municipality," "municipalities" or "city" shall appear in this act, they shall be and are hereby defined as including cities, cities and counties and counties, and are hereby expressly declared to be interchangeable with any or either of these terms. Wherever the terms "city council" or "council" shall appear in this act, they shall be and are hereby defined as including the board of supervisors of a county, and are hereby expressly declared to be interchangeable with these terms; and all of the provisions of this act extending authority to or imposing duties or obligations upon the city council or council shall apply with equal force to the board of supervisors. Wherever the terms "street" or "streets" shall appear in this act, they shall be and are hereby defined as including highway, or highways, and are hereby expressly declared to be interchangeable therewith; and all of the provisions of this act relating to street or streets shall apply with equal force to highway or highways. Wherever the terms "city clerk," "clerk of the city council," "clerk of the council" or "clerk" shall appear in this act, they shall be and are hereby defined as including the county clerk of a county, and are hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the city clerk, clerk of the city council, clerk of the council or clerk shall apply with equal force to the county clerk. Wherever the terms "city treasury" or "municipal treasury" shall appear in this act, they shall be and are hereby defined as including the county treasury, and are hereby expressly declared to be interchangeable with any or either of these terms. Wherever the terms "treasurer" or "city treasurer" shall appear in this act, they shall be and are hereby defined as including the county treasurer of a county, and are hereby expressly declared to be interchangeable therewith; and all of the provisions of this act extending authority to or imposing duties or obligations upon the treasurer or city treasurer shall apply with equal force to the county treas-

urer. Wherever the term "corporate limits" shall appear in this act, it shall be and is hereby defined as including the county boundary; and is hereby expressly declared to be interchangeable therewith; and all of the provisions of this act referring to corporate limits shall apply with equal force to the county boundary. [New section added May 30, 1913, Stats. 1913, p. 351. In effect August 10, 1913.]

County street superintendent. Compensation.

§ 11. The board of supervisors of any county in which it is desired to perform work under the provisions of this act shall be and they are hereby authorized to appoint a person to be known as the street superintendent of the said county who shall have all of the authority and perform all of the duties and obligations herein imposed upon the street superintendent, and shall be considered as designated wherever the words "street superintendent" or "superintendent of streets" are used in this act; and the board of supervisors may appoint as many deputies for the said street superintendent of the county as in their judgment may be proper and necessary, the said street superintendent to receive a compensation of six dollars per day, and his deputies to receive a compensation of four dollars per day for their time actually expended. The office of the street superintendent shall be the office of the county surveyor, and, at any time when no work is actually being conducted under the provisions of this act, or when the street superintendent shall not be in his office, the county surveyor shall have charge of the records in the street superintendent's office and perform such duties as are herein imposed upon the street superintendent, and have such other authority as is herein granted to the street superintendent; and all of the provisions of this act extending authority to or imposing duties or obligations upon the street superintendent or superintendent of streets shall apply with equal force to the superintendent of streets appointed by the board of supervisors. [New section added May 30, 1913, Stats. 1913, p. 352. In effect August 10, 1913.]

Phraseology of bonds changed.

§ 12. If any bonds provided to be issued under the terms of this act, the phraseology of the said bonds shall be changed to conform to the designation of a county instead of city, and the officers hereinbefore mentioned on the part of the county shall be and they are hereby authorized to perform all of the duties herein by the provisions of this act or the provisions of the said bond specified to be performed. [New section added May 30, 1913, Stats. 1913, p. 352. In effect August 10, 1913.]

Payment from general fund.

§ 13. If the board of supervisors shall determine that the whole or any part of the cost and expenses of the work mentioned in this act shall be paid out of the treasury of the county, such payment, or any part of the same, may be made from the general fund of the county or general road fund of the county, or from the road district fund of the road district in which the said improvement shall be constructed. [New section added May 30, 1913, Stats. 1913, p. 352. In effect August 10, 1913.]

1. Constitutionality — Taking property without compensation or due process.—The provision of section 4 requiring a certificate of a searcher of records is not violative of the constitutional inhibition against the taking of property without compensation, or due process of law.—*Schaeffer v. Smith*, 169 Cal. 764, 147 Pac. 976.

2. Same—Due process.—Section 4 of the act held constitutional, in so far as it does not stop inquiry as to matters that are jurisdictional, as to which the legislature can not estop the property owner of the

right to show want of compliance.—*Ramish v. Hartwell*, 126 Cal. 443, 58 Pac. 920; *Chase v. Trout*, 146 Cal. 350, 80 Pac. 81.

3. Resolution of intention—Period of bonds—Recital not necessary to validity.—It is not a prerequisite to the validity of bonds for a street-work assessment that the resolution of intention should specify the period for which the bonds are to run.—*Cohn v. Federal Const. Co.*, 171 Cal. 547, 548, 153 Pac. 916.

4. Same—Same—Same—May be done at any time.—Inasmuch as the time of fixing

the term of street improvement bonds is not mentioned in the statute, that act may be done at any time before action becomes necessary.—*Cohn v. Federal Const. Co.*, 171 Cal. 547, 551, 153 Pac. 916.

5. Same—Same—Same—The issue fixes the time.—The issue of street improvement bonds before the city council fixes the term for which they are to run is premature, and the property owner may have an injunction to prevent such issue, until such determination by the council.—*Cohn v. Federal Const. Co.*, 171 Cal. 547, 552, 153 Pac. 916.

6. Determination of bond period a legislative act.—The determination of the period of street improvement bonds is a legislative act committed to the city council, and it can not be exercised by the street superintendent or the city treasurer, or other ministerial officer.—*Cohn v. Federal Const. Co.*, 171 Cal. 547, 551, 153 Pac. 916.

7. Term of bonds—New warrant may be issued.—A new warrant, after the term has been determined by the council, may be issued.—*Cohn v. Federal Const. Co.*, 171 Cal. 547, 552, 153 Pac. 916.

8. Assessment—Right of way of railroad—Fee—Bonds invalidated.—While the right of way of a railroad can not be assessed in the present case, it does not appear that the fee has not such a value as may render it liable as property fronting on the street improvement, and the failure to include it in the assessment invalidates the bonds issued under the bond act, to cover the deficiency caused by the failure to assess.—*Schaeffer v. Smith*, 169 Cal. 764, 147 Pac. 976.

9. Bonds as conclusive evidence of regularity proceedings—Clause does not apply to void assessment.—The provision of the bond act making the bonds conclusive evidence of the regularity of the proceedings does not apply to proceedings which fail to comply with constitutional prerequisites, and does not validate an absolutely void assessment.—*Schaeffer v. Smith*, 169 Cal. 764, 147 Pac. 976.

10. Same—Same—Failure to appeal—Bond issue not validated.—An assessment absolutely void can not be validated by appeal, and the failure to appeal does not operate as a waiver, or validate a bond issue based on such assessment.—*Schaeffer v. Smith*, 169 Cal. 764, 147 Pac. 976.

11. Same—Prima facie evidence of regularity.—Under the street improvement act of 1899 (40) the issuance of the bond afforded prima facie evidence of the regularity of the proceedings, the acceptance of the work, and, consequently, that it was done according to specifications.—*Allen v. Hance*, 161 Cal. 189, 193, 118 Pac. 527.

12. Waiver of irregularity—Estoppel of property owner.—A property owner may waive the invalidity of a contract for street improvements, and by such waiver is estopped to assert the invalidity of the assessment arising from the inclusion of the clause, "all loss or damage arising from the nature of the work to be done under this agreement . . . shall be sustained by the contractor," in the specifications, even though no personal liability was imposed on him.—*Allen v. Hance*, 161 Cal. 189, 194, 118 Pac. 527.

13. Same — Same — Doctrine of prior cases overruled.—*Heft v. Payne*, 97 Cal. 108, and *Union Paving Co. v. McGovern*, 127 Cal. 638, holding that the doctrine of estoppel in pais has no application where there was no personal liability, overruled.—*Allen v. Hance*, 161 Cal. 189, 194, 118 Pac. 527.

14. Same—Same—Property owner may estop himself.—One may estop himself from denying the existence of a lien upon his property for a street assessment.—*Allen v. Hance*, 161 Cal. 189, 196, 118 Pac. 527.

15. Extension of time of completion after time expired—Effect of section 4 to cure irregularity.—Section 4 of the street bond act is effective, after the issue of bonds, to cure an objection to the work done under the Vrooman act that the time for completion of the work was extended after the time fixed had expired.—*Chase v. Trout*, 146 Cal. 350, 80 Pac. 81.

The same is true of five other enumerated objections: *Chase v. Trout*, (Cal.) 80 Pac. 81.

16. Sale of land to pay delinquent bonds—1895 amendment of section 3771, Political Code, did not affect remedy of act.—The 1895 amendment of section 3771 of the Political Code, authorizing the tax collector to sell land to pay delinquent taxes did not affect the remedy provided by this act for the sale of lands to pay delinquent assessment bonds.—*Ramish v. Hartwell*, 126 Cal. 443, 58 Pac. 920.

"IMPROVEMENT BOND ACT OF 1915."

ACT 4950a—An act to provide for the issuance of improvement bonds to represent and be secured by certain assessments made for the cost of certain work and improvements made in and upon streets, avenues, lanes, alleys, courts, places and sidewalks within municipalities and upon property and rights of way owned by municipalities, to provide for the collection of such assessments, the sale of the property affected thereby and for the payment of the bonds so issued.

History: Approved June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1441. Amended May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 209.

Serial bonds may issue.

§ 1. The city council of any municipality in this state shall have power, in its discretion, to determine that serial bonds shall be issued in the manner and form hereinafter provided to represent and be secured by the assessments which shall be made to pay for the cost of any work or improvement which shall be made in any one or more of the streets, avenues, lanes, alleys, courts, places or public ways of any such city, or in, over or through any property or rights of way owned by such city, which work and improvement shall include any and all work and improvements, the doing of which is provided for in the street work acts hereinafter referred to.

Street work acts affected.

§ 2. Wherever in this act the phrase "street work act" is used, it means and shall be taken to mean "An act to provide for work upon streets, lanes, alleys, courts, places and sidewalks and for the construction of sewers within municipalities," approved March 18th, 1885, and all acts amendatory thereof or supplementary thereto, and also the act entitled "An act to provide for work in and upon streets, avenues, lanes, alleys, courts, places and sidewalks within municipalities, and upon property and rights of way owned by municipalities, and for establishing and changing the grades of any such streets, avenues, lanes, alleys, courts, places and sidewalks, and providing for the issuance and payment of street improvement bonds to represent certain assessments for the cost thereof and providing a method for the payment of such bonds," approved April 7th, 1911, and designated "improvement act of 1911," and all acts amendatory thereof or supplementary thereto, and also any and all other acts for the doing of work and making of other improvements within municipalities whereby the cost of the whole or any portion of such work or improvements is charged and assessed upon real property; and for any proceeding instituted under either of said acts shall be held to apply exclusively to the act under which any such proceeding was instituted.

Bonds payable when and where. Interest. Redemption fund. Register.

§ 3. Said bonds shall be issued in series and an even annual proportion of the aggregate principal sum thereof shall be payable on the second day of July every year succeeding the first nine months after their date, until the whole is paid, and the said bonds shall bear interest at a rate of not to exceed eight per cent per annum from the date of filing with the clerk of the street superintendent's list of unpaid assessments, on all sums unpaid, until the whole of said principal sum and interest are paid, which interest shall be payable semiannually by coupon, on the second days of January and July, respectively of each year; provided, that the first payment of interest shall not come due till six months before the maturity of the first series of bonds. The final series or installment of said bonds shall mature and be payable on a date which shall not exceed fourteen years from the second day of July next succeeding nine months from their date. Said bonds and interest shall be paid at the office of the city treasurer of said municipality who shall keep a redemption fund designated by the name of said bonds, into which he shall place all sums received by him from the collection of the assessments made for the payment of the cost of the work or improvements upon which the said bonds are issued, and of the interest and penalties thereon and from which fund he shall disburse and pay the said bonds and the interest due thereon upon presentation of the proper bonds and coupons; and under no circumstances shall said bonds or the interest thereon be paid out of any other fund. Said city treasurer shall keep a register in his office which shall show the series, number, date, amount, rate of interest, and last known holder of each bond, and the number and amount of each coupon of interest paid by him, and shall cancel and file each bond and coupon so paid. [Amendment of May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 209.]

Resolution of intention.

§ 4. When said city council shall determine that serial bonds shall be issued hereunder to represent the expense of any proposed work or improvement under said street work act it shall so declare in the resolution of intention to do said work and shall specify the rate of interest which they shall bear. The like description of said bonds shall be inserted in the resolution ordering the work, in the resolution of award and in all notices of said proceedings required by said act to be either posted or published, and also a like notice shall be entered in any warrant issued by the superintendent of streets to the contractor. Said bond declaration may be substantially in the following form: "Notice is hereby given that serial bonds to represent unpaid assessments, and bear interest at the rate of per cent per annum, will be issued hereunder in the manner provided by the improvement bond act of 1915, the last installment of which bonds shall mature years from the second day of July next succeeding nine months from their date." [Amendment of May 4, 1917. In effect July 27, 1917, Stats. 1917, p. 210.]

Street superintendent to file list of unpaid assessments. Notice of hearing. Objections. Advertisements for bids. Award to highest bidder.

§ 5. After the full expiration of thirty (30) days from the date of the warrant, or if an appeal be taken to the city council as provided in said street work act, then five (5) days after the final decision of said council, and after the street superintendent shall have recorded the return, the street superintendent shall make and file with the clerk of the city council a complete list of all assessments unpaid, upon any assessment or diagram number. Said clerk shall then give notice of the filing of said list and of a time, to be therein fixed by said clerk, when interested persons may appear before the city council and show cause why bonds should not be issued upon the security of the unpaid assessments shown on said list, which time shall be that of some regular meeting of said council. Such notice shall be posted for not less than five days on or near the council chamber door and be published twice in a newspaper published in such city, if there be any, the first of which publications shall be not less than five days before the time fixed for such hearing. Reference shall therein be made to the resolution of intention and the date of its passage for a description of the work therein mentioned and no other description thereof shall be necessary. The council shall hear any objection presented and shall pass upon the same and shall thereupon determine the assessments which are unpaid and the aggregate amount of same. It may adjourn the hearing from time to time. Its decision shall be final. The city council shall then prescribe the denominations of such bonds, which shall be in convenient amounts not necessarily equal, and shall provide for issuance of same in annual series. Said bonds must be sold at a time to be fixed by the council, and to the highest bidder therefor, but for not less than par and accrued interest, and the proceeds of the sale shall be deposited in the city treasury. Before selling said bonds, or any part thereof, the city council must advertise for bids therefor, by publication once a week for at least two weeks in some newspaper of general circulation published in the city, or if there is no such newspaper published in the city then by notice of sale, posted for at least two weeks on or near the council chamber door of said city. If satisfactory bids are received the bonds offered for sale must be awarded to the highest bidder. If no such bids are received or the council determines that the bids received are not satisfactory as to price or responsibility of the bidders the council may reject all bids received, if any, and either readvertise or deliver said bonds to the contractor in satisfaction of the sum due him upon his assessment and warrant. From the proceeds of any sale of said bonds, there shall be paid to such contractor the balance due him upon his assessment and warrant including interest upon the principal amount thereof at the rate specified in said bond declaration computed from the date of filing of said unpaid assessment

list, and the surplus of such proceeds shall be credited to the redemption fund for the payment of such bonds. The cost of such publications shall be paid from such redemption fund. [Amendment of May 4, 1917. In effect July 27, 1917. Stats. 1917, p. 211.]

Form of bond.

§ 6. Said bonds shall each be substantially in the following form:

IMPROVEMENT BOND.

City (or other form of municipality) of (naming it).

\$..... No.

Under and by virtue of the act of the legislature of the state of California, entitled (title of this act) the of (a municipal corporation) will on the second day of July, 19 .., out of the redemption fund for the payment of the bonds issued upon the assessments made for the work upon and improvements on certain streets (or on street, or in improvement district No., or on certain rights of way owned by, or by other suitable description), more fully described in the certain resolution of intention passed by the city council (or other board) of said municipality on the day of 19.., pay to bearer, the sum of dollars (\$.....) with interest thereon from the day of 19.. at the rate of per cent per annum, all as is hereinafter specified, and at the office of the treasurer of said municipality.

This bond is one of several annual series of bonds of like date, tenor and effect, but differing in amounts and maturities, issued by said municipality under said act for the purpose of providing means for paying for the work and improvements described in said resolution of intention, and is secured by the moneys in said redemption fund and by the unpaid assessments made for the payment of said work, and, including principal and interest, is payable exclusively out of said fund.

The interest is payable semiannually, to wit: On the second days of January and July in each year hereafter, upon presentation of the proper coupons therefor; provided, that the first of said coupons is for the interest to the second day of January, 19.., and thereafter the interest coupons are for the semiannual interest.

This bond will continue to bear interest after maturity at the rate above stated; provided, it is presented at maturity and payment thereof is refused upon the sole ground that there is not sufficient moneys in said redemption fund with which to pay same. If it is not presented at maturity interest thereon will run until maturity.

This bond may be redeemed and paid in advance of maturity upon the second day of July in any year by giving the notice provided in said act.

In witness whereof, said of has caused this bond to be signed by the treasurer of said and by its clerk and has caused its clerk to affix thereto its corporate seal all on the day of, 19....

Treasurer.

(Seal)

Clerk.

[Amendment of May 4, 1917. In effect July 27, 1917. Stats 1917, p. 212.]

Coupons.

§ 7. The coupons affixed to said bonds shall be signed by the treasurer, and the city council may by order provide in its discretion for the use upon said coupons of an engraved, printed or lithographed signature of the treasurer in place of a signature by hand. The bonds shall have semi-annual coupons attached thereto, the first of which shall be payable upon the second day of January next before the maturity of the first series of bonds coming due, and shall be for the interest accrued at that time. [Amendment of May 4. 1917. In effect July 27, 1917, Stats. 1917, p. 213.]

Annual series.

§ 8. The bonds so issued shall be payable to the party to whom they issue, or bearer, and shall be issued in series, as is hereinbefore described, and shall bear interest at the rate specified in the resolution of intention to do said work. The bonds maturing in any year shall constitute the annual series of that year and the aggregate principal of the bonds in such series shall equal the even annual proportion of the aggregate principal sum of the entire bond issue hereinbefore referred to. Said bonds, by their issuance, shall be conclusive evidence of the regularity of all proceedings had prior thereto under this act and under said street work act.

Advanced maturity.

§ 9. The city treasurer may advance the maturity of any bond and pay and cancel the same whenever there shall be surplus moneys in the redemption fund with which to pay same, by giving notice of such redemption at least nine months prior to the second day of July in any year. Such notice may be given in writing, personally or by registered mail to the holder or owner thereof, or by publication once a week for two weeks in a daily or weekly newspaper published in said city; provided, that if such notice be so given by publication then a copy of same shall be mailed to the last known holder or owner thereof at his last known address at least nine months prior to the next second day of July specified in said notice. In the event of such notice being given, the maturity of such bond shall be advanced and said bond be deemed to mature on the second day of July specified in the notice as the date on which it will mature, at which time the same shall be paid; provided, however, that the holder or owner of such bond may prior thereto surrender same and receive the principal thereof together with the interest thereon which would accrue on the second day of July specified in said notice. On said second day of July, if said bond has not been sooner surrendered, the treasurer shall set aside to the credit of the holder or owner of said bond the amount of principal and accrued interest then due on same, and said bond shall then be deemed to have matured, and interest shall thereafter cease to accrue on said bond. The amount so set aside shall on demand be paid the holder or owner of said bond on surrender and cancellation of same. The costs of such advertising shall be paid from said redemption fund.

Registration of bonds.

§ 10. Said bonds may be surrendered by the holder to the treasurer for registration in accordance with the provisions of any law applicable to the registration of the municipal bonds of the city, and thereafter the principal and interest thereon shall be paid to the proper registered owner thereof.

Unpaid assessments a trust fund.

§ 11. In the event of such bonds being so issued, then the assessments, which shall be unpaid, as shown on the list filed by the superintendent of streets and determined by the city council, together with interest thereon, shall remain and constitute a trust fund for the redemption and payment of said bonds and of the interest which may be due thereon. In the event of non-payment of any assessment or installment thereof, or of any interest thereon, and as a cumulative remedy, the same when due as herein-after provided, may by order of the council be collected by suit brought to foreclose the lien thereof in the same manner as provided in said street work act for the foreclosure of other assessments by action in a superior court, and with like costs, attorneys' fees and other relief. Such assessments and each installment thereof and the interest and penalties thereon shall be and shall continue to constitute a lien against the lots and parcels of land on which made, until the same be paid, but for a period not exceeding the time within which an action might be brought on the last series of bonds issued

upon the security of such unpaid assessments. Such lien shall be prior and superior to all other liens, except the lien for other state, county and municipal taxes; provided, however, that unmatured installments, interest and penalties shall not be deemed to be within the terms of any general covenant or warranty.

Assessments payable in installments. Sale of land on default of payment. Purchase by city. Purchase by state.

§ 12. Such unpaid assessments shall be payable in annual series, corresponding in number to the number of series of bonds issued and an even annual proportion of each assessment shall be payable in each year preceding the date of maturity of each of the several series of bonds so issued. Such annual proportion of each assessment coming due in any year, together with the annual interest on such assessment, shall in turn be payable in annual or semiannual installments according as the general municipal taxes of such city on real property are payable in annual or semiannual installments, and such installments and said annual interest shall be payable and become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the general municipal taxes on real property of said city. Upon default in payment, the lands securing such installments and assessments shall be sold in the same manner in which real property in such city is sold, for the nonpayment of general municipal taxes, and be subject to redemption in the same manner as such real property is redeemed from such delinquent sale, and upon failure of redemption shall in like manner pass to the purchaser. The city may be the purchaser at any delinquent sale in like manner in which it becomes or may become the purchaser of property sold for nonpayment of the general municipal property tax, and in the event of its so becoming the purchaser shall pay and transfer into said redemption fund the amount of the delinquent assessment and of the delinquent interest thereon upon which said sale is made. In cases where the municipal property tax is collected by county or city and county officials and sales for nonpayment of such taxes are made to the state, the state shall be the purchaser at any such sale hereunder, but shall hold the title acquired at such sale upon behalf of the city and shall account to the city for any moneys received upon redemption or from the sale of such property, the city for the purposes of this act being deemed the real purchaser. In other cases where under the law, the city is not always the purchaser at sales for delinquent municipal taxes, the city shall become such purchaser at any delinquent sale hereunder where there is no other purchaser. In the event of there being no available funds in the treasury with which to make such payment, the tax collector shall delay the entry of the certificate of sale until such funds are available, making demand in the meantime upon the city council that a suitable amount be included in the next tax levy for the purpose of providing funds with which to make such payment; provided, however, that the period of redemption from such tax sale shall not be extended thereby nor the rights or privileges of the property owner be thereby in any wise affected. In the event of such purchase being made by the city and of any succeeding installment of such assessment or of such interest not being paid in any future year, the property shall not be sold unless there has previously been a redemption from such sale or unless under the law it is being then sold for delinquent taxes. The city shall nevertheless from time to time when due, pay and transfer into said redemption fund the amount of any such future delinquent assessment and interest pending redemption, and no redemption shall be made until any such subsequent payments, with interest and penalties, shall also be paid. [Amendment of May 4, 1917. In effect July 27, 1917, Stats. 1917, p. 213.]

Interest on assessments.

§ 13. Interest on all unpaid assessments shall run from the return of the warrant and assessment, and be computed at the same rate specified in the bonds secured by

such assessments. Such interest shall be payable annually or semi-annually as above provided, according as such general municipal taxes on real property in such city are payable annually or semi-annually, but shall in each year be computed and collected up to the next second day of July succeeding, no deduction being made by reason of any installment of such assessment being due or paid prior thereto in such year.

Entered on assessment roll.

§ 14. The superintendent of streets shall make and certify to the city auditor, or other person authorized to apportion upon the assessment rolls taxes levied in such city for general municipal purposes, a complete list of all such unpaid assessments, which list shall contain such description of each lot or parcel of land assessed as will enable such auditor or other person to identify it, and the amount and date of the assessment thereon. The auditor shall thereupon enter in his assessment roll on which taxes will next become due, opposite each lot or parcel of land affected in a space marked "public improvement assessment," or by other suitable designation, the several installments of such assessment coming due during the fiscal year covered by such assessment roll, including in each case the interest due on such total unpaid assessments as herein provided. Taxpayers shall have the like right to pay such assessment as so entered under protest as they have to pay general municipal taxes under protest, but in making such payment under protest must accompany the payment with their written protest. In the event of the lot or parcel of land affected by any assessment not being separately assessed on said roll so that the installment to be collected can be conveniently entered thereon, then said auditor shall enter on said roll a description of the lot or parcel affected, with the name of the owners if known but otherwise described as "unknown owners," and extend the proper installment opposite same. In the event of a subdivision of the lot or parcel affected into separate holdings, the owners of same may in writing request the auditor to separate the installments according to some fixed proportions to be stated by them and to enter same in said roll opposite their respective holdings in accordance therewith. Such owners shall in connection therewith in writing waive objections to the proceeding and to the method of collecting assessments proposed by them and agree to pay future installments in accordance therewith. Thereafter the auditor shall enter such installments opposite the respective lots or parcels of land in the proportions agreed upon; provided, however, such division of the installments shall not be so disproportioned to the relative values of the separate holdings of land as to jeopardize the security of the assessments.

Assessments may be released.

§ 15. Any interested property owner may release and pay any such unpaid assessment by depositing with the city treasurer the total unpaid balance of any such assessment together with the total interest which would become due on such assessment were it paid in the regular way; provided, that if the amount of same be sufficient to provide surplus moneys with which to redeem any bond outstanding and not due the next second day of July, then such person so releasing such assessment may direct the treasurer to redeem such bond, and the treasurer shall then give the proper notice for redeeming such bond, by advancing its maturity as hereinbefore provided upon which redemption the person releasing such assessment shall be entitled to credit and reimbursement for the par value of any coupons thereon which shall be canceled but not paid, less any costs incurred for publishing any notice of redemption.

Special tax to protect city.

§ 16. The city council may, at the time of fixing the annual tax rate and levying the taxes to be collected for general municipal purposes, levy a special tax upon the taxable property in the city for the purpose of paying for the lands purchased or to be

purchased at such tax sales, but not to exceed ten cents on each one hundred dollars of assessable property. Such special tax shall be in addition to all other taxes levied for municipal purposes, and shall be computed, entered and collected in the same manner, and by the same persons, and at the same time and with the same penalties and interest as are other municipal taxes of said city. In the event of a surplus remaining in said redemption fund after payment of all said bonds and the interest thereon, the same shall first be applied to repayment to said city of any special taxes so levied less its recovery on the lands purchased at delinquent sale, and also of any costs incurred by it hereunder, and then be proportionately credited upon the final installments due upon said assessments securing said bonds and repaid to those paying same if previously paid.

Effect of certificate of sale and deed.

§ 17. In the event of sale by the tax collector of any lot or parcel of land for non-payment of taxes, and of any installment of the assessment thereon, or of the penalties, interest or costs on same or for non-payment of any installment, penalties, interest or costs, then any certificate of such sale and deed issued pursuant thereto, is primary evidence of the regularity of all proceedings theretofore had, and shall be conclusive evidence of all things of which bonds issued upon the security thereof are conclusive evidence, and prima facie evidence of the regularity of all proceedings subsequent to the issuance of the bonds, and such deed conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except the lien for other state, county and municipal taxes, and unmatured assessments thereon.

Definitions.

§ 18. The term "city auditor" as used in this act shall be held to mean and include any person who, under whatever name or title, is charged with the duty of extending taxes upon the assessment rolls and lists. The term "tax collector" as used in this act shall be held to mean and include any person who, under whatever name or title, is charged with the duty of collecting taxes, advertising delinquent lists of unpaid taxes, selling lands thereunder and executing certificates of sale and deeds thereon. Whenever in this act the name of any municipal body or other officer is used, or any word or phrase is used which is not herein expressly defined, it means and shall be taken to mean such municipal body or officer, or word or phrase as the same respectively is expressly defined in said street work act.

Directory provisions.

§ 19. The provisions of this act relative to the performance of official duty as to any time or place and relative to the form of any resolution, notice, order, list, certificate of sale, deed or other instrument, shall be deemed directory. No bond, coupon, assessment or installment thereof or of interest or penalties thereon shall be held invalid for error in the computation of the proper amount due on same, provided the error be found to be comparatively negligible.

Effect of act.

§ 20. This act shall in no wise affect an act entitled "An act to provide a system of street improvement bonds to represent certain assessments for the cost of street work and improvement within municipalities, and also for payment of said bonds," approved February 27, 1893, nor part III of the "improvement act of 1911" hereinbefore referred to, nor any similar acts on the same subject, or apply to proceedings had thereunder, but is intended to and does provide an alternate system for the issuance of bonds to represent and be secured by the assessments mentioned in this act; and it shall be in the discretion of the legislative body of any city to proceed under the provisions of this act or of such other acts; but when any proceedings for the issuance of bonds are commenced under this act, as amended from time to time, the pro-

visions of this act, and of such amendments thereof as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts or any acts in conflict herewith shall be void and of no effect as to such proceedings commenced under this act. This act may be designated and referred to as the "improvement bond act of 1915."

REDEMPTION FROM SALES FOR DELINQUENT ASSESSMENTS.

ACT 1951—An act fixing and regulating the manner of sale and redemption of real property for delinquent assessments to pay the damages, costs, and expense for or incident to laying out, opening, extending, widening, straightening, diverging, curving, contracting, or closing up, in whole or in part, any street, square, lane, alley, court, or place within municipalities in this state.

History: Approved March 27, 1895, Stats. 1895, p. 204.

Sales and redemptions, how made.

§ 1. All sales, and redemptions after sale, of any real property upon which the assessment levied and assessed to pay the damages, costs, and expense for or incident to laying out, opening, extending, widening, straightening, diverging, curving, constructing, or closing up, in whole or in part, any street, square, lane, alley, court, or place within municipalities in this state, shall remain unpaid and become delinquent under the provisions of any act or law regulating such matters, shall be made and had in the same time and manner as such sales and redemption were required by law to be made and had on the first day of January, Anno Domini eighteen hundred and ninety-five.

Repeal of conflicting acts.

§ 2. All acts or parts of acts in conflict with this act are hereby repealed.

§ 3. This act shall take effect and be in force from and after its passage and approval.

ABANDONMENT OF PROCEEDING UNDER "STREET IMPROVEMENT ACT OF 1909."

ACT 1952—An act empowering the legislative body of any city or municipal corporation to abandon proceedings taken under an act entitled, "An act to provide for the improvement of public streets, lanes, alleys, courts and places in municipalities, in cases where any damage to private property would result from such improvement, and for the assessment of the costs, damages and expenses thereof upon the property benefited thereby," approved April 21, 1909, and referred to as the "street improvement act of 1909."

History: Approved June 8, 1915. In effect August 8, 1915. Stats. 1915, p. 1322.

Abandonment of street improvement proceedings.

§ 1. The legislative body of any city or municipal corporation is hereby empowered to abandon at any time by ordinance or resolution any proceedings taken under an act entitled "An act to provide for the improvement of public streets, lanes, alleys, courts and places in municipalities, in cases where any damage to private property would result from such improvement, and for the assessment of the costs, damages, and expenses thereof upon the property benefited thereby," approved April 21, 1909, and referred to as the "street improvement act of 1909," and to do all things necessary to restore to all parties involved whatever is justly and equitably due to them in the premises, on such abandonment.

The repealing act provided that suits instituted prior to its taking effect might be continued to completion under the repealed act.

See, post, Act 1955, § 47.

“STREET IMPROVEMENT ACT OF 1913.”

ACT 4953—An act to provide for the establishment and change of grade of public streets, lands, alleys, courts, places and rights of ways in municipalities, and providing for the improvement thereof, in cases where any damage to private property would result from such improvement and for the assessment of the costs, damages and expenses thereof upon the property benefited thereby, and to provide a system of local improvement bonds to represent the assessments for the costs, damages and expenses of such improvement, and for the payment and effect of such bonds.

Amended title of act.

An act to provide for the establishment and change of grade of public streets, lanes, alleys, courts, places and rights of way, and of any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways in municipalities and providing for the construction or improvement thereof, in cases where any damage to private property would result from such improvement, and for the assessment of the costs, damages and expenses thereof upon the property benefited thereby, and to provide a system of local improvement bonds to represent the assessments for the costs, damages and expenses of such improvement, and for the payment and effect of such bonds. [Amendment of May 26, 1917. In effect July 27, 1917, Stats. 1917, p. 970.]

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 954. Amended June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1217; May 26, 1917, in effect July 27, 1917, Stats. 1917, p. 970. Prior act: “Street Improvement Act of 1909,” approved April 21, 1909, Stats. 1909, p. 1042, amended April 27, 1911, Stats. 1911, p. 1191, was repealed by the present act.

City may establish and change street grade, etc. Official grade already established.

§ 1. Whenever the public interest or convenience may require, the legislative body of any city is hereby empowered to establish or change or modify the grade of any public street, avenue, lane, alley, court, place or right of way in said city, or any portion thereof, and also the grade of the roadway of any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways, in, on, under, over or through any public street, avenue, lane, alley, court, place or other land of the city, or in, on, under, over or through any land in which and where the city may then have an easement or right of way therefor; and in any case when or where, in the opinion of said legislative body, any damage to private property would result from the improvement thereof, to order the whole or any part, either in length or width, of such public street, avenue, lane, alley, court, place or right of way or other land of the city, in which and where the city may then have an easement or right of way therefor, to be improved to conform to such official grade by grading or regrading, paving or repaving, planking or replanking, macadamizing or remacadamizing, piling or repiling, capping or recapping, graveling or regravelling, oiling or reoiling, sewerage or resewering, sidewalking or residewalking, curbing or recurbing, guttering or reguttering, or by the construction, reconstruction or repair of manholes, culverts, cesspools, conduits, crosswalks, steps, parking or parkways, or by the construction, reconstruction or repair of poles, posts, wires, conduits, lamps and other appurtenances for the lighting thereof; and also in any case where, in the opinion of said legislative body, any damage to private property would result from the construction, reconstruction or repair thereof, to order the construction, reconstruction or repair of any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways, together with approaches thereto, and all appurtenances therefor, in, on, under, over or through any public street, avenue, lane, alley, court, place or other land of the city, or in, on, under, over or through any land in which and where

the city has an easement or right of way therefor, to the grade established for the roadway of such tunnel, subway, viaduct, bridge or independent subterranean way, and order the construction, reconstruction or repair of stormwater ditches or tunnels, or breakwaters, levees or walls of rock, or other materials, culverts, manholes, cesspools, conduits, subways, retaining walls, sewers, ditches, drains and channels for sanitary and drainage purposes, or either or both thereof, with necessary outlets, catch-basins, flush-tanks, septic tanks, connecting sewers and other appurtenances, to protect the streets, avenues, lanes, alleys, courts, places or rights of way, or any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways which may be constructed as hereinabove provided, from overflow or injury by water or otherwise; and to order the doing of any other work which shall be necessary to improve the whole, or any portion of such street, avenue, lane, alley, court, place or other land of the city, or any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways which may have been constructed, or which shall be constructed, under the proceedings provided in this act. This act shall apply equally in cases where the official grade of any public street, avenue, lane, alley, court, place or right of way, or of the roadway of any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways, in, on, under, over or through any public street, avenue, lane, alley, court, place or other land of the city, or in, on, under, over or through any land in which and where the city may then have an easement or right of way therefor has previously been established or changed, and where such grade is established, modified or changed in whole or in part by the same proceedings by which the improvement is ordered, if in the opinion of the legislative body of the city, damage will result to private property from the making of the improvement contemplated by the proceedings. [Amendment of May 26, 1917. In effect July 27, 1917, Stats. 1917, p. 970.]

This section was also amended June 11, 1915, Stats. 1915, p. 1217.

Resolution of intention. Boundaries of district.

§ 2. Before ordering any establishment, change, or modification of grade, or any improvement described in section one hereof, the said legislative body shall pass an ordinance or resolution, declaring its intention so to do, and that, in its opinion, damage to private property would result from such improvement, designating the proposed grade, describing the proposed improvement, fixing the time and place for the hearing of protests in relation thereto by said legislative body, which shall be not less than thirty days from the date of the passage of said ordinance or resolution of intention, and specifying the exterior boundaries of the district of land to be benefited by said improvement, and to be specially assessed to pay the costs and expenses thereof, and the damages caused by said improvement, which shall be known as the assessment district. Such legislative body may include in one improvement, under one ordinance or resolution of intention and order and under one contract, the grade of all or any portion of one or more streets, avenues, lanes, alleys, courts, places, rights of way or other land of the city, or land in which and where the city has an easement or right of way, established, changed, or modified, and the grade of the roadway of any of the following avenues of public travel, namely, tunnels, subways, viaducts, bridges or independent subterranean ways, in, on, under, over or through any portion of any of said streets, avenues, lanes, alleys, courts, places, rights of way or other land of the city, or land in which and where the city has an easement or right of way, established, changed or modified, and the construction of any one or more or all of the different kinds of work enumerated in section one hereof, upon the same or any part or portion thereof, and may exclude therefrom any of such work already done. [Amendment of May 26, 1917. In effect July 27, 1917, Stats. 1917, p. 972.]

Ordinance posted and published. Publication of notice. Notice mailed property owner.

Form of notice. "Unknown owners." Clerk's affidavit.

§ 3. Said ordinance or resolution of intention shall be conspicuously posted for two days on or near the chamber door of said legislative body and published by two insertions in a daily or weekly newspaper published and circulated in said city, and designated by said legislative body for the purpose. If no such newspaper be so published and circulated in said city, such posting of said ordinance or resolution of intention shall be sufficient. The superintendent of streets shall thereupon cause to be conspicuously posted along all streets and parts of streets or other public places or rights of way, or along any land of the city or land in, on, under or over which the city has an easement or right of way where any work is to be done or improvement made, or in, on, under or over which any tunnel, subway, viaduct, bridge or independent subterranean way is to be constructed, at not more than three hundred feet apart, notices (not less than three in all) of the passage of such ordinance or resolution. Said notices shall be headed "notice of street work" in letters not less than one inch in length, shall be in legible characters, and shall state the fact and date of the passage of said ordinance or resolution of intention, and the time and place fixed for the hearing of protests, and notify all persons interested to appear at said time and place with their objections to said improvement, if any they have, and briefly describe the proposed improvement in general terms, and refer to the ordinance or resolution of intention for further particulars. He shall also cause a notice of similar substance to be published by two insertions in a daily newspaper published and circulated in said city, or, if there be no such daily newspaper, then by two successive insertions in a weekly or semiweekly newspaper so published and circulated. If no such newspaper be so published and circulated in said city such notice shall also be posted on or near the chamber door of the legislative body of said city, and in two other public places in said city. Such posting and publication shall be completed at least ten days before the day set for the hearing of protests. The city clerk shall immediately upon the passage of said ordinance or resolution of intention mail, postage prepaid, to each property owner in the district to be assessed to pay the costs and expenses of the improvement, at his last known address as the same appears on the tax rolls of said city, or, where no address so appears, to the general delivery, a postal card, containing a notice, which shall be substantially in the following form (filling blanks):

You are hereby notified that on the day of, 19..., the legislative body of the city of, California, by virtue of the street improvement act of 1913, passed an ordinance (resolution) of intention numbered, for the improvement of street between and street. The time for filing protests will expire on the day of, 19..., and protests will be heard on the day of, 19..., at the hour of in the council chamber of said city.

Property belonging to you is within the assessment district for said improvement, and will be assessed therefor. For further information you are referred to said ordinance, and to the maps, profiles, plans and specifications on file in the office of the city engineer (or city clerk).

.....
City Clerk.

If any lots or parcels of land in the assessment district be assessed to "unknown owners" on the tax rolls of said city, no such postal cards need be mailed to the owners thereof.

The city clerk shall, upon the completion of the mailing of said postal cards, file in the office of the superintendent of streets an affidavit setting forth the time and manner of his compliance with this requirement; provided, that the failure of the city clerk

to mail said cards, or the failure of the property owners, or any of them, to receive the same, or the failure of the superintendent of streets to post the said notices of street work, or to post proper notices thereof, shall in no wise affect the validity of the proceedings or prevent the legislative body from acquiring jurisdiction to order the said improvement; provided, however, that the city council may require affidavits to be filed showing the posting and mailing of said notices before it adopts the ordinance or resolution ordering the improvement.

Your property is within the assessment district for said improvement, and will be assessed therefor. For further information you are referred to said ordinance, and to the maps, profiles, plans and specifications on file in the office of the city engineer.

.....
City Clerk.

· If any lots or parcels of land in the assessment district be assessed to "unknown owners" on the tax rolls of said city, no such postal cards need be mailed to the owners thereof.

The city clerk shall immediately upon the completion of the mailing of said cards file in the office of the superintendent of streets an affidavit setting forth the time and manner of his compliance with this requirement; provided, that the failure of the city clerk to address said cards or any of them to the true owners of said property, or to mail said cards, or the failure of the property owners to receive the same, shall in no wise affect the validity of the proceedings or prevent the legislative body from acquiring jurisdiction to order the work; provided, however, that the legislative body shall not pass any ordinance or resolution ordering the work until such affidavit is made and filed as herein prescribed. [Amendment of May 26, 1917. In effect July 27, 1917, Stats. 1917, p. 973.]

This section was also amended June 11, 1915, Stats. 1915, p. 1217.

Protest. Notice of hearing. Majority protest.

§ 4. At or before the time fixed for the hearing, any person interested, objecting to the proposed improvement or to the extent of the assessment district described in the ordinance or resolution of intention, may file a written protest with the clerk of said legislative body. Every protest must contain a description of the property in which each signer thereof is interested and set forth the nature of his interest therein and must be accompanied by the affidavit of one of the signers thereof that each signature thereto is the genuine signature of the person whose name is thereto subscribed, and in case any signature is made by an agent, there must be attached to the protest the affidavit of the agent that he is duly authorized to sign such protest. Any protest not complying with the foregoing requirements shall not be considered by said legislative body. The clerk shall endorse on every such protest the date of its reception by him, and at the time fixed for the hearing, or at any other time to which the hearing may be adjourned, he shall present to said legislative body all protests so filed with him. Before the hearing of any protest there shall be filed with such legislative body affidavits showing that the said notices have been posted and published as hereinbefore required, and the said legislative body shall thereupon cause to be entered in its minutes an order reciting that notice of said hearing has been posted and published as required by law, and such order shall be prima facie evidence of the truth of the facts therein recited. The legislative body shall hear said protests at said meeting, or at any time to which the hearing thereof may be continued, and pass upon the same, and its decision shall be final and conclusive; provided, however, if such protests are against the proposed improvement, and the legislative body finds that such protests are signed by the owners of a majority of the frontage of the property fronting on the streets or parts of streets within the assessment district for such improvement, all further proceedings shall be stayed and barred for six months from and after the filing of such majority protests,

unless the owners of a majority of such frontage shall in the meantime petition for the said improvement to be made. If such protests are not signed by a majority of the owners of such property, and such protests are sustained, no further proceedings shall be had under said ordinance or resolution of intention, but a new ordinance or resolution of intention for the same improvement may be passed at any time. If such protests are denied, the proceedings shall continue as if such protests had not been made. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1220.]

Jurisdiction to order improvements.

§ 5. If no protests are filed at or before the time fixed for the hearing thereof by the ordinance or resolution of intention, or if protests are filed, and after hearing are denied, as above provided, the legislative body shall have jurisdiction to order the establishment, change or modification of grade or other improvement described in the ordinance or resolution of intention. Having acquired such jurisdiction, it shall by ordinance or resolution order the establishment, change or modification of grade or such other improvement to be made, and refer the same to the commission hereinafter provided for, to estimate the damages caused thereby, and report an assessment of said damages, and of all costs and expenses of the improvement, on the property benefited thereby. [Amendment of May 26, 1917. In effect July 27, 1917, Stats. 1917, p. 975.]

Commission to estimate damages.

§ 6. In any city having a board of public works created by its charter or by law, such board, and in other cities the mayor, city engineer or surveyor and superintendent of streets, or if all of such officers last mentioned do not exist in cities having no board of public works, any three competent and disinterested persons appointed by said legislative body shall act as a commission to estimate the damages caused by said proposed improvement and to assess the same, and all costs and expenses of said proposed improvement upon the property benefited thereby. Such commissioners, if they are appointed by said legislative body as aforesaid, shall be sworn to make the assessment of benefits and damages faithfully, impartially and to the best of their ability. Said commission shall have power to subpoena witnesses to appear before it to be examined under oath, which any of said commissioners may administer.

Hearing of petitions for damages.

§ 7. Upon the passage of the final ordinance or resolution referred to in section five hereof, said commission shall appoint a time and place for the hearing of petitions for damages caused by said improvement, and shall cause notice of such time and place to be published for at least five days in a daily newspaper, or three times in a weekly newspaper, published in said city, or if no such newspaper is so published and circulated, then by posting for two days in three public places in said city. The time set for hearing such petitions shall be not less than thirty days from the first publication or posting of such notice. Before said hearing said commission shall view the location of the proposed improvement, and the property affected thereby. Said hearing may be continued from time to time by said commission.

Petition of ownership filed.

§ 8. At or before the time set for the hearing of petitions for damages any person owning property, and claiming that the same will be damaged by said proposed improvement, shall file with the superintendent of streets, who shall transmit the same to the commission, a petition showing the fact of such ownership, a description of the property claimed to be damaged, its market value, and the amount of damages which it is claimed such property will sustain by the proposed improvement, and the post office address of such petitioner, or his agent. Every such petition shall be verified by the

oath of the petitioner or his agent. After considering the petitions filed as herein provided, and after hearing the petitioners who may appear, and after viewing the location of the proposed improvement and the property affected thereby, said commission shall proceed to determine the amount of damages, if any, which will be sustained by each such petitioner because of the proposed improvement. Any property owner who fails to file any such petition shall be deemed to have waived his right to a hearing with respect to any damages to any property owned by him, and to object to the amount of such damages as fixed by said commission. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1221.]

Notice before awarding contracts. Bids. Bids opened. May reject bids. Application for acceptance of work. Work commenced. If contractor abandons work. Contractor's bond. Materialmen's claims.

§ 9. Before the awarding of any contract by the legislative body for doing any work authorized by this act, said legislative body shall cause notice, with specifications, to be posted conspicuously for five days on or near the chamber door of said legislative body, inviting sealed proposals or bids for doing the work ordered, and shall also cause notice of said work inviting said proposal, and referring to the specifications posted or on file, to be published for two days in a daily, or weekly newspaper published and circulated in said city, designated by said legislative body for that purpose, and in case there is no newspaper published in said city, then it shall only be posted as hereinbefore provided. Every bid shall be delivered to the clerk of the legislative body and shall be accompanied by a check certified by a responsible bank, amounting to ten per cent of the amount of the bid, payable to the order of the said clerk, or by a bond for the said amount, and so payable, signed by the bidder and by two sureties who shall justify before any officer competent to administer an oath, in double the said amount, and over and above all statutory exemptions, and said amount shall be forfeited to the city in case the bidder depositing the same does not, within ten days after written notice that the contract has been awarded to him, enter into a contract with the city to do the work, with the bonds hereinafter required. Said bids shall be opened by the legislative body in public session and publicly declared, and no bid shall be considered unless accompanied by said bond or said certified check. The legislative body must let the contract to the lowest responsible bidder, who shall give bond for the faithful performance of the work in such sum as may be required by it, with sureties satisfactory to said legislative body; provided, however, that the legislative body may reject any and all bids, should it deem this for the public good, and also the bid of any person who has been delinquent or unfaithful in the performance of any former contract with the city, or of any other contract let by or under the authority thereof. The contract must provide that the work shall be done under the supervision of the superintendent of streets, and no work shall be paid for until it has been accepted by the legislative body. Whenever the contractor desires the work, or part thereof, to be accepted, he must make written application to that effect to the legislative body. Upon the filing of such application for acceptance, the clerk of the legislative body shall give not less than five days' notice by publication by two insertions in a daily or weekly newspaper, published and circulated in the city, or by posting for two days in three public places in the city, in case no such newspaper is published and circulated therein, that at a certain time and place, to be named in said notice, the legislative body of the city will hear and consider any objections to the acceptance of the work, or part of the work, for the acceptance of which said contractor has made such application, and only after such hearing shall any work be accepted. If upon such hearing any objections to the acceptance are made, and are sustained by the legislative body, the legislative body must require the contractor to take such steps as will remove such objections; and in the event of his failure

to do so, within such time as the legislative body shall prescribe, the legislative body may relet such portion of the work, and charge the contractor the cost thereof, together with all expenses incident to said reletting, and retain the same out of any moneys due, or to become due, to him under the contract, and also hold him and his sureties responsible therefor upon his bond. The contract shall provide that the work must be commenced within twenty days after the contractor receives written notice from the superintendent of streets that there is sufficient money or bonds, or money and bonds in the special fund devoted to the proposed improvement to pay the contract price, and completed within such time as the superintendent of streets shall prescribe. If the contractor abandons the work or fails to proceed with the same as rapidly as required by his contract, the legislative body may relet the contract, or any portion thereof, and pay the cost of the same, and also any expenses incident to the reletting, out of any funds due, or to become due the contractor, and also hold him and his sureties responsible upon his bond for such costs and expenses, and also any damages resulting from such abandonment. At the time of executing said contract the contractor shall file with the superintendent of streets a good and sufficient bond, approved by the superintendent of streets, in a sum not less than one-half the total amount payable by the terms of said contract. Such bond shall be executed by the principal and at least two sureties who shall qualify for double the sum specified in said bond, and shall be made to inure to the benefit of any and all persons, companies, or corporations who performed labor on or furnished materials to be used in the said work or improvement, and shall provide that if the contractor to whom said contract was awarded fails to pay for any material so furnished for the said work, or for any work or labor done thereon of any kind that the sureties will pay the same to an amount not exceeding the sum specified in said bond. Any materialman, person, company or corporation furnishing materials to be used in the performance of said work specified in said contract or who performed work or labor upon the said improvement, whose claim has not been paid by the said contractor to whom the said contract was awarded, may, within thirty days from the time said improvement is finally accepted, file with the superintendent of streets a verified statement of his or its claim, together with a statement that the same, or some part thereof, has not been paid. At any time within ninety days after the filing of such claim the person, company or corporation filing the same, or their assigns, may commence an action on said bond for the recovery of the amount due on said claim, together with the costs incurred in said action and a reasonable attorney fee to be fixed by the court for the prosecution thereof. Upon the signing of the contract for the doing of the work the clerk of the legislative body, if there be no board of public works in said city, shall certify to such commission the amount of the contract price.

Assessment for incidental expenses. Report.

§ 10. The commission shall, as soon as practicable, after determining what damages will be caused by said improvement, and, after the signing of the contract for the work, assess the total amount of all the incidental expenses of such improvement, which shall include the necessary expenses and disbursements of the commission, the cost of making the assessment, and all expenses necessarily incurred by the city in connection with the proposed improvement for maps, diagrams, plans, surveys and other matters incident thereto, upon the respective lots or parcels of land in the assessment district described in the ordinance or resolution of intention, in proportion to the benefits to be received by such lots or parcels of land, respectively, from the said improvement, and shall make and file with the clerk of the legislative body a report in writing containing the following:

Lots damaged.

1. A schedule describing the lots or parcels of land belonging to each petitioner for damages and which will be damaged by said proposed improvement, stating the amount

of damage to each lot or parcel as determined by the commission, and the name of the owner of each such lot or parcel of land so damaged.

Diagram of district.

2. A diagram showing the assessment district, and also the boundaries and dimensions of the respective lots or parcels of land within said district, and each of such lots or parcels of land shall be given a separate number in red ink upon said diagram.

Proposed assessment.

3. A proposed assessment of the total amount of damages that will be caused by said improvement, as determined by the commission, the total amount of the contract price for the work and the total amount of the incidental expenses thereof as above specified, upon the respective lots or parcels of land in said district in proportion to the benefits to be received by such lots or parcels of land, respectively, from said improvement. Said assessment shall refer to such lots or parcels of land upon said diagram by the red ink numbers thereof, and need contain no other description thereof, and shall show the names of the owners, if known, otherwise designating them as unknown; but no mistake in the name of the owner of any lot or parcel of land shall affect the validity of the assessment thereon.

In case the commissioners do not all agree, a majority of the whole number may make such report.

Hearing on report.

§ 11. Upon the filing of the report provided for in section ten hereof, the clerk of the legislative body shall present such report to the legislative body, which shall fix a day for the hearing thereof by said legislative body, which day shall not be less than twenty days from the date of filing such report, and shall cause a notice of such hearing to be published by the clerk thereof, by three insertions in a daily newspaper published and circulated in said city, or if there be no daily newspaper in said city, then by two successive insertions in a weekly newspaper so published and circulated; or if no newspaper is so published and circulated, then by posting for two days in three public places in said city. Such publication shall be completed at least ten days before the date fixed for the hearing. Said notice shall state the fact that such report has been filed, and the date set for the hearing thereof, and require all persons interested to file with the clerk their objections, if any they have, to the confirmation of said report at or before the time fixed for the hearing.

Objections to report. Decision on report. Recording of assessment and diagram. When assessments become delinquent.

§ 12. Any objection to said report shall be in writing signed by the objector, or his agent, and shall comply with the requirements of section four hereof for the form and substance of protests, and shall be filed with the clerk of the legislative body at or before the time fixed for the hearing. At the time fixed, or at any other time to which the hearing may be continued, the legislative body shall hear said report and any objections thereto, and any person interested may appear and be heard upon said report and objections. After such hearing the legislative body shall pass upon the report, and may confirm, modify, or correct the same, or may confirm the report as modified or corrected, or order the commission to make and file a new report which shall be heard in like manner as the first report and after like notice of hearing. If no objections are filed, or if the objections filed are not sustained, the legislative body shall confirm the report. The action of the legislative body upon said report shall be declared by resolution entered upon its minutes, and shall be final and conclusive,

except as to the damages to be caused by the proposed improvement; and when such report is confirmed, or is confirmed as modified or corrected, the clerk of the legislative body shall transmit the diagram and assessment provided for in section ten hereof, as finally confirmed, to the superintendent of streets. The superintendent of streets shall thereupon record such assessment and diagram in his office, in a suitable book to be kept for that purpose, and append thereto his certificate of the date of such recording, and such record shall be the assessment-roll. From the date of such recording all persons shall be deemed to have notice of the contents of such assessment-roll. Immediately upon such recording the several assessments contained in such assessment-roll shall become due and payable, and each of such assessments shall be a lien upon the property against which it is made, paramount to all other liens, except liens for state, county and municipal taxes; and such liens shall only be discharged by payment of the assessment or by redemption of the land after sale for delinquency. The superintendent of streets shall, upon the recording of said assessment, give notice by publication for five days in a daily newspaper published and circulated in said city, or by two insertions in a weekly newspaper so published and circulated; or in case no such daily or weekly newspaper is so published and circulated in said city, then by posting such notice for four days in three public places in said city, that said assessment has been recorded in his office and that all sums assessed therein are due and payable immediately, and that payment of the said sums must be made to him within thirty days after the date of the first publication or posting, which date shall be stated in the notice. Said notice shall also contain a statement that all assessments not paid before the expiration of the said thirty days shall become delinquent, and that thereupon five per cent upon the amount of each such assessment will be added thereto. When payment of any assessment is made the superintendent of streets shall mark opposite such assessment the word "paid," the date of payment, and the name of the person by or for whom the same is paid, and shall give a receipt therefor. Upon the expiration of said period of thirty days, all assessments then unpaid shall become delinquent, and the superintendent of streets shall mark each such assessment "delinquent" on said assessment-roll, and add five per cent to the amount thereof.

Publication of delinquent list.

§ 13. The superintendent of streets shall within thirty days from the date of such delinquency begin the publication of a list of the delinquent assessments, which list must contain a description of each lot or parcel of land delinquent, and opposite each description the name of the owner as stated in the assessment-roll, and the amount of the assessment and costs due, including the cost of advertisement, which cost of advertisement shall not exceed the sum of fifty cents for each parcel of land separately assessed. He shall append to and publish with said delinquent list a notice that unless each assessment delinquent, together with the penalty and costs thereon, is paid, the property upon which such assessment is a lien will be sold at public auction at a time and place to be specified in the notice. Such publication must be made by five insertions in some daily newspaper published and circulated in the city, or by two insertions in a weekly newspaper so published and circulated, or, in case no such newspaper is so published and circulated in said city, such list of delinquent assessments and notice shall be posted in three public places in said city for five days. The time of sale must not be less than five days nor more than ten days after the last publication of said list, or after the completion of such posting, as the case may be, and the place of sale must be in or in front of the office of the superintendent of streets. At any time after such delinquency and prior to the sale of any piece of property assessed and delinquent, any person may pay the assessment on such piece of property, together with the penalties and costs due thereon, including the cost of advertising, if such payment is made after the first publication of the list of delinquent assessments.

Sale of property.

§ 14. At the time and place fixed for the sale the superintendent of streets must commence the sale of the property advertised, commencing at the head of the list, and continuing in numerical order of lots or parcels of land until all are sold; provided, that he may postpone or continue the sale from day to day until all the property is sold. Each lot or parcel of land separately assessed must be offered for sale separately, and the person who will take the least quantity of land and then and there pay the amount of the assessment, penalty and costs due, including fifty cents to the superintendent of streets for a certificate of sale, shall become the purchaser. In case there is no other purchaser for any lot or parcel of land offered for sale, the same shall be struck off to the city as purchaser.

Certificate of sale. Lien vests in purchaser.

§ 15. After making the sale the superintendent of streets must execute in duplicate a certificate of sale setting forth a description of the property sold, the name of the owner thereof as given in the assessment-roll, that said property was sold for a delinquent assessment (specifying the improvement for which the same was made), the amount for which such property was sold, the date of sale, the name of the purchaser, and the time when the purchaser will be entitled to a deed. The superintendent of streets must file one copy of such certificate in his office, and deliver the other to the purchaser, or if the city is the purchaser, to the clerk of the legislative body, who shall file the same in his office. Upon the filing of the copy of such certificate in the office of the superintendent of streets, the lien of the assessment shall vest in the purchaser and is only divested by a redemption of the property as in this act provided. The superintendent of streets shall also enter upon the assessment-roll opposite the description of each piece of property offered for sale, the description of the portion thereof sold, the amount for which the same was sold, the date of the sale, and the name of the purchaser.

Redemption of property sold.

§ 16. At any time before the expiration of one year from the date of the sale, any lot or parcel of land sold for a delinquent assessment may be redeemed by any party in interest by the payment to the superintendent of streets of the amount for which the property was sold, and in addition thereto, ten per cent thereon if paid within six months from the date of sale; and twenty-five per cent if paid within twelve months. When redemption is made the superintendent of streets shall note that fact and the date thereof on the duplicate certificate of sale on file in his office, and deposit the amount paid with the city treasurer, who shall credit the purchaser named in the certificate of sale with the said amount and pay the same to such purchaser, or to his assigns, upon the surrender of the certificate of sale and upon satisfactory proof of assignment thereof, if any. When the city is the purchaser, the superintendent of streets shall notify the clerk of the legislative body of the redemption, and such clerk shall thereupon cancel the certificate of sale thereof on file in his office.

Deed after twelve months. Notice served on owner. Provisions to be complied with.

§ 17. At any time after the expiration of twelve months from the date of sale the superintendent of streets must execute to the purchaser, or to his assignee on his application, if such purchaser or assignee has complied with the provisions of this section, a deed of the property sold, in which shall be recited substantially the matters contained in the certificate, also any assignment thereof, and the fact that no person has redeemed the property. The superintendent of streets shall receive from the

applicant for a deed, one dollar for making such deed, unless the city is the purchaser, in which case no charge shall be made therefor. The purchaser or his assignee, must at least thirty days before he applies for a deed, serve upon the owner of the property, and upon the occupant of such property, if the same is occupied, a written notice, setting forth a description of the property, that said property has been sold for a delinquent assessment (specifying the improvement for which the same was made), the amount for which it was sold, the amount necessary to redeem at the time of giving notice and the time when such purchaser or assignee will apply to the superintendent of streets for a deed. If the said owner cannot be found, after due diligence, said notice must be posted in a conspicuous place upon said property at least thirty days before the time stated therein, at which the application for a deed will be made. The person applying for a deed must file with the superintendent of streets an affidavit or affidavits, showing that notice of such application has been given, as herein required, and if the notice was not served on the owner of the property personally, that due diligence was used to find said owner; which affidavit or affidavits must be filed by the superintendent of streets in his office. If redemption of the property is made after such affidavits are filed, and more than eleven months from the date of sale, the person making such redemption must pay, in addition to the other amounts required, \$3.00 for the service of notice and the making of such affidavits, which amount shall be paid over to the purchaser, or his assignee, in the same manner as other sums paid for redemption. No deed for any property sold for delinquent assessment shall be made until the purchaser, or his assignee, has complied with all the provisions of this section, and filed the proper affidavits with the superintendent of streets. Such deed shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the execution thereof, and of title in the grantee.

Special fund. Loan to special fund.

§ 18. The funds collected by the superintendent of streets under the proceedings herein provided for, either upon voluntary payment or as the result of sales, shall be paid by said superintendent of streets as fast as collected to the treasurer of said city, who shall place the same in a special fund designated by the number or name of the proceedings, and payment shall be made out of said special fund only for the purposes provided for in this act. To expedite the making of any such improvement the legislative body may at any time transfer into said special fund out of any money in the general fund such sums as it may deem necessary, and the sums so transferred shall be deemed a loan to such special fund, and shall be repaid out of the proceeds of the assessments provided for in this act; provided, however, that the legislative body of any municipality may, in its discretion, order by resolution entered upon its minutes that the whole, or any part, of the costs and expenses of any of the work mentioned in this act shall be paid out of the treasury of the municipality from such fund as the legislative body may designate, and whenever a part of such cost and expenses is so ordered to be paid the commission in making up the assessment heretofore provided for such cost and expenses shall first deduct from the whole cost and expenses such part thereof as has been so ordered to be paid out of the municipal treasury, and shall assess the remainder of said costs and expenses proportionately upon the lots, part of lots and lands within the district to be assessed for such work, and in the manner heretofore provided.

Lots may be assessed. Lots owned by U. S., etc., may be omitted from assessment.

§ 19. Whenever any lot, piece or parcel of land belonging to the United States or to the state of California, or to any county, city, public agent, mandatory of the government, school board, public educational, penal, or reform institution, or institution

for the feeble-minded or the insane, and being in use in the performance of any public function, is included within the district declared by the legislative body in the resolution of intention to be the district to be assessed to pay the costs and expenses of the improvement, the legislative body may, in its discretion, in the resolution of intention declare that such lots, pieces, or parcels of land so owned and in use, or any of them, shall be omitted from the assessment to be made to cover the costs and expenses of said work or improvement. In the event that said lots, pieces, or parcels of land, or any of them, shall by said resolution be omitted from the assessment, then the total expense of all work done shall be assessed on the remaining lots lying within the limits of the assessment district without regard to such omitted lots, pieces or parcels of land. In the event the legislative body shall in its resolution of intention declare that the said lots, pieces or parcels of land so owned and in use, or any of them, shall be included in the assessment, or in the event that no declaration is made respecting such lots, pieces or parcels of land, then such sum or sums as thereafter may be assessed against such lots, pieces or parcels of land so owned and used shall be payable by the city, out of its general fund, unless the legislative body shall in its resolution of intention designate another fund, and the contract for said work or improvement thereafter made shall contain a provision to that effect. After all sales provided for in section fourteen of this act have been made the superintendent of streets shall report to the city treasurer the amount collected.

When awards of damages are payable.

§ 20. When sufficient money is in the hands of the city treasurer in the special fund devoted to the proposed improvement to pay the total amount of estimated damages therefrom, all expenses of the proceedings and the cost of doing the work, it shall be the duty of the superintendent of streets to notify the contractor for the work of that fact, and to draw demands on said special fund for the respective amounts of damages awarded by the report, and to notify the owner of each parcel of land declared by the report to be damaged, if the name of such owner is stated in the report, that the awards of damages are payable, and that he may receive the sum awarded to him on executing a release to the city of all liability for damages caused by said improvement. Such notification may be given by depositing a notice, postage prepaid, in the postoffice addressed to such person at his last known place of residence.

Refusal to accept award. Action to recover amount claimed.

§ 21. If any owner of property that will be damaged by the proposed improvement shall fail or refuse to accept the amount awarded to him by the report provided for in section 10 hereof, the legislative body may cause proceedings to be brought against him in the name of the city, in the proper superior court, to have the amount of damage to such property determined. Such proceedings shall conform, as nearly as may be, to the provisions of the Code of Civil Procedure, regarding eminent domain; provided, however, that the plaintiff shall not be required to pay the amount of damages awarded within thirty days after judgment. In such proceeding the ordinance ordering the improvement shall be conclusive evidence of the necessity of the same. If no such proceeding is brought against him any owner of property that is damaged by the proposed improvement may decline to accept the amount awarded him, if any, and bring an action against the city to recover the amount to which he claims to be entitled. Any such action must be brought within thirty days after the final completion of the improvement. If in such action he fails to recover more than the amount awarded to him by the report aforesaid, he shall not recover costs.

When assessments raise insufficient amount.

§ 22. If the first assessment for any improvement under this act, or if the sale of any bonds issued to represent assessments under this act as hereinafter provided,

fails to raise a sufficient amount of money to pay all costs, damages and expenses of the improvement, including any judgments rendered in the action and proceedings mentioned in section 21 and the costs and expenses of such action or proceedings, the legislative body may pay the deficit out of the general fund, or may order a supplemental assessment to raise such deficit, which shall be made and collected in the same manner, as nearly as may be, as the first assessment, and so on until sufficient money shall have been raised to pay for such improvement.

Bonds. Period. Interest and principal payments.

§ 23. The legislative body of any city shall have the power, in its discretion, to determine that serial bonds shall be issued in the manner and form hereinafter provided to represent assessments of twenty-five dollars or more for the cost and expenses of any work or improvement authorized by this act. Said serial bonds shall extend over a period not to exceed twenty-five years from the second day of January next succeeding the issuance of said bonds, and an even annual proportion of the principal sum thereof shall be payable by coupon on the second day of January every year after their date until the whole is paid; provided, that if the period over which said bonds are to extend exceeds ten years, one-tenth part of the principal sum thereof shall be payable by coupon on the second day of January of each of the last ten years of said period. The interest on said bonds shall be payable semiannually by coupon on the second day of January and July respectively, of each year, at the rate of not to exceed ten per cent per annum on all sums unpaid, until the whole of said principal and interest is paid. Said bonds and interest thereon shall be paid at the office of the city treasurer of said municipality, who shall keep a fund designated by the name of said bonds, into which he shall receive all sums paid him for the principal of said bonds and the interest thereon, and from which he shall disburse such sums upon the presentation of said coupons; and under no circumstances shall said bonds or the interest thereon be paid out of any other fund. Said city treasurer shall keep a register in his office which shall show the series, number, date, amount, rate of interest, payee and indorsees of each bond, and the number and amount of each coupon of principal or interest paid by him, and shall cancel and file each coupon so paid. [Amendment of June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1221.]

Bond ordinance. List of assessments of \$25 or over.

§ 24. Whenever the legislative body of any city shall determine that serial bonds shall be issued to represent the cost and expenses of any proposed work or improvement under this act, it shall so declare in the ordinance or resolution of intention to do said work, and shall specify the rate of interest which they shall bear and the period of time over which they are to run, and said ordinance or resolution shall also state that a bond will issue to represent each assessment of twenty-five dollars or more remaining unpaid at the expiration of thirty days after the first publication or posting of the notice of the recording of the assessment by the superintendent of streets. Whenever it shall have been determined, as provided in section twenty-three of this act, that serial bonds shall be issued to represent assessments amounting to twenty-five dollars, or over, the superintendent of streets shall, forthwith after the full expiration of thirty days from the date of the first publication of the notice of the recording of the assessment roll, or forthwith after the full expiration of thirty days from the recording of a re-assessment in the event that such be made, and after all previous payments have been credited on such re-assessment, make and certify to the city treasurer a complete list of all assessments unpaid, which amount to twenty-five dollars or over upon any assessment or diagram number. [Amendment of June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1222.]

Bond for each lot. Improvement bond. Default in payment.

§ 25. Upon receiving the list of assessments mentioned in the preceding section, the city treasurer shall thereupon make out and sign a separate bond representing upon each lot or parcel of land upon said list the total amount of the assessments, or re-assessments, as the case may be, as thereon shown. And if said lot or parcel of land is described upon said assessment and diagram by its number or block, or both, upon the official map of said municipality, or upon any map on file in the office of the county recorder of the county in which said municipality is situated, then it shall be in said bond a sufficient description of said lot or parcel of land to designate it by said number or block, or both, as it appears on said official or recorded map. Said bond shall be substantially in the following form:

IMPROVEMENT BOND.
Series

\$..... No.

Under and by virtue of and pursuant to the provisions of (title of act) I, out of the fund for the above designated improvement bonds, series will pay to bearer the sum of (\$.....) dollars with interest at the rate of per cent per annum, as is hereinafter specified, at the office of the city treasurer of the city of, state of California. This bond is issued to represent an assessment for in the city of, as the same is more fully described in the assessment therefor. Its amount is the amount assessed in said assessment against the lot numbered therein and in the diagram attached thereto, and which now remains unpaid; but until paid, with accrued interest, is a first lien upon the property affected thereby, as the same is described herein, and in said recorded assessment with its diagram, to wit: The lot or parcel of land in the city of, county of, state of California, described as follows:

.....
.....

This bond is payable exclusively from said fund, and neither the city of, nor any officer thereof is to be holden otherwise for its principal or interest. The term of this bond is years from January second, 19..., and at the expiration of said time the whole sum then unpaid shall be due and payable; but on the second day of January of each year, after the date hereof, an even annual proportion of its principal is due and payable upon presentation of the coupon therefor, until the whole is paid, with accrued interest, at the rate of per cent per annum.

The interest is payable semi-annually on the second day of January and July in each year hereafter upon presentation of the coupons therefor, the first of which is for the interest from date to the second day of, 19..., and thereafter the interest coupons are for the semi-annual interest.

Should default be made in the first, or any succeeding payment of the principal, or in any payment of interest, by the owner of said lot, or any one in his behalf, the holder of this bond is entitled to declare the whole unpaid amount to be due and payable, and to have said lot or parcel of land advertised and sold forthwith in the manner provided by law.

Dated at said city of, this day of, in the year one thousand nine hundred and

.....
City treasurer of the city of
.....

Mistake does not invalidate.

No mistake or error in the description in the bond of the lot assessed shall affect the validity or lien of the bond, unless the mistake or error is such that the lot can not be identified, and in such event the holder of such bond may have the same corrected upon application to the city treasurer and the officers or board who made the assessment to represent which such bond was issued.

Assessments less than \$25. When owner does not desire bond issued. Coupons. Owner may pay at any time.

In case the amount of the unpaid assessment or re-assessment upon any lot or parcel of land shall be less than twenty-five dollars, then the same shall be collected as is provided in this act. If any person, or his authorized agent, shall at any time before the issuance of the bond for said assesment or re-assessment upon his lot or parcel of land present to the city treasurer his affidavit made before a competent officer, that he is the owner of a lot or parcel of land in said list, accompanied by the certificate of a searcher of records that he is such owner of record, and shall with such affidavit and certificate notify said treasurer in writing that he desires no bond to be issued for the assessment upon said lot or parcel of land, then no such bond shall be issued therefor and the street superintendent shall retain his right for enforcing collection of said assessment or re-assessment as if said lot or parcel of land had not been so listed by the street superintendent. The bonds so issued by said treasurer shall be payable to the bearer, and shall be serial bonds, as is hereinbefore described, and shall bear interest at the rate specified in the resolution of intention to do said work. They shall have annual coupons attached thereto, payable in annual order on the second day of January in each year after the date of the bonds until all are paid, or if the term of said bonds be more than ten years, then said coupons shall be payable on the second day of January of each of the last ten years of the term of the bonds; and each coupon shall be for an even annual proportion of the principal of the bond. They shall have semi-annual interest coupons thereto attached, the first of which shall be payable upon the second day of January or July, as the case may be, next after its date, and shall be for the interest accrued at that time, and the rest of which shall be for the semi-annual interest accruing from the second day of January or July, as the case may be. The owner of, or any person interested in, any lot or parcel of land upon which a bond has been issued, under the terms of this act, may at any time pay off such bond and discharge his land from the lien of the assessment, by paying to the city treasurer for the holder of such bond the amount then unpaid on the principal sum thereof, and all interest thereon which has accrued and is unpaid, together with the semi-annual installment of interest which will next become due thereafter, and in addition thereto, interest for one year at the rate specified in the bond upon the unpaid amount of the principal. The treasurer shall thereupon make an entry upon his bond register that such bond has been paid in full. When all the coupons of principal and interest are paid or the bond is surrendered or satisfied, the city treasurer shall report the fact to the street superintendent, who shall forthwith indorse the same on the margin of the record of the assessment to the credit of which the same is paid. [Amendment of June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1222.]

When court declares assessment invalid new assessment may be made. Court to point out irregularities, etc. City may set aside assessment and make reassessment. Reassessment based on special benefits. Method of making reassessment. Assessment without power of city. Notice. Payments on original assessment credited.

§ 26. Whenever any assessment or any bond to represent the amount of such assessment, made or issued under the provisions of this act, has been set aside by any court of competent jurisdiction, or such court has refused to enforce any assessment,

or has decreed any such bond not to constitute a valid and subsisting lien against the lot, piece or parcel of land upon which such assessment has been levied, then the superintendent of streets shall cause a new assessment to be made for the same purpose for which the former assessment was made, whether any of the assessments have been paid or not, and new bonds shall in regular course thereafter issue in the event that bonds were issued under or provided for in the original assessment. It is hereby made the duty of any court of competent jurisdiction in rendering its judgment holding invalid any assessment hereafter made, or of any bond hereafter issued to represent the amount of any such assessment, to make a finding as to whether or not the making of such assessment was entirely without the power of the said city, and if not, then what omission, irregularity, illegality, informality or non-compliance with the requirements of this act has occurred in the proceedings upon which said assessment or assessments and bonds rest, and what effect shall be given to them in making the reassessment. In the event that the court shall find that the proceeding, the expenses of which are represented by said assessment or bonds, was commenced in good faith and carried on pursuant to an ordinance or resolution of the city council providing for such improvement to be paid for by a special assessment, it shall be the duty of the said court to order the making of a new assessment. The city council may, at the request of any interested party, or on its own motion, by resolution duly passed, set aside any assessment or assessments and bonds, to be made and issued without any decree having been obtained of or from any court regarding said matter, if in its opinion the assessment be invalid, and it may take all necessary steps and make and pass all necessary orders, resolutions or ordinances to reassess and relevy such assessment, and may reassess and relevy the same with the same force and effect as an original levy.

Such reassessment, whether made after decree of court has been rendered, or pursuant to a resolution of the council, shall be based upon the special and peculiar benefit of the proposed improvement to the respective lots, pieces or parcels of land assessed. The total amount of the reassessment shall not exceed the total amount of the original assessment. Such reassessment so made shall become a charge upon the property upon which the same is levied, notwithstanding any omission, failure or neglect of any officer, body or person to comply with the provisions of this act, and notwithstanding the fact that the proceedings of the city council, board of public works or any officer of the city or other person connected with such proceedings, may have been irregular, illegal, informal or defective, or not in full conformity with the requirements of this act. It is hereby declared to be the true intent and meaning of this section to make the cost and expense of all local improvements actually made or proposed to be made in the attempted exercise of the powers conferred upon municipalities under this act, payable by the real estate benefited or to be benefited by such improvements by making a reassessment therefor which shall equitably proportion to each lot, each piece or parcel of land thereby benefited the amount of the actual benefits derived or to be derived from said improvement, notwithstanding that the proceedings of the city council or other officers or agents of the city, or other persons connected therewith may have been irregular, illegal or defective, or not in full conformity with the requirements of this act. Such reassessment shall be made without a repetition of the proceedings had prior to the issuance of the assessment and shall be made and issued in the following manner: The superintendent of streets shall, upon the entering of a decree of court directing the reassessment, or upon the passage of a resolution of the city council directing a reassessment, proceed at once to make a reassessment in accordance with the said decree of court or said resolution of the city council thereof. Such reassessment shall be made upon the district described in the ordinance of intention for said improvement, and in the

event that there shall have been informalities, uncertainties or ambiguities in the description of the limits of said district, then upon the district which the court or council shall find to be that actually benefited by said improvement, but in so finding said court or council shall follow the lines described in the ordinance of intention so far as the same can be ascertained, and in all cases of uncertainty or ambiguity they shall give regard to the lines described and make such determination as to the lines where there is any uncertainty or ambiguity in the ordinance of intention as may be just and equitable. In the event that a portion of the improvement has been found to be entirely without the power of said city to order, then said assessment shall be for the remainder of the improvement only, and the benefits arising from the improvement entirely without the jurisdiction of the city to order shall not be considered in making the re-assessment. Upon the completion of the re-assessment it shall be presented to the city council and a day of hearing shall be fixed by it which shall be at least twenty days after the filing of the re-assessment. The city clerk shall then advertise the fact of the filing by publishing a notice in the official newspaper, or in such other paper as the council may direct, by five insertions, if the paper be a daily, or by two insertions, if it be a weekly or semi-weekly newspaper, stating the fact that the re-assessment has been filed with him and that objections to said re-assessment will be heard at the time specified by the city council. At the time fixed for said hearing, or at such time or times to which the same may be adjourned, the city council shall consider the objections to said re-assessment and in its discretion revise, correct and modify such re-assessment in such manner as is most equitable, and it shall thereupon pass a resolution approving and confirming such re-assessment and such decision shall be a final determination of all matters relating to the actual benefits derived or to be derived from the improvement by the respective lots, pieces and parcels of land enumerated in the re-assessment. Said re-assessment shall thereupon be recorded by the street superintendent and it shall in all respects have the same effect and weight as the original assessment, and shall be enforced in the same manner. All payments made upon the original assessment shall be credited upon the re-assessment and in the event that the re-assessment in any instance is less than the amount of the original assessment, the excess shall be payable to the persons who paid the original assessments.

Records of bonds issued.

§ 27. The city treasurer shall enter in a book kept for that purpose in his office, a record of each bond issued hereunder, specifying the date of its issue, the amount for which issued, to whom delivered, its duration and a description of the lot against which issued. Payments of principal and interest on account of any bond issued hereunder shall be made to the city treasurer, who shall keep a separate account of all such payments, (entering the same in the record herein required to be kept) and place the same in appropriate funds for the payment of principal and interest of the bonds on account of which paid, and who shall, upon the surrender of the coupons attached to said bond, pay to the holder thereof, or his order, the amount called for by said coupons out of the funds in his possession applicable thereto.

Bonds lien on property.

§ 28. The improvement bonds issued hereunder shall take the place of and have the same force, validity and effect as assessment liens that the assessments would have had if no bonds had been issued, and the lien of said bonds shall not be held or construed to be merely contractual. Said bonds shall by their issuance be conclusive evidence of the regularity and validity of all proceedings leading up thereto. The amount due upon any such bond shall be a lien upon the lot described in such bond superior to all other liens, charges and encumbrances, except the liens of prior assessment and of municipal, state and county taxes.

Sale of bonds.

§ 29. Improvement bonds or any number of such bonds, issued hereunder, except as otherwise provided in this act, shall be sold to the highest cash bidder, after advertisement for bids, which advertisement shall be published for at least three times in a daily newspaper published and circulated in said city, or if there be no such daily newspaper, then such advertisement shall be published at least once in a weekly or semi-weekly newspaper so published and circulated, or shall be sold in such other manner as the legislative body may determine. If any bond be sold for an amount in excess of par such excess shall be paid into such fund of the city as the legislative body thereof may prescribe. The proceeds of the sale of such improvement bond shall be paid into the fund of the proceeding to represent assessments in which said bonds were issued.

Unsold bonds turned into fund. Contractor may advance incidental expenses.

§ 30. Any bonds not sold at the full expiration of fifteen days after the completion of the publication of the advertisement provided for in the preceding section shall be turned into the fund for the improvement for which the assessment is made, and shall be deemed and treated as so much money in said fund, and shall upon final acceptance of said improvement be issued to and accepted by the contractor for the work, or his assigns, in payment pro tanto of the contract price of said improvement, provided there is sufficient money in the said fund to pay all incidental expenses and all awards of damages that must be paid prior to the doing of the work. Whenever in the proceedings for any improvement bonds are authorized under the provisions of this act, and at the expiration of fifteen days after the completion of the publication of said advertisement, there is not sufficient money in the fund for the improvement to pay the incidental expenses and the amount of any award or awards or damages that must be paid prior to the doing of the work, the contractor may advance to the fund for said improvement an amount sufficient to pay said incidental expenses and damages, and receive therefor bonds in sufficient amount, at their par value, exclusive of any accrued interest thereon, to equal the amount advanced by him. If the said contractor in such event fails, neglects or refuses for a period of ten days after written notice from the city treasurer that said fifteen days from the completion of the publication of said advertisement has expired, and that there is not sufficient money in said fund to pay said incidental expenses and said awards of damages, to advance to said fund a sum sufficient for said purposes, the legislative body of the municipality may, in its discretion, declare said contracts forfeited, and said contractor shall thereupon lose all rights under said contract.

Bonds in satisfaction of damages.

§ 31. The owner of any property assessed, to whom damages have been awarded, as provided in this act, may take such bonds, or any thereof, in lieu of, or in satisfaction pro tanto of, such damages. When so taken such bond shall be deemed to have been sold to such owner and the amount of damages to which he is entitled shall be reduced by the amount of such bonds so taken at their par value. Such owner may, also, at any time after such assessment becomes payable, and before the sale of said property for non-payment thereof, demand of the street superintendent that such assessment, or any number of such assessments, be offset against the amount of damages to which he is entitled. Thereupon, if the amount of such damages be equal to or greater than such assessments, including any penalties and costs due thereon, the assessments shall be marked "paid by offset"; and if said amount be less than said assessments, and any penalties and costs due thereon, the person demanding such offset shall at the same time pay the difference to the street superintendent in money, and the assessment shall, on such payment, be marked paid, the entry showing what part thereof is paid by offset and what part in money.

Advance from general fund to pay incidental expenses.

§ 32. The legislative body of any municipality may, in its discretion, upon the failure of any contractor to advance sufficient money to the fund devoted to any improvement to pay the incidental expenses and the awards of damages as hereinabove provided, advance from the general fund, or from such fund as said legislative body may designate, to said fund the amount necessary for such purposes. Whereupon the city treasurer shall issue to said city bonds of the improvement in an amount equal at their par value to the amount of money so advanced by the said city, and in any event it shall be competent for the city to advance to the appropriate fund the par value of all or any part of said bonds, in which case the said bonds shall be issued to the city, and the said city shall have the same rights in respect to the enforcement and collection thereof as other purchasers. Where the city advances money as in this section provided, it shall have full authority at any time to sell said bonds at a point acceptable to the legislative body thereof.

Remaining bonds treated as cash.

§ 33. Whenever the contractor or the city has advanced to the appropriate fund an amount sufficient to pay the incidental expenses and awards, and has received bonds at their par value in an amount equal to the sum so advanced, as hereinbefore provided, the bonds remaining shall be turned into said fund, and shall be treated and regarded as so much money in said fund, and shall upon final acceptance of the work be issued to and received by the contractor in payment pro tanto of the contract price of said improvement.

Sale of lots for delinquent interest on bonds.

§ 34. Whenever, through the default of the owner of any lot or parcel of land upon which such bond is issued to represent the assessment, payment, either of the principal or of the interest, is not made when the same has become due, and the holder of the bond thereupon demands, in writing, that the city treasurer proceed to advertise and sell said lot or parcel of land as herein provided, then the whole bond or its unpaid remainder, with its accrued interest, as expressed in said bond, shall become due and payable immediately, and on the day following shall become delinquent.

Publication of notice. Notice served on owner.

§ 35. Upon the application of the holder of any bond that is now or shall hereafter become delinquent as hereinbefore provided the said city treasurer shall publish twice in a newspaper of general circulation, to be designated by him, published in the city where his office is situated, a notice which must contain the date, number, and series of the delinquent bond, a description of the property mentioned in said bond, and the name of the owner of such property (if known), and if unknown, the fact shall be so stated, the amount due thereon, and a statement that unless the amount of said bond and the interest due thereon, together with the cost of publication of such notice are paid, the real property described in said bond will be sold at public auction on a day to be therein fixed, which shall not be less than fifteen nor more than thirty days from the date of the first publication of said notice, and the place of such sale, which must be in or in front of the office of the said city treasurer. A like notice shall not less than fifteen days before the day of sale so fixed be served upon any such owner if known either personally or by depositing the same in the postoffice at such city addressed to such owner at his address if known with the postage thereon prepaid. At any time prior to the sale, the owner or person in possession of any real estate offered for sale under the provisions of this act may pay the whole amount of said bond then due, with costs, and such bond shall thereupon be canceled; but in case such payment is not made by such owner or person in possession, or by some

one in behalf of such owner, or person in possession, the property subject thereto shall be sold at public auction to the bidder offering to pay the amount due on the bond with costs for the least portion of such lot or parcel of land offered for sale.

Affidavit of publication.

§ 36. The city treasurer, before the day of sale hereinafter provided for, must file with the city clerk a copy of the publication, with an affidavit of the publisher of such newspaper, or some one in his behalf, attached thereto, that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication and the date of each issue thereof in which such publication was made, on which affidavit is prima facie evidence of all the facts stated therein.

Expenses.

§ 37. Th city treasurer must collect, in addition to the amount due on such bond, the cost of the publication of such notice, and fifty cents for the certificate of sale delivered to the purchaser as hereinafter provided.

City treasurer's record.

§ 38. The city treasurer, before delivering any certificate of sale, must, in a book kept in his office for that purpose, enter the date, number and series of the bond, description of the lands sold, corresponding with the description in the certificate, the date of sale, purchaser's name, the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection during office hours, when not in actual use, and he shall enter on the record of the bond the words "canceled by sale of the property," giving the date of such sale.

Purchaser's lien on property.

§ 39. Immediately on the sale, the purchaser shall become vested with a lien on the property, so sold to him, to the extent of his bid, and is only divested of such lien by the payment to the city treasurer of the purchase money, including costs herein provided for, with interest thereon, at the rate of one per cent per month from the date of sale.

Redemption of property.

§ 40. A redemption of the property sold may be made by the owner of the property, or any party in interest, within twelve months from the date of purchase, or at any time, prior to the application for a deed, as hereinafter provided. Redemption must be made in lawful money of the United States, and when made to the city treasurer he must mark the word "Redeemed," the date and by whom redeemed on the margin of the book where the entry of the certificate is made, and credit the amount paid to the purchaser named in the certificate, and pay the same to such purchaser, or his assignee, upon the surrender of the certificate of sale, and upon satisfactory proof of an assignment thereof, if any.

Deed after one year. Notice to owner. Fee for service.

§ 41. If the property is not redeemed within the time allowed by the provisions of the foregoing section, the city treasurer, or his successor in office, upon application of the purchaser, or his assignee, must make to said purchaser, or his assignee, a deed to the property, reciting in the deed, substantially, the matter contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption. The treasurer shall be entitled to receive from the purchaser two dollars for making said deed, which shall be deposited in the city treasury for the use of the city after payment has been made therefrom for the acknowledgment of said deed;

provided, however, that the purchaser of the property, or his assignee, or agent, must, thirty days prior to the expiration of the time of the redemption, or thirty days before his application for a deed, serve upon the owner or agent of the property purchased, if named in such certificate of sale, and upon the party occupying the property, if the property is occupied, a written notice, stating that said property, or a portion thereof, has been sold to satisfy the bond lien, the date of sale, the date, number, and series of the bond, the amount then due, and the time when the right of redemption will expire, or when the purchaser will apply for a deed, and the owner of the property shall have the right of redemption indefinitely, until such notice shall have been given and said deed applied for, upon the payment of the fees, penalties, and costs in this act required. In case of unoccupied property, a similar notice must be posted in a conspicuous place upon the property at least thirty days before the purchaser applies for a deed; and no deed to the property sold, in accordance with the provisions of this act, shall be issued by the city treasurer to the purchaser of such property until such purchaser shall have filed with such treasurer an affidavit showing that the notice hereinbefore required to be given has been given as herein required, which said affidavit shall be filed and preserved by the said treasurer as other records kept by him in his office. Such purchaser shall be entitled to receive the sum of fifty cents for his service of such notice and the making of such affidavit, which sum of fifty cents shall be paid by the redemptioner at the time and in the same manner as the other sums, costs and fees are paid.

Deed as evidence.

§ 42. The deed, when duly acknowledged or proved, shall be conclusive evidence of all things which the bond upon which it is based is conclusive evidence, and prima facie evidence of the regularity of all proceedings subsequent to the issue of the bond, and conveys to the grantee the absolute title to the lands described therein, free of all encumbrances, except the lien for state, county and municipal taxes.

Abandonment of proceedings. Readvertisement for bids.

§ 43. The legislative body of any municipality may, in its discretion, at any time prior to the letting of the contract for any improvement under this act, determine that said proceedings shall be abandoned, which determination shall be declared by ordinance or by resolution entered upon its minutes. Such legislative body may in like manner abandon such proceedings after the letting of such contract in any case where the contractor has failed to begin work within the time provided in this act, or has failed to complete the same within the time specified in the contract, or has failed to diligently prosecute the said work after beginning the same. Such legislative body may also in like manner abandon said proceedings when the contractor has failed, neglected or refused for a period of ten days after receiving the notice from the city treasurer that there is not enough money in the fund for the improvement to pay the incidental expenses and the awards of damages, as hereinbefore provided, to advance to said fund an amount sufficient for such purposes. Such legislative body may in any of the contingencies specified in this section, instead of abandoning the said proceedings, direct the superintendent of streets to readvertise for bids for the doing of said work, or any part thereof, and the said contract may be re-let as in the first instance, but the bid of any contractor who has failed in any of the obligations imposed upon him by this act, or by his contract, shall not be considered in any subsequent bidding for the same work.

Description by reference.

§ 44. In all resolutions, notices, orders and determinations subsequent to the ordinance or resolution of intention a description of the assessment district by reference to the ordinance or resolution of intention shall be sufficient, and in all resolutions,

notices, orders, and determinations subsequent to the "Notice of street work" a description of the work by reference to the ordinance or resolution of intention shall be sufficient.

Definitions: "lots or parcels of land."

§ 45. The term "lots or parcels of land" whenever mentioned in this act shall be deemed to include, and shall include, property owned or controlled by any person, firm or corporation, as a railroad, street, or interurban railroad right of way, and whenever a railroad, street, or interurban railroad right of way shall be included within any district to be assessed for the cost of any improvement provided for in this act such railroad right of way (whether the same is owned in fee or as an easement or under a franchise) shall be included in the assessment, and shall be assessed in the same manner and with the same effect as other lots or parcels of land are assessed, as provided in this act, and such railroad, street, or interurban railroad right of way shall be subject to sale for nonpayment of assessments as in this act provided.

§ 46. The following words and phrases shall, where used in this act, have the following meaning:

"Improvement."

1. The term "improvement" includes all work, construction, reconstruction and improvements mentioned in section one of this act.

"City."

2. The term "city" includes every incorporated city, city and county, or other corporation organized for municipal purposes.

"City treasurer."

3. The term "city treasurer" includes any officer who has charge and makes payment of the city funds.

"Superintendent of streets."

4. The term "superintendent of streets" includes any officer or board whose duty it is by law to have the care or charge of streets or the improvement thereof in any city. In any city where there is no superintendent of streets, or such board, the legislative body is hereby authorized to designate some other officer of the city, or other person, to perform the duties imposed by this act on the superintendent of streets, and all of the provisions hereof applicable to the superintendent of streets shall apply to the officer so designated.

"Owner."

5. The term "owner" or the term "any person interested" is deemed to be the person owning the fee, or the person in whom on the day any protest is filed, the legal title to real property appears by deeds duly recorded in the county recorder's office of the county in which said city is situate; or any person in possession of real property as the executor, administrator, trustee under an express trust, guardian or other legal representative of the owner, or any person in possession of real property under written contract of purchase, duly recorded.

"Incidental expenses."

6. The term "incidental expenses" shall be held to mean and include all the necessary expenses and disbursements of the commission, the cost of making the assessment, and all expenses necessarily incurred by the city in connection with the proposed improvement for maps, diagrams, plans, surveys, the mailing of any notices, and other matters incident thereto.

“Delinquency.”

7. The term “delinquency” as herein used shall mean delinquency in the payment of an assessment made under the provisions of this act, and the expression “time of delinquency” shall mean the time in this act fixed when assessments become delinquent. [Amendment of May 26, 1917. In effect July 27, 1917. Stats. 1917, p. 975.]

Act of 1909 repealed.

§ 47. An act entitled “An act to provide for the improvement of public streets, lanes, alleys, courts and places in municipalities, in cases where any damage to private property would result from such improvement, and for the assessment of the costs, damages and expenses thereof upon the property benefited thereby,” approved April 21, 1909, is hereby repealed; provided, that proceedings taken under the act hereby repealed, commenced prior to the taking effect of this act, may be continued to completion under the provisions thereof with the same force and effect as if said act were not hereby repealed.

Acts not repealed.

§ 48. Except as to the act hereby expressly repealed this act shall in no wise affect any other act or acts on the same subject, nor apply to any proceedings taken thereunder, but is intended to and does provide an alternative system for making the improvements provided for by this act; and it shall be within the discretion of the legislative body of any city to proceed, in making said improvements, under the provisions either of this act or of such other acts; but when any proceedings commenced under this act, the provisions of this act, and of such amendment thereof as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in such other acts or any acts in conflict herewith shall be void and of no effect as to the proceedings commenced under this act.

Title of act.

§ 49. The provisions of this act shall be liberally construed to promote the objects thereof. This act may be designated and referred to as the “Street Improvement Act of 1913.”

1. **Traffic tunnel—Los Angeles charter authorizes city to proceed under act.**—The Los Angeles charter amendment of 1917 authorizes the city to proceed in constructing a traffic tunnel in this act.—Hayes v. Handley, 182 Cal. 273, 187 Pac. 952.

2. **Same—Same.**—The charter does not isolate Los Angeles from the rest of the state so as to prevent it from constructing such a tunnel under the general law.—Hayes v. Handley, 182 Cal. 273, 187 Pac. 952.

3. **Same—Not an additional burden.**—A

traffic tunnel does not impose an additional burden upon the use of a city street so as to require additional compensation to the abutting property owner.—Hayes v. Handley, 182 Cal. 273, 187 Pac. 952.

4. **Publication of notice—Selection of newspaper.**—The requirement as to publication of notice was sufficiently complied with by publication in a newspaper designated by the council, the act having made no provision as to what body shall have the power of selection.—Hayes v. Handley, 182 Cal. 273, 187 Pac. 952.

“CHANGE OF GRADE ACT OF 1909.”

ACT 4954—An act to provide for changing or modifying the grade of public streets, lanes, alleys, courts, or other places, within municipalities.

History: Approved April 21, 1909, Stats. 1909, p. 1018. Amended April 10, 1911, Stats. 1911, p. 854.

Power of city council to change grade.

§ 1. The city council of any city is hereby empowered to change or modify the grade of public streets, lanes, alleys, courts, or other places therein, in the manner herein-after provided.

Resolution of intention. Publication of notice. Posting of notice.

§ 2. Before any change or modification of grade is ordered, the city council shall pass an ordinance or resolution of intention to order such change or modification of grade. Said ordinance or resolution of intention shall state the name of, or otherwise designate the public street, lane, alley, court or other place the grade of which, or any portion thereof, is proposed to be changed or modified, and shall set forth the change or modification of grade proposed to be made. One or more public streets, alleys, lanes, courts, or other places, or portions thereof, may be included in the same ordinance or resolution of intention. Said ordinance or resolution of intention shall be posted conspicuously for two days on or near the chamber door of said city council, and published by two insertions in a daily or weekly newspaper published and circulated in said city, and designated by said council for that purpose. If no such newspaper is published and circulated in said city, such ordinance or resolution of intention shall be posted for two days on or near the council chamber door, and in two other public places in said city. The street superintendent shall thereupon cause to be conspicuously posted along all public streets, lanes, alleys, courts, or other places, or portions thereof designated in the said ordinance or resolution of intention, where such change or modification of grade is proposed to be made, at not more than one hundred feet in distance apart, notices, but not less than three in all, of the passage of said ordinance or resolution of intention. Said notice shall be headed "Notice of Change of Grade," in letters of not less than one inch in length, and shall in legible characters state the fact of the passage of the said ordinance or resolution of intention, its date, the name or other designation of the public street, lane, alley, court, or other place, or portion thereof, the grade of which is proposed to be changed or modified, and shall refer to the ordinance or resolution of intention for further particulars. He shall also cause a notice similar in substance to be published for six days in a daily newspaper published and circulated in said city, and designated by said city council for that purpose, or in cities where there is no daily newspaper, by two insertions in a weekly newspaper so published, circulated and designated. In case there is no daily or weekly newspaper published in said city, said notice shall be posted for six days on or near the chamber door of said council, and in two other public places in said city.

Protest of owners. Findings of council. Intersecting streets; protests.

§ 3. Any person or persons owning any real property fronting upon any public street, lane, alley, court or other place, or portion thereof, where such change or modification of grade is proposed to be made, may, within thirty days after the first publication of the notice of the passage of the ordinance or resolution of intention, or within thirty days after the first posting thereof, where no publication thereof is made, as hereinbefore provided, file a written protest with the clerk of the city council against such proposed change or modification of grade. Every such protest must contain a description of the property owned by each signer thereof, sufficient to identify the same, and if signed by more than one person, must be accompanied by the affidavit of one of the signers that each signature thereto is the genuine signature of the person whose name purports to be thereto subscribed; and in case any signature is made by an agent, there must be attached to the protest the affidavit of the agent that he is duly authorized to sign such protest. Any protest not complying with the foregoing requirements shall not be considered by said city council. The clerk of the city council shall indorse on every such protest the date of its reception by him; and at the next regular meeting of the city council after the expiration of the time for filing protests, shall present to said city council all protests so filed with him. If the city council finds that such protests are signed by the owners of a majority of the frontage of the property fronting on the public street, lane, alley, court, or other place, or portion thereof where such change or modification of grade is proposed to be made, all further pro-

ceedings under said ordinance or resolution of intention shall be stayed and barred for six months from and after the filing of such majority protests, except as herein-after provided, unless the owners of a majority of such frontage shall in the mean time petition the same change or modification of grade to be made; but a new ordinance or resolution of intention to make a different change or modification of grade of such public street, lane, alley, court, or portion thereof, may be passed at any time.

In the event that the ordinance or resolution of intention designates any public street, lane, alley, court or other place, or portion thereof, the grade of which is proposed to be changed or modified, and there be included in said ordinance or resolution of intention any other public street, lane, alley, court or other place, a portion thereof, intersecting therewith or terminating therein, the grade of which is also proposed to be changed or modified, the change or modification of grade of such public street, lane, alley, court or other place, and of such other public street, lane, alley, court or other place or portion thereof, so intersecting or terminating, shall not be stayed or barred by any protests, made and filed as hereinbefore provided, unless such protest be signed by the owners of a majority of the total frontage of the property fronting on all such public streets, lanes, alleys, courts or other places, or portions thereof, where such change or modification of grade is proposed to be made. If the city council finds that such protests are not signed by the owners of a majority of the property fronting on the public street, lane, alley, court or other place, or portion thereof, where such change or modification of grade is proposed to be made, or if the proposed change or modification of grade extends for a distance of not more than one block, and the grade of such public street, lane, alley, court, or other place, for at least one block thereof immediately adjacent to such block where such change or modification of grade is proposed to be made, on each side thereof, has already been established, or if the proposed change or modification of grade extends for a distance of not more than one block, at the end of a public street, lane, alley, court or place, and the grade thereof for at least one block thereof immediately adjacent to such block has already been established, the city council shall thereupon fix a time for hearing such protests not less than ten days after the meeting of the council at which such time is so fixed and shall cause notice of the time and place of such hearing to be published for two days in a daily newspaper published and circulated in said city, or by one insertion in a weekly newspaper so published and circulated; and if no daily or weekly newspaper be published and circulated in said city, then said notice shall be posted for two days on or near the council chamber door, and in two other public places in said city; and such publication or posting shall be completed at least five days before such hearing. The city council shall hear said protests at the time and place appointed, or at any time to which the hearing thereof may be continued, and pass upon the same, and its decision thereon shall be final and conclusive. If such protests are sustained, no further proceedings shall be had under said ordinance or resolution of intention, but a new ordinance or resolution of intention to make the same, or a different change or modification of grade may be passed at any time. If such protests are denied, the proceedings shall continue as if such protests had not been filed.

Jurisdiction, when acquired.

§ 4. If no protests are filed within the time hereinbefore provided, or if protests are filed, and after hearing are denied, as herein provided, the city council shall acquire jurisdiction to order the change or modification of grade described in the ordinance or resolution of intention to be made. Having acquired such jurisdiction, the city council shall be ordinance or resolution, order the change or modification of grade to be made as proposed by and described in the ordinance or resolution of intention. Said ordinance or resolution ordering the change or modification of grade shall be

published by two insertions in a daily, or by one insertion in a weekly newspaper published and circulated in said city; or, if no such newspaper be published and circulated therein, the same shall be posted for two days on or near the council chamber door, and in two other public places in said city.

Who deemed to be owner.

§ 5. Except as otherwise hereinafter provided the person owning the fee, or the person in whom on the day any protest or petition is filed the legal title to real property appears, by deeds duly recorded in the county recorder's office of the county in which said city is situated, shall be deemed to be the owner thereof for the purposes of this act; provided, however, that any person in possession of real property as the executor, administrator, trustee, guardian, or other legal representative of the owner, or any person in possession of real property under written contract of purchase duly recorded, shall be deemed to be the owner thereof for the purposes of this act. In the case of property held by tenancy in common, if any cotenant sign a protest under this act, only the proportionate share of the frontage thereof represented by his interest therein shall be counted in determining the amount of frontage represented by such protest. In the event that the change or modification of grade proposed by the ordinance or resolution of intention is only on one side of any public street, lane, alley, court or other place, or portion thereof, only the owners of the real property fronting on the side of such public street, lane, alley, court or other place, or portion thereof where such change or modification of grade is proposed to be made, shall be entitled to make or file a protest under the provisions of this act. If the grade of any public street, lane, alley, court, or other place, or portion thereof, has been heretofore, or shall be hereafter changed or modified, nothing in this act contained shall be construed to prevent any subsequent change or changes, modification or modifications of grade of any such public street, lane, alley, court or other place, or portion thereof.

Affidavits of publication and posting of notices.

§ 5a. Proof of publication of any notice required by this act shall be made by affidavit, as provided in the Code of Civil Procedure, and proof of the posting of any such notice shall be made by the affidavit of the person posting the same, setting forth the facts regarding such posting. It shall be the duty of any officer who is required by this act to have any notice published or posted, to obtain and file in his office the affidavit or affidavits in proof thereof; provided, that his failure so to do shall not affect the validity of any proceedings under this act. Any such affidavit so filed shall be prima facie evidence of the facts therein stated regarding such publication or posting. [New section approved April 10, 1911, Stats. 1911, p. 854.]

Meaning of certain words.

§ 6. The following words and phrases, where used in this act, shall have the following meanings:

1. The terms "municipality" or "city" include every incorporated city, city and county, or other corporation organized for municipal purposes.
2. The terms "city council" and "council" include any body or board in which by law is vested the legislative power of any city.
3. The terms "clerk" and "city clerk" shall include any person or officer who shall be clerk of the city council.
4. The term "superintendent of streets" includes any officer or board whose duty it is by law to have the care or charge of streets, or the improvement thereof, in any city. In any city where there is no superintendent of streets, or no such board, the legislative body is hereby authorized to designate some other officer to perform the

duties imposed by this act on the superintendent of streets, and all the provisions hereof applicable to the superintendent of streets shall apply to the officer so designated.

Certain acts not affected. Intention of act. Name of act.

§ 7. This act shall in no wise affect an act entitled "an act to provide for work upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities," approved March 18, 1885, or amendments thereto; or an act entitled "An act to amend an act [entitled] 'An act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for the construction of sewers within municipalities,' approved March 18, 1885, by adding thereto certain new and additional sections, to provide the mode of carrying into effect certain provisions of said act relative to changing grades," approved March 31, 1891, or amendments thereto, or any other acts on the same subject; but is intended to and does provide an alternate system of proceedings for changing or modifying the grades of public streets, lanes, alleys, courts, or other places in municipalities; and it shall be within the discretion of the city council of any municipality to proceed in making any such change or modification of grade, either under the provisions of this act, or under the provisions of said acts hereinbefore mentioned, or amendments thereto; but when any proceedings are commenced under this act, the provisions of this act, and of such amendments thereto as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts, or in any acts in conflict with the provisions hereof, shall be void and of no effect as to the proceedings commenced under the provisions of this act. The election of the city council to proceed under the provisions of this act shall be expressed in its ordinance of intention to order any change or modification of grade. The provisions of this act shall be liberally construed to promote the objects thereof. This act may be designated and referred to as the "Change of grade act of 1909."

§ 8. This act shall take effect immediately.

1. Notice of hearing of protests—Actual appearance of protestants, and hearing of.—Where all the protestants appear before the board of trustees and present their protest, and are given a hearing thereon, this was all that was necessary to give the board jurisdiction to proceed with the work, although no notice of the time and place of the hearing was given as required by the act.—Federal Construction Co. v. Kneese, 37 Cal. App. 659, 174 Pac. 694.

2. Same—Notice to non-protesting owners not required.—No notice of time and place of hearing of protests need be given to non-protesting owners.—Federal Construction Co. v. Kneese, 37 Cal. App. 659, 174 Pac. 694.

3. Referendum — Street improvement proceedings not subject to.—Notwithstanding the legislative character of the acts street improvement proceedings are not subject to referendum.—Chase v. Kalber, 28 Cal. App. 561, 153 Pac. 397.

SPECIAL IMPROVEMENT BOND ACT OF 1911.

ACT 4955—An act providing for the issuance of improvement bonds to represent certain special assessments for public improvements, and providing for the effect and enforcement of such bonds.

History: Approved April 11, 1911, Stats. 1911, p. 1192.

"Street opening act of 1903." "Park act." "Street improvement act of 1909." "Improvement bond." "Assessment." "Delinquency." "City council."

§ 1. The expression "street opening act of 1903" as herein used shall mean the act entitled "An act to provide for the laying out, opening, extending, widening, or straightening, in whole or in part, of public streets, squares, lanes, alleys, courts, and places within municipalities, for the condemnation of property necessary or convenient for such purposes, and for the establishment of assessment districts and the assessment of property therein to pay the expenses of such improvement," approved March 24, 1903 (Stats 1903, p. 376), and acts amendatory thereto.

The expression "park act" as herein used shall mean the act entitled "An act to provide for the acquisition by municipalities of land for public park or playground purposes by condemnation, and for the establishment of assessment districts and the assessment of property therein to pay the expense of acquiring such land," approved April 22, 1909 (Stats. 1909, p. 1066).

The expression "street improvement act of 1909" as herein used shall mean the act entitled "An act to provide for the improvement of public streets, lanes, alleys, courts and places in municipalities, in cases where any damage to private property would result from such improvement, and for the assessment of the costs, damages, and expenses thereof upon the property benefited thereby," approved April 21, 1909 (Stats. 1909, p. 1042).

The expression "improvement bond" as herein used shall mean a bond issue under the provisions of this act.

The terms "assessment" or "assessment-roll" as herein used shall mean a special assessment made under the provisions of any of the acts herein in this section specified.

The term "delinquency" as herein used shall mean delinquency in the payment of an assessment made under the provisions of the acts herein in this section specified and the expression "time of delinquency" shall mean the time in said acts fixed when assessments become delinquent. The expression "city council" as herein used shall mean the legislative body of the municipality.

Council may determine the issue of improvement bonds.

§ 2. The city council of any municipal corporation of this state may, in its discretion, at or before the time of the confirmation of any assessment or assessment-roll in proceedings had and taken under the street opening act of 1903, the park act or the street improvement act of 1909, determine that improvement bonds may issue to represent such assessments, which determination shall be made by resolution or ordinance.

Owner of lot may elect to pay assessment in installments.

§ 3. Whenever it is determined as provided in section 2 hereof that improvement bonds may be issued to represent assessments, the owner of any lot or parcel of land against which an assessment has been made, when the amount of such assessment is fifty (\$50) dollars or over, may at any time prior to delinquency, elect to pay such assessment in installments and to have an improvement bond issued against such lot, in the form and manner and with the effect in this act [provided]; provided, there be no other bond or bonds outstanding against said lot representing any special assessment.

Election to be made in writing. Rate of interest. Form of agreement. Records of assessment. Improvement bond. Mistake in description.

§ 4. Such election shall be made by such owner or his agent thereunto duly authorized in writing filed with the superintendent of streets, or if said assessment is in the custody of the city tax collector with such tax collector, an affidavit made before a competent officer that he or his principal, as the case may be, is the owner of the lot or parcel of land in question, which affidavit must be accompanied by a certificate of a searcher of records, that he or his principal is such owner and also by filing with such officer a written agreement upon the form hereinafter fixed, waiving all objections of whatsoever kind or nature against the assessment and all proceedings thereto and undertaking to pay the amount of such assessment in either five or ten annual installments, each of which shall be due on the first day of July of each year, and the first of which shall be due on the first day of July next following the date of such bond, with interest on all deferred payments at the rate of seven per cent per annum, payable at the same time as the installments of principal. Said agreement shall contain a provision to the effect that in case of default in the payment of any

installment of the principal provided for therein, or interest accrued on deferred payments, at the time called for by said agreement, then and in that event, the entire remaining unpaid installments shall become immediately due and payable, and that the same, and all liens and agreements which are security therefor, may be collected and enforced as in this act provided. Said agreement shall be in the following or substantially the following form (filling blanks):

The undersigned, being the owner of the lot assessed in the assessment for — said lot being assessed therein for the sum of — (\$—) dollars, does hereby expressly waive and release all objections of whatsoever kind or nature against the said assessment and all proceedings prior thereto, and in consideration of the benefit of said improvement and of the extension of time for paying therefor herein requested, do undertake and agree to pay the amount of said assessment, to wit: the sum of — (\$—) dollars in — yearly installments, at the time, in the manner, and with the interest, specified and provided in — (title of act), and do request and elect to have a bond issued against said lot in the manner and form and with the effect provided in said act, and do expressly agree that in the case of default in the payment of any installment of the principal provided for in said bond, or interest accrued on deferred payments, then, and in that event, that the entire remaining unpaid installments shall become immediately due and payable, and that the same, and all liens and agreements which are security therefor, may be collected and enforced as in this act provided.

Upon an election being effected as herein provided the superintendent of streets, or other officer having in his custody said assessment, shall make a note thereof in his records opposite the assessment as to which such election is made. All agreements and affidavits made and filed hereunder shall be bound in a substantial book and kept among the records of the superintendent of streets, or other officer having custody of such assessments. At the time of delinquency, such officer shall advise, in writing, the city treasurer respecting the assessments as to which the owners have elected to pay in installments. The city treasurer shall thereupon prepare a separate bond representing each assessment as to which such right of election has been exercised, running for either five (5) or ten (10) years, as specified in the agreement made as herein provided, which bond shall be in the following or substantially the following form (filling blanks):

IMPROVEMENT BOND.

Series —

\$ —

No. —

Under and by virtue of and pursuant to the provisions of — (title of act), I, out of the fund for the above designated improvement bonds, series — will pay to bearer the sum of — (\$—) dollars with interest at the rate of seven (7) per cent per annum, as is hereinafter specified, at the office of the city treasurer of the city of —, state of California. This bond is issued to represent an assessment for — in the city of — as the same is more fully described in the assessment therefor. Its amount is the amount assessed in said assessment against the lot numbered — therein and in the diagram attached thereto, and which now remains unpaid; but until paid, with accrued interest, is a first lien upon the property affected thereby, as the same is described herein and in said recorded assessment with its diagram, to wit: the lot or parcel of land in the city of —, county of —, state of California, described as follows:

.....

and it is issued in accordance with the written request therefor on file in the office of — the — of said city.

This bond is payable exclusively from said fund, and neither the city of — nor any officer thereof is to be holden otherwise for its principal or interest. The term of this bond is — years from July first, 19—, and at the expiration of said time the whole sum then unpaid shall be due and payable; but on the first day of July of each year, after the date hereof, an even annual proportion of its principal is due and payable upon presentation of the coupon therefor, until the whole is paid, with accrued interest at the rate of seven (7) per cent per annum.

The interest is payable annually on the first day of July in each year hereafter upon presentation of the coupons therefor, the first of which is for the interest from date to the first day of July, 19—, and thereafter the interest coupons are for the annual interest.

Should default be made in the first, or any succeeding payment of the principal, or in any payment of interest, by the owner of said lot, or any one in his behalf, the holder of this bond is entitled to declare the whole unpaid amount to be due and payable, and shall thereupon have a right to collect the same and to enforce all liens and agreements which are security therefor as in said act provided.

At said city —, this — day of —, in the year one thousand nine hundred and —.

— —, —,
City Treasurer of the City of —.

Said bonds shall be payable to the bearer and no mistake or error in the description in the bond of the lot assessed shall affect the validity or lien of the bond, unless the mistake or error is such that the lot can not be identified, and in such event the holder of such bond may have the same corrected upon application to the city treasurer and the officers or board who or which made the assessment to represent which such bond is issued.

Records of bonds issued.

§ 5. The city treasurer shall enter in a book kept for that purpose in his office, a record of each bond issued hereunder, specifying the date of its issue, the amount for which issued, to whom delivered, its duration and a description of the lot against which issued. Payments of principal and interest on account of any bond issued hereunder shall be made to the city treasurer, who shall keep a separate account of all such payments (entering the same in the record herein required to be kept), and place the same in appropriate funds for the payment of principal and interest of the bonds on account of which paid, and who shall, upon the surrender of the coupons attached to said bond, pay to the holder thereof, or his order, the amount called for by said coupons out of the funds in his possession applicable thereto.

Validity of proceedings.

§ 6. Improvement bonds issued hereunder shall by their issuance be conclusive evidence of the regularity and validity of all proceedings thereto. The amount due upon any such bond shall be a lien upon the lot described in such bond superior to all other liens, charges, and encumbrances except the liens of prior assessments and of municipal, state and county taxes.

Sale of bonds. Advertisement.

§ 7. Improvement bonds or any number of such bonds, issued hereunder, except as otherwise provided in section 9 hereof, shall be sold to the highest cash bidder, after advertisement for bids, which advertisement shall be published for at least three times in a daily newspaper published and circulated in said city, or if there be no such daily newspaper, then such advertisement shall be published once in a weekly or semi-weekly newspaper so published and circulated; provided, however, that said bonds

shall not be sold for less than par. If any bond be sold for an amount in excess of par such excess shall be paid into the general fund of the city.

Proceeds of sale.

§ 8. The proceeds of the sale of such improvement bonds shall be paid into the fund of the proceeding to represent assessments in which said bonds were issued.

City may advance funds.

§ 9. It shall be competent for the city to advance to the appropriate fund the par value of all or any part of said bonds, in which case said city shall have the same rights in respect to the enforcement and collection thereof as other purchasers. Where the city advances money as in this section provided it shall have full authority at any time to sell said bonds to reimburse itself therefor.

Holder of bond may demand sale of lot when payment is not made.

§ 10. Whenever, through the default of the owner of any lot or parcel of land upon which such bond is issued to represent the assessment, payment, either of the principal or of the interest, is not made when the same has become due, and the holder of the bond thereupon demands, in writing, that the city treasurer proceed to advertise and sell said lot or parcel of land as herein provided, then the whole bond or its unpaid remainder, with its accrued interest, as expressed in said bond, shall become due and payable immediately, and on the day following shall become delinquent.

Procedure of sale. Prior to sale owner may pay whole amount due.

§ 11. Upon the application of the holder of any bond that is now or shall hereafter become delinquent as hereinbefore provided, the said city treasurer shall publish twice in a newspaper of general circulation, to be designated by him, published in the city where his office is situated, a notice which must contain the date, number, and series of the delinquent bond, a description of the property mentioned in said bond, and the name of the owner of such property (if known), and if unknown, the fact shall be so stated, the amount due thereon, and a statement that unless the amount of said bond and the interest due thereon, together with the cost of publication of such notice are paid, the real property described in said bond will be sold at public auction on a day to be therein fixed, which shall not be less than fifteen nor more than thirty days from the day of the first publication of said notice, and the place of such sale, which must be the office of the said city treasurer. A like notice shall not less than fifteen days before the day of sale so fixed be served upon any such owner if known either personally or by depositing the same in the post office at such city addressed to such owner at his address if known with the postage thereon prepaid. At any time prior to the sale, the owner or person in possession of any real estate offered for sale under the provisions of this act may pay the whole amount of said bond then due, with costs, and such bond shall thereupon be canceled; but in case such payment is not made by such owner or person in possession, or by some one in behalf of such owner, or person in possession, the property subject thereto shall be sold at public auction to the bidder offering to pay the amount due on the bond with costs for the least portion of such lot or parcel of land offered for sale.

Evidence of publication of notices.

§ 12. The city treasurer, before the day of sale hereinafter provided for, must file with the city clerk a copy of the publication, with an affidavit of the publisher of such newspaper, or someone in his behalf, attached thereto, that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication and the date of each appearance in which such publication was made, which affidavit is prima facie evidence of all the facts stated therein.

Costs collected.

§ 13. The city treasurer must collect, in addition to the amount due on such bond, the cost of the publication of such notice, and fifty cents for the certificate of sale delivered to the purchaser as hereinafter provided.

Record of certificates of sale by city treasurer.

§ 14. The city treasurer, before delivering any certificate of sale must, in a book kept in his office for that purpose, enter the date, number and series of the bond, a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection during office hours when not in actual use, and he shall enter on the record of the bond the words "canceled by sale of the property," giving the date of such sale.

Purchaser's lien.

§ 15. Immediately on the sale, the purchaser shall become vested with a lien on the property so sold to him, to the extent of his bid, and is only divested of such lien by the payment to the city treasurer of the purchase money, including costs herein provided for, with interest thereon at the rate of one per cent per month from the date of sale.

Redemption within twelve months.

§ 16. A redemption of the property sold may be made by the owner of the property, or any party in interest, within twelve months from the date of purchase, or at any time prior to the application for a deed, as hereinafter provided. Redemption must be made in lawful money of the United States, and when made to the city treasurer he must credit the amount paid to the person named in his certificate, and pay it on demand to him or his assignees.

Record of certificates of sale by recorder.

§ 17. On receiving the certificate of sale, the recorder must file it, and make an entry in a book similar to that required of the city treasurer, the fee for which shall be fifty cents, and on presentation of the receipt of the city treasurer for the total amount of the redemption money, the recorder must, without charge, mark the word "redeemed," the date, and by whom redeemed, on the margin of the book where the entry of the certificate is made.

Deed to property not redeemed. Notice to owner thirty days prior to application for deed. Notice posted on property.

§ 18. If the property is not redeemed within the time allowed by the provisions of section 16 hereof for its redemption, the city treasurer, or his successor in office, upon application of the purchaser, or his assignee, must make to said purchaser, or his assignee, a deed to the property, reciting in the deed, substantially, the matter contained in the certificate and that no person has redeemed the property during the time allowed for its redemption; the treasurer shall be entitled to receive from the purchaser two dollars for making said deed, which shall be deposited in the city treasury for the use of the city after payment has been made therefrom for the acknowledgment of said deed; provided, however, that the purchaser of the property, or his assignee, or agent, must, thirty days prior to the expiration of the time of the redemption, or thirty days before his application for a deed, serve upon the owner or agent of the property purchased, if named in such certificate of sale, and upon the party occupying the property, if the property is occupied, a written notice, stating that said property, or a portion thereof, has been sold to satisfy the bond lien, the date of sale, the

date, number, and series of the bond, the amount then due, and the time when the right of redemption will expire, or when the purchaser will apply for a deed, and the owner of the property shall have the right of redemption indefinitely, until such notice shall have been given and said deed applied for, upon the payment of the fees, penalties, and costs in this act required. In case of unoccupied property, a similar notice must be posted in a conspicuous place upon the property at least thirty days before the purchaser applies for a deed; and no deed to the property sold, in accordance with the provisions of this act, shall be issued by the city treasurer to the purchaser of such property, until such purchaser shall have filed with such treasurer an affidavit showing that the notice hereinbefore required to be given has been given as herein required, which said affidavit shall be filed and preserved by the said treasurer as other records kept by him in his office. Such purchaser shall be entitled to receive the sum of fifty cents for his service of such notice and the making of such affidavit, which sum of fifty cents shall be paid by the redemptioner at the time and in the same manner as the other sums, costs and fees are paid.

Evidence of regularity of proceedings.

§ 19. The deed, when duly acknowledged or proved, shall be conclusive evidence of all things which the bond upon which it is based is conclusive evidence, and prima facie evidence of the regularity of all proceedings subsequent to the issue of the bond, and conveys to the grantee the absolute title to the lands described therein, free of all encumbrances, except the lien for state, county, and municipal taxes.

IMPROVEMENT ACT OF 1911.

ACT 4956—An act to provide for work in and upon streets, avenues, lanes, alleys, courts, places and sidewalks within municipalities, and upon property and rights of way owned by municipalities, and for establishing and changing the grades of any such streets, avenues, lanes, alleys, courts, places and sidewalks, and providing for the issuance and payment of street improvement bonds to represent certain assessments for the cost thereof and providing a method for the payment of such bonds.

History: Approved April 7, 1911, Stats. 1911, p. 730. Amended (1) April 22, 1913, in effect August 10, 1913, Stats. 1913, p. 57; (2) April 25, 1913, in effect August 10, 1913, Stats. 1913, p. 78; (3) May 30, 1913, in effect August 10, 1913, Stats. 1913, p. 356; (4) June 10, 1913, in effect August 10, 1913, Stats. 1913, p. 540; (5) June 11, 1915, in effect August 10, 1915, Stats. 1915, p. 1464; (6) May 10, 1919, in effect July 22, 1919, Stats. 1919, p. 479; (7) May 16, 1919, in effect July 22, 1919, Stats. 1919, p. 554.

PART I.

- § 1. PUBLIC STREETS DEFINED.
- § 2. WHAT WORK MAY BE DONE.
- § 3. RESOLUTION OF INTENTION TO IMPROVE STREET.
- § 4. WHEN CHARGEABLE ON DISTRICT.
- § 5. NOTICE OF IMPROVEMENT—POSTING.
- § 6. WRITTEN PROTEST AGAINST PROPOSED WORK.
- § 7. JURISDICTION ACQUIRED.
- § 8. PLANS AND SPECIFICATIONS.
- § 9. DESCRIPTIONS BY REFERENCE.
- § 10. INVITING SEALED PROPOSALS.
- § 11. NOTICE OF AWARD OF CONTRACT POSTED AND PUBLISHED.
- § 12. OWNERS MAY DO WORK.
- § 13. READVERTISING FOR BIDS.
- § 14. DELINQUENT CONTRACTORS.
- § 15. BOND FOR FAITHFUL PERFORMANCE.
- § 16. PROTESTING ERRONEOUS PROCEEDINGS.
- § 17. ADVANCING INCIDENTAL EXPENSES.

- § 18. AUTHORITY TO MAKE CONTRACTS—WORK MAY BE DONE UNDER CITY ENGINEER.
§ 19. BOND FOR LABOR AND MATERIAL.
§ 20. METHODS OF ASSESSMENT.
 Subdivision 1. Frontage assessment.
 2. Main street crossings.
 3. Main street terminations.
 4. Alley and main street crossings.
 5. Alley and subdivision street crossings.
 6. Alley terminations.
 7. One side of street.
 8. Public property.
 9. When owners may grade.
 10. Diagram of assessment district.
 11. Railroad property.
§ 21. MAKING THE ASSESSMENT.
§ 22. WARRANT.
§ 23. ASSESSMENTS LIEN ON LAND—WARRANT, ETC., DELIVERED TO CONTRACTOR.
§ 24. DEMANDING PAYMENT.
§ 25. WARRANT RETURNED—UNPAID ASSESSMENTS.
§ 26. FINAL OBJECTIONS.
§ 27. CONTRACTOR MAY SUE—ATTORNEY'S FEE—WARRANT, ETC., EVIDENCE—COMPLAINT—
 DESCRIPTION OF LOT.
§ 28. NEW ASSESSMENT PERMITTED.
§ 29. SELLING PREMISES ON EXECUTION.
§ 30. PARTIAL ASSESSMENT.
§ 31. REPAIRS.
§ 32. SUIT FOR REPAIRS.
§ 33. ADDITIONAL PENALTY FOR NEGLECT.
§ 34. TENANT MAY PAY ASSESSMENT.
§ 35. SERVICE OF NOTICE.
§ 36. [REPEALED.]
§ 37. RECORDS OF STREET SUPERINTENDENT.
§ 38. DUTY OF STREET SUPERINTENDENT.
§ 39. DAMAGES—DEFECTIVE STREETS.
§ 40. PARTIAL EXPENSE FROM TREASURY.
§ 41. CITY ENGINEER.
§ 42. SUPERINTENDENT OF WORK.

PART II

- § 43. CHANGE OF GRADE.
§ 44. CLAIMING DAMAGES.
§ 45. COMMISSIONERS.
§ 46. DAMAGES AND BENEFITS.
§ 47. REPORT OF COMMISSIONERS.
§ 48. NOTICE OF HEARING REPORT.
§ 49. OBJECTIONS TO REPORT.
§ 50. ADVERTISING FOR BIDS.
§ 51. MAKING AN ASSESSMENT.
§ 52. ASSESSMENT-ROLL.
§ 53. COLLECTING ASSESSMENTS.
§ 54. SALE OF PROPERTY.
§ 55. REDEEMABLE WITHIN ONE YEAR.
§ 56. SEPARATE FUNDS.
§ 57. NOTICE OF DAMAGES AWARDED.
§ 58. CONDEMNATION PROCEEDINGS.

PART III.

- § 59. SERIAL BONDS MAY BE ISSUED.
§ 60. WHEN AND WHERE PAYABLE—INTEREST—OWNER MAY PAY.
§ 61. NOTICE IN RESOLUTION OF INTENTION.
§ 62. NOTIFICATION TO TREASURER.
§ 63. FORM OF BOND.
§ 64. LIMITATION, TWENTY-FIVE DOLLARS.
§ 65. OWNER MAY STOP ISSUANCE.
§ 66. TO WHOM PAYABLE—COUPONS—RECORD OF BONDS.

- § 67. PENALTY FOR NON-PAYMENT.
- § 68. SALE OF PROPERTY.
- § 69. TREASURER'S AFFIDAVIT.
- § 70. COSTS, FEES, AND PENALTIES.
- § 71. CERTIFICATE OF TREASURER.
- § 72. PURCHASER'S LIEN ON PROPERTY—CERTIFICATE OF SALE.
- § 73. REDEMPTION.
- § 74. DUPLICATE FILED BY RECORDER.
- § 75. DEED TO PROPERTY NOT REDEEMED, ETC.
- § 76. ABSOLUTE TITLE.
- § 77. RAILROAD PROPERTY.
- § 77a. IMPROVEMENTS BY RAILROAD COMPANIES.
- § 78. NO PROTESTS.

PART IV.

- § 79. DEFINITIONS
- § 79a. "PLACES" DEFINED.
- § 80. HEARINGS.
- § 81. PUBLICATION AND POSTING.
- § 82. CONSTRUCTION OF ACT.
- § 83. SAVING CLAUSE.
- § 84. [REPEALED.]
- § 85. [REPEALED.]
- § 86. [REPEALED.]
- § 87. [REPEALED.]
- § 88. [REPEALED.]
- § 89. [REPEALED.]

PART I.

Public streets defined.

§ 1. All streets, lanes, alleys, places or courts, in the municipalities of this state now open or dedicated, or which may hereafter be open or dedicated to public use, shall be deemed and held to be open public streets, lanes, alleys, places or courts, for the purpose of this act, and the city council of each municipality is hereby empowered to establish and change the grades of said streets, lanes, alleys, places, or courts, and fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in this act under the proceedings hereinafter described.

What work may be done.

§ 2. Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to order the whole or any portion or portions, either in length or width of any one or more of the streets, avenues, lanes, alleys, courts, places or public ways of any such city graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regraveled, piled or repiled, capped or recapped, oiled or reoiled, and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings and parkways, sewers, ditches, drains, conduits and channels for sanitary and drainage purposes or either or both thereof, with outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels and other appurtenances; pipes, hydrants and appliances for fire protection; tunnels, viaducts, conduits and subways, breakwaters, levees, bulkheads and walls of rock or other material to protect the same from overflow or injury by water; and poles, posts, wires, pipes, conduits, lamps and other suitable or necessary appliances for the purpose of lighting said streets, avenues, lanes, alleys, courts, places or public ways; the planting of trees thereon, and the construction or reconstruction in, over or through property or rights of way owned by such city, of tunnels, sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes or either or both thereof, with necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks,

connecting sewers, ditches, drains, conduits, channels and other appurtenances, pipes, hydrants and appliances for fire protection and breakwaters, levees, bulkheads and walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways and other property in any such city, from overflow by water, and to order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, lanes, alleys, courts, places, or public ways or property or rights of way of such city.

Resolution of intention to improve street.

§ 3. Before ordering any work done or improvement made, which is authorized by this act, the city council shall pass a resolution of intention so to do referring to the street by its lawful or official name, or the name by which it is commonly known, and briefly describe the work. Said resolution shall contain also a notice of the day, hour and place when and where any and all persons having any objections to the proposed work or improvement may appear before the legislative body and show cause why said proposed improvement should not be carried out in accordance with said resolution; said time shall not be less than fifteen nor more than forty days from the date of the passage of said resolution. Said resolution of intention shall be published twice in one or more daily, semi-weekly, or weekly newspapers published and circulated in said city, and designated by said council for that purpose. The city council may include in one proceeding, under one resolution of intention and in one contract, any of the different kinds of work mentioned in this act and any number of streets and rights of way or portions thereof contiguous or otherwise, and it may except therefrom any of said work already done upon a street to the official grade. The lots and portions of lots fronting upon said excepted work already done shall not be included in the assessment for the class of work from which the exception is made; provided, that this shall not be construed so as to affect the special provisions as to grading contained in subdivision 9 of section 20 of this act. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1464.]

Work chargeable on district.

§ 4. Whenever the contemplated work or improvement, in the opinion of the city council, is of more than local or ordinary public benefit, or whenever, according to estimate to be furnished by the city engineer, the total estimated costs and expenses thereof would exceed one-half the total assessed value of the lots and lands assessed, if assessed upon the lots or land fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment-roll whereon it was assessed for taxes for municipal purposes, and allowing a reasonable depth from such frontage for lots or lands assessed in bulk, the city council may make the expense of such work or improvement chargeable upon a district, which the said city council shall, in its resolution of intention, declare to be the district benefited by said work or improvement, and to be assessed to pay the costs and expenses thereof.

Notice of passage of resolution to be posted.

§ 5. After the adoption of the resolution of intention, the street superintendent shall cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than three hundred feet in distance apart, but not less than three in all, or when the work to be done is only upon an entire crossing or intersection or any part thereof, in front of each quarter block or irregular block liable to be assessed, notices of the passage of said resolution. In case the work is chargeable upon a district as herein provided, copies of said notice shall also be posted along all the open streets within such district at not more than three hundred feet in distance apart but not less than three in all on each street. In every case all the posting must be fully completed

at least ten days before the day set for hearing protests or objections as provided in section three hereof.

Said notices shall be headed "notice of improvement" in letters of not less than one inch in length; and shall, in legible characters, state the fact of the passage of the resolution of intention, its date, and briefly, the work or improvement proposed, and refer to the resolution of intention for further particulars. Said notices shall contain also a statement of the day, hour and place when and where any and all persons having any objections to the proposed work or improvement may appear before the legislative body and show cause why said proposed improvement should not be carried out in accordance with said resolution. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1465.]

Written protest against proposed work.

§ 6. At any time not later than the hour set for hearing objections to the proposed work as provided in section three hereof, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent of the district to be assessed, or both. Such protest must be in writing and be delivered to the said clerk of the city council, and no other protests or objections shall be considered. At the time set for hearing protests the city council shall proceed to hear and pass upon all protests so made and its decision shall be final and conclusive; provided, however, that when the protest is against the proposed work, and the cost thereof is to be assessed upon the property fronting thereon, and the city council finds that such protest is made by the owners of a majority of the property fronting on the proposed work, or when the protest is against the proposed work and the cost thereof is to be assessed upon the property within a district, and the city council finds that such protest is made by the owners of more than one-half of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date of the decision of the city council on said hearing, unless the said protest be overruled by an affirmative vote of four-fifths of the members of the city council. The words "proposed work" as used herein, shall mean and include all the work described in the resolution of intention. The city council may adjourn said hearings from time to time. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1465.]

Jurisdiction acquired.

§ 7. If no protests or objections in writing have been delivered to the clerk up to the hour set for hearing provided in section three hereof, or when a protest shall have been found by said city council to be insufficient, or shall have been overruled, or, when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon the city council shall be deemed to have acquired jurisdiction to order the proposed improvements. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1466.]

Plans and specifications.

§ 8. Before passing any resolution for the construction of improvements, plans and specifications and careful estimates of the costs and expenses thereof shall be furnished to said city council, if required by it, by the city engineer of said city; and for the work of constructing sewers, specifications shall always be furnished by him.

Description by reference.

§ 9. In all resolutions, notices, orders and determinations subsequent to resolution of intention and notice of improvement, it shall be sufficient to briefly describe the work or the assessment district or both and to refer to the resolution of intention for further particulars.

Inviting sealed proposals.

§ 10. Before the awarding of any contract by the city council for doing any work authorized by this act, the city council shall pass a resolution ordering the work. Notice, with specifications, shall be posted conspicuously for five days on or near the council chamber door of said council, inviting sealed proposals or bids for doing the work ordered. Notice inviting such proposals, and referring to the specifications posted or on file, shall be published twice in a daily, semi-weekly, or weekly newspaper published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall only be posted as hereinbefore provided. The time fixed for the opening of bids shall be not less than ten days from the time of the first publication or posting of said notice. All proposals or bids offered shall be accompanied by a check payable to the city certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of the proposal, or by a bond for the said amount and so payable, signed by the bidder and two sureties, who shall justify, before any officer competent to administer an oath, in double the said amount, and over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said city council, and said council shall, in open session publicly open, examine and declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by said check or bond satisfactory to the council. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any reasonable bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid. If the bids are rejected or no bids received the city council may within six months thereafter readvertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the respective checks and bonds corresponding to the bid so rejected. But the checks accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder or by the owners of three-fourths part of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects or refuses to enter into the the contract to perform said work or improvement, as hereinafter provided, then the certified check accompanying his bid and the amount therein mentioned, shall be declared to be forfeited to said city and shall be collected by it and paid into the general fund, and any bond forfeited may be prosecuted, and the amount due thereon collected and paid into said fund.

Notice of award of contract posted.

§ 11. Notice of such award of contract shall be posted for five days, in the same manner as hereinbefore provided for the posting of proposals for said work, and shall be published twice in a daily, semi-weekly or weekly newspaper published and circulated in said city and designated by said city council; provided, however, that in case there is no newspaper published and circulated in such city, then such notice of award shall only be kept posted as hereinbefore provided. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1466.]

Owners may do work.

§ 12. The owners of three-fourths of the frontage of lots and lands liable to be assessed, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may within ten days after

the first publication, or first posting in case there is no publication, of said notice of said award, elect to take said work and enter into a written contract to do the whole work at the price at which the same has been awarded, and all work done under such contract shall be subject to such regulations as may be prescribed by ordinance of the city council. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within ten days, or to commence the work within fifteen days after the date of such written contract, and to prosecute the same with diligence to completion, it shall be the duty of the superintendent of streets to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1466.]

Re-advertising for bids.

§ 13. But if such original bidder neglects, fails or refuses, for fifteen days after the first publication of the notice of award, to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and award the contract for said work to the then lowest regular bidder. Should no bids be received in response to this second call for proposals, the council may again advertise for bids under the same proceedings, at any time within six months from the time set for the last reception of bids, and let the contract to the then lowest bidder, and such delay shall in no way affect the validity of any of the proceedings or assessments levied thereunder. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract, as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work.

Delinquent contractors.

§ 14. If the owner or contractor, who may have taken any contract, does not complete the same within the time limited in the contract, or within such further time as the city council may give him, the superintendent of streets shall report such delinquency to the city council which may relet the unfinished portion of said work, after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance.

Bond for faithful performance.

§ 15. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the superintendent of streets of said city, with two or more sureties and payable to such city, in a sum not less than twenty-five per cent of the amount of the contract, conditioned for the faithful performance of the contract; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions.

Protesting erroneous proceedings.

§ 16. At any time within ten days from the date of the first publication of the notice of award of contract, any owner of, or other person having any interest in any lot or land liable to assessment, who claims that any of the previous acts or proceedings, relating to said improvement are irregular, defective, erroneous or faulty, may file with the clerk of the city council a written notice specifying in what respect said acts and proceedings are irregular, defective, erroneous or faulty. Said notice shall state that it is made in pursuance of this section. All objections to any act or proceeding occurring prior to the date of the first publication of the aforesaid notice of award, in relation to said improvement, not made in writing and in the manner and at the

time aforesaid, shall be waived, provided, the resolution of intention to do the work has been actually published and the notices of improvement posted as provided in this act.

Advancing incidental expenses.

§ 17. Before being entitled to a contract, the bidder to whom the award was made, or the owners who have elected to take the contract, must advance to the superintendent of streets, for payment by him, the cost of publication of the notices, resolutions, orders and matters required under the proceedings prescribed in this act, and of such other notices as may be deemed requisite by the city council, together with all other incidental expenses. And in case the work is abandoned by the city before the letting of the contract the incidental expenses incurred previous to such abandonment shall be paid out of the city treasury.

Authority to make contracts. Work may be done under city engineer.

§ 18. The superintendent of streets is hereby authorized in his official capacity, to make all written contracts, and to receive all bonds authorized by this act, and to do any other act, either express or implied, that pertains to the street department under this act; and he shall fix the time for the commencement, which shall not be more than fifteen days from the date of the contract, and for the completion of the work under all contracts entered into by him, which work shall be prosecuted with diligence from day to day thereafter to completion, and he may extend the time so fixed from time to time, under the direction of the city council. The work must, in all cases, be done under the direction and to the satisfaction of the superintendent of streets and the materials used shall comply with the specifications and be to the satisfaction of said superintendent of streets and all contracts made therefor must contain a provision to that effect; provided, however, that if the city council by resolution adopted within ten days after the passage of the resolution ordering the work so directs the work shall be done under the direction of the city engineer and the materials used shall comply with the specifications and be to the satisfaction of said engineer, instead of said superintendent of streets, and in such case the contract shall contain a provision to that effect. Said contract shall contain also express notice that, in no case, except where it is otherwise provided by law or the city charter will the city, or any officer thereof, be liable for any portion of the expense, nor for any delinquency of persons or property assessed. The city council may, by ordinance, prescribe general rules directing the superintendent of streets (or the city engineer, in the cases herein provided) and the contractor as to the materials to be used, and the mode of executing the work, under all contracts thereafter made. The assessment and apportionment of the expenses of all such work or improvement shall be made by the superintendent of streets in the mode provided by this act. [Amendment of June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1467.]

Bond for labor and material. Lien for materials furnished.

§ 19. Every contractor, person, company or corporation, including contracting owners, to whom is awarded any contract for street work under this act, shall, before executing the said contract, file with the superintendent of streets a good and sufficient bond, approved by the mayor, in a sum not less than one-half of the total amount payable by the terms of said contract; such bond shall be executed by the principal and at least two sureties, who shall qualify for double the sum specified in said bond, and shall be made to inure to the benefit of any and all persons, companies, or corporations who perform labor on, or furnish materials to be used in the said work of improvement, and shall provide that if the contractor, person, company, or corporation to whom said contract was awarded fails to pay for any materials so furnished for the

said work of improvement, or for any work or labor done thereon of any kind, that the sureties will pay the same, to an amount not exceeding the sum specified in said bond. Any laborer, materialman, person, company or corporation, furnishing materials to be used in the performance of said work specified in said contract, or who performed work or labor upon said improvement, whose claim has not been paid by the said contractor, company or corporation, who executed the said contract, shall severally have a first lien upon and against the assessment, any partial assessment, any reassessment, and any bonds which may be issued to represent any assessment or reassessment. Such laborers, or materialmen may, at any time prior to thirty days after the recording of the assessment for said work, file with the superintendent of streets, a verified statement of his or its claim, together with a statement that the same, or some part thereof, has not been paid. At any time within ninety days after the filing of such claim, the persons, company, or corporation, filing the same or their assigns, may commence an action either to enforce the aforesaid lien, or on said bond, for the recovery of the amount due on said claim, together with the costs incurred in said action, and a reasonable attorneys fee to be fixed by the court; for the prosecution thereof. [Amendment of May 10, 1919. In effect July 22, 1919. Stats. 1919, p. 480.]

Frontage assessment. Method of assessment.

§ 20. Subdivision 1. The expenses incurred for any work authorized by this act (which expense shall not include the cost of any work done in such portion of any street as is required by law to be kept in order or repair by any person or company having railroad tracks thereon, nor include work which shall have been declared in the resolution of intention to be assessed on a district benefited) shall be assessed upon the lots and lands fronting thereon, except as otherwise in this act specifically provided; each lot or portion of a lot being separately assessed, in proportion to the frontage, at a rate per front foot sufficient to cover the total expense of the work.

Main street crossings.

Subdivision 2. The expense of the work done on main street crossings shall be assessed at a uniform rate per front foot of the quarter blocks and irregular blocks adjoining and cornering upon the crossings, and separately upon the whole of each lot or portion of a lot having any frontage in the said blocks fronting on said main streets, half way to the next main street crossing, or to the end of such street if it does not meet another, and all the way on said blocks to a boundary line of the city where no such crossing intervenes, but only according to its frontage in said quarter blocks and irregular blocks.

Main street terminations.

Subdivision 3. Where a main street terminates in another main street, the expenses of the work done on one half of the width of the street opposite the termination shall be assessed upon the lots in each of the two quarter blocks adjoining and cornering on that side, according to the frontage of such lots on said main streets, and the expense of the work on the other half of the width of said street when the work is sewerage of the terminating street only, shall be assessed upon the lots fronting on the termination and the lots adjacent to said lots on each side half way from the termination to the next terminating or intersecting street, according to the frontage of such lots on that side, and in all other work done on the termination, the property fronting on the termination shall be considered frontage and be assessed as set forth in subdivision one of this section.

Alley and main street crossings.

Subdivision 4. Where any alley or subdivision street crosses a main street, the expense of all work done on said crossing shall be assessed on all lots or portions of

lots half way on said alley or subdivision street to the next crossing or intersection, or to the end of such alley or subdivision street, if it does not meet another.

Alley and subdivision street crossing.

Subdivision 5. The expense of work done on alley or subdivision street crossings shall be assessed upon the lots fronting upon such alley or subdivision streets on each side thereof, in all directions, half way to the next street, place or court, on either side, respectively, or to the end of such alley or subdivision street, if it does not meet another.

Alley terminations.

Subdivision 6. Where a subdivision street, avenue, lane, alley, place or court terminates in another street, avenue, lane, alley, place or court, the expense of the work done on one half of the width of the subdivision street, avenue, lane, alley, place or court opposite the termination, shall be assessed upon the lot or lots fronting on such subdivision street, avenue, lane, alley, place or court so terminating, according to its frontage thereon, half way, on each side respectively, to the next street, avenue, lane, alley, place or court, or to the end of such street, avenue, lane, alley, place or court, if it does not meet another, and the expense of the work on the other half of the width when the work is sewerage of the terminating subdivision street, avenue, lane, alley, place or court, shall be assessed upon the lots fronting on the termination and the lots adjacent to said lots on each side half way from the termination to the next terminating or intersecting street, according to the frontage of such lots on that side, and in all other work done on the termination the property fronting on the termination shall be considered frontage and be assessed as set forth in subdivision one of this section.

One side of street.

Subdivision 7. Where any work mentioned in this act (manholes, sewers, cesspools, culverts, crosswalks, piling and capping excepted) is done on one side of the center line of any street, or sewerage or re-sewerage is ordered to be done under the sidewalk on only one side of any street for any length thereof, the assessment for the expenses thereof shall be made only upon the lots and lands fronting nearest upon that side of the street and for intervening intersections only upon the two quarter blocks adjoining and cornering upon that side.

Public property.

Subdivision 8. Whenever any lot, piece or parcel of land belonging to the United States, or to the state of California, or any lot, piece or parcel of land belonging to any county, city, public agent, mandatory of the government, school board, educational, penal or reform institution, or institution for the feeble-minded or the insane, and being in use in the performance of any public function, shall front upon the proposed work or improvement, or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said city council may, in the resolution of intention, declare that said lots, pieces or parcels of land, or any of them, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement. In the event that said lots, pieces or parcels of land, or any of them, shall by said resolution be omitted from the assessment, then the total expense of all work done shall be assessed on the remaining lots fronting on the work or improvement, or lying within the limits of the assessment district without regard to such omitted lots, pieces or parcels of land. In the event that the council shall, in such resolution of intention, declare that said lots, pieces or parcels of land so owned as aforesaid, or any of them, shall be included in the assessment, or in the event that no declaration is made respect-

ing such lots, pieces or parcels of land, or any of them, then said city shall be liable for such sum or sums as may thereafter be assessed against any such lots, pieces or parcels of land so owned and used, and so included in the assessment by reason of the aforesaid declaration, or such lots, pieces or parcels of land so owned and used respecting which the resolution of intention makes no declaration, which shall be payable by the said city out of the general fund unless the legislative body shall in its resolution of intention designate another fund.

When owners may grade.

Subdivision 9. It shall be lawful for the owner or owners of lots or lands fronting upon any street, the width and grade of which have been established by the city council, to perform, at his or their own expense (after obtaining permission from the council so to do, but before said council has passed its resolution of intention to order grading inclusive of this), any grading upon said street, to its full width, or to the center line thereof, and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer, setting forth the number of cubic yards of cutting and filling made by him or them in said grading, and the proportions performed by each owner, and that the same is done to the established width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the superintendent of streets, which certificate the superintendent shall record in a book kept for that purpose in his office, properly indexed. Whenever thereafter the city council orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners and his or their successors in interest, shall be entitled to credit, on the assessment upon his or their lots and lands fronting on said streets for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; provided, however, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them, and proportionately assessed for the whole of said grading; and the superintendent of streets shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and lands owned, respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work (except grading) on such street, in front of any block, at his or their own expense, and the city council shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done; provided, that the work so done at the expense of such owner or owners, shall be upon the official grade, and in condition satisfactory to the street superintendent at the time said order is passed.

Diagram of assessment district.

Subdivision 10. Whenever the resolution of intention declares that the cost and expenses of the work and improvement are to be assessed upon a district, the city engineer shall make a diagram of the property affected or benefited by the proposed work or improvement, as described in resolution of intention, and to be assessed to pay the expenses thereof. Such diagram shall show each separate lot, piece or parcel of land, the area in square feet of each of such lots, pieces or parcels of land, and the relative location of the same to the work proposed to be done, all within the limits of the assessment district; and when said diagram shall have been approved by the city council, the clerk shall certify the fact and date thereof. Immediately thereafter the said diagram shall be delivered to the superintendent of streets of said city, who shall, after the contractor of any street work has fulfilled his contract to the satisfaction of said superintendent of streets or city council on appeal, proceed to estimate upon the lands, lots or portions of lots within said assessment district, as shown by said diagram, the benefits arising from such work, and to be received by each such lot, portion of such lot, piece or subdivision of land, and shall thereupon assess upon and against said lands in said assessment district the total amount of the costs and expenses of such work, and in so doing shall assess said total sum upon the several pieces, parcels, lots or portions of lots, and subdivisions of land in said assessment district benefited thereby, to wit: Upon each respectively, in proportion to the estimated benefits to be received by each of said several lots, portions of lots, or subdivisions of land. In other respects the assessment shall be as provided in the next section, and the provisions of subdivisions one, two, three, four, five, six and seven of this section shall not be applicable to the work or improvement provided for in this subdivision.

Railroad property.

Subdivision 11. The terms, lot, lots, lands, piece or parcel of land wherever mentioned in this act shall be deemed to include and shall include property owned or controlled by any person, firm or corporation as a railroad, street or interurban railroad right of way, and whenever a railroad, street or interurban railroad right of way shall front on or abut or parallel or be included with or divide longitudinally any street improved under the provisions of this act or shall be included within any district to be assessed for the cost of any improvement provided in this act, such railroad right of way (whether the same is owned in fee or as an easement) shall be included in the warrant, assessment and diagram and shall be assessed in the manner and with the same effect as other lots, lands or pieces or parcels of land are assessed as provided in this act, and such railroad, street or interurban railroad right of way shall be subject to sale for nonpayment of assessments as in this act provided. [Amendment approved April 25, 1913, Stats. 1913, p. 78. In effect Aug. 10, 1913.]

Assessment to cover work.

§ 21. After the contractor of any street work has fulfilled his contract to the satisfaction of the street superintendent of said city, or the city engineer, if such power has been delegated to him, as hereinbefore provided, or of the city council on appeal, the street superintendent shall make an assessment to cover the sum due for the work performed and specified in said contract (including all incidental expenses), in conformity with the provisions of the preceding section according to the character of the work done; or, if any direction and decision be given by said council on appeal, then in conformity with such direction and decision, which assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to be paid therefor, together with all incidental expenses, the rate per front foot assessed, if the assessment be made per front foot, the amount of each assessment, the name of the

owner of each lot, or portions of a lot (if known to the street superintendent); if unknown the word "unknown" shall be written opposite the number of the lot and the amount assessed thereon, the number of each lot or porton or portions of a lot assessed, and shall have attached thereto a diagram exhibiting each street or street crossing, lane, alley, place or court, on which any work has been done, showing the relative location of each district, lot, or portion of lot to the work done, numbered to correspond with the numbers in the assessments, and showing the number of feet fronting or number of lots assessed, for said work contracted for and performed. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1467.]

Warrant.

§ 22. To said assessment shall be attached a warrant, which shall be signed by the superintendent of streets, and countersigned by the mayor of said city. The said warrant shall be substantially in the following form:

FORM OF WARRANT.

By virtue hereof, I (name of the superintendent of streets), of the city of, county of (or city and county of), and state of California, by virtue of the authority vested in me as said superintendent of streets, do authorize and empower (name of contractor) (his or their) agents or assigns, to demand and receive the several assessments upon the assessment and diagram hereto attached and this shall be (his or their) warrant for the same.

(Date)

.....

(Name of superintendent of streets.)

Countersigned by (name of mayor).

Assessments lien on lands. Warrant, etc., delivered to contractor.

§ 23. Said warrant, diagram, and assessment, together with the certificate, if any, of the city engineer of the quantity and character of the work done, shall be recorded in the office of said superintendent of streets. When so recorded the several amounts assessed shall be a lien upon the lands, lots, or portions of lots assessed, respectively, for the period of two years from the date of said recording, unless sooner discharged; and from and after the date of said recording of any warrant, assessment and certificate, all persons shall be deemed to have notice of the contents of the record thereof. After said warrant, assessment, and certificate are recorded, the same shall be delivered to the contractor, or his agent, or assigns, on demand, but not until after the payment to the said superintendent of streets of the incidental expenses not previously paid by the contractor, or his assigns; and by virtue of said warrant said contractor, or his agents or assigns, shall be authorized to demand and receive the amount of the several assessments made to cover the sum due for the work specified in such contracts and assessments. [Amendment of June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1468.]

Demanding payment.

§ 24. The contractor or his assigns, or some person in his or their behalf, shall call upon the persons assessed, or their agents, if they can conveniently be found, and demand payment of the amount assessed to each. If any payment be made, the contractor, his assigns, or some person in his or their behalf, shall receipt the same upon the assessment in presence of the person making such payment, and shall also give a separate receipt if demanded. Whenever the person so assessed, or their agents cannot conveniently be found, or whenever the name of the owner of the lot is stated as "Unknown" on the assessment, then the said contractor, or his assigns, or some person in his or their behalf, shall publicly demand payment on the premises assessed.

Warrant returned. Unpaid assessments.

§ 25. The warrant shall be returned to the superintendent of streets within thirty days after its date, with a return attached thereto, signed by the contractor, or his assigns, or some person in his behalf, verified upon oath, stating the nature and character of the demand, and whether any of the assessments remain unpaid, in whole or in part, and the amount thereof. Thereupon the superintendent of streets shall record the return so made with the record of the warrant and assessment either in the margin of said record or in the same book with and immediately following the record of the assessment; and also the original contract referred to therein, if it has not already been recorded at full length in a book to be kept for that purpose in his office, and shall sign the record. The said superintendent of streets is authorized at any time to receive the amount due upon any assessment list and warrant issued by him, and give a good and sufficient discharge therefor; provided, that no such payment so made after suit has been commenced, without the consent of the plaintiff in the action, shall operate as a complete discharge of the lien until the costs in the action shall be refunded to the plaintiff; and he may release any assessment upon the books of his office, on the payment to him of the amount of the assessment against any lot with interest, or on the production to him of the receipt of the party or his assigns to whom the assessment and warrant were issued; and if any contractor shall fail to return his warrant within the time and in the form provided in this section, he shall thenceforth have no lien upon the property assessed; provided, however, that in case any warrant is lost, upon proof of such loss a duplicate can be issued, upon which a return may be made, with the same effect as if the original had been so returned. After the return of the assessment and warrant as aforesaid, all amounts remaining due thereon shall draw interest at the rate of ten per cent per annum until paid, said interest to be computed from the date of the recording of the return. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1468.]

Final objections.

§ 26. The owners, whether named in the assessment or not, the contractor, or his assigns, and all other persons directly interested in any work done under this act, or in the assessment, feeling aggrieved by any act or determination of the superintendent of streets in relation thereto, or who claim that the work has not been performed according to the contract in a good and substantial manner, or having or making any objection to the correctness or legality of the assessment or other act, determination, or proceedings of the superintendent of streets, shall, within thirty days after the date of the warrant, appeal to the city council as provided in this section, by briefly stating their objections in writing, and filing the same with the clerk of said city council. Notice of the time and place of the hearing, as fixed by the council, briefly referring to the work contracted to be done, or other subject of appeal, and to the acts, determinations, or proceedings objected to or complained of, shall be posted conspicuously by the clerk, on or near the chamber door of the council chambers, for five days. Upon such appeal, the said city council may remedy and correct any error or informality in the proceedings, and revise and correct any of the acts or determinations of the superintendent of streets relative to said work; may confirm, amend, set aside, alter, modify or correct the assessment in such manner as to them shall seem just, and require the work to be completed according to the directions of the city council; and may instruct and direct the superintendent of streets to correct the warrant, assessment, or diagram in any particular, or to make and issue a new warrant, assessment, and diagram, to conform to the decisions of said city council in relation thereto, at their option. All the decisions and determinations of said city council, upon notice and hearing as aforesaid, shall be final and conclusive upon all persons entitled to appeal under the provisions of this section, as to all errors, infor-

malities, and irregularities which said city council might have avoided, or have remedied, during the progress of the proceedings, or which it can at that time remedy. No assessment, warrant, diagram or affidavit of demand and nonpayment, after the issue of the same, and no proceedings prior to the assessment, shall be held invalid by any court for any error, informality, or other defect in the same, where the resolution of intention of the council to do the work, has been actually published as herein provided, and said notices of improvement have been posted along the line of the work, as provided in section 5 of this act, before the passage of the resolution ordering the work to be done.

Contractor may sue. Attorney's fee. Warrant, etc., evidence.

§ 27. At any time after the period of thirty-five days from the day of the date of the warrants, as herein provided, or if an appeal is taken to the city council, as provided in section 26 of this act, at any time after five days from the decision of said council, or after the return of the warrant or assessment after the same may have been corrected, altered, or modified, as provided in said section 26 (but not less than thirty-five days from the date of the warrant), the contractor or his assignee may sue, in his own name, the owner of the land, lots or portions of lots, assessed on the day of the date of the recording of the warrant, assessment, and diagram, or any day thereafter during the continuance of the lien of said assessment, and recover the amount of any assessment remaining unpaid, with interest thereon at the rate of ten per cent per annum until paid. And in all cases of recovery under the provisions of this act, where personal demand has been made upon the owner or his agent, but not otherwise, the plaintiff shall recover such sum as the court may fix, in addition to the taxable cost as attorney's fees, but not any percentage upon said recovery. And when suit has been brought, after a personal demand has been made, and a refusal to pay such assessment so demanded, the plaintiff shall be entitled to have and recover the sum of fifteen dollars as attorney's fees, in addition to all taxable costs, notwithstanding that the suit may be settled or a tender may be made before a recovery in said action, and he may have judgment therefor. Suit may be brought in the superior court within whose jurisdiction the city is in which said work has been done, and in case any of the assessments are made against lots, portions of lots, or lands, the owners whereof can not, with due diligence, be found, the service of each of said actions may be had in such manner as is prescribed in the codes and laws of this state. It shall be competent to bring a single action under any such assessment irrespective of the number of lots assessed where the parties defendant are identical, and where separate actions are brought, the same may be consolidated by order of the court. The said warrant, assessment, certificate and diagram, with the affidavit of demand and nonpayment, shall be held prima facie evidence of the regularity and correctness of the assessment and of the prior proceedings and acts of the superintendent of streets and city council upon which said warrant, assessment and diagram are based, and like evidence of the right of the plaintiff to recover in the action.

Complaint.

In a complaint in any such action it shall be held sufficient to allege briefly that the city council ordered the work, the performance of the work under the contract, the making of the assessment, the issuing of said warrant and certificate and the making of said diagram; that an assessment (naming the amount) was levied against that certain lot or parcel of land (describing the same) which, according to the information and belief of the plaintiff, is owned by the defendant; that payment of said assessment has been demanded in the time, form and manner prescribed in this act and that the same has not been paid.

Description of lots.

In describing said lot or parcel of land in said complaint it shall be sufficient to refer to the same by its number upon said diagram, provided a certified copy of said warrant, assessment and diagram shall have been previously filed in the office of the recorder of the county or city and county in which the same is situated. It shall be the duty of such recorder to so file any such certified copy presented to him upon payment of the filing fee therefor, which fee is hereby fixed at fifty cents. [Amendment of June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1469.]

New assessment permitted.

§ 28. Whenever, in any suit, the lien of an assessment or reassessment, or of a bond issue for the cost of such work, shall be held invalid for any cause arising subsequent to the publication and posting of the resolution of intention and the posting of the notices of improvement along the line of work, or because the work or any part thereof is not sufficiently described in the resolution of intention, the contractor or his assigns, or the holder of such bond, shall have the right, within sixty days thereafter, to apply for and receive a new assessment for the cost of the work done and sufficiently described in the resolution of intention or specifications on file, such cost to be assessed upon the property and in the same manner as provided in sections 20 and 21 of this act; and the street superintendent shall, within twenty days after such application, make and deliver to said applicant a new assessment, warrant and diagram in accordance with the law governing the issuance of originals of such documents, and the mayor shall in like manner countersign the said warrant, which reassessment shall be a lien on the property so assessed for two years from the date of the recording of said reassessment and warrant and be enforced in the same manner as an original assessment would be enforced. If an appeal be taken from the judgment in which such an assessment is held invalid, the time herein provided for making application for a new assessment shall not begin until such case be in some manner finally disposed of.

Selling premises on execution.

§ 29. The court in which said suit shall be commenced shall have power to adjudge and decree a lien against the premises assessed, and to order such premises to be sold on execution, as in other cases of the sale of real estate by the process of said courts; and on appeal, the appellate courts shall be vested with the same power to adjudge and decree a lien and to order such premises to be sold on execution or decree as is conferred on the court from which an appeal is taken. Such premises, if sold, may be redeemed as in other cases. In all suits now pending or hereafter brought under this act to recover street assessments, the proceedings therein shall be governed and regulated by the provisions of this act, and also, when not in conflict herewith, by the codes of this state.

Partial assessment.

§ 30. The city council, instead of waiting until the completion of the improvement, may, in its discretion, and not otherwise, upon the completion of two blocks or more of any improvement, order the street superintendent to make an assessment for the proportionate amount of the contract completed, and thereupon proceedings and rights of collection of such proportionate amount shall be had as provided in the preceding sections.

Repairs.

§ 31. When any portion of any improved street, avenue, lane, alley, court, or place in said city, or any sidewalk constructed thereon shall be out of repair, or pending reconstruction, and in condition to endanger persons or property passing thereon, or

in condition to interfere with the public convenience in the use thereof, it shall be the duty of said superintendent of streets to require, by notice in writing, to be delivered to them or to their agents personally, or left on the premises, the owners or occupants of lots or portions of lots fronting on said portion of said street, avenue, alley, lane, court, or place, or said portion of said sidewalks so out of repair or needing reconstruction as aforesaid, to repair or reconstruct, or to do both, forthwith, said portion of said street, avenue, lane, alley, court, or place, to the center line of said street in front of the property of which he is the owner, or tenant, or occupant; and said superintendent of streets shall particularly specify in said notice what work is required to be done, and how the same is to be done, and what material shall be used in said repairs, or reconstruction, or both. If said repairs, or reconstructions, or both, be not commenced within three days after notice given as aforesaid, and diligently and without interruption prosecuted to completion, the said superintendent of streets may, under authority from said city council, make such repairs, reconstructions, or both, or enter into a contract with any suitable person, at the expense of the owner, tenant, or occupant, after the specification for the doing of said work shall have been conspicuously posted by him in his office for two days, inviting bids for the doing of said work, which bids shall be delivered to him at his office on or before the second day of said posting, and opened by him on the next day following the expiration of said two days of posting, and the contract by him be awarded to the lowest bidder, if such lowest bid, in the judgment of said street superintendent, shall be reasonable. All of said bids shall be preserved in his office and open at all times after the letting of the contract to the inspection of all persons, and such owner, tenant, or occupant shall be liable to pay said contract price. Such work shall be commenced within twenty-four hours after the contract shall have been signed, and completed without delay to the satisfaction of said street superintendent. Upon the completion of said repairs, or reconstruction, or both, by said contractors as aforesaid, to the satisfaction of said superintendent of streets, said superintendent of streets shall make and deliver to said contractor a certificate to the effect that said repairs, or reconstruction, or both, have been properly made by said contractor to the grade, and that the charges for the same are reasonable and just, and that he, said superintendent, has accepted the same.

Suit for repairs.

§ 32. If the expenses of the work and material for such improvement, after the completion thereof, and the delivery to said contractor of said certificate, be not paid to the contractor so employed, or his agent or assignee, on demand, the said contractor, or his assignee, shall have the right to sue such owner, tenant, or occupant, for the amount contracted to be paid; and said certificate of the superintendent of streets shall be prima facie evidence of the amount claimed for said work and materials, and of the right of the contractor to recover for the same in such action. Said certificate shall be recorded by the said superintendent of streets in a book kept by him in his office for that purpose, properly indexed, and the sum contracted to be paid shall be a lien, the same as provided in section 23 of this act, and may be enforced in the same manner.

Additional penalty for neglect.

§ 33. In addition, and as cumulative to the remedies above given, the city council shall have power, by resolution or ordinance, to prescribe the penalties that shall be incurred by any owner or person liable, or neglecting, or refusing to make repairs when required, as provided in section 31 of this act, which fines and penalties shall be recovered for the use of the city by prosecution in the name of the people of the state of California in the court having jurisdiction thereof, and may be applied, if deemed

expedient by the said council, in the payment of the expenses of any such repairs not otherwise provided for.

Tenant may pay assessment.

§ 34. Any tenant or lessee of the lands or lots liable may pay the amount assessed against the property of which he is the tenant or lessee under the provisions of this act, or he may pay the price agreed on to be paid under the provisions of section 30 of this act, either before or after suit brought, together with costs, to the contractor, or his assigns, or he may redeem the property, if sold on execution or decree for the benefit of the owner, within the time prescribed by law, and deduct the amount so paid from the rents due and to become due from him, and for any sums so paid beyond the rents due from him, he shall have a lien upon and may retain possession of the said land and lots until the amount so paid and advanced be satisfied, with legal interest, from accruing rents, or by payment by the owner.

Service of notice.

§ 35. Notices in writing which are required to be given by the superintendent of streets, under the provisions of this act, may be served by any person, with the permission of the superintendent of streets, and the fact of such service shall be verified by the oath of the person making it, taken before the superintendent of streets, who for that purpose, and for all other purposes, and in all cases where a verification is required under the provisions of this act, is hereby authorized to administer oaths, or other person authorized to administer oaths or such notices may be delivered by the superintendent of streets himself, who must also verify the service thereof, and who shall keep a record, of the fact of giving such notices, when delivered by himself personally, and also of the notices and proof of service when delivered by any other person.

§ 36. [Repealed June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1477.]

Records of street superintendent.

§ 37. The superintendent of streets shall keep a public office in some convenient place within the municipality, and such records as may be required by the provisions of this act. The records so kept and signed by him, shall have the same force and effect as other public records, and copies therefrom duly certified, may be used in evidence with the same effect as the originals. The said records shall, during all office hours, be open to the inspection of any person wishing to examine them, free of charge.

Duty of street superintendent.

§ 38. It shall be the duty of the superintendent of streets to see that the laws, ordinances, orders, and regulations relating to the public streets and highways be fully carried into execution, and that the penalties thereof are rigidly enforced. He shall keep himself informed of the condition of all the public streets and highways, and also of all public buildings, parks, lots, and grounds of said city, as may be prescribed by the city council. He shall, before entering upon the duties of his office, give bonds to the municipality, with such sureties and for such sums as may be required by the city council; and should he fail to see the laws, ordinances, orders, and regulations relative to the public streets or highways carried into execution, after notice from any citizen of a violation thereof, he and his sureties shall be liable upon his official bond to any person injured in his person or property in consequence of said official neglect. He shall superintend and direct the cleaning of all sewers, and the expense of the same shall be paid out of the street or sewer fund of said city.

Damages. Defective streets.

§ 39. If, in consequence of any graded street or public highway or sidewalk, being out of repair and in condition to endanger persons or property passing thereon, any person, while carefully using said street or public highway, or sidewalk and exercising ordinary care to avoid the danger, suffer damage to his person or property, through any such defect therein, no recourse for damages thus suffered shall be had against such city; but if such defect in the street or public highway shall have existed for the period of twenty-four hours or more after written notice thereof to the said superintendent of streets, then the person or persons on whom the law may have imposed the obligations to repair such defect in the street or public highway, and also the officer or officers through whose official negligence such defect remains unrepaired, shall be jointly and severally liable to the party injured for the damage sustained; provided, that said superintendent has the authority to make said repairs, under the direction of the city council, at the expense of the city.

Partial expense from treasury.

§ 40. The city council may, in its discretion, order, by resolution that the whole or any part of the cost and expenses of any of the work mentioned in this act be paid out of the treasury of the municipality from such fund as the council may designate, in which case it shall be so stated in the resolution of intention. Whenever a part of such cost and expenses is so ordered to be paid, the superintendent of streets, in making up the assessment heretofore provided for such cost and expenses, shall first deduct from the whole cost and expenses such part thereof as has been so ordered to be paid out of the municipal treasury, and shall assess the remainder of said costs and expenses proportionately upon the lots, parts of lots and lands fronting on the streets where said work was done, or liable to be assessed for such work, and in the manner heretofore provided.

City engineer.

§ 41. The city engineer, or where there is no city engineer, the county or city and county surveyor, shall be the proper officer to do the surveying and other engineering work necessary to be done under this act, and to survey and measure the work to be done under contracts for grading and macadamizing streets, and to estimate the costs and expenses thereof; and every certificate signed by him in his official character shall be prima facie evidence in all courts in this state of the truth of its contents. He shall also keep a record of all surveys made under the provisions of this act, as in other cases. In all those cities where there is no city engineer, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of city engineer, and all the provisions hereof applicable to the city engineer shall apply to such person so appointed. Said city council is hereby empowered to fix his compensation for such services.

Superintendent of work.

§ 42. The superintendent of streets (or the city engineer, if the city council has by resolution directed that the work be done under his direction and to his satisfaction, as provided in section 18 of this act) shall, when in his judgment it is necessary appoint a suitable person or persons to take charge of and superintend the construction and improvement of any work authorized by this act, whose duty it shall be to see that the contract made for the doing of said work is strictly fulfilled in every respect and in case of any departure therefrom to report the same to the superintendent of streets, or to the city engineer, if appointed by him. Such person shall be allowed for his time actually employed in the discharge of his duties such compensation as shall be just, but not to exceed five dollars per day. The sum to which the party so employed shall be

entitled shall be deemed to be incidental expenses within the meaning of those words as defined by this act. [Amendment of June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1470.]

PART II.

Modification of grade.

§ 43. The city council is hereby empowered to change or modify the grade of any public street, lane, alley, place or court, and to regrade or repave the same, so as to conform to such modified grade, in the manner as hereinafter provided. Before any change of grade is ordered the city council shall pass a resolution of intention to make such change or modification of grade, and it shall have power at the same time and in the same resolution to provide for the actual cost of performing the work of regrading, repaving, sewerage, sidewalk, or curbing of said street or portion of street, with the same or other material with which it was formerly graded, paved, sewerage, sidewalked, or curbed; and that the cost of the same shall also be assessed upon the same district which is declared to be benefited by such changed or modified grade. One or more streets or blocks of streets may be embraced in the same resolution. Such resolution shall be published twice in the newspaper in which the official notices of the city council are usually printed and published, to be designated in such resolution and shall describe the proposed change or modification of grade or regrading, and shall designate and establish the district to be benefited by such change or modification of grade or regrading, and to be assessed for the cost of the same. The superintendent of streets shall also cause to be conspicuously posted within the district designated in the resolution, notice of the passage of said resolution. Said notice shall be the same in all requirements of contents and posting as the "notices of improvement" provided for in section five of this act. If no objection to said proposed change or changes, or modifications of grade, shall be filed with the clerk of the council within thirty days from the first publication of the resolution of intention hereinbefore mentioned, or, if objections are presented, and after due notice and hearing are overruled by the council, the city council shall have power to order and declare such grades to be changed and established in conformity to said resolution, which order shall be posted by the clerk on the chamber door of the council for five days. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1471.]

Claiming damages.

§ 44. Within thirty days after the first posting of said order, as aforesaid, any person owning property fronting upon said portions of the street or streets where such change of grade is made, may file a petition with the clerk of the city council showing the fact of such ownership, the description and situation of the property, its market value, and the estimated amount of damages over and above all benefits which the property would sustain by the proposed change if completed. Such petition shall be verified by the oath of the petitioners or their agents.

Commissioners.

§ 45. Whenever such petition or petitions have been filed, the mayor, engineer or surveyor, and superintendent of streets of the city, or city and county, or board of public works if there be such a board acting as a board of commissioners, shall assess the benefits, damages, and costs of the proposed change of grade upon each separate lot of land situated within such assessment district showing the same by a plat as said lot appears of record upon the last city, or city and county assessment-roll. The commissioners shall be sworn to make the assessments of benefits and damages to the best of their judgment and ability, without fear or favor. The commissioners shall have power to subpoena witnesses to appear before them to be examined under oath, which any one of said commissioners is authorized to administer.

Damages and benefits.

§ 46. The commissioners having determined the damage which would be sustained by each petitioner, in excess of all benefits, shall proceed to assess the total amount thereof, together with the costs, charges, and expenses of the proceedings, upon the several lots of land benefited within the district of assessment, so that each of the lots shall be assessed in accordance with its benefits caused by such work or improvement; and during the progress of their work shall make a report to such city council as often as it may be required.

Report of commissioners.

§ 47. The commissioners shall make their report in writing, and shall subscribe to the same and file it with the city council. In their said report they shall describe separately each piece of property which will sustain damage, stating the amount of damages each will sustain over and above all benefits. They shall also give a brief description of each lot benefited within said assessment district, the name of the owner, if known, and the amount of benefits in excess of damages assessed against the same. In case the three commissioners do not agree, the award agreed upon by a majority of them shall be sufficient. In designating the lots to be assessed, reference may be had to a diagram of the property in the district affected; such diagram to be attached to and made a part of the report of the commissioners. If in case the commissioners find that conflicting claims of title exist, or shall be in ignorance or doubt of the ownership of any lot or land, or any improvement thereon, or any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any land or improvements, or particulars of their interest, shall not affect the validity of the assessment.

Notice of hearing report.

§ 48. On the filing of said report, the clerk of said city council shall give notice of such filing by publication twice in one or more daily newspapers, or in a weekly or semi-weekly newspaper so published and circulated; and said notice shall require all persons interested to show cause, if any, why such report should not be confirmed, before the city council, on a day to be fixed by the city council and stated in said notice, which day shall not be less than twenty days from the first publication thereof.

Objections to report.

§ 49. All objections shall be in writing and filed with the clerk of the city council, who shall, at the next meeting after the date fixed in the notice to show cause, lay the said objections, if any, before the council, which shall fix a time for hearing the same; of which time the clerk shall notify the objectors in the same manner as are notified objectors to the original resolution of intention. At the time set, or at such other time as the hearing may be adjourned, the city council shall hear such objections and pass upon the same, and at such time shall proceed to pass upon such report, and may confirm, correct, or modify the same, or may order the commissioners to make a new assessment, report, and plat, which shall be filed, notice given and had, as in the case of an original report.

Advertising for bids.

§ 50. In case the resolution of intention also provides for the assessment upon the district the cost of regrading or repaving such street or streets to such changed or modified grade, after the report of the commissioners as to the damages caused by such change of grade has been passed upon by the city council, it shall then advertise for bids to perform the work of regrading, repaving, sewerage, sidewalking or curbing such street or streets with the same or other material with which the same had been formerly graded, paved, sewerage, sidewalked, or curbed; first causing a notice, with

specifications, to be posted conspicuously for five days on or near the council chamber door, inviting sealed proposals or bids for doing such work, and shall also cause notices of said work, inviting said proposals and referring to the specifications posted or on file, to be published twice, in a daily, semi-weekly, or weekly newspaper published and circulated in said city, and designated by the city council for that purpose. All proposals or bids offered shall be accompanied by a check, payable to the city, and certified by a responsible bank, which shall not be less than ten per cent of the aggregate of the proposals; or by a bond for said amount, signed by the bidder and two sureties, who shall justify under oath in double said amount over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of the said city council, and said council shall in open session publicly open, examine and declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by a check or a bond satisfactory to the council. The city council may reject any and all bids, and may award the contract to the lowest responsible bidder. If not accepted the city council may readvertise for proposals or bids as in the first instance, and thereafter proceed in the manner in this section provided. All checks accompanying bids shall be held by the clerk until such successful bidder has entered into a contract, as herein provided; and in case he refuses so to do, then the amount of his certified check shall be declared forfeited to the city, and shall be collected and paid into its general fund, and all bonds so forfeited shall be prosecuted, and the amount thereof collected and paid into such fund. Notice of the awards of the contracts shall be published and posted in the same manner as hereinbefore in this section provided for the posting of proposals for said work.

Making assessment.

§ 51. After such contract has been awarded and entered into, the clerk of the city council shall certify to the city council that fact, together with the total amount of the cost of the same, whereupon the city council shall cause to be forwarded to the commissioners a copy of such certificate; whereupon such commissioners shall proceed to assess the cost of doing such work upon all the lots and land lying within the district to be assessed, distributing the same so that each lot will be assessed for its proportion of the same, according to the benefits it receives from the work, and in the same manner in which the damages caused by the change of grade were assessed upon the same. Such commissioners in making such assessment shall show the total amount for which each lot or tract is assessed, in excess of all benefits, for the total cost of changing and modifying the grade of the street, as well as the regrading, repaving, sewerage, sidewalk, and curbing of the same, and costs or damages connected therewith. The provisions of part I of this act in regard to the mode or manner of the assessment of the cost of such work shall not apply to the work in this part contemplated; neither shall the provisions of this act in regard to the issuing of bonds to represent the cost of the same, nor the provisions in regard to the right of protest against the work apply.

Assessment-roll.

§ 52. The clerk of said city council shall forward to the street superintendent of the city a certified copy of the report, assessment, and plat, as finally confirmed and adopted by the city council. Such certified copy shall thereupon be the assessment-roll, the cost of which shall be provided for by the commissioners, as a portion of the cost of the proceedings therein. Immediately upon receipt thereof by the street superintendent, the assessment therein contained shall become due and payable, and shall be a lien upon all the property contained or described therein.

Collecting assessments.

§ 53. The superintendent of streets shall thereupon give notice, by publication twice in one or more daily newspapers published and circulated in said city, or city and

county, or in a weekly or semi-weekly newspaper so published and circulated, that he has received said assessment-roll, and that all sums levied and assessed in said assessment-roll are due and payable immediately, and that the payment of said sums is to be made to him within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of such delinquent assessment, together with the cost of advertising each delinquent assessment will be added thereto. When payment of any assessment is made to said superintendent of streets, he shall write the word "paid" and the date of payment opposite the respective assessment so paid, and the name of the persons by or for whom said assessment is paid, and shall give a receipt therefor. On the expiration of said thirty days, all assessments then unpaid shall be and become delinquent, and said superintendent of streets shall certify such fact at the foot of said assessment-roll, and shall add five per cent to the amount of each assessment so delinquent. After the date of said delinquency no assessment shall be received unless said five per cent together with all costs be paid therewith.

Sale of property.

§ 54. The said superintendent of streets shall, within five days from the date of such delinquency, proceed to advertise the various sums delinquent, and the whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece or parcel of land separately assessed. Said list of delinquent assessments, with a notice of the time and place of sale of the property affected thereby, shall be published twice in one or more daily newspapers published and circulated in such city, or in a weekly newspaper so published and circulated before the day of sale for such delinquent assessment. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment list, and the place must be in or in front of the office of said superintendent of streets. If any assessment together with said penalty and costs be not paid before the time of sale the street superintendent shall proceed to sell and shall sell each lot, piece or parcel of land separately assessed at public auction to the bidder offering to pay the amount due for the least portion of such lot, piece or parcel of land so offered for sale, and shall issue a certificate therefor. If there be no bidder said property shall be struck off to the municipality.

Redeemable within one year.

§ 55. All property sold shall be subject to redemption for one year by the payment of the amount of the assessment, penalty and costs and interest thereon at the rate of ten per cent per annum from the date of sale. The superintendent of streets shall, if there is no redemption, make and deliver to the purchaser at such sale, or his consignee, a deed conveying the property sold, and shall collect for each deed one dollar. The deed of the street superintendent, made after such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings hereunder, and of title in the grantee.

Separate funds.

§ 56. The superintendent of streets shall from time to time pay over to the city treasurer all moneys collected by him on account of any such assessments. The city treasurer shall, upon receipt thereof, place the same in a separate fund, designating each fund by the name of the street, square, lane, alley, court, or place for the change of grade for which the assessment was made. Payments shall be made from said fund to the parties entitled thereto, upon warrants signed by the commissioners or a majority of them.

Notice of damages awarded.

§ 57. When sufficient money is in the hands of the city treasurer, in the fund voted for the proposed work or improvement, to pay the total cost for damages, as well as for the cost of doing the work, and all other expenses connected therewith, it shall be the duty of the commissioners to notify the owner, possessor, or occupant of the premises damaged, and to whom damages have been awarded, that a warrant has been drawn for the payment of the same, which can be received at the office of such commissioners. Such notification may be made by depositing a notice, postage prepaid, in the postoffice, addressed to his last known place of residence. If, after the expiration of three days the service or deposit of the notice in the postoffice, he shall not have applied for such warrant, the same shall be drawn and deposited with the city treasurer, to be delivered to him upon demand.

Condemnation proceedings.

§ 58. If the owner of any premises damaged neglects or refuses, for ten days after the warrant has been placed in the hands of the city treasurer, subject to his demand, to accept the same, the city council may cause proceedings to be commenced, in the name of the city, to condemn said premises, as provided by law under the right of eminent domain. The resolution of intention shall be conclusive evidence of the necessity of the same. Such proceedings shall have precedence, so far as the business of the court will permit, and any judgment for damages therein rendered shall be payable out of a special fund in the treasury for that purpose. At any time after the trial and judgment entered, or pending appeal, the court may order the city treasurer to set apart in the city treasury a sufficient sum from said fund to answer the judgment, and thereupon may authorize or order the municipality to proceed with the proposed work or improvements. In case of a deficiency in said fund to pay the whole assessed judgment and damages, the city council may, in its discretion, order the balance thereof to be paid out of the general fund of the treasury, or to be distributed by the commissioners over the property assessed by a supplementary assessment; but in the last named case, in order to avoid delay, the city council may advance such balance out of any available fund in the treasury, and reimburse the same from the collection of assessments. The treasurer shall pay such warrants in the order of their presentation; provided, that warrants for damages and for costs of performing the work shall have priority over warrants for charges and expenses, and the treasurer shall see that sufficient money remains in the fund to pay all warrants of the first class before paying any of the second. The provisions of section 1251 of the Code of Civil Procedure, requiring the payment of damages within thirty days after the entry of judgment, shall not apply to damages rendered in proceedings under this act. All provisions contained in parts I and IV of this act, which provisions are not in conflict herewith, shall apply to all matters herein contained.

PART III.**Serial bonds may be issued.**

§ 59. The city council of any municipality in this state shall have the power, in its discretion, to determine that serial bonds shall be issued in the manner and form hereinafter provided to represent assessments of twenty-five dollars or over for the cost of any work or improvement authorized in part I of this act.

Life of bonds. Interest. When payable. Owner may pay.

§ 60. Said serial bonds shall extend over a period not to exceed nine years from the second day of January next succeeding their date, and an even annual proportion of the principal sum thereof shall be payable, by coupon, on the second day of January every year after their date, until the whole is paid, and the interest shall be payable

semi-annually, by coupon, on the second days of January and July, respectively, of each year, at the rate of not to exceed ten per cent per annum on all sums unpaid, until the whole of said principal and interest are paid.

Said bonds and interest thereon shall be paid at the office of the city treasurer of said municipality, who shall keep a fund designated by the name of said bonds, into which he shall place all sums paid him for the principal of said bonds and the interest thereon, and from which he shall disburse such sums, upon the presentation of said coupons; and under no circumstances shall said bonds or the interest thereon be paid out of any other fund. Said city treasurer shall keep a register in his office, which shall show the series, number, date, amount, rate of interest, payee and indorsees of each bond, and the number and amount of each coupon of principal or interest paid by him and shall cancel and file each coupon so paid.

The owner of or any person interested in any lot or parcel of land upon which a bond has been issued under the terms of this act may at any time before commencement of proceedings for sale pay off such bond and discharge the land described in the bond from the lien of the assessment, by paying to the city treasurer, for the holder of such bond, the amount then unpaid on the principal sum thereof, all interest thereon which has accrued and is unpaid, and all penalties accrued and unpaid, together with the two semi-annual installments of interest which will next thereafter become due according to the terms of such bond. Upon such payment being made to the city treasurer he shall report the same to the street superintendent, who shall forthwith mark paid on the margin of the record of the assessment, the assessment to represent which such bond was issued, and thereupon the lien of said assessment shall cease and the city treasurer shall forthwith notify the holder of the bond and call in the same. The city treasurer shall enter in his record of such bond the amount paid and the date of payment, and upon the lien of the assessment being extinguished as aforesaid, shall cancel said bond and file it in his office. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1471.]

Notice in resolution of intention.

§ 61. When said city council shall determine that serial bonds shall be issued to represent the expenses of any proposed work or improvement under this act, it shall so declare in the resolution of intention to do said work, and shall specify the rate of interest which they shall bear. The like description of said bonds shall be inserted in the resolution ordering the work, in the resolution of award, and in all notices of said proceedings required by this act to be either posted or published; and also a notice that a bond will issue to represent each assessment of twenty-five dollars or more remaining unpaid for thirty days after the date of the warrant, or five days after the decision of said council upon an appeal, shall be included in the warrant provided for in section 22 of this act.

Notification to treasurer.

§ 62. After the full expiration of thirty days from the date of the warrant, or if an appeal be taken to the city council as provided in this act, then five days after the final decision of said council, and after the street superintendent shall have recorded the return, as provided in section 25 hereof, the street superintendent shall make and certify to the city treasurer a complete list of all assessments unpaid, which amount to twenty-five dollars or over, upon any assessment or diagram number; and said treasurer shall thereupon make out, sign, and issue to the contractor, or his assigns, payee of the warrant and assessment, a separate bond, representing upon each lot or parcel of land upon said list the total amount of the assessments against the same, as thereon shown. And if said lot or parcel of land is described upon said assessment and diagram by its number or block, or both, and is also designated by its number

or block, or both, upon the official map of said municipality, or upon any map on file in the office of the county recorder of the county in which said municipality is situated, then it shall be in said bond a sufficient description of said lot or parcel of land to designate it by said number or block, or both, as it appears on said official or recorded map.

Street improvement bond.

§ 63. Said bond shall be substantially in the following form:

STREET IMPROVEMENT BOND.

Series (designating it), in the city (or other form of the municipality) of (naming it).
\$ 100. No.

Under and by virtue of an act of the legislature of the state of California (title of this act), I, out of the fund for the above designated street improvement bonds, series, will pay to, or order, the sum of dollars (\$) with interest at the rate of per cent per annum, all as is hereinafter specified, and at the office of the treasurer of the of, state of California.

This bond is issued to represent the cost of certain street work upon, in the of, as the same is more fully described in assessment number, issued by the street superintendent of said, after the acceptance of said work, and recorded in his office. Its amount is the amount assessed in said assessment against the lot or parcel of land numbered therein, and in the diagram attached thereto, as number, and which now remains unpaid, but until paid, with accrued interest, is a first lien upon the property affected thereby, as the same is described herein, and in said recorded assessment with its diagram, to wit: the lot or parcel of land in said of, county of, state of California.

This bond is payable exclusively from said fund, and neither the municipality nor any officer thereof is to be holden for payment otherwise of its principal or interest. The term of this bond is years from the second day of January next succeeding its date, and at the expiration of said time the whole sum then unpaid shall be due and payable; but on the second day of January of each year after its date an even annual proportion of its whole amount is due and payable, upon presentation of the coupon therefor, until the whole is paid, with all accrued interest at the rate of per centum per annum.

The interest is payable semi-annually, to wit: On the second days of January and of July in each year hereafter, upon presentation of the coupons therefor, the first of which is for the interest from date to the next second day of, and thereafter the interest coupons are for semi-annual interest, except the last, which is for interest from the semi-annual payment next preceding and to date of the final maturity of this bond.

This bond may be redeemed by the owner or any person interested in any lot or parcel of land described herein, in the manner provided in said act, at any time before maturity, and before commencement of proceedings for sale, upon payment to the city treasurer, for the holder of this bond, of the amount then unpaid on the principal sum thereof, all interest thereon which has accrued and is unpaid and all penalties accrued and unpaid, together with the two semi-annual installments of interest which will next thereafter become due according to the terms of said bond.

Should default be made in the annual payment upon the principal, or in any payment of interest from the owner of said lot or parcel of land, or anyone in his behalf, the holder of this bond is entitled to declare the whole unpaid amount to be due and payable, and to have said lot or parcel of land advertised and sold forthwith, in the manner provided by law.

At said of this day of , in the year one thousand hundred and
City treasurer of the of

[Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1472.]

Limitation, twenty-five dollars.

§ 64. In case the amount of unpaid assessments upon any lot or parcel of land shall be less than twenty-five dollars, then the same shall be collected as is hereinbefore provided in part I of this act.

Owner may stop issuance.

§ 65. If any person, or his authorized agent, shall at any time before the issuance of the bond for said assessment upon his lot or parcel of land present to the city treasurer his affidavit, made before a competent officer, that he is the owner of a lot or parcel of land in said list, accompanied by the certificate of a searcher of records that he is such owner of record, and with such affidavit and certificate such person notifies said treasurer in writing that he desires no bond to be issued for the assessments upon said lot or parcel of land, then no such bond shall be issued therefor, and the payee of the warrant, or his assigns, shall retain his right for enforcing collection as if said lot or parcel of land had not been so listed by the street superintendent.

To whom payable. Coupons. Record of bonds.

§ 66. The bonds so issued by said treasurer shall be payable to the party to whom they issue, or order, and shall be serial bonds, as is hereinbefore described, and shall bear interest at the rate specified in the resolution of intention to do said work. They shall have annual coupons attached thereto, payable in annual order, on the second day of January in each year after the date of the bond, until all are paid, and each coupon shall be for an even annual proportion of the principal of the bond. They shall have semi-annual interest coupons thereto attached, the first of which shall be payable upon the second day of January or July, as the case may be, next after its date, and shall be for the interest accrued at that time, and the last of which shall be for the amount of interest accruing from the second day of January or July, as the case may be, next preceding the maturity of said bonds to the maturity thereof. The city treasurer shall, in addition to his other duties in the premises, keep a record of all bonds issued by him, of all payments on said bonds with the dates thereof and of all penalties accruing thereon; and he shall report all payments of coupons or penalties upon said bonds, with the dates thereof, to the street superintendent, who shall forthwith endorse the same upon the margin of the record of the assessment to the credit of which the same are paid, and said assessment shall be a first lien upon the property affected thereby until the bond issued for the payment thereof, and the accrued interest thereon and the penalties, if any, shall be fully paid according to the terms thereof. Said bonds, by their issuance, shall be conclusive evidence of the regularity of all proceedings thereto under this act. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1474.]

Penalty for non-payment.

§ 67. In case any annual or semi-annual coupon, representing either principal or interest, is not paid at the office of the city treasurer within fifteen days after the same is due, immediately a penalty of ten per cent of the amount of such coupon shall be added thereto and to the amount due on the bond to which it was or is attached, and shall be immediately due and payable.

Whenever payment on any such bond, either upon the principal, or of any interest, or of any penalty, is not made when the same is due, and the holder of the bond while

any of the same remains unpaid demands, in writing, that the said city treasurer proceed to advertise and sell the land described in such bond as herein provided, then the whole bond or its unpaid remainder, with its accrued interest, as expressed in said bond, shall become due and payable immediately, and on the day following shall become delinquent. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1474.]

Notice of delinquency of bond.

§ 68. Upon the application of the holder of any bond that is now or shall hereafter become delinquent as hereinbefore provided, the said city treasurer shall publish twice in a newspaper of general circulation, to be designated by him, published in the city where his office is situated, a notice of which must contain the date, number and series of the delinquent bond, a description of the property mentioned in said bond, the amount due thereon, and a statement that unless the amount of said bond and the interest due thereon, together with penalties and the cost of publication of such notice are paid, the real property described in said bond will be sold at public auction on a day to be therein fixed, which shall not be less than fifteen nor more than thirty days from the day of the first publication of said notice, and the place of such sale, which must be the office of the said city treasurer.

Like notice shall not less than fifteen days before the day of sale so fixed be deposited by the city treasurer in the post office at such city, addressed to the person to whom said property is assessed upon the last assessment roll of such city (or if the city has no assessment roll, upon the last assessment roll of the county in which such city is situated), at his address if known, and to all record lien holders, with the postage, thereon prepaid. When the addresses of such persons are unknown the notice shall be mailed to them at the city in which said property is located.

Owner may pay before sale.

At any time prior to the sale, the owner or person in possession of any real estate offered for sale under the provisions of this act may pay the whole amount of said bond then due, with penalties and costs, and such bond shall thereupon be canceled; but in case such payment is not made by such owner, or person in possession, or by some one in his behalf of such owner or person in possession, the property subject thereto shall be sold at public auction to the bidder offering to pay the amount due on the bond with penalties and costs for the least portion of such lot or parcel of land offered for sale. [Amendment of May 16, 1919. In effect July 22, 1919, Stats. 1919, p. 555.]

This section was also amended June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1475.

Treasurer's affidavit.

§ 69. The city treasurer, before the day of sale hereinafter provided for, must file with the city clerk a copy of the publication, with an affidavit of the publisher of such newspaper, or some one in its behalf, attached thereto, that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication and the date of each appearance in which such publication was made, which affidavit is prima facie evidence of all the facts stated therein.

Costs, fees and penalties. Collection of penalties.

§ 70. The city treasurer must collect, in addition to the amount due on such bond, the penalties hereinabove provided for and the cost of the publication of such notice, and one dollar, being for the certificate of sale delivered to the purchaser as herein-after provided and for the cost of filing the duplicate thereof as hereinafter provided. [Amendment of May 16, 1919. In effect July 22, 1919, Stats. 1919, p. 556.]

This section was also amended June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1475.

Certificate of treasurer.

§ 71. The city treasurer, before delivering any certificate of sale must, in a book kept in his office for that purpose, enter the date, number and series of the bond, a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection during office hours when not in actual use, and he shall enter on the record of the bond the words "canceled by sale of the property," giving the date of such sale.

Purchaser's lien on property. Certificate of sale.

§ 72. Immediately on the sale, the purchaser shall become vested with a lien on the property so sold to him, for the amount of the purchase money, and is only divested of such lien by the payment to the city treasurer for the purchaser of the purchase money, and in addition thereto ten per cent thereon, with interest on said purchase money at one per cent per month from date of sale.

The city treasurer shall issue for each sale an original and a duplicate certificate of sale referring to the proceedings, describing the parcel sold and giving the name of the purchaser and the amount for which said parcel was sold and shall deliver the original certificate to the purchaser and shall file the duplicate in the office of the recorder of the county in which the land sold is situated. [Amendment of May 16, 1919. In effect July 22, 1919, Stats. 1919, p. 556.]

This section was also amended June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1475.

Redemption.

§ 73. A redemption of the property sold may be made by the owner of the property, or any party in interest, within twelve months from the date of purchase, or at any time prior to the application for a deed, as hereinafter provided. Redemption must be made in lawful money of the United States, and when made to the city treasurer he must credit the amount paid to the person named in his certificate, and pay it on demand to him or his assignees.

Duplicate filed by recorder.

§ 74. On receiving the duplicate certificate of sale, the recorder must file it and make an entry in a book similar to that required to be kept by the city treasurer, the fee for which shall be fifty cents. He shall also, when requested, without other charge, endorse the fact of filing the duplicate certificate on the original certificate. On redemption, the city treasurer shall issue his receipt for the total amount of the redemption money and shall file the same with the recorder, who must, without charge, mark the word "redeemed," the date, and by whom redeemed, on the margin of the book where the entry of the certificate is made. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1474.]

Deed to property not redeemed. Notice of sale and application for deed. Affidavit that notice has been given.

§ 75. If the property is not redeemed within the time allowed by the provisions of section seventy-three hereof for its redemption, the city treasurer, or his successor in office, upon application of the purchaser or his assignee, must make to said purchaser, or his assignee, a deed to the property, reciting in the deed, substantially, the matter contained in the certificate and that no person has redeemed the property during the time allowed for its redemption; the treasurer shall be entitled to receive from the purchaser two dollars for making said deed, which shall be deposited in the city treasury for the use of the city after payment has been made therefrom for the acknowl-

edgment of said deed; provided, however, that the purchaser of the property, or his assignee, or the agent, of either of them, must at least thirty days prior to the expiration of the time of redemption, or thirty days before his application for his deed, serve upon the owner of the property purchased, and upon the occupant of such property, if the same is occupied, a written notice stating that said property, or a portion thereof, has been sold to satisfy the bond lien, the date of sale, the date, number and series of the bond, the amount then due, and the time when the right of redemption will expire or when the purchaser, or his assignee, will apply for a deed, and the owner of the property shall have the right of redemption indefinitely until such notice shall have been given and said deed applied for, upon the payment of the fees, penalties and costs in this act required. Where said owner resides out of the state, or has departed from the state, or can not after due diligence be found within the state, or conceals himself to avoid the service of said notice, or is a corporation having no managing or business agent, cashier, or secretary, or other officer upon whom summons may be served according to law, who, after due diligence, cannot be found within the state, and the fact appears by affidavit filed in the office of the city treasurer, service of said notice shall be made by publishing the same once a week for four successive weeks before the expiration of the time for redemption or before the application for a deed, in a newspaper of general circulation published in the county wherein said property is situated. In case of publication, where the residence of a non-resident or absent owner is known, a copy of said notice shall, within three days after the first publication of the same, be deposited in the post office, directed to the person to be served, at his place of residence, postage thereon prepaid. Where the residence of said owner is unknown then a copy of said notice shall within three days after the first publication of the same be deposited in the post office directed to the person to be served at the city in which said property is located postage thereon prepaid. The owner of the property shall have the right of redemption indefinitely until notice shall have been given as herein provided and said deed applied for, upon the payment of the fees, penalties and costs in this act required. No deed to the property sold in accordance with the provisions of this act shall be issued by the city treasurer to the purchaser of such property, or his assignee, until there shall have been filed with such city treasurer an affidavit or affidavits showing that the notice hereinbefore required to be given has been given as herein required, which said affidavits shall be filed and preserved by the said treasurer as are other records kept by him in his office. The cost of publication of notice of delinquent sale and the cost of publication of notice of application for a deed shall each become a lien against the property at the time of the first publication thereof. The purchaser or his assignee shall be entitled to receive the sum of three dollars for his service of such notice and the making of the affidavit thereof, where the notice is served personally, and the cost of publication together with fifty cents for the affidavit of due diligence and fifty cents for the affidavit of publication where service is made by publication, all of which sums shall be paid by the redemptioner at the time and in the same manner as the other sums, costs and fees are paid. [Amendment of June 11, 1915. In effect August 10, 1915, Stats. 1915, p. 1476.]

Absolute title.

§ 76. The deed, when duly acknowledged or proved, is primary evidence of the regularity of all proceedings theretofore had and shall be conclusive evidence of all things of which the bond upon which it is based is conclusive evidence, and prima facie evidence of the regularity of all proceedings subsequent to the issue of the bond, and conveys to the grantee the absolute title to the lands described therein, free of all encumbrances, except the lien for state, county, and municipal taxes.

Railroad property.

§ 77. Whenever any railroad track or tracks of any description exist upon the street or streets upon which the city council of any city has ordered an improvement to be made, and has excepted therefrom the portions used by the track, between the rails and for two feet on each side thereof, and between the tracks if there is more than one, the said order, unless said city council shall by resolution theretofore passed have declared the contrary, shall be deemed to be and constitute a requirement that the person or company having said railroad track or tracks thereon shall improve the said portion with improvements similar in all respects to, with the same materials, under the same specifications and superintendence, and to the like inspection and satisfaction as those ordered to be performed by said order ordering the work; provided, however, that the city council may by ordinance require increased depth of concrete between, to the full depth of, or under the ties, or both, where and whenever the city council shall, in its judgment decide that this method of construction is necessary. The city council may also require by ordinance or otherwise, any person or company aforesaid, to pave alongside of and contiguous to its rails with special types of brick or paving blocks. The resolution of intention and notice of proposed improvement shall be construed and are hereby declared to be notice to said person or company of the intention to order the same. Thereupon it shall be the duty of said person or company having such track or tracks on such street or streets to notify in writing the superintendent of streets if such person or company elects to enter upon the direct performance of such work at its own charge and expense; said notice must be delivered to the superintendent of streets within ten days after the first publication of notice of award of contract. The omission or neglect to make such election shall be construed as constituting the superintendent of streets the agent of the owner of said track or tracks, with authority to enter into a contract made in accordance with the provisions of this section for making the said improvements. Said superintendent of streets shall advertise for bids for the improvement of said portions of the street or streets lying between the rails and for two feet on each side thereof, and between the tracks, if there be more than one. It shall be the duty of said city council to award the contract for the making of said improvements to the lowest regular responsible bidder. Such bidding and awarding of contracts shall be made in the same manner hereinbefore provided for the awarding of contracts for improvements excepting that no notice of award shall be published. Immediately upon the award, the superintendent of streets shall enter into a contract with the person to whom said contract was awarded for the making of said improvement or improvements upon the portions of the street or streets described in said notice inviting bids, and at the price stated in said bid. The contractor shall execute bonds in the manner required by section 15 of this act. Upon the completion of the work and its acceptance, the street superintendent shall make a certificate of such completion, together with a statement of the amount due under the terms of said contract for the performance of said work. Such certificate shall be countersigned by the mayor of said city, and shall be recorded in the office of said superintendent of streets. The contractor thereupon shall be entitled to payment of the full amount of said contract price, and the recording of such certificate shall be sufficient notice to the owner of such track or tracks that said contract price is due and payable. In the event that such amount is not paid within thirty days from the date of the recording of said certificate, the contractor may file a sworn statement to that effect with the superintendent of streets, who shall record the same in his office in the book in which the certificate of acceptance has been recorded. Said contractor shall thereupon have a cause of action against said person or company owning said tracks for the amount of said contract, together with a reasonable attorney's fee, and shall also have as a security for the recovery of such amount, a first lien upon the track and franchises of

said railroad, between whose rails or tracks the said work has been performed, contained within the corporate limits of the said city. In such suit, the certificate of the superintendent of streets, hereinbefore mentioned, shall be and constitute prima facie evidence of the regularity of all proceedings, and of the right of the contractor to recover judgment against said person or company. Execution may be taken out upon the entry of judgment, and levied upon any property of said person or company subject to execution. In the event that said person or company shall file the written election to enter upon the direct performance of such work at its own cost and expense, no further proceedings shall be taken in the matter unless such person or company neglects or fails for thirty days, or for such further time as the city council may grant, to make said improvement. In the event that the improvement of the portions of the street or streets above described between the rails and for two feet on each side thereof, and between the tracks, if there be more than one, shall not be made with diligence, as herein provided or in all respects similar to the improvement of the rest of the street, or with the same materials or under the same specifications, and to the satisfaction of the superintendent of streets, the city council of said city may, by resolution entered in its minutes, prescribe such terms and conditions as to it may seem fit and proper before permitting the said person or company to continue with the said improvement. If the said person or company shall, after three days' notice of the adoption of said resolution, fail to comply with the terms and conditions so prescribed, the city council may declare said person or company to have forfeited its privilege of performing such work under its own direction. Whereupon the street superintendent shall advertise for bids for the performance of such work, or such portion thereof as may remain uncompleted, and the contract therefor shall be awarded and entered into in the same manner hereinbefore provided for the awarding and execution of contracts where said person or company has not elected to make the improvements under its own direction; and upon the completion of the improvement, the contractor to whom such contract may be awarded, or his assigns, shall be entitled to a certificate from the street superintendent similar to that hereinabove provided for, and shall have the right to collect from said person or company by suit the amount specified in said certificate in all respects the same as hereinbefore provided where the contract is let for such improvement in the first instance. The city council may, by ordinance, prescribe and enforce such additional regulations and penalties as it may deem necessary to compel the improvements as herein provided of any portion or portions of any such street or streets so occupied by any such railroad track or tracks.

Improvements by railroad companies.

§ 77a. Whenever any railroad track or tracks of any description exist upon any street in any city which has been paved, macadamized, graveled, capped, or oiled either for the whole or any portion of the width of the roadway thereof along or near the line of such railroad track or tracks, and the roadbed thereof has not been improved similar in all respects to and with the same materials as such street along the line of such tracks or tracks; or where any portion of such roadbed, whether so improved or not is out of repair or is not on the official grade of such street or has small hummocks or ridges or loose rock upon or along such roadbed or the materials composing such roadbed next to the rails of such track or tracks are not flush with the top of such rails or the sides thereof, the city council of any city may, by resolution, require and order the person or company having or owning such railroad track or tracks to improve the roadbed thereof by making repairs or by bringing the roadbed to the official grade or removing the hummocks or ridges or loose rock upon or along such roadbed or making the roadbed and the materials thereof flush with the top or sides of the rails of such track or tracks. Such city council may require and order any or all of said

work or improvement as may be designated in such resolution and to be done in the manner therein designated.

The city council may also require, by resolution, any person or company aforesaid to pave alongside of and contiguous to its rails with special type of brick or paving blocks or other material.

The resolution to require and order said work or improvement shall be personally served upon the person or company having or owning such railroad track or tracks, or service thereof may be made upon any agent or representative of such person or company or any officer of such company, and upon such service being made, such resolution shall be construed and is hereby declared to be notice to said person or company of the intention to order the work or improvement as designated in such resolution.

Thereupon, it shall be the duty of said person or company to notify, in writing, the superintendent of streets of the city where such work or improvement is to be done, if such person or company elects to enter upon the direct performance of such work or improvement at his or its own charge or expense. Said notice must be delivered to the said superintendent of streets within ten days after the service of such resolution as aforesaid.

The omission or neglect to make such election by delivering such notice shall be construed as constituting the superintendent of streets the agent of the owner of said track or tracks with authority to enter into a contract made in accordance with the provisions of this section for doing said work and making said improvements.

Said superintendent of streets shall thereupon be vested with authority to and he shall advertise for bids for said work or improvement for at least two days in some newspaper published and circulated in such city, and fix the time in such notice for receiving bids not less than five days from the first publication thereof.

It shall be the duty of such city council to award the contract for doing said work or making said improvements to the lowest regular, responsible bidder.

All bids offered shall be accompanied by a check or by a bond and shall be delivered, opened and award of contract made, all as provided by section ten of said act, except that no notice of award shall be published.

Upon the award being made, the superintendent of streets shall enter into a contract with the person to whom said contract was awarded for doing said work or making said improvement described in said notice inviting bids, and at the price stated in said bid.

The contractor shall execute bonds in the manner required by section fifteen of said act. Upon the completion of the work and its acceptance, the street superintendent shall make a certificate of such completion, together with a statement of the amount due under the terms of said contract for the performance of said work. Such certificate shall be countersigned by the mayor of said city, and shall be recorded in the office of said superintendent of streets. The contractor thereupon shall be entitled to payment for the full amount of said contract price, and the recording of such certificate shall be sufficient notice to the owner of such track or tracks that said contract is due and payable. In the event that such amount is not paid within thirty days from the date of the recording of said certificate, the contractor may file a sworn statement to that effect with the superintendent of streets, who shall record the same in his office in the book in which the certificate of acceptance has been recorded. Said contractor shall thereupon have a cause of action against said person or company owning said tracks for the amount of said contract, together with a reasonable attorney's fee, to be fixed by the court, and shall also have as a security for the recovery of such amount, a first lien upon the track and franchises of said railroad contained within the corporate limits of the said city. In such suit, the certificate of the superintendent of streets,

hereinbefore mentioned, shall be and constitute prima facie evidence of the regularity of all proceedings, and of the right of the contractor to recover judgment against said person or company. Execution may be taken out upon the entry of judgment, and levied upon any property of said person or company subject to execution. In the event that said person or company shall file the written election to enter upon the direct performance of such work at its own costs and expense, no further proceedings shall be taken in the matter unless such person or company neglects or fails for thirty days, or for such further time as the city council may, by resolution, grant, to make and complete said work or improvement.

In the event that the said work or improvement shall not be made with diligence as herein provided, the city council of said city may, by resolution entered upon its minutes, prescribe such terms and conditions as to it may seem fit and proper before permitting the said person or company to continue with the said improvement. If the said person or company shall, after three days' notice of the adoption of said resolution, fail to comply with the terms and conditions so prescribed, the city council may, at any time thereafter, declare said person or company to have forfeited its privilege of performing such work or improvement under its own direction. Whereupon the street superintendent shall advertise for bids for the performance of such work, or such portion thereof as may remain uncompleted, and the contract therefor shall be awarded and entered into in the same manner hereinbefore provided for the awarding and execution of contracts where said person or company has not elected to make the improvements under its own direction; and upon the completion of the improvement, the contractor to whom such contract may be awarded, or his assigns, shall be entitled to a certificate from the street superintendent similar to that hereinabove provided for, and shall have the right to collect from said person or company by suit the amount specified in said certificate in all respects the same as hereinbefore provided where the contract is let for such work or improvement in the first instance. The city council may, by ordinance, prescribe and enforce such additional regulations and penalties as it may deem necessary to compel the work or improvement as herein provided of any portion or portions of any such street or streets so occupied by any such railroad track or tracks.

The word "roadbed" herein used shall be deemed to embrace that portion of any street used by the track of any railroad between the rails and for two feet on each side thereof and between the tracks if there is more than one, including the rails of such track or tracks. [New section approved June 10, 1913, Stats. 1913, p. 540. In effect August 10, 1913.]

No protests.

§ 78. None of the provisions of part I of this act in regard to a protest against the work shall apply to any work contemplated by the preceding section. All provisions of part I of this act not inconsistent with the provisions hereof shall apply hereto.

PART IV.

Definitions.

§ 79. First. The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lots and lands, by deeds duly recorded in the county recorder's office of each county, or the person in possession of lands, lots, or portions of lots or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated, and deemed to be the "owner" (for the purpose of this law), according to the intent and meaning of that word as used in this act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

Second. The words "work," "improve," "improved" and "improvement," as used in this act shall include all work mentioned in this act, and also the construction, reconstruction and repairs, of all or any portion of said work.

Third. The term "incidental expenses," as used in this act, shall include the compensation of the city engineer for work done by him; also the cost of printing and advertising as provided in this act; also, the compensation of the person appointed by the superintendent of streets to take charge of and superintend any of the work mentioned in this act; also the expenses of making the assessment for any work authorized by this act. All demands for incidental expenses mentioned in this subdivision shall be presented to the street superintendent by itemized bill, duly verified by oath of the demandant.

Fourth. The notices, resolutions, orders or other matter required to be published by the provisions of this act, shall be published in a daily newspaper, in cities where such there is, and where there is no daily newspaper, in a semi-weekly or weekly newspaper, to be designated by the council of such city, as often as the same is issued, and no other statute shall govern or be applicable to the publications herein provided for; provided, however, that in case there is no daily, semi-weekly, or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semi-weekly or weekly newspaper, in three of the most public places in such city except where herein otherwise specifically provided. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer or clerk of the newspaper, or of the poster of the notice. No publication or notice, other than that provided for in this act, shall be necessary to give validity to any of the proceedings provided for therein. The word "twice" as used in this act, referring to the number of times notices, resolutions or other matters shall be published, shall be held to mean the publication of the same in two entire issues of a newspaper, one being on one day and the other issue being on a subsequent day of the same or a subsequent week.

Fifth. The word "municipality" and the word "city," as used in this act, shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes.

Sixth. The words "paved" or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadamizing, or of bituminous rock or asphalt, or of iron, wood or other material, whether patented or not, which the city council shall by ordinance or resolution adopt.

Seventh. The word "street," as used in this act, shall be deemed to, and is hereby declared to, include avenues, highways, lanes, alleys, crossings, or intersections, courts and places, which have been dedicated and accepted according to law or in common and undisputed use by the public for a period of not less than five years next preceding, and the term "main street" means such actually opened street or streets as bound a block; and the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.

Eighth. The terms "street superintendent" and "superintendent of streets," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any city. In all those cities where there is no street superintendent or superintendent of streets, the city council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of street superintendent or superintendent of

streets; and all provisions hereof applicable to the street superintendent or superintendent of streets shall apply to such person so appointed.

Ninth. The term "city council" is hereby declared to include any body or board which, under the law, is the legislative department of the government of any city.

Tenth. In municipalities in which there is no mayor, then the duties imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees, or other chief executive officer of the municipality.

Eleventh. The terms "clerk" and "city clerk," as used in this act, are hereby declared to include any person or officer who shall be clerk of the said city council.

Twelfth. The term "quarter block," as used in this act, as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting street halfway from such intersection to the next main street, or, when no main street intervenes, all the way to a boundary line of the city.

Thirteenth. The term "city treasurer" as used in this act shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the municipality.

"Places" defined.

§ 79a. The word "places" as used in this act, shall be deemed to, and is hereby declared to include any public pleasure ground and common which has been dedicated and accepted according to law, and this act shall include the improvement of a public pleasure ground and common. [New section approved April 22, 1913, Stats. 1913, p. 57. In effect August 10, 1913.]

Hearings.

§ 80. Whenever in proceedings hereunder, a time and place for hearing by the city council is fixed, and, from any cause, the hearing is not then and there held or regularly adjourned to a time and place fixed, the power of the city council in the premises shall not thereby be divested or lost but the city council may proceed anew to fix a time and place for the hearing, and cause notice thereof to be given by publication by at least one insertion in a daily, semi-weekly or weekly newspaper, such publication to be at least five days before the date of the hearing, and thereupon the city council shall have power to act as in the first instance.

Publication and posting.

§ 81. Whenever any resolution, order, notice, or determination is required to be published or posted, and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer of the city, it shall be the duty of the city clerk to post or procure the publication or posting thereof, as the case may be. No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting, or procuring the publication or posting, of any resolution, notice, order or determination hereunder when the same is actually published or posted for the time herein required.

Construction of act.

§ 82. This act shall be liberally construed to the end that its purposes may be effective. No error, irregularity, informality, and no neglect or omission of any officer of the city, in any procedure taken hereunder, which does not directly affect the jurisdiction of the city council to order the improvement, shall avoid or invalidate such proceeding or any assessment for the cost of work done thereunder. The exclusive remedy of any person affected or aggrieved thereby shall be by appeal to the city council as herein provided.

Saving clause.

§ 83. This act shall in no wise affect an act entitled "An act to provide for work upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities," approved March 18, 1885; or an act entitled "An act to provide a system of street improvement bonds to represent certain assessments for the cost of street work and improvement within municipalities, and also for payment of said bonds," approved February 27, 1893; or an act entitled "An act to provide for local improvements upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities, such act to be known as the 'Local Improvement Act of 1901,' " which became a law February 26, 1901, or an act entitled "An act to provide for the improvement of public streets, lanes, alleys, courts, and places in municipalities, in cases where any damage to private property would result from such improvement, and for the assessment of the costs, damages and expenses thereof upon the property benefited thereby," which became a law April 21, 1909, or amendments to any of said acts, or any other acts on the same subject, or apply to proceedings had thereunder, but is intended to and does provide an alternate system for making the improvements provided for by this act; and it shall be in the discretion of the legislative body of any city to proceed, under the provisions either of this act or of such other acts; but when any proceedings are commenced under this act, the provisions of this act, and of such amendments thereof as may be hereafter adopted, and no other, shall apply to all such proceedings, and any provisions contained in said acts or any acts in conflict herewith shall be void and of no effect as to the proceedings commenced under this act. This act may be designated and referred to as the "Improvement Act of 1911," and shall take effect and be in force on its passage and approval.

§ 84. [Repealed, June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1477.]

§ 85. [Repealed, June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1477.]

§ 86. [Repealed, June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1477.]

§ 87. [Repealed, June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1477.]

§ 88. [Repealed, June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1477.]

§ 89. [Repealed, June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1477.]

The amending act of May 30, 1913, Stats. 1913, p. 358, in effect August 10, 1913, contained the following section:

Act not affected.

§ 2. This act shall not be construed as amending or repealing the provisions of an act of the legislature, entitled, "An act relating to the liability of public officers for damages resulting from defects and dangers in streets, highways, public buildings, public work or property"; nor as in any way limiting, modifying or qualifying the operation of the provisions thereof.

1. **Section 2, Vrooman act.**—Referred to in the interpretation of section 2 of the Vrooman act.—*Thompson v. Hance*, 174 Cal. 572, 575, 163 Pac. 1021.

2. **Constitutionality—Due process.**—An express declaration in the resolution of intention that the district assessed is the district to be benefited is not necessary to due process of law, or for compliance with any other constitutional provision.—*Watkinson v. Vaughn*, 182 Cal. 55, 186 Pac. 753.

2a. **Same—Interest of city board—Due process.**—Interest of members of the board of trustees arising from the ownership of property is not such a disqualification to

act as would render action void as not constituting due process of law.—*Federal, etc., Co. v. Curd*, 179 Cal. 489, 2 A. L. R. 1202, 177 Pac. 469.

3. **Same—Fourteenth amendment of the federal constitution.**—The installation of a system of street electrolliers and conduits for the purpose of lighting, at the expense of the property owners, to be physically connected with a public utility corporation's lines temporarily, but which is to be the property of the municipality, does not violate section 1 of article XIV of the amendments to the constitution of the United States.—*Park v. Pacific, etc., Co.*, 37 Cal. App. 112, 173 Pac. 615.

4. Same—Title broad enough to cover sewer construction.—The title of the act is broad enough to include the construction of sewers in the public streets, avenues and lanes of a city.—*Watkinson v. Vaughn*, 182 Cal. 55, 186 Pac. 753.

5. Same—Section 24, article IV, of the constitution not violated.—The provision of the constitution that every act shall embrace but one subject which shall be expressed in its title, is violated by the act.—*Park v. Pacific, etc., Co.*, 37 Cal. App. 112, 173 Pac. 615.

6. Same—Assessments according to benefits.—The street improvement act of 1911, fairly interpreted authorizes assessments to be made according to actual benefits and is constitutional.—*Rockridge Place Co. v. City Council*, 178 Cal. 58, 63, 172 Pac. 1110.

7. Same—Richmond charter.—The Richmond charter contains no provision for the mode of exercising its power to improve its streets, and it was authorized to adopt the provisions of this act by resolution of intention to improve its streets, and such resolution was not invalid under section 6, article XI, of the constitution.—*Cutting v. Vaughn*, 182 Cal. 151, 187 Pac. 19.

8. Same—Confiscatory assessment—More than assessment for taxes.—The mere fact that the amount assessed against property, because of their situation, exceed the amount at which they had been theretofore appraised for taxation does not necessarily lead to the conclusion that the assessment was confiscatory.—*Hutchinson Co. v. Coughlin*, 29 Cal. App. Dec. 556, 184 Pac. 435.

9. Construction and application—Act not repealed by public utilities act.—The act was not repealed by implication by the public utilities act.—*Park v. Pacific, etc., Co.*, 37 Cal. App. 112, 173 Pac. 615.

10. Same—Applies to all municipalities—Posting notice where no newspaper is printed and circulated.—The act is applicable to all municipalities in the state, and notice by posting where no newspaper is printed and circulated is provided.—*Coleman v. Spring Construction Co.*, 41 Cal. App. 201, 182 Pac. 473.

11. Same—Street lighting systems—Act includes.—The word "work," defined in section 79, subdivision 2, was intended to include street lighting systems.—*Park v. Pacific, etc., Co.*, 37 Cal. App. 112, 173 Pac. 615.

12. Resolution of intention—Jurisdictional.—The resolution of intention is jurisdictional.—*Watkinson v. Vaughn*, 182 Cal. 55, 186 Pac. 753.

13. Same—Recital that district assessed is the district benefited.—Under the provisions of section 16, a property owner can not, after the completion of the work, say for the first time that the proceedings were not properly taken because the resolution of intention failed to recite that the district assessed was the district benefited, provided only that the resolution has been actually published and the notices of im-

provement posted as provided in the act.—*Watkinson v. Vaughn*, 182 Cal. 55, 186 Pac. 753.

14. Same—Recital as to the bond period.—The resolution of intention need not state the specific number of years the bonds are to run, but may state the period in the language of the act (§ 61).—*Shepherd v. Chapin*, (Cal. App.) 188 Pac. 571.

15. Same—Sufficient recital.—Where the resolution of intention states that the bonds will be issued in the manner provided by the act, it thereby incorporates the provisions of the statute, it is sufficient.—*Federal, etc., Co. v. Ryan*, 32 Cal. App. Dec. 347, 191 Pac. 69.

16. Same—Description of streets—Official or popular name.—The resolution of intention in this case held not to comply with the provisions of the act which require that the resolution of intention shall refer to the streets to be improved by official or popular name.—*Park v. Pacific, etc., Co.*, 37 Cal. App. 112, 173 Pac. 615.

17. Same—Same—Same—Need not be named by official name.—The act does not require the streets to be referred to by their official names, if they are referred to by the names by which they are commonly known.—*Federal, etc., Co. v. Kneese*, 37 Cal. App. 659, 174 Pac. 694.

18. Same—Uncertainties helped by accompanying plans and specifications.—Uncertainty in the resolution of intention may be made certain by the plans and specifications accompanying the resolution and referred to therein.—*Federal, etc., Co. v. Kneese*, 37 Cal. App. 659, 174 Pac. 694.

18a. Construction of act—Notices—Posting.—Under its own provisions the act is to be liberally construed to effect its objects, and the provisions relating to posting notices are to be read in the light of the purposes to be accomplished.—*Gordon v. Ransome-Crummey Co.*, 37 Cal. App. 755, 174 Pac. 906.

19. Same—Same—Affidavit—Location of improvement and notices.—The affidavit of posting in this case sufficiently describes location of the improvement and the notices.—*Gordon v. Ransome-Crummey Co.*, 37 Cal. App. 755, 174 Pac. 906.

20. Same—Completion of posting, date of.—An affidavit of posting which recited that "affiant posted said notices on the twenty-fifth day of May, A. D. 1911" is a sufficient statement that the posting was "completed" was the date named.—*Gordon v. Ransome-Crummey Co.*, 37 Cal. App. 755, 174 Pac. 906.

21. Same—Defective posting of notice of resolution of intention cured by issue of bonds.—The provision of the act making the issue of bonds conclusive evidence of the regularity of the proceedings cures an error in posting notices of resolution of intention three hundred and nine feet apart along the improvement, instead of three hundred feet as required by the act.—*Gordon v. Ransome-Crummey Co.*, 37 Cal. App. 755, 174 Pac. 906.

22. Same—Notice of hearing of objections—Sufficient notice.—The posting of the notice provided for in section 6 is sufficient notice of objections to improvement.—*Watkinson v. Vaughn*, 182 Cal. 55, 186 Pac. 753.

23. Same—Posting notices of improvement—Waiver of objection by failing to object.—A property owner who fails to object that the notices of improvement were not posted "immediately" after the publication of the resolution of intention, until after the work is completed will be deemed to have waived such objection.—*Watkinson v. Vaughn*, 182 Cal. 55, 186 Pac. 753.

24. Same—Printing and circulation both essential.—Notice by posting is authorized in a city where a newspaper is both printed and circulated.—*Coleman v. Spring Construction Co.*, 41 Cal. App. 201, 182 Pac. 473.

25. Same—Variations in size of letters.—A hairbreadth variation in the prescribed size of letters in a notice of street improvement does not invalidate the same.—*Shepherd v. Chapin*, (Cal. App.) 188 Pac. 571; *Coleman v. Spring Construction Co.*, 41 Cal. App. 201, 182 Pac. 473.

26. Same—Objections to defects of publication and posting—Waiver under section 16.—Under section 16 defects as to publication and posting notices are waived unless objected to before the council in ten days after notice of award.—*Shepherd v. Chapin*, (Cal. App.) 188 Pac. 571.

27. Street superintendent—Vested with power to accept work and make assessment.—Under the act the street superintendent is vested direct with power to accept the work and make the assessment.—*California, etc., Co. v. Boone*, 181 Cal. 35, 183 Pac. 447.

28. Same—Same—No provision for certificate of final acceptance.—There is no provision in the act that there shall be a certificate of final acceptance made by the superintendent of streets.—*California, etc., Co. v. Boone*, 181 Cal. 35, 183 Pac. 447.

29. Protests—Time to file—Cities where no newspaper is printed and circulated.—The fact that the act fixes no time to file protests where the notice is posted, and not published, does not make it inapplicable to cities where no newspaper is printed and circulated.—*Coleman v. Spring Construction Co.*, 41 Cal. App. 201, 182 Pac. 473.

30. Same—Time of decision.—The city council does not lose its jurisdiction to proceed further by its failure to pass upon protests at the next regular meeting after the expiration of the time within which protests may be made.—*Farley v. Reindollar*, 174 Cal. 703, 165 Pac. 19.

31. Same—Same—Loss of jurisdiction.—No court would hold that the city council lost jurisdiction to proceed with a matter which it had regularly taken up for hearing because it continued that hearing to some other not unreasonable nor forbidden date, even if the statute did not authorize, as this one does, an adjournment of the hearing from time to time.—*Farley v. Reindollar*, 174 Cal. 703, 165 Pac. 19.

32. Same—Same—Defense of non-protesting owner.—A non-protesting owner can not urge, in defense of an action to foreclose an assessment lien against his property, that the city council did not acquire jurisdiction to make the assessment because of irregularities in hearing and passing upon the protests of other owners.—*Farley v. Reindollar*, 174 Cal. 703, 165 Pac. 19.

33. Same—Same—Same—Ultra-technicalities.—The law looks with steadily decreasing favor on property owners who sit by without urging any objections which they may have to proceedings about to be taken, for the hearing of which the law affords ample opportunity, and then, after their property has been approved, endeavor to deprive the contractor of his just remuneration by ultra-technicalities.—*Farley v. Reindollar*, 174 Cal. 703, 165 Pac. 19.

See, also, *Harney v. Benson*, 113 Cal. 314, 45 Pac. 687; *O'Dea v. Mitchell*, 144 Cal. 374, 77 Pac. 1020; *Haughawout v. Raymond*, 148 Cal. 311, 83 Pac. 53; *McCaleb v. Dreyfus*, 156 Cal. 204, 103 Pac. 924.

34. Same—Finality of proceedings.—The rule as to the finality of judgments applies to street assessment proceedings.—*Hutchinson Co. v. Coughlin*, 29 Cal. App. Dec. 556, 184 Pac. 435.

35. Same—Same.—The decision of the local governing body, in street improvement proceedings, in the absence of fraud, or arbitrary action amounting to fraud, is as conclusive as a judgment in a civil action.—*Hutchinson Co. v. Coughlin*, 29 Cal. App. Dec. 556, 184 Pac. 435.

36. Same—Failure to make—Can not urge lack of jurisdiction—Strict observance of statute.—A property owner who fails to file a protest can not urge against an assessment, lack of jurisdiction on the part of the city council to proceed with the work because of its failure to observe strictly the statutory requirements in the hearing and determination of the protests that were made.—*Farley v. Reindollar*, 174 Cal. 703, 165 Pac. 19.

37. Same—Same—Jurisdiction not lost by failure to act at next regular meeting.—The city council does not lose jurisdiction to hear and determine a protest, under section 6, by failing to take final action thereon at the next regular meeting after the expiration of the time within which protests might be made, if the protest was taken up at that meeting and postponed for further hearing to a later and reasonable date.—*Farley v. Reindollar*, 174 Cal. 703, 165 Pac. 19.

38. Same—Estoppel of property owner.—If a property owner, having a right to defend against an erroneous assessment for work ordered after jurisdiction has been established, fails to assert that right in an administrative tribunal, which is vested with power to correct the error, he may not be heard, either as plaintiff or defendant, in litigation involving the validity of such assessment, to assert its invalidity without showing fraud or the exercise ar-

bitrary and harmful power on the part of the tribunal.—*Hutchinson Co. v. Coughlin*, 29 Cal. App. Dec. 556, 184 Pac. 435.

39. Same—Waiver of property owner by agreement with the contractor.—Where the owner of land assessed under the authority of this act waives right of protest against the performance of the work and the validity of the district, by written agreement with the contract, it will not be allowed to complain of any matter within the terms of this waiver.—*Cutting v. Vaughn*, 182 Cal. 151, 187 Pac. 19.

40. Proposals—Notice inviting proposals—Irregularity in notice.—The omission of the notice inviting proposals to recite the alternative of a bond in not less than ten per cent of the aggregate amount of the proposal, the resolution of intention providing for such bond or certified check for that amount, does not invalidate the contract.—*Federal, etc., Co. v. Wold*, 30 Cal. App. 360, 158 Pac. 340.

41. Resolution of award—Correction of.—The city council has authority under section 16 to correct an omission in the resolution of award that serial bonds would be issued to represent the cost of the improvement, by the adoption of an amended resolution and ordering reposting and republishing of notice.—*Federal, etc., Co. v. Ryan*, 32 Cal. App. Dec. 347, 191 Pac. 69.

42. Resolution of award—Amount of contract bid.—A recital in the resolution of award that the contract was awarded to the stated bidder for the amount of his bid, and in the notice that the board of trustees had awarded the contract to the lowest responsible bidder was a sufficient compliance with the act without stating the amount of the bid.—*Federal, etc., Co. v. Ryan*, 32 Cal. App. Dec. 347, 191 Pac. 69.

43. Same—Letting—Duty of board ceases when—Duty of superintendent of streets.—When the board of trustees makes its award its duties in respect to letting the contract ceases, and it is then the duty of the street contractor to cause the contract to be entered into, either by the original bidder, or by the property owners, if they elect to take it over.—*Wentland v. Clark, etc., Co.*, 37 Cal. App. 34, 173 Pac. 480.

44. Same—Same—Same—Notice to board by property owners.—A notice given by the property owners to the board of trustees conferred no rights on them and imposed no duty on the board of trustees.—*Wentland v. Clark, etc., Co.*, 37 Cal. App. 34, 173 Pac. 480.

45. Plans and specifications—Error immaterial—Absence of appeal.—Where the resolution of intention and specifications correctly and sufficiently describe the improvement, a mistake in the plans accompanying the specifications as to the exact frontage of the lots of two property owners is immaterial in the absence of an appeal therefrom.—*Wentland v. Clark, etc., Co.*, 37 Cal. App. 34, 173 Pac. 480.

46. Same—Not invalid for indefiniteness.—Plans and specifications calling for culverts of corrugated iron "or steel" were

held not invalid in the absence of a showing what was the difference in cost, if any, or how it might injuriously affect the property owner.—*Shepherd v. Chapin*, (Cal. App.) 188 Pac. 572.

47. Same—Same—"Trap rock or granite" gravel.—Specifications calling for gravel of "trap rock or granite" composition, "equal to the gravel found in the San Joaquin river," are not invalid for uncertainty and indefiniteness.—*Shepherd v. Chapin*, (Cal. App.) 188 Cal. 571.

48. Extension of time—Failure to ask and grant—Does not void contract, when.—The failure of the contractor to request and of the council to permit an extension of time for the completion of work actually going on in good faith until the day after the term of the original contract had expired, taken with the action of the council in granting said extension on the day after such expiration by a resolution which it is conceded they could have legally and regularly enacted the day before the contract had expired, would seem to be such a mere irregularity not jurisdictional in character as section 26 of the act was intended to remedy.—*Oakland Paving Co. v. Whittel, etc., Co.*, 32 Cal. App. Dec. 563, 195 Pac. 1058.

49. Acceptance of work—Binding as between city and contractor, and on material man seeking to recover on the bond.—The resolution ordering the assessment with the certificate of the superintendent of streets together constitute a legal acceptance of the improvement as completed, binding between the city and the contractor, and binding upon a material man seeking to recover on the bond.—*California, etc., Co. v. Boone*, 181 Cal. 35, 183 Pac. 447.

50. Same—Acceptance of work piecemeal.—The fact that the contractor requested that the work be accepted piecemeal as provided in section 30, and that the board of trustees granted the request, can not change the plain provisions of the act that "the work must in all cases, be done under the direction and to the satisfaction of the superintendent of streets," and that he alone, therefore, has power to accept the work as completed.—*California, etc., Co. v. Boone*, 181 Cal. 35, 183 Pac. 447.

51. Same—Refusal of street superintendent to accept.—If the street superintendent refuses to accept the work the contractor may appeal to the council.—*California, etc., Co. v. Boone*, 181 Cal. 35, 183 Pac. 447.

52. Notice of completion—Single improvement—Separate portions—Notice sufficient.—Where the contract price for a street improvement under improvement act of 1911 was a lump sum and the improvement was a single one, although the improvement was in two portions, and two different sorts of paving was required, a notice of claim filed within the time prescribed by section 19 of the act after the completion of the whole work is sufficient.—*Hub Hardware Co. v. Aetna Accident & Liability Co.*, 178 Cal. 265, 269, 173 Pac. 81.

53. Completion of work—Actual acceptance not date of certificate.—The work was completed on the day actually accepted by the superintendent of streets and not on the date of his certificate of acceptance, and a materialman's claim against the contractor must be filed within thirty days thereafter.—*California, etc., Co. v. Boone*, 181 Cal. 35, 183 Pac. 447.

54. Lien—Mistake in recording contract does not invalidate.—A mistake in recording the contract, showing the date when the work was required to be completed as eighty days, whereas the original contract showed "one hundred eighty days" and the work being actually completed within the latter period, does not invalidate the lien, since under the act the lien existed before the record was made.—*Wentland v. Clark, etc., Co.*, 37 Cal. App. 34, 173 Pac. 480.

55. Recordation of papers—Must be in the usual way.—The recordation of assessments, warrants and diagrams, must be made in the way usual with official documents by copying them at length in a book of records kept for that purpose.—*Federal, etc., Co. v. Curd*, 179 Cal. 479, 177 Pac. 473.

56. Appeal—Council acts judicially.—The city council acts judicially on an appeal involving the validity of the assessment district, and no appeal being provided, its action is conclusive, when collaterally attacked.—*Cutting v. Vaughn*, 182 Cal. 151, 187 Pac. 19.

57. Same—Lien—Time.—The time for appeal to the council does not begin to run nor does the contractor's lien attach until the warrants, assessments, and certificates have been recorded.—*Federal, etc., Co. v. Curd*, 179 Cal. 479, 177 Pac. 473.

58. Appeal—Readjustment—Apportionment of increase—Consistent with benefits.—Where, on readjustment of an assessment for a street improvement by the city council, after appeal from street superintendent's assessment, the assessment of some lots was increased and of other lots was decreased, the fact that the amount of the aggregate increases was divided equally among the remaining lots so as to increase their assessments \$0.0006 per square foot of area is entirely consistent with the conclusion that the increased assessment was one according to the benefits of the several lots.—*Rockridge Place Co. v. City Council*, 178 Cal. 58, 61, 172 Pac. 1110.

59. Same—Same—Same—Finding conclusive on certiorari.—A finding by a city council in a street improvement proceeding "that said several lots . . . are benefited by said work and improvement in the proportions and in the amounts set forth," unless assailed by something in the record, is conclusive on certiorari.—*Rockridge Place Co. v. City Council*, 178 Cal. 58, 62, 172 Pac. 1110.

59a. Same—Reassess—Power implied.—The power to reassess in case of error is implied in view of the provision of section 82 that irregularities not jurisdictional shall

not avoid an assessment.—*Stotts v. Meese*, 39 Cal. App. 334, 178 Pac. 727.

60. Delinquent payments—Defects in sections 68, 70, 72 remedied by amendment of 1919.—Defects in the amendment of 1915 to sections 68, 70, 72, as to the collection of money due on a bond after a payment becomes delinquent, were remedied by the amendment of 1919.—*Shepherd v. Chapin*, (Cal. App.) 188 Pac. 571.

61. Sale of property covered by assessment bond, without deposit of cost of search.—A street assessment is a contract and the statutes in force at the time are a part thereof, and a holder of an assessment bond issued prior to the 1919 amendment, could compel the city treasurer to sell the property, without depositing the cost for a search of the records for other lienholders.—*Oakland, etc., Co. v. Fitzmaurice*, (Cal. App.) 190 Pac. 499.

62. Claim of materialman—Time of filing.—A materialman need not wait the completion of the work to file his claim with the superintendent of streets.—*California, etc., Co. v. Boone*, 181 Cal. 35, 183 Pac. 447.

63. Surety bond—Liability extends to assignees of contractor.—The liability of a surety on a bond for labor and materials given under the provisions of the street improvement act of 1911 extends to the assignees of the contractor.—*Hub Hardware Co. v. Aetna Accident & Liability Co.*, 178 Cal. 265, 266, 173 Pac. 81.

64. Same—Failure of city council to establish grade before contract—Liability of surety not affected.—The invalidity of a contract for a street improvement under the street improvement act of 1911, because of the failure of the city council to establish the official grade of the street proposed to be improved, prior to entering into the contract, if such is the fact, does not affect the liability of the surety on the bond for labor and materials required by the act.—*Hub Hardware Co. v. Aetna Accident & Liability Co.*, 178 Cal. 265, 268, 173 Pac. 81.

65. Same—Failure to complete contract in time—Liability of surety not affected.—Whatever may be the effect of the failure of the contractor to complete his contract for a street improvement under the improvement act of 1911 within the time fixed in the contract, as between him and the city, that fact can not affect the liability of the surety on the bond for labor and materials given under the provisions of the act, whether such labor and materials were furnished before or after the expiration of such time for completion.—*Hub Hardware Co. v. Aetna Accident & Liability Co.*, 178 Cal. 265, 268, 173 Pac. 81.

66. Injunction—Void improvement casts no cloud on property owner's title—Not ground for equitable relief.—An improvement bond void on its face for failure to recite that it may be redeemed by the owner at any time, casts no cloud on his title, and is no ground for equitable relief.—*Coleman v. Spring Construction Co.*, 41 Cal. App. 201, 182 Pac. 473.

BOUNDARY IMPROVEMENT ACT OF 1911.

ACT 4957—An act to provide for work upon streets, avenues, lanes, alleys, courts and places forming the exterior boundaries of any municipality, whether partly, or wholly, within or without said boundaries, and providing for the construction of sewers, drains and sidewalks thereon and in connection therewith.

History: Approved April 21, 1911, Stats. 1911, p. 1018. Amended June 2, 1913, in effect August 10, 1913, Stats. 1913, p. 371.

Streets forming boundaries of cities deemed public streets.

§ 1. All streets, avenues, lanes, alleys, courts, or places forming the exterior boundaries of any municipality of this state, whether partly, or wholly, within or without said boundaries, now open or dedicated, or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, avenues, lanes, alleys, places or courts for the purposes of this act, and the city council of each municipality, and the board of supervisors of the county in which said municipality is located, are hereby empowered to establish and change the grades of said streets, lanes, alleys, avenues, places or courts, and fix the width thereof, and are hereby invested with jurisdiction to order to be done thereon any of the work mentioned in section 2 of this act, under the proceedings hereinafter described.

Council and supervisors may order such streets improved.

§ 2. Whenever the public interest or convenience may require, said council and said board of supervisors are hereby authorized and empowered to order the whole, or any portion, either in length or width, of any streets, avenues, lanes, alleys, places or courts forming the exterior boundaries of any municipality, whether partly, or wholly, within or without said boundaries, graded or reggraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or reggraveled, piled or repiled, capped or recapped, oiled or reoiled, sewered or resewered, and to order sidewalks, manholes, culverts, bridges, cesspools, gutters, tunnels, curbing and crosswalks to be constructed therein, and to order storm-water ditches, channels, breakwaters, levees or walls of rock or other material to protect the same from overflow or injury, and to order any other work to be done, which shall be necessary to complete the whole, or any portion of said streets, avenues, lanes, alleys, courts, places or sidewalks, and they may order any of said work to be improved; and also to order a sewer or sewers with outlets for drainage or sanitary purposes, in, over, or through any right of way granted or obtained for such purposes.

Council and supervisors have concurrent jurisdiction.

§ 3. The council of each municipality, and the board of supervisors of the county in which said municipality is located, shall have concurrent jurisdiction of all proceedings under this act, and the council, or board, passing the resolution of intention hereinafter provided for shall thereafter have exclusive jurisdiction of all work and proceedings covered by said resolution, except as herein otherwise provided.

Posting and publication of resolution of intention. Majority may object. Plans and estimates. When expense chargeable against district.

§ 4. Before ordering any work done, or improvement made, which is authorized by section 2 of this act, the said council, or the said board of supervisors, shall pass a resolution of intention so to do and describing the work, which shall be posted conspicuously for two days on or near the chamber door of said council, or board, and published by two insertions in one or more daily, semi-weekly, or weekly newspapers published and circulated in said municipality, and designated by said council, or board, for that purpose. The street superintendent of said municipality, when the resolution is passed by said council, or the county surveyor, when the resolution is passed by

said board, shall thereupon cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than one hundred feet in distance apart, but not less than three in all, or when the work to be done is only upon an entire crossing, or any part thereof, in front of each quarter block and irregular block liable to be assessed, notices of the passage of said resolution. Said notice shall be headed "Notice of Street Work," in letters of not less than one inch in length, and shall, in legible characters, state the fact of the passage of the resolution, its date, and briefly the work or improvement proposed, and refer to the resolution for further particulars. He shall also cause a notice, similar in substance, to be published for six days in one or more daily newspapers published and circulated in said municipality, and designated by said council, or board, or in municipalities where there is no daily newspaper, by one insertion in a semi-weekly or weekly newspaper so published, circulated and designated. In case there is no such paper published in said municipality, said notice shall be posted for six days on or near the chamber door of said council, or board, and in two other conspicuous places in said municipality. The owners of a majority of the frontage of the property fronting on said proposed work or improvement, where the same is for one block or more, may make a written objection to the same within ten days after the expiration of the time of the publication and posting of said notice, which objection shall be delivered to the clerk of the council, or board, who shall indorse thereon the date of its reception by him. Said council, or board shall, at its next meeting, fix a time for hearing said objections not less than one week thereafter. The clerk of said council, or board, shall thereupon notify the persons making such objections, by depositing a notice of the time and place fixed for the hearing of said objections in the postoffice of said municipality, postage prepaid, addressed to each objector, or his agent, when he appears for such objector. At the time specified said council, or board, shall hear the objections urged, and pass upon the same, and its decision thereon shall be final and conclusive. At the expiration of twenty days after the expiration of the time of said publication of said notice given by said street superintendent, or county surveyor, and at the expiration of twenty-five days after the advertising and posting, as aforesaid, of any resolution of intention, if no written objection to the work therein described has been delivered, as aforesaid, by the owners of the majority of the frontage of the property fronting on said proposed work or improvement or if any written objection has been overruled by the said council, or board, the said council, or board, shall be deemed to have acquired jurisdiction to order any of the work to be done, or improvement to be made, which is authorized by this act; which order or resolution, when made, shall be published for two days, the same as provided for the publication of the resolution of intention. Before passing any resolution for the construction of said improvements, plans and specifications and careful estimates of the costs and expenses thereof shall be furnished to said council, or board, if required, by the city engineer of said municipality, or the county surveyor, and for the work of constructing sewers, specifications shall always be furnished by him. Whenever the contemplated work of improvement, in the opinion of the council, or board, is of more than local or ordinary public benefit, or whenever, according to estimate to be furnished by the city engineer, or county surveyor, the total estimated costs and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed, if assessed upon the lots or land fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment-roll whereon it was assessed for taxes for county purposes, and allowing a reasonable depth from such frontage for lots or lands assessed in bulk, the council, or board, may make the expense of such work or improvement chargeable upon a district, which the said council, or board, shall, in its resolution of intention, declare to be the district benefited by said work or improvement, and to

be assessed to pay the costs and expenses thereof. Objections to the extent of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the costs and expenses thereof, may be made by interested parties in writing, within ten days after the expiration of the time of the publication of the notice of the passage of the resolution of intention. The council, or board, shall, at its next meeting, fix a time for hearing said objections not less than one week thereafter. The clerk thereof shall thereupon notify the persons making such objections by depositing a notice thereof in the postoffice of said municipality, postage prepaid, addressed to each objector. At the time specified the council, or board, shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive. If the objections are sustained, all proceedings shall be stopped; but proceedings may be immediately again commenced by giving the notice of intention to do the said work or make said improvements. If the objections are overruled by the council, or board, the proceedings shall continue the same as if such objections had not been made.

Majority of owners may petition.

§ 5. The owners of a majority in frontage of lots and lands fronting on any street, avenue, lane, alley, place or court, or of lots or lands liable to be assessed for the expense of the work petitioned to be done, or their duly authorized agents, may petition the council, or board, to order any of the work mentioned in this act to be done, and the council, or board, may order the work mentioned in said petition to be done, after notice of its intention so to do has been posted and published as provided in section 4 of this act.

Notice inviting bids. Certified check. Bids, contracts, etc.

§ 6. Before the awarding of any contract by the council, or board, for doing any work authorized by this act, the council, or board, shall cause notice, with specifications, to be posted conspicuously for five days on or near the council, or board, chamber door, inviting sealed proposals or bids for doing the work ordered, and shall also cause notice of said work, inviting said proposals, and referring to the specifications posted or on file, to be published for two days in a daily, semi-weekly, or weekly newspaper published and circulated in said municipality, designated by the council, or board, for that purpose, and in case there is no newspaper published in said municipality, then it shall only be posted as hereinbefore provided. All proposals or bids offered shall be accompanied by a check payable to the order of the mayor of the municipality, or president of the board of supervisors, certified by a responsible bank, for an amount which shall not be less than ten per cent of the aggregate of the proposal, or by a bond for the said amount and so payable, signed by the bidder and by two sureties, who shall justify, before any officer competent to administer an oath, in double the said amount, over and above all statutory exemptions. Said proposals or bids shall be delivered to the clerk of said council, or board, and said council, or board, shall, in open session, examine and publicly declare the same; provided, however, that no proposal or bid shall be considered unless accompanied by said check or bond satisfactory to the council, or board. The council, or board, may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent and unfaithful in any former contract with the municipality or county, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid. If not approved by the council, or board, without further proceedings, the council, or board, may readvertise for proposals or bids for the performance of the work as in the first instance, and thereafter proceed in the manner in this section provided, and

shall thereupon return to the proper parties the respective checks and bonds corresponding to the bid so rejected. But the checks accompanying such accepted proposals or bids shall be held by the clerk of said council, or board, until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder or by the owners of three-fourths part of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects or refuses to enter into the contract to perform said work or improvement, as hereinafter provided, then the certified check accompanying his bid and the amount therein mentioned, shall be declared to be forfeited to said municipality, or county, and shall be collected by it and paid into its fund for repairs of streets, avenues, lanes, alleys, courts and places herein mentioned, and any bond forfeited may be prosecuted, and the amount due thereon collected and paid into said fund. Notice of such awards of contracts shall be posted for five days, in the same manner as hereinbefore provided for the posting of proposals for said work, and shall be published for two days in a daily newspaper published and circulated in said municipality and designated by said council, or board, or in municipalities where there is no daily newspaper, by one insertion in a semi-weekly or weekly newspaper so published, circulated and designated; provided, however, that in case there is no newspaper printed or published in any such municipality, then such notice of award shall only be kept posted as hereinbefore provided. The owners of three-fourths of the frontage of lots and lands upon the street whereon said work is to be done, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may, within ten days after the first posting and publication of said notice of said award, elect to take said work and enter into a written contract to do the whole work at the price at which the same has been awarded. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within ten days, or to commence the work within fifteen days after the first posting and publication of said award, and to prosecute the same with diligence to completion, it shall be the duty of the superintendent of streets, or county surveyor, to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid. But if such original bidder neglects, fails or refuses, for fifteen days after the first posting and publication of the notice of award, to enter into the contract, then the council or board, without further proceedings, shall again advertise for proposals or bids, as in the first instance, and award the contract for said work to be then lowest regular bidder. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work. If the owner, or contractor, who may have taken any contract, does not complete the same within the time limited in the contract, or within such further time as the council, or board, may give them, the superintendent of streets, or county surveyor, shall report such delinquency to the council, or board, which may relet the unfinished portion of said work, after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the superintendent of streets, or county surveyor, with two or more sureties and payable to such municipality, or county, in such sums as the council, or board, shall deem adequate, conditioned for the faithful performance of the contract; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions. Before being entitled to a contract, the bidder to whom the award was made, or the owners who have elected to take the contract, must advance to the superintendent of streets, or county surveyor, for payment by him, the cost of publication of the notices, resolutions,

orders, or other incidental expenses and matters required under the proceedings described in this act, and such other notices as may be deemed requisite by the council, or board. And in case the work is abandoned by the council, or board, before the letting of the contract, the incidental expenses incurred previous to such abandonment shall be paid out of the treasury of the municipality, or county.

Duties of superintendent of streets.

§ 7. The superintendent of streets, or county surveyor, is hereby authorized, in his official capacity, to make all written contracts, and receive all bonds authorized by this act, and to do any other act, either express or implied, that pertains to the street department under this act; and he shall fix the time for the commencement, which shall not be more than fifteen days from the date of the contract, and for the completion of the work under all contracts entered into by him, which work shall be prosecuted with diligence from day to day thereafter to completion, and he may extend the time so fixed from time to time, under the direction of the council, or board. The work provided for in section 2 of this act must, in all cases, be done under the direction and to the satisfaction of the superintendent of streets, or county surveyor, and the materials used shall comply with the specifications and be to the satisfaction of said superintendent of streets, or county surveyor, and all contracts made therefor must contain a provision to that effect, and also express notice that, in no case, except where it is otherwise provided in this act, will the municipality, or county, or any officer thereof, be liable for any portion of the expense, nor for any delinquency of persons or property assessed. The council, or board, may, by ordinance, prescribe general rules directing the superintendent of streets, or county surveyor and the contractor, as to the materials to be used, and the mode of executing the work, under all contracts thereafter made. The assessment and apportionment of the expenses of all such work or improvement shall be made by the superintendent of streets, or county surveyor, in the mode herein provided.

Contractor's bond covering labor and materials.

§ 8. Every contractor, person, company, or corporation, including contracting owners, to whom is awarded any contract for street work under this act, shall, before executing the said contract, file with the superintendent of streets, or county surveyor, a good and sufficient bond, approved by him, in a sum not less than one-half of the total amount payable according to the terms of said contract, such bond shall be made to inure to the benefit of any and all persons, companies, or corporations who perform labor on, or furnish materials to be used in the said work or improvement, and shall provide that if the contractor, person, company, or corporation to whom said contract was awarded fails to pay for any materials so furnished for the said work of improvement, or for any work or labor done thereon of any kind, that the sureties will pay the same, to an amount not exceeding the sum specified in said bond. Any materialmen, person, company or corporation, furnishing materials to be used in the performance of said work specified in said contract, or who performed work or labor upon the said improvement, whose claim has not been paid by the said contractor, company, or corporation, to whom the said contract was awarded, may, within thirty days from the time said improvement is completed, file with the superintendent of streets or county surveyor, a verified statement of his or its claim, together with a statement that the same, or some part thereof, has not been paid. At any time within ninety days after the filing of such claim, the person, company, or corporation filing the same, or their assigns, may commence an action on said bond for the recovery of the amount due on said claim, together with the costs incurred in said action, and a reasonable attorney fee, to be fixed by the court, for the prosecution thereof.

Assessment of expenses.

§ 9. Sub. 1. The expenses incurred for any work authorized by this act (which expense shall not include the cost of any work done in such portion of any street as is required by law to be kept in order or repair by any person or company having railroad tracks thereon, nor include work which shall have been declared in the resolution of intention to be assessed on a district benefited) shall be assessed upon the lots and lands fronting thereon, except as hereinafter specifically provided; each lot or portion of a lot being separately assessed, in proportion to the frontage, at a rate per front foot sufficient to cover the total expense of the work.

Expenses after completion to be borne by city.

Sub. 2. The expense of all improvements, until the streets, avenues, street crossings, lanes, alleys, places, or courts, are finally accepted, as provided in section 18 of this act shall be assessed upon the lots and lands, as provided in this section, according to the nature and character of the work. And after such acceptance the expense of all work thereafter done on the portion thereof lying within the municipality shall be paid by said municipality out of the street department fund, and all work thereafter done on the portion thereof lying without the boundaries of the municipality shall be paid by said county out of the general road fund, and if at any time thereafter the portion thereof lying without the boundaries of the said municipality shall be included within its boundaries, then the expense of all work thereafter done thereon shall be paid by said municipality, out of the said street department fund.

Main street crossings.

Sub. 3. The expense of the work done on main street crossings shall be assessed at a uniform rate per front foot of the quarter blocks and irregular blocks adjoining and cornering upon the crossings, and separately upon the whole of each lot or portion of a lot having any frontage in the said blocks fronting on said main streets, halfway to the next main street crossing, and three hundred feet on blocks where no such crossing intervenes within six hundred feet of such street crossing, but only according to its frontage in said quarter blocks and irregular blocks.

One main street terminating in another.

Sub. 4. Where a main street terminates in another main street, the expenses of the work done on one-half of the width of the street opposite the termination shall be assessed upon the lots in each of the two quarter blocks adjoining and cornering on the same, according to the frontage of such lots on said main street; provided, that lots and lands more than three hundred feet from such termination on such cross street shall not be assessed for any portion of such expense at such termination, and the expense of the other half of the width of said street upon the lot or lots fronting on the latter half of the street at such termination.

Alley crossings.

Sub. 5. Where an alley or subdivision street crosses a main street, the expense of all work done on said crossing shall be assessed on all lots or portions of lots halfway on said alley or subdivision street to the next crossing or intersection, or to the end of such alley or subdivision street, if it does not meet another.

Expense of work done on alley or subdivision street crossings.

Sub. 6. The expense of work done on alley or subdivision street crossings shall be assessed upon the lots fronting upon such alley or subdivision streets on each side thereof, in all directions, halfway to the next street, place or court, on either side, respectively, or to the end of such alley or subdivision street, if it does not meet another; provided, that lots and lands more than three hundred feet from such crossing on such alley or subdivision street shall not be assessed therefor.

One alley terminating in another.

Sub. 7. Where a subdivision street, avenue, lane, alley, place, or court terminates in another street, avenue, lane, alley, place or court, the expense of the work done one one-half of the width of the subdivision street, avenue, lane, alley, place, or court opposite the termination, shall be assessed upon the lot or lots fronting on such subdivision street, or avenue, lane, alley, place, or court so terminating, according to its frontage thereon, halfway on each side respectively to the next street, avenue, lane, alley, court, or place, or to the end of such street, avenue, lane, alley, place, or court, if it does not meet another; provided, that lots and lands located more than three hundred feet from such termination on such subdivision street shall not be assessed therefor, and the other one-half of the width upon the lots fronting such termination.

Work done on one side of street center.

Sub. 8. Where any work mentioned in this act (manholes, cesspools, culverts, crosswalks, piling and capping excepted) is done on either or both sides of the center line of any street for one block or less, and further work opposite to the work of the same class already done is ordered to be done to complete the unimproved portion of said street, the assessment to cover the total expenses of said work so ordered shall be made upon the lots, or portions of the lots only fronting the portions of the work so ordered.

Act of 1859 not applicable.

Sub. 9. Section 1 of chapter 325 of the laws of this state, entitled "An act amendatory of and supplementary to an act to provide revenue for the support of the government of this state, approved April twenty-ninth, eighteen hundred and fifty-seven," approved April nineteen, eighteen hundred and fifty-nine, shall not be applicable to the provisions of this section; but the property herein mentioned shall be subject to the provisions of this act, and be assessed for work done under the provisions of this section.

Different kinds of work may be included in resolution.

Sub. 10. The council, or board, may include in one resolution of intention and order any of the different kinds of work mentioned in this act, and it may except therefrom any of said work already done upon the street to the official grade. The lots and portions of lots fronting upon said excepted work already done shall not be included in the frontage assessment for the class of work from which the exception is made.

Engineer to make diagram of district. Superintendent of streets to estimate assessment.

Sub. 11. Whenever the resolution of intention declares that the costs and expenses of the work and improvement are to be assessed upon a district, the council, or board, shall direct the city engineer, or county surveyor, to make a diagram of the property affected or benefited by the proposed work or improvement, as described in the resolution of intention, and to be assessed to pay the expenses thereof. Such diagram shall show each separate lot, piece or parcel of land, the area in square feet of each of such lots, pieces, or parcels of land, and the relative location of the same to the work proposed to be done, all within the limits of the assessment district; and when said diagram shall have been approved by the council, or board, the clerk shall, at the time of such approval, certify the fact and date thereof. Immediately thereafter the said diagram shall be delivered to the superintendent of streets, or county surveyor, of said municipality, or county, who shall, after the contractor of any street work has fulfilled his contract to the satisfaction of said superintendent of streets, or county surveyor, and council or board on appeal, if an appeal is taken, proceed to estimate

upon the lands, lots or portions of lots within said assessment district, as shown by said diagram, the benefits arising from such work, and to be received by each such lot, portion of such lot, piece, or subdivision of land, and shall thereupon assess upon and against said lands in said assessment district the total amount of the costs and expenses of such proposed work, and in so doing shall assess said total sum upon the several pieces, parcels, lots, or portions of lots, and subdivisions of land in said district benefited thereby, to wit: upon each respectively in proportion to the estimated benefits to be received by each of said several lots, portions of lots, or subdivisions of land. In other respects the assessment shall be as provided in the next section and the provisions of subdivisions 3, 4, 5, 6, 7 and 8 of this section shall not be applicable to the work or improvement provided for in this subdivision.

Street superintendent to make assessment.

§ 10. After the contractor of any street work has fulfilled his contract to the satisfaction of the street superintendent, or county surveyor, and council, or board, on appeal, if appeal is taken, the street superintendent, or county surveyor, shall make an assessment to cover the sum due for the work performed and specified in said contract (including any incidental expenses), in conformity with the provisions of the preceding section according to the character of the work done; or, if any direction and decision be given by said council, or board, on appeal, then in conformity with such direction and decision, which assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to be paid therefor, together with any incidental expenses, the rate per front foot assessed, if the assessment be made per front foot, the amount of each assessment, the name of the owner of each lot or portion of a lot (if known to the street superintendent, or county surveyor, if unknown the word "unknown" shall be written opposite the number of the lot), and the amount assessed thereon, the number of each lot or portion or portions of a lot assessed, and shall have attached thereto a diagram exhibiting each street or street crossing, lane, alley, place, or court, on which any work has been done, and showing the relative location of each district lot, or portion of lot to the work done, numbered to correspond with the numbers in the assessments, and showing the number of feet fronting, or number of lots assessed, for said work contracted for and performed.

Warrant. Form of warrant. Warrant, etc., recorded. Assessment lien upon land. When action to foreclose is defeated by error.

§ 11. To said assessment shall be attached a warrant, which shall be signed by the superintendent of streets, or county surveyor, and countersigned by the mayor of said municipality, or the president of said board. The said warrant shall be substantially in the following form:

Form of the Warrant.

By virtue hereof, I (name of the superintendent of streets) of the city of, county of, (or county surveyor of county, or city and county of, and state of California, by virtue of the authority vested in me as said superintendent of streets, or county surveyor, do authorize and empower (name of contractor), (his or their) agents or assigns, to demand and receive the several assessments upon the assessment and diagram hereto attached, and this shall be (his or their) warrant for the same.

(Date.)

Countersigned by (name of mayor of municipality or president of board).

.....,

(Name of superintendent of streets or county surveyor.)

Said warrant, assessment, and diagram, together with the certificate of the city engineer, or county surveyor, shall be recorded in the office of said superintendent of

streets, or county surveyor. When so recorded, the several amounts assessed shall be a lien upon the lands, lots, or portions of lots assessed, respectively, for the period of two years from the date of said recording, unless sooner discharged; and from and after the date of said recording of any warrant, assessment, diagram and certificate, all persons mentioned in section 13 of this act shall be deemed to have notice of the contents of the record thereof. After said warrant, assessment, diagram, and certificate are recorded, the same shall be delivered to the contractor, or to his agent, or assigns, on demand, but not until after the payment to the said superintendent of streets, or county surveyor, of the incidental expenses not previously paid by the contractor, or his assigns; and by virtue of said warrant said contractor, or his agent, or assigns, shall be authorized to demand and receive the amount of the several assessments made to cover the sum due for the work specified in such contracts and assessments. Whenever it shall appear by any final judgment of any court of this state, that any suit brought to foreclose the lien of any sum of money assessed to cover the expense of said street work done under the provisions of this act has been defeated by reason of any defect, error, informality, omission, irregularity, or illegality in any assessment hereafter to be made and issued, or in the recording thereof, or in the return thereof made to, or recorded by said superintendent of streets, or county surveyor, any person interested therein may, at any time within three months after the entry of said final judgment, apply to said superintendent of streets, or county surveyor, who issued the same, or to any superintendent of streets, or county surveyor, in office at the time of said application, for another assessment to be issued in conformity to law; and said superintendent of streets, or county surveyor, shall, within fifteen days after the date of said application, make and deliver to said applicant a new assessment, diagram, and warrant in accordance with law; and the acting mayor of the municipality, or president of the board, shall countersign the same as now provided by law, which assessment shall be a lien for the period of two years from the date of said assessment, and be enforced as provided in section 9 of this act.

Contractor demands payment. Demanding payment on premises. Return of warrant.

Superintendent may receive payments. Failure to return warrant. Interest on delinquent amounts.

§ 12. The contractor, or his assigns, or some person in his, or their behalf, shall call upon the persons assessed, or their agents, if they can conveniently be found, and demand payment of the amount assessed to each. If any payment be made the contractor, his assigns, or some person in his or their behalf, shall receipt the same upon the assessment in presence of the person making such payment, and shall also give a separate receipt if demanded. Whenever the persons so assessed, or their agents, cannot conveniently be found, or whenever the name of the owner of the lot is stated as "unknown" on the assessment, then the said contractor, or his assigns, or some person in his or their behalf, shall publicly demand payment on the premises assessed. The warrant shall be returned to the superintendent of streets, or county surveyor, within thirty days after its date, with a return indorsed thereon, signed by the contractor, or his assigns, or some person in his or their behalf, verified upon oath, stating the nature and character of the demand, and whether any of the assessments remain unpaid, in whole or in part, and the amount thereof. Thereupon the superintendent of streets, or county surveyor, shall record the return so made, in the margin of the record of the warrant and assessment, and also the original contract referred to therein, if it has not already been recorded at full length in a book to be kept for that purpose in his office, and shall sign the record. The said superintendent of streets, or county surveyor, is authorized at any time to receive the amount due upon any assessment list and warrant issued by him, and give a good and sufficient discharge therefor; provided, that no such payment so made after suit has been com-

menced, without the consent of the plaintiff in the action, shall operate as a complete discharge of the lien until the costs in the action shall be refunded to the plaintiff: and he may release any assessment upon the books of his office, on the payment to him of the amount of the assessment against any lot with interest, or on the production to him of the receipt of the party or his assigns to whom the assessment and warrant were issued; and if any contractor shall fail to return his warrant within the time and in the form provided in this section he shall thenceforth have no lien upon the property assessed; provided, however, that in case any warrant is lost, upon proof of such loss a duplicate can be issued, upon which a return may be made, with the same effect as if the original had been so returned. After the return of the assessment and warrant as aforesaid, all amounts remaining due thereon shall draw interest at the rate of ten per cent per annum until paid.

Owners feeling aggrieved may appeal to council. Notice of hearing published. Decisions of council final.

§ 13. The owners, whether named in the assessment or not, the contractor, or his assigns, and all other persons directly interested in any work provided for in this act, or in the assessment, feeling aggrieved by any act or determination of the superintendent of streets or county surveyor, in relation thereto, or who claim that the work has not been performed according to the contract in a good and substantial manner, or having or making any objection to the correctness or legality of the assessment or other act, determination, or proceedings of the superintendent of streets, or county surveyor, shall, within thirty days after the date of the warrant, appeal to the council, or board, by briefly stating their objections in writing, and filing the same with the clerk of said council, or board. Notice of the time and place of the hearing, briefly referring to the work contracted to be done, or other subject of appeal, and to the acts, determinations or proceedings objected to or complained of, shall be published for five days. Upon such appeal, the said council, or board, may remedy and correct any error or informality in the proceedings, and revise and correct any of the acts or determinations of the superintendent of streets, or county surveyor, relative to said work; may confirm, amend, set aside, alter, modify, or correct the assessment in such manner as to them shall seem just, and require the work to be completed according to the directions of the council, or board; and may instruct and direct the superintendent of streets, or county surveyor, to correct the warrant, assessment, or diagram in any particular, or to make and issue a new warrant, assessment, and diagram, to conform to the decisions of said council, or board, in relation thereto, at their option. All the decisions and determinations of said council, or board, upon notice and hearing as aforesaid, shall be final and conclusive upon all persons entitled to appeal under the provisions of this section, as to all errors, informalities, and irregularities which said council, or board, might have remedied and avoided; and no assessment shall be held invalid, except upon appeal to said council, or board, as provided in this section for any error, informality, or other defect in any of the proceedings prior to the assessment, or in the assessment itself, where notice of the intention of the council, or board, to order the work to be done, for which the assessment is made, has been actually published in any designated newspaper of said city for the length of time prescribed by law, before the passage of the resolution ordering the work to be done.

Contractor may sue. Attorney's fees. Suit brought in superior court. Premises may be ordered sold. Act to be liberally construed.

§ 14. At any time after the period of thirty-five days from the date of the warrants, as herein provided, or if an appeal is taken to said council, or board, as provided in section 13 of this act, at any time after five days from the decision of said council, or

board, or after the return of the warrant or assessment, after the same may have been corrected, altered, or modified, as provided in said section 13 (but not less than thirty-five days from the date of the warrant), the contractor or his assignee may sue, in his own name, the owner of the land, lots, or portions of lots, assessed on the day of the date of the recording of the warrant, assessment, and diagram, or any day thereafter during the continuance of the lien of said assessment, and recover the amount of any assessment remaining unpaid, with interest thereon at the rate of ten per cent per annum until paid. And in all cases of recovery under the provisions of this act, the plaintiff shall recover the sum of fifteen dollars, in addition to the taxable costs as attorney's fees, but not any percentage upon said recovery. And when suit has been brought, after a personal demand has been made and a refusal to pay such assessment so demanded, the plaintiff shall also be entitled to have and recover said sum of fifteen dollars, as attorney's fees, in addition to all taxable costs, notwithstanding that the suit may be settled or a tender may be made before a recovery in said action, and he may have judgment therefor. Suit may be brought in the superior court of the county within whose jurisdiction the said work has been done, and in case any of the assessments are made against lots, portions of lots, or lands, the owners thereof cannot, with due diligence, be found, the service in each of such actions may be had in such manner as is prescribed in the codes and laws of this state. The said warrant, assessment, certificate, and diagram, with the affidavit of demand and nonpayment, shall be held prima facie evidence of the regularity and correctness of the assessment and of the prior proceedings and acts of the superintendent of streets, or county surveyor, and council, or board, upon which said warrant, assessment, and diagram are based, and like evidence of the right of the plaintiff to recover in the action. The court in which said suit shall be commenced shall have power to adjudge and decree a lien against the premises assessed, and to order such premises to be sold on execution, as in other cases of the sale of real estate by the process of said courts; and on appeal, the appellate courts shall be vested with the same power to adjudge and decree a lien and to order such premises to be sold on execution or decree as is conferred on the court from which an appeal is taken. Such premises, if sold, may be redeemed as in other cases. In all suits now pending, or hereafter brought to recover street assessments, the proceedings therein shall be governed and regulated by the provisions of this act, and also, when not in conflict herewith, by the codes of this state. This act shall be liberally construed to effect the ends of justice.

Assessment before completion of improvement.

§ 15. The council, or board, instead of waiting until the completion of the improvement, may, in its discretion, and not otherwise, upon the completion of two blocks or more of any improvement, order the street superintendent, or county surveyor, to make an assessment for the proportionate amount of the contract completed, and thereupon proceedings and rights of collection of such proportionate amount shall be had as provided herein.

Records of superintendent of streets.

§ 16. The records kept by the superintendent of streets, or county surveyor in conformity with the provisions of this act, and signed by him, shall have the same force and effect as other public records, and copies therefrom, duly certified, may be used in evidence with the same effect as the originals. The said records shall, during all office hours, be open to the inspection of any citizen wishing to examine them, free of charge.

Service of notices in writing.

§ 17. Notices in writing which are required to be given by the superintendent of streets, or county surveyor, under the provisions of this act, may be served by any

person with the permission of the superintendent of streets, or county surveyor, and the fact of such service shall be verified by the oath of the person making it, taken before the superintendent of streets, or county surveyor, who for that purpose, and for all other purposes, and in all cases where a verification is required under the provisions of this act, is hereby authorized to administer oaths, or other persons authorized to administer oaths, or such notices may be delivered by the superintendent of streets, or county surveyor, himself, who must also verify the service thereof, and who shall keep a record of the fact of giving such notices, when delivered by himself personally, and also of the notices and proof of service when delivered by any other person.

Streets accepted by council. Lands may be assessed to construct sewer.

§ 18. Whenever any street or portion of a street, has been or shall hereafter be fully constructed to the satisfaction of the superintendent of streets or county surveyor, and of the council, or board, and is in good condition throughout and a sewer, gas-pipes, and water-pipes are laid therein, under such regulations as the council, or board, shall adopt, the same shall be accepted by the council, or board, by ordinance, and thereafter shall be kept in repair and improved by the said municipality or county as herein directed; provided, that the council, or board, may partially or conditionally accept any street, or portion of a street, without a sewer, or gas-pipes, or water-pipes therein, if the ordinance of acceptance expressly states that the council, or board, deems such sewer, or gas-pipes, or water-pipes to be then unnecessary, but the lots of land previously, or at any time, assessable for the cost of constructing a sewer shall remain and be assessable for such cost, and for the cost of repairs and restoration of the street damaged in the said construction, whenever said council, or board, shall deem a sewer to be necessary, and shall order it to be constructed, the same as if no partial or conditional acceptance had ever been made. The superintendent of streets or county surveyor, shall keep in his office a register of all streets, accepted by the council, or board, under this section, which register shall be indexed for easy reference thereto.

Council has authority to construct sewers, etc.

§ 19. The council, or board, shall have full power and authority to construct sewers, gutters, and manholes and provide for the cleaning of the same, and culverts or cess-pools, or crosswalks or sidewalks, or any portion of any sidewalk upon or in any of such streets, avenues, lanes, alleys, courts or places, and also for drainage purposes over or through any right of way obtained or granted for such purposes, with necessary and proper outlet or outlets to the same, of such materials, in such a manner, and upon such terms as it may be deemed proper.

Costs may be paid from treasury.

§ 20. The said council, or board, may, in its discretion, order by resolution that the whole or any part of the cost and expenses of any of the work mentioned in this act be paid out of the treasury of the municipality, or county, from such fund as the council, or board, may designate. Whenever the work to be done is situated partly within and partly without the municipality, both the council and the board may, in their discretion, order, by resolution, that the whole, or any part of the costs and expenses of the work mentioned in this act, be paid out of the treasury of said municipality, or county, or both, and when the whole or a portion thereof is to be paid out of both, each shall pay such proportion thereof as may be agreed upon, from such funds as the said council or board may designate.

Assessment when improvements are partly within city.

§ 21. Whenever a part of such cost and expenses is so ordered to be paid, the superintendent of streets, or county surveyor, in making up the assessment heretofore provided for such cost and expenses, shall first deduct from the whole cost and expense such part thereof as has been so ordered to be paid out of the municipal treasury or county treasury, as the case may be, and shall assess the remainder of said cost and expense proportionately upon the lots, parts of lots, and lands fronting on the streets where said work was done, or liable to be assessed for such work, and in the manner heretofore provided.

Proper officer to do surveying, etc.

§ 22. The city engineer, or where there is no city engineer, or the proceedings hereunder are before the board of supervisors, the county, or city and county surveyor shall be the proper officer to do the surveying and other engineering work necessary to be done under this act, and to survey and measure the work to be done under contracts for grading and macadamizing streets, and to estimate the costs and expenses thereof; and every certificate signed by him in his official character shall be prima facie evidence in all courts in this state of the truth of its contents. He shall also keep a record of all surveys made under the provisions of this act, as in other cases.

"Incidental expenses" defined.

§ 23. The term "incidental expenses," as used in this act, shall include the compensation of the city engineer or county surveyor for work done by him to be fixed by said council or board; also the cost of printing and advertising as provided in this act, and not otherwise. All demands for incidental expenses mentioned in this section shall be presented to the street superintendent, or county surveyor, by itemized bill, duly verified by oath of the demandant.

Publication of notices, etc. Proof of publication.

§ 24. The notices, resolutions, orders or other matter required to be published by the provisions of this act, shall be published in a daily newspaper, in municipalities where such there is, and where there is no daily newspapers, in a semi-weekly or weekly newspaper, to be designated by the council, or board, as often as the same is issued, and no other statute shall govern or be applicable to the publications herein provided for; provided, however, that only in case there is no daily, semi-weekly or weekly newspaper printed or circulated in any such municipality then such notices, resolutions, orders or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semi-weekly or weekly newspaper, in three of the most public places in such municipality. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher or clerk of the newspaper, or of the poster of the notice. No publication or notice, other than that provided for in this act, shall be necessary to give validity to any of the proceedings provided for herein.

Definitions: "Council." "Board."

§ 25. Whenever the words "council" or "board" are used herein only that word applying to the body before which the proceedings are pending shall be used in the reading and construction of the provisions of this act in relation to proceedings before such body. The word "council" is hereby declared to include any body or board which, under the law is the legislative department of the government of any municipality. The word "board" is hereby declared to include the board of supervisors of any county, or city and county.

"Superintendent of streets." "County surveyor."

§ 26. The words "superintendent of streets," "street superintendent" or "city engineer" used herein, shall be used in the application and construction of this act only when the resolution of intention and the proceedings are under the jurisdiction of the council of the municipality, and this act shall then be read and construed as if the words "or county surveyor," were not incorporated herein, and when the resolution of intention and the proceedings are under the jurisdiction of the board of supervisors, the county surveyor shall perform all of the acts and duties herein required of the superintendent of streets and city engineer, and this act shall be read and construed, when said proceedings are under the jurisdiction of the board of supervisors, as if the said words "street superintendent," "superintendent of streets" and "city engineer" were not incorporated herein, and the words "county surveyor" only were used.

"Work." "Improved."

§ 27. The words "work," "improved" and "improvement," as used in this act shall include all work mentioned in this act, and also the construction, reconstruction and repairs of all or any portion of said work.

"Municipality."

§ 28. The word "municipality," as used in this act, shall be understood and so construed as to include and is hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes.

"Paved."

§ 29. The words "paved" or "repaved," as used in this act, shall be held to mean and include pavement of stone, whether paving blocks or macadamizing, or of bituminous rock or asphalt, or of iron, wood or other material, whether patented or not, which the council or board shall by ordinance adopt.

"Street." "Blocks."

§ 30. The word "street," as used in this act, shall be deemed to, and is hereby declared to include avenues, highways, lanes, alleys, crossings, or intersections, courts and places, and the term "main street" means such actually opened street or streets as bound a block; and the word "blocks" whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the municipality.

"Street superintendent."

§ 31. The terms "street superintendent" and "superintendent of streets," as used in this act, shall be understood and so construed as to include, and are hereby declared to include, any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof in any municipality. In all those municipalities where there is not a street superintendent or superintendent of streets the council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down as those of street superintendent, or superintendent of streets; and all provisions hereof applicable to the street superintendent, or superintendent of streets shall apply to such person so appointed.

"Clerk."

§ 32. The term "clerk" as used in this act, is hereby declared to include any person or officer who shall be clerk of the said council, or board.

"Quarter block."

§ 33. The term "quarter block" as used in this act as to irregular blocks, shall be deemed to include all lots or portions of lots having any frontage on either intersecting

street halfway from such intersection to the next main street or, when no main street intervenes within six hundred feet of such intersection, only those lots or portions of lots or lands within a distance of three hundred feet therefrom shall be considered as being within the quarter block.

“One year.”

§ 34. The term “one year,” as used in this act, shall be deemed to include the time beginning with January first and ending with the thirty-first day of December of the same year.

§ 35. That said act shall take effect and be in force immediately upon its passage.

Improvement of street on boundary line.

§ 36. The provisions of this act shall apply to and authorize the improvement of any street in or along which the boundary line between two municipalities extends. The city councils of such municipalities shall have concurrent jurisdiction of all proceedings under the act to effect the improvement of such streets to the same extent and in the same manner and form as herein provided for the council and the board of supervisors in respect to streets referred to in the act. The council passing the resolution of intention shall thereafter have exclusive jurisdiction of all work and proceedings covered by said resolution, the same as provided in section 3 of the act. [New section approved June 2, 1913, Stats. 1913, p. 371. In effect August 10, 1913.]

DISPOSITION OF LAND OF ABANDONED STREETS.

ACT 4958—An act to provide for the disposition of lands abandoned or closed up as public streets, authorizing the execution of deeds therefor by officers of municipalities and providing for the acceptance of deeds for new streets opened in lieu of such abandoned streets.

History: Approved May 1, 1911, Stats. 1911, p. 1346.

City may convey interest in closed street.

§ 1. Whenever any city or city and county shall deem it advisable to close and abandon any street or portion thereof in said city or city and county, and open a new street or streets in lieu of those so closed or abandoned, and pursuant thereto the council, board of supervisors or other governing body of the municipality shall have taken proceedings under any general law of this state or pursuant to the provisions of the charter of any such city or city and county and closed up or abandoned such street or streets or portions thereof, the council, board of supervisors or other governing body of the municipality in which such street or portion of such street is located, shall have the power by ordinance or resolution (unless otherwise in the charter of such municipality provided) to convey by deed its interest in such street or portions of street so abandoned or closed, to the owners of the lands adjacent thereto or fronting on such street in such manner as said council, board of supervisors or other governing body shall deem that equity requires.

Compensation.

§ 2. Such resolution or ordinance shall provide for the execution of any such deed or deeds in the name of such municipality by at least two officials of the municipality, and said council or other governing body may in its discretion impose any reasonable conditions, or demand compensation by exchange of lands, or otherwise, before conveying land, the fee of which has reverted to such municipality.

Deeds not to be delivered until city has new street.

§ 3. The deeds provided for in the preceding section shall not in any case be delivered to the grantees therein named until good and sufficient conveyances shall have

been delivered to such municipality vesting in such municipality the title to such new street or streets so opened in lieu of such streets so closed or abandoned.

§ 4. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

OPENING STREETS THROUGH CEMETERIES.

ACT 4959—An act relating to the opening of streets through cemeteries.

History: Approved April 24, 1911, Stats. 1911, p. 1100.

Opening streets through cemeteries.

§ 1. No streets, alleys or roads shall be opened or laid out within the boundary lines of any cemetery located in whole or in part within the lines of any city or city and county of this state, where burials have been had within five years prior thereto, without the consent of the corporation or association owning and controlling such cemetery.

STRIKES.

See tit. "Master and Servant."

CHAPTER 374.

SUBWAYS.

CONTENTS OF CHAPTER.

ACT 4973. TUNNELS UNDER NAVIGABLE STREAMS.

TUNNELS UNDER NAVIGABLE STREAMS.

ACT 4973—An act concerning tunnels, tubes and subways under navigable streams and bodies of water in the state of California.

History: Approved March 11, 1911, Stats. 1911, p. 474.

Construction of tunnels under navigable streams.

§ 1. Whenever, in the judgment of the board of supervisors of any county, it shall be deemed advisable in the interests of commerce, or for the benefit of the residents of said county, or for the purpose of expediting travel between points on opposite sides of any navigable stream or body of water, to build and construct tubes, tunnels or subways under such navigable streams or bodies of water for the public use, at such point or place under said navigable stream or body of water as shall be determined upon by the said board of supervisors, the said board of supervisors must call an election and submit to the electors of said county the question whether bonds of said county shall be issued and sold for the purpose of building and constructing said tube, tunnel or subway. The order calling such election shall be valid and effectual when signed by two-thirds of said board of supervisors, and said election shall be held and said bonds issued, in accordance with the terms and provisions of title II, part IV, of the Political Code of the state of California.

Expenses of ascertaining cost of tunnel.

§ 2. The board of supervisors of any county in this state may, for the purpose of ascertaining the probable cost of any proposed tube, tunnel or subway, expend out of the general fund of said county not otherwise appropriated, a sum not exceeding thirty-five hundred dollars; provided, that when any such proposed tube, tunnel or subway shall reach partly in one county and partly in another, said counties shall equally divide the expenditure necessary to ascertain in probable cost of any such proposed tube, tunnel or subway, not exceeding in the aggregate the sum of thirty-five hundred dollars.

Division of cost between counties joined by tunnel.

§ 3. Whenever any such tube, tunnel or subway is proposed to be built or constructed under navigable streams or waterways forming the dividing line between counties, the board of supervisors of each of the counties into which any of such tubes, tunnels or subways will reach shall first agree as to what portions of the cost of such tubes, tunnels or subways shall be paid by each of said counties, and thereafter the boards of supervisors of each of such counties shall have power to take such proceedings as they may deem proper under section 1 of this act; provided, however, that no such tube, tunnel or subway shall be built or constructed under navigable streams or waterways forming the dividing line between counties, unless all the counties into which such tubes, tunnels or subways reach shall first authorize that such work be done and bonds therefor issued in the manner provided in section 1 of this act.

When tunnel reaches within limits of city.

§ 4. Whenever any such tube, tunnel or subway, or any part thereof, shall reach within the limits of any incorporated town, or city, or city and county, and the governing body of each of such incorporated towns, or cities, or cities and counties, and the board of supervisors of the county in which such incorporated towns, or cities, are situated shall first so agree, the board of supervisors shall have the power to call an election and submit to the electors of said county the question whether bonds of said county shall be issued and sold for the purpose of building and constructing such tube, tunnel or subway in the manner prescribed in section 1 of this act; provided, however, that in the event of such bonds being authorized and sold, the construction of such tubes, tunnels or subways shall be under the direction and control of a commission which is hereby created, consisting of the chairman of said board of supervisors and the mayor of each of such incorporated towns, cities, or cities and counties, within the limits of which such tube, tunnel or subway, or any part thereof, shall reach.

§ 5. This act shall take effect immediately.

SUISUN.

See Act 3094, note.

SUNDAY.

See Kerr's Cyc. Penal Code, §§ 299-301. Also, see tit. "Master and Servant."

SUNNYVALE.

See Act 3094, note.

CHAPTER 375.**SUPERVISORS.**

References: See Kerr's Cyc. Political Code, §§ 4041, et seq.
See tit. "Taxation."

CONTENTS OF CHAPTER.

ACT 4998. EXPENSES OF POSSE COMITATUS.

EXPENSES OF POSSE COMITATUS.

ACT 4998—An act to authorize boards of supervisors to pay the expenses of posse comitatus in criminal cases.

History: Approved April 16, 1880, Stats. 1880, p. 102.

Posse comitatus.

§ 1. The board of supervisors of any county may allow, in their discretion, such compensation as they may deem just, to defray the necessary expenses that have been

incurred by a posse comitatus in criminal cases; provided, no claim shall be allowed for expenses which have not been incurred within one year before such allowance.

Act takes effect when.

§ 2. This act shall take effect and be in force from and after its passage.

SUPREME COURT COMMISSION.

Editor's note.—The supreme court commission was created originally by the act of March 12, 1885 (Stats. 1885, p. 101). It consisted of three members, to hold office for four years. It was continued by the act of February 15, 1889 (Stats. 1889, p. 13), when the commission was enlarged to five members. It was again continued January 31, 1893 (Stats. 1893, p. 1). Again, March 2, 1897 (Stats. 1897, p. 47), when the term of the appointment was shortened to two years. Again, February 17, 1899 (Stats. 1899, p. 11). Again, March 12, 1901 (Stats. 1901, p. 273); and again March 18, 1903 (Stats. 1903, p. 178). It was wholly discontinued by the constitutional amendment of 1904 creating the district courts of appeal. Constitution, article VI, § 4.

SUPREME COURT LIBRARY.

See Kerr's Cyc. Political Code, §§ 2313, et seq.

SUPREME COURT REPORTER.

See Kerr's Cyc. Political Code, §§ 767, et seq.

CHAPTER 376.

SURVEYOR-GENERAL.

References: Consent of state to act of Congress, see tit. "Public Lands."

Duties, salary, assistants and clerks, see Kerr's Cyc. Political Code, §§ 483, et seq.

Regulation of land titles, see tit. "Public Lands."

Relinquishment of lien lands, see tit. "Public Lands."

CONTENTS OF CHAPTER.

ACT 5024. OFFICE FURNITURE AND VAULTS.

OFFICE FURNITURE AND VAULTS.

ACT 5024—Authorizing the state surveyor general to furnish his office and vault therein, and making an appropriation therefor.

History: Approved March 20, 1903, Stats. 1903, p. 252.

CHAPTER 377.

SURVEYORS.

References: See, generally, tits. "County Engineer"; "Surveyor General."

CONTENTS OF CHAPTER.

ACT 5030. LICENSING LAND SURVEYORS.

LICENSING LAND SURVEYORS.

ACT 5030—An act to define the duties of and to license land surveyors, and to repeal an act entitled, "An act to define the duties of and to license land surveyors," approved March 31, 1891.

History: Approved March 16, 1907, Stats. 1907, p. 310. Prior act on same subject of March 31, 1891, Stats. 1891, p. 478, amended March 20, 1903, Stats. 1903, p. 267, repealed by this act.

Requirements to receive license.

§ 1. Every person desiring to become a licensed land surveyor in this state must present to the state surveyor general of this state a certificate that he is a person of good moral character; also a certificate signed by three licensed surveyors, which certificate shall set forth that the person named therein is, in the opinion of the person signing the same, a fit and competent person to receive a license as a land surveyor, together with his oath that he will support the constitution of this state and of the United States, and that he will faithfully discharge the duties of a licensed land surveyor, as defined in this act.

Surveyor general to issue license.

§ 2. Upon receipt of such certificate and oath by the state surveyor general, it shall be his duty to forthwith issue to such applicant a license, which license shall set forth the fact that the applicant is a competent surveyor, or that he has had at least two years' experience in the field as a surveyor or assistant surveyor.

Contents.

§ 3. Such license shall contain the full name of the applicant; the technical institution from which he is a graduate (if he be a graduate), or if he is not a graduate, the fact must be stated in the license; his birthplace, age, and to whom issued; the names of the licensed surveyors upon whose certificate the license is issued, and the date of its issuance.

Lists to be sent to county recorders.

§ 4. All papers received by the state surveyor general on application for licenses shall be kept on file in his office, and a proper index and record thereof shall be kept by him, and a list of all licensed land surveyors shall be kept by him, and he shall monthly transmit to the county recorder of each county in this state a full and correct list of all persons so licensed; and it is hereby made the duty of such recorders to keep such lists in their offices in such way as they may be easily accessible to all persons.

Seal of office.

§ 5. Every licensed surveyor shall have a seal of office, the impression of which must contain the name of the surveyor, his principal place of business, and the words "licensed surveyor"; and all maps and papers signed by him, and to which said seal has been attached, shall be prima facie evidence in all the courts of this state.

Term of license.

§ 6. Surveyors' licenses issued in accordance with this act, shall remain in force until revoked for cause, as hereinafter provided.

May administer oaths.

§ 7. Every licensed surveyor is authorized to administer and certify oaths, when it becomes necessary to take testimony to identify or establish old or lost corners; or if a corner or monument be found in a perishable condition, and it appears desirable that evidence concerning such corner or monument be perpetuated; or whenever the importance of the [survey] makes it desirable, to administer an oath, for the faithful performance of duty, to his assistants. A record of such oaths shall be preserved as part of the field-notes of the survey.

Duty of surveyors.

§ 8. Every licensed surveyor is hereby authorized to make surveys relating to the sale or subdivision of lands, the retracing or establishing of property or boundary

lines, public roads, streets, alleys, or trails; and it shall be the duty of each surveyor, whenever making any such surveys, except those relating to the retracing or subdivision of cemetery or town lots, whether the survey be made for private persons, corporations, cities, or counties, to set permanent and reliable monuments, and such monuments must be permanently marked with the initials of the surveyor setting them.

Record of surveys. What record must show.

§ 9. Within sixty days after a survey relating to the sale or subdivision of lands, the retracing or establishing of property and boundary lines, public roads or trails, original cemetery or townsites, and their subdivisions has been made by a licensed surveyor, he shall file with the recorder of the county in which such survey or any portion thereof lies, a record of survey. Such record shall be made in a good draughtsman-like manner, on one or more sheets of firm paper of the uniform size of twenty-one by thirty inches. This record of survey shall be either an original plat or a copy thereof, and must contain all the data necessary to enable any competent practical surveyor to retrace the survey. The record of survey must show: All permanent monuments set, describing their size, kind and location, with reference to the corners which they are intended to perpetuate; all bearing or witness trees marked in the field; complete outlines of the several tracts or parcels of land surveyed within courses, and lengths of boundary lines; the angles, as measured by Vernier readings, which the lines of blocks or lots, if the record relate to an original townsite survey, make with each other and with the center lines of adjacent streets, alleys, roads, or lanes; the variations of the magnetic needle with which old lines have been retraced; the scale of the map, the date of survey; a proper connection with one or more points of an original or larger tract of land, and the name of the same; the name of the grant or grants, or of the township and ranges, within which the survey is located; the signature and seal of the surveyor; provided, that nothing in this section shall require record to be made of surveys of a preliminary nature, where no monuments or corners are established.

County recorder to index records of surveys.

§ 10. The record of surveys thus filed with the county recorder of any county must be by him pasted into a stub book, provided for that purpose, and he must keep a proper index of such records, by name of owner, by name of surveyor, by name of grant, city, or town, and by United States subdivisions; and in all cases where such maps, plats, diagrams, or descriptions are filed by a state licensed land surveyor the county recorder shall make no charge for filing and indexing such records of surveys.

Revocation of license.

§ 11. It shall be the duty of the county surveyor of each county, immediately on ascertaining that any licensed surveyor has failed to comply with the requirements of this act, to furnish the surveyor general with satisfactory proofs of such fact. Upon receipt of such proofs, the state surveyor general must revoke his license, and no other license shall be issued to him within one year from such revocation. A violation of section 9 of this act shall be a misdemeanor, and any person convicted of such violation shall be punished by a fine not to exceed one hundred dollars, or imprisonment in the county jail not exceeding thirty days.

Fees of surveyor general.

§ 12. The surveyor general shall receive a fee of ten dollars for each license, and five dollars for each duplicate license, issued by him; the fees so received to be paid into the state treasury to the credit of the general fund as provided in section 3574 of the Political Code.

Repeal of prior acts.

§ 13. An act entitled "An act to define the duties of and to license land surveyors," approved March 31, 1891, and all other acts, and parts of acts, in conflict with this act, are hereby repealed.

§ 14. This act shall take effect immediately.

1. County surveyor—Must be licensed at the commencement of his term of office.—The county surveyor must be a licensed surveyor under the act of 1891; but one who did not hold the certificate required at the time of his election, but obtained it before the commencement of his term of office, could legally hold the office.—*Ward v. Crowell*, 142 Cal. 587, 76 Pac. 491.

CHAPTER 378.**SURVEYS.**

References: See, generally, tits. "County Engineer"; "Public Lands"; "Surveyor General"; "Surveyors."

CONTENTS OF CHAPTER.

ACT 5035. PERPETUATION OF MARKING OF GOVERNMENT SURVEY.

PERPETUATION OF MARKINGS OF GOVERNMENT SURVEY.

ACT 5035—An act to further perpetuate the markings of the government survey.

History: Approved March 18, 1905, Stats. 1905, p. 102.

County surveyor, duties relating to. Marking of government surveys.

§ 1. When in the performance of his official duties any county surveyor shall find a government corner which has been marked by any government surveyor by placing charcoal in the ground, or by a wooden stake, earth mound, or other perishable monument, it shall be his duty, to remark said corner by placing therein a monument of heavily galvanized iron pipe or galvanized iron stake not less than two inches in diameter and not less than two feet long, or other monument not less in size and equally imperishable.

How placed.

§ 2. All such monuments located in public highways shall be placed with the top not less than twelve inches below the surface of the ground, but when not located in public highways, they shall be placed with the top six inches above the surface of the ground. If the top of the monument is placed above the ground, it shall be not less than four feet long, if of metal.

Witness objects recorded.

§ 3. The surveyor shall note witness objects that are within a reasonable distance of any corner, and state distance and course from said corner, and record the same in a properly indexed record-book kept in the county surveyor's office, which shall be a public record.

Supervisors to furnish stakes, etc.

§ 4. All boards of supervisors are required to furnish all necessary pipes or stakes for monuments for their respective counties without cost, on demand.

SUSANVILLE.

See Act 3094, note.

"SUTRO LIBRARY."

See tit. "State Library," Act 4873.

SUTTER-BUTTE BY-PASS.

See tit. "Sacramento and San Joaquin Drainage District."

CHAPTER 379.

SUTTER COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3959.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

- ACT 5043. SEPARATE JUDGE.
- 5044. PROTECTION OF LANDS FROM OVERFLOW.
- 5045. TRANSCRIBING RECORDS.

SEPARATE JUDGE.

ACT 5043—An act to provide for a separate judge for each of the counties of Yuba and Sutter.

History: Approved March 2, 1897, Stats. 1897, p. 48.

PROTECTION OF LANDS FROM OVERFLOW.

ACT 5044—An act to provide for the protection of certain lands in from overflow.

History: Approved March 25, 1868, Stats. 1867-68, p. 316. Amended March 8, 1872, Stats. 1871-72, p. 307. Supplemented March 30, 1872, Stats. 1871-72, p. 734.

Editor's note: Of this act the code commissioners say: "Unconstitutional as to section 21 (*Brandenstein v. Hoke*, 101 Cal. 131 [35 Pac. 562]; *Wilson v. Supervisors*, 47 Cal. 91)." See, also, *People v. Whyler*, 41 Cal. 351; *Moulton v. Parks*, 64 Cal. 166, 64 Pac. 613.

The title of the act sufficiently indicates its purpose. It created levee district number one, and provided for the construction of levees, embankments, etc., and for the levy of a special tax to pay the cost thereof. It is also provided for the creation of other districts for a like purpose, and for the establishment of funds to be used for their benefit. A number of districts were created under its provisions, and a large number of decisions of the supreme court cite it; but

the act is more or less obsolete, and has been largely if not entirely superseded by the general laws relating to reclamation, levee, swamp and overflowed land and protection districts; and for that reason no attempt at annotation has been made.

The following cases are noted for the benefit of those who may have occasion to refer to the act: Citations.—*Wilson v. Sup. of Sutter Co.*, 47 Cal. 91, 92; *Dean v. Davis*, 51 Cal. 406, 407; *Hoke v. Perdue*, 62 Cal. 545, 546; *Moulton v. Parks*, 64 Cal. 166, 179, 30 Pac. 613; *In re Madera Irr. Dist.*, 92 Cal. 296, 311, 28 Pac. 272, 675, 27 Am. St. Rep. 106, 14 L. R. A. 755; *People ex rel. Silva v. Levee Dist. No. 6*, 131 Cal. 30, 31, 63 Pac. 676.

TRANSCRIBING RECORDS.

ACT 5045—An act concerning the county records of the county of Sutter.

History: Approved April 21, 1858, Stats. 1858, p. 205.

SUTTER CREEK.

See Act 3094, note.

CHAPTER 380.

SUTTER'S FORT.

CONTENTS OF CHAPTER.

- ACT 5062. ACQUISITION OF SUTTER'S FORT.
- 5063. GUARDIAN OF SUTTER'S FORT.
- 5064. GARDENER AT SUTTER'S FORT.
- 5065. ASSISTANT GARDENER AT SUTTER'S FORT.
- 5066. MEMORIAL OF CALIFORNIA PIONEERS.
- 5067. IMPROVEMENT OF TWENTY-SIXTH STREET, SACRAMENTO.

ACQUISITION OF SUTTER'S FORT.

ACT 5062—An act to provide for the acquisition of Sutter's Fort and appointing trustees therefor.

History: Approved March 7, 1891, Stats. 1891, p. 25. Amended March 21, 1907, Stats. 1907, p. 838.

GUARDIAN OF SUTTER'S FORT.

ACT 5063—An act to provide for the appointment of a guardian of Sutter's Fort, and prescribing his duties.

History: Approved March 16, 1895, Stats. 1895, p. 56. Amended March 18, 1905, Stats. 1905, p. 171; March 20, 1909, Stats. 1909, p. 581; May 27, 1919, in effect July 27, 1919, Stats. 1919, p. 1310. The amendment of 1919 provided for a salary of \$1800 per annum.

GARDENER AT SUTTER'S FORT.

ACT 5064—An act authorizing the board of Sutter's Fort trustees to appoint a gardener for the purpose of caring for the grounds around Sutter's Fort, and providing for the compensation of said gardener.

History: Approved March 21, 1907, Stats. 1907, p. 776. Amended April 27, 1911, Stats. 1911, p. 1148; May 27, 1919, in effect July 27, 1919, Stats. 1919, p. 1310. The amendment of 1919 provided for a salary of \$1320 per annum.

ASSISTANT GARDENER AT SUTTER'S FORT.

ACT 5065—An act providing for an assistant gardener for Sutter's Fort.

History: Approved April 14, 1909, Stats. 1909, p. 893. Amended May 27, 1919, in effect July 27, 1919, Stats. 1919, p. 1310. The amendment of 1919 provided for a salary of \$1200 per annum.

MEMORIAL OF CALIFORNIA PIONEERS.

ACT 5066—An act to grant permission to the "Sacramento Society of California Pioneers" to erect a memorial building on the grounds of the Sutter's Fort park in Sacramento city.

History: Approved March 15, 1907, Stats. 1907, p. 296.

IMPROVEMENT OF TWENTY-SIXTH STREET, SACRAMENTO.

ACT 5067—An act authorizing the board of Sutter's Fort trustees to improve a certain street in the city of Sacramento, to wit: Twenty-sixth street from the south line of K street to the north line of L street, and to make an appropriation therefor.

History: Approved March 8, 1907, Stats. 1907, p. 184.

CHAPTER 381.

SWAMP AND OVERFLOWED LAND DISTRICTS.

References: See Kerr's Cyc. Political Code, §§ 3440, et seq.

See, generally, tits. "Levee Districts"; "Protection Districts"; "Public Lands"; "Reclamation Districts"; "Tide Lands."

Dissolution of swamp and overflowed land districts for non-user, see tit. "Reclamation Districts," Act 3902. Also Kerr's Cyc. Political Code, § 3493.

CONTENTS OF CHAPTER.

ACT 5072a. PAYMENT TO COUNTIES OF SWAMP LAND DISTRICT FUNDS.

5073. "SWAMP LAND DISTRICT No. 17."

5074. "SWAMP LAND DISTRICT No. 118."

5075. "SWAMP LAND DISTRICT No. 150."

5076. "SWAMP LAND DISTRICT No. 221."

5077. "SWAMP LAND DISTRICT No. 307."

PAYMENT TO COUNTIES OF SWAMP LAND DISTRICT FUNDS.

ACT 5072a—An act providing for the payment of all moneys in the state treasury to the credit of swamp land district funds to the treasuries of the counties wherein the said swamp land districts are situated, and to provide for the control of the same by the auditor and treasurer of said counties, and prescribing the duties of the controller and treasurer in relation thereto.

History: Approved March 31, 1891, Stats. 1891, p. 243.

“SWAMP LAND DISTRICT NO. 17.”

ACT 5073—An act conferring additional powers upon trustees of swamp land district No. 17, in San Joaquin county.

History: Approved April 3, 1876, Stats. 1875-76, p. 781.

“SWAMP LAND DISTRICT NO. 118.”

ACT 5074—An act relative to swamp land district number one hundred and eighteen, in Contra Costa county.

History: Approved March 26, 1874, Stats. 1873-74, p. 689. The act of March 6, 1876, Stats. 1875-76, p. 140, which was in effect, a levy of an assessment for the purposes of the district by the legislature, was held unconstitutional in *People v. Houston*, 54 Cal. 536.

“SWAMP LAND DISTRICT NO. 150.”

ACT 5075—An act in relation to the formation of a new swamp land district.

History: Approved March 30, 1874, Stats. 1873-74, p. 867.

“SWAMP LAND DISTRICT NO. 221.”

ACT 5076—An act to legalize swamp land district No. 221, and provide for the collection of taxes of the same.

History: Approved March 23, 1878, Stats. 1877-78, p. 434.

“SWAMP LAND DISTRICT NO. 307.”

ACT 5077—An act in relation to swamp land district No. 307, and legalizing certain proceedings therein.

History: Approved March 14, 1878, Stats. 1877-78, p. 250.

CHAPTER 382.

SYNDICALISM.

CONTENTS OF CHAPTER.

ACT 5086. CRIMINAL SYNDICALISM ACT.

CRIMINAL SYNDICALISM ACT.

ACT 5086—An act defining criminal syndicalism and sabotage, proscribing certain acts and methods in connection therewith and in pursuance thereof and providing penalties and punishments therefor.

History: Approved April 30, 1919. In effect immediately. Stats. 1919, p. 281.

“Criminal syndicalism” defined.

§ 1. The term “criminal syndicalism” as used in this act is hereby defined as any doctrine or precept advocating, teaching or aiding and abetting the commission of crime, sabotage (which word is hereby defined as meaning wilful and malicious physical damage or injury to physical property), or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change.

Unlawful acts. Penalty.**§ 2. Any person who:**

1. By spoken or written words or personal conduct advocates, teaches or aids and abets criminal syndicalism or the duty, necessity or propriety of committing crime, sabotage, violence or any unlawful method of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change; or

2. Wilfully and deliberately by spoken or written words justifies or attempts to justify criminal syndicalism or the commission or attempt to commit crime, sabotage, violence or unlawful methods of terrorism with intent to approve, advocate or further the doctrine of criminal syndicalism; or

3. Prints, publishes, edits, issues or circulates or publicly displays any book, paper, pamphlet, document, poster or written or printed matter in any other form, containing or carrying written or printed advocacy, teaching, or aid and abetment of, or advising, criminal syndicalism; or

4. Organizes or assists in organizing, or is or knowingly becomes a member of, any organization, society, group or assemblage of persons organized or assembled to advocate, teach or aid and abet criminal syndicalism; or

5. Wilfully by personal act or conduct, practices or commits any act advised, advocated, taught or aided and abetted by the doctrine or precept of criminal syndicalism, with intent to accomplish a change in industrial ownership or control, or effecting any political change;

Is guilty of a felony and punishable by imprisonment in the state prison not less than one nor more than fourteen years.

Constitutionality.

§ 3. If for any reason any section, clause or provision of this act shall by any court be held unconstitutional then the legislature hereby declares that, irrespective of the unconstitutionality so determined of such section, clause or provision, it would have enacted and made the law of this state all other sections, clauses and provisions of this act.

Urgency measure.

§ 4. Inasmuch as this act concerns and is necessary to the immediate preservation of the public peace and safety, for the reason that at the present time large numbers of persons are going from place to place in this state advocating, teaching and practicing criminal syndicalism, this act shall take effect upon approval by the governor.

1. Constitutionality.—Section 1, article IV, constitution.—The requirements of section 1, article IV, of the constitution are sufficiently complied with by the recitals of section 4 of the act.—*Ex parte McDermott*, 180 Cal. 783, 183 Pac. 437.

2. Same.—Upheld so far as material.—Act of 1919 (p. 281) held constitutional in so far as its provisions are material in the present case.—*Ex parte McDermott*, 180 Cal. 783, 183 Pac. 437.

3. Same—Same.—The act was held constitutional in so far as its provisions were material in the present case, an indictment for displaying and circulating books, etc., in violation of the act.—*People v. Malley*, (Cal. App.) 194 Pac. 48.

3a. Same.—Not class legislation.—The act is not unconstitutional on the ground that it is class legislation.—*People v. Steelik*, 33 Cal. App. Dec. 594.

4. I. W. W. printed matter.—The display and circulation of books, pamphlets and printed matter examined at the I. W. W. headquarters in San Francisco, was held to be in violation of the criminal syndicalism act.—*People v. Malley*, (Cal. App.) 194 Pac. 48.

5. "Sabotage" defined.—"Sabotage," as used in the criminal syndicalism act, and as there defined, means wilful and malicious physical damage or injury to physical property.—*People v. Malley*, (Cal. App.), 194 Pac. 48.

6. Questions for the jury.—The interpretation to be placed on the matters circulated, in a prosecution for a violation of the criminal syndicalism act, and the probable effect of such circulation, and the defendant's motives, are questions for the jury.—*People v. Malley*, (Cal. App.) 194 Pac. 48.

7. Evidence of conspiracy.—Evidence was properly admitted in a prosecution for a violation of the act against a member of the I. W. W., that the latter was engaged in a conspiracy to violate the provisions of the act, although some of it related to matters occurring long before he became a member.—*People v. Steelik*, 33 Cal. App. Dec. 594.

8. Indictment—Each and all of acts denounced constitute an offense, and all may be conjunctively pleaded.—The acts denounced in the criminal syndicalism act comprise a series, any one or all of which constitute an offense, and an indictment may

set forth all in a single count conjunctively.—*People v. Steelik*, 33 Cal. App. 594.

See, also, *People v. Malley*, (Cal. App.) 194 Pac. 48.

9. Same — Sufficient.—An indictment charging the offense in substantially the language of the statute is sufficient.—*People v. Taylor*, 34 Cal. App. Dec. 414.

10. Question of fact.—The question as to whether the communist labor party in California, was organized to advocate, teach, and abet criminal syndicalism, is one for the jury, not one of law.—*People v. Taylor*, 34 Cal. App. Dec. 414.

SYRUP.

See tit. "Adulteration."

TAFT.

See Act 3094, note.

CHAPTER 383.

TAXATION.

References: Corporation taxes, see Kerr's Cyc. Political Code, §§ 3664-3671d.

Taxation in general, see Kerr's Cyc. Political Code, §§ 3607, et seq.

CONTENTS OF CHAPTER.

ACT 5092. "INHERITANCE TAX ACT."

5093. INHERITANCE TAX—LIEN ENFORCEMENT ACTIONS.

5098. COUNTY SPECIAL TAX FOR CERTAIN PURPOSES.

5099. MUNICIPAL SPECIAL TAX FOR SPECIFIC PUBLIC IMPROVEMENTS.

5100. MUNICIPAL TAXATION.

5102. REASSESSMENT AND EQUALIZATION ACT OF 1893.

5103. COMPENSATION FOR THE COLLECTION OF DELINQUENT TAXES.

5105. TAX COMMISSIONS AND FEES ABOLISHED.

5106. SUITS FOR TAX COMMISSIONS AND FEES PROHIBITED.

5107. PAYMENT OF TAX COMMISSIONS AND FEES PROHIBITED.

5109. ASSESSMENT OF ANIMALS PASTURING IN ANOTHER COUNTY.

5110. ASSESSMENT OF MIGRATORY LIVESTOCK.

5116. TAX DEEDS VALIDATED.

5117. CERTIFICATES OF SALES AND TAX DEEDS VALIDATED.

5118. SUITS FOR DELINQUENT PERSONALTY TAXES.

5119. FORM OF COMPLAINT IN SUITS FOR DELINQUENT TAXES.

5122. CORPORATION TAX ACT.

5126. ASSESSMENT AND COLLECTION OF TAXES IN FREEHOLDERS' CHARTER MUNICIPALITIES.

5128. TAX COMMISSION ACT OF 1915.

5129. VALIDATION OF ASSESSMENTS.

5130. DESTRUCTION BY FIRE OF CERTAIN REPORTS AND DOCUMENTS AUTHORIZED.

5131. DUPLICATE AND EXCESS PAYMENTS OF TAXES.

5132. DAILY PAYMENT OF EXCESS TAXES AUTHORIZED—REFUNDING OF SUCH PAYMENTS.

INHERITANCE TAX ACT.

ACT 5092—An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and by any act hereby repealed and for suits to quiet title against claims of liens arising hereunder, or under an act hereby repealed, to be known as the "inheritance tax act"; and to repeal chapter five hundred ninety-five of the laws of the session of the legislature of California of 1913, approved June 16, 1913, known as the "inheritance tax act," and all amendments thereto, and to repeal all acts and parts of acts in conflict with this act.

History: Approved May 23, 1917. In effect July 27, 1917. Stats. 1917, p. 880. Prior acts on same subject were enacted as follows: (1) Act of March 23, 1893, Stats. 1893, p. 193; amended March 9, 1895, Stats. 1895, p. 33; March 9, 1897, Stats. 1897, p. 77; March 14, 1899, Stats. 1899, p. 101; February 27, 1903, Stats. 1903, p. 55; March 20, 1903, Stats. 1903, p. 268; and repealed by (2) act of March 20, 1905, Stats. 1905, p. 341, which was, in turn, repealed by (3) act of April 7, 1911, Stats. 1911, p. 713, which was, in turn, repealed by (4) act of June 16, 1913, Stats. 1913, p. 1066, and this last act was repealed by the present act. The act of June 16, 1913, repealed the act of March 20, 1909 (Stats. 1909, p. 557), authorizing the controller to appoint an inheritance tax deputy, etc.

Title. Definitions.

§ 1. (1) This act shall be known as the "inheritance tax act."

"Estate" and "property." Wife's share of community property exempted.

(2) The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or transferred to individual legatees, devisees, heir, next of kin, grantees, donees, vendees or successors, and shall include all personal property within or without the state; provided, that for the purpose of this act the one-half of the community property which goes to the surviving wife on the death of the husband, under the provisions of section one thousand four hundred two of the Civil Code, shall not be deemed to pass to her as heir to her husband, but shall, for the purpose of this act, be deemed to go, pass or be transferred to her for valuable and adequate consideration and her said one-half of the community shall not be subject to the provisions of this act; provided, further, that in case of a transfer of community property from the husband to the wife, within the meaning of subdivisions (3) or (5) of section two of this act, one-half of the community property so transferred shall not be subject to the provisions of this act; and provided, further, that the presumption that property acquired by either husband or wife after marriage is community property, shall not obtain for the purpose of this act as against any claim by the state for the tax hereby imposed; but the burden of proving such property to be community property shall rest upon the person claiming the same to be community property.

"Transfer."

(3) The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described.

"Decedent."

(4) The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor.

“County treasurer” and “inheritance tax appraiser.”

(5) The words “county treasurer” and “inheritance tax appraiser,” as used in this act, shall be taken to mean the treasurer or the inheritance tax appraiser of the county of the superior court having jurisdiction as provided in section fifteen of this act.

Tax on transfer of property, when.

§ 2. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state, said taxes to be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted, in the following cases:

(1) When the transfer is by will or by the intestate or homestead laws of this state, from any person dying seized or possessed of the property while a resident of the state, or by any order of court setting apart property pursuant to article I, chapter five, title eleven, part three of the Code of Civil Procedure.

(2) When the transfer is by will or intestate laws of property within this state and the decedent was a nonresident of the state at the time of his death, or by any order of court setting apart property pursuant to article I, chapter five, title eleven, part three of the Code of Civil Procedure.

(3) When the transfer is of property made by a resident, or by a nonresident when such nonresident's property is within this state, by deed, grant, bargain, sale, assignment or gift, made without valuable and adequate consideration (i. e., a consideration equal in money or in money's worth to the full value of the property transferred):

- (a) In contemplation of the death of the grantor, vendor, assignor, or donor, or,
- (b) Intended to take effect in possession or enjoyment at or after such death.

When such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.

(4) The words “contemplation of death,” as used in this act, shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in nowise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person making a gift *causa mortis*; and it is hereby declared to be the intent and purpose of this act to tax any and all transfers which are made in lieu of or to avoid the passing of property transferred by testate or intestate laws.

Property held in joint names.

(5) Whenever property, real or personal, is held in the joint names of two or more persons, or is deposited in banks or other institutions or depositaries in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons, the right of the surviving joint tenant or joint tenants, person or persons to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this act in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased joint tenant or joint depositor and had been devised or bequeathed to the surviving joint tenant or joint tenants, person or persons, by such deceased joint tenant or joint depositor by will, excepting therefrom such part thereof as may be proved by the surviving joint tenant or joint tenants to have originally belonged to him or them and never to have belonged to the decedent.

Appointment deemed transfer.

(6) Whenever any person, trustee or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a transfer taxable under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person, trustee or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons, trustees or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

Bequest exceeding reasonable compensation.

(7) Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devise, or residuary legacies exceeds what would be a reasonable compensation for their services, such excess over and above the exemptions herein provided for shall be liable to said tax; and the superior court in which the probate proceedings are pending shall fix the compensation.

Property transferred subject to charge determined by death of person.

(8) Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

Aggregate value of more than one transfer.

(9) When more than one transfer within the meaning of any of the preceding subdivisions of this section has been made, either before or after the passage of this act, by a decedent to one person, the tax shall be imposed upon the aggregate market value of all of the property so transferred to such person in the same manner and to the same extent as if all of the property so transferred were actually transferred by one transfer.

No deduction of United States tax.

(10) In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the government of the United States.

Lien. Suit within five years.

§ 3. Such taxes shall be and remain a lien upon the property passed or transferred until paid; provided, that said lien shall be limited to the property chargeable therewith, and the person to whom the property passes or is transferred, and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The provisions of the Code of Civil Procedure relative to the limitation of time of

enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty prescribed by this article, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law; provided, that unless sued for within five years after they are due and legally demandable, such taxes, or any taxes accruing under any act herein repealed, shall cease to be a lien as against any bona fide purchaser of said property; and, provided, that no such lien shall cease within two years from the date of the passage of this act.

Tax when property value not over \$25,000.

§ 4. When the property or any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:

(1) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal ancestor, lineal issue of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent (provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter), or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of a decedent, a wife or widow of a son, or the husband of a daughter of the decedent at the rate of three per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

Tax when property value exceeds \$25,000.

§ 5. (1) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision one of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, two per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, four per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, seven per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, ten per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twelve per centum of such excess.

(f) Upon all in excess of one million dollars, fifteen per centum of such excess.

(2) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision two of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, six per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, nine per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, twelve per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, fifteen per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twenty per centum of such excess.

(f) Upon all in excess of one million dollars, twenty-five per centum of such excess.

(3) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision three of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, eight per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, ten per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, fifteen per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, twenty per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twenty-five per centum of such excess.

(f) Upon all in excess of one million dollars, thirty per centum of such excess.

(4) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision four of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, ten per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, fifteen per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, twenty per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, twenty-five per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars, thirty per centum of such excess.

Exemptions allowed.

§ 6. The following exemptions from the tax are hereby allowed:

(1) All property transferred to societies, corporations, and institutions now or hereafter exempted by law from taxation, or to any public corporation, or to any society, corporation, institution, or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution, or association of persons in trust for or to be devoted to any charitable, benevolent, educational, or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof, shall be exempt; provided, however, that such society, corporation, institution or association be organized or existing under the laws of this state or that the property transferred be limited for use within this state.

(2) Property of the clear value of twenty-four thousand dollars, transferred to the widow or to a minor child of the decedent, and of ten thousand dollars transferred to each of the other persons described in the first subdivision of section four, shall be exempt.

(3) Property of the clear value of two thousand dollars, transferred to each of the persons described in the second subdivision of section four, shall be exempt.

(4) Property of the clear value of one thousand dollars, transferred to each of the persons described in the third subdivision of section four, shall be exempt.

(5) Property of the clear value of five hundred dollars, transferred to each of the persons and corporations described in the fourth subdivision of section four, shall be exempt.

Time of payment. Discount. Bond.

§ 7. (1) All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued; provided, that if said tax is paid within six months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators, or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond for the payment of said tax, together with interest.

If estate not settled within eighteen months.

(2) The penalty of ten per cent per annum imposed by subdivision (1) of this section for the nonpayment of said tax, shall not be charged in cases where, in the judgment of the court, by reason of claims made upon the estate necessary litigation, or other unavoidable cause of delay, the estate of any decedent, or a part thereof, cannot be settled at the end of eighteen months from the death of the decedent; but in such cases seven per cent per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed, after which ten per cent interest per annum shall again be charged until the tax is paid; but litigation to defeat the payment of the tax shall not be considered necessary litigation.

Immediate appraisement and payment.

§ 8. (1) When any grant, gift, legacy, devise or succession upon which a tax is imposed by section two of this act shall be an estate, income, or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion, or other expectancy, real or personal, the entire property or fund by which such estate, income, or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the market value thereof determined, in the manner provided in section sixteen or seventeen of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid.

Incumbrances.

(2) In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual

burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section eleven hereof upon order of the court having jurisdiction.

Property transferred in trust. Bond. Return of property filed. Recovery on bond if security not renewed.

(3) When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act; such return of overpayment shall be made in the manner provided by section eleven of this act, upon order of the court having jurisdiction; provided, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax or the trustees thereof may elect not to pay the same until such person or persons, or body politic or corporate beneficially interested in such property shall come into the actual possession or enjoyment thereof, and in that case such person or persons or body politic or corporate or trustees shall execute a bond to the people of the state of California in a penalty of twice the amount of said tax with such sureties as the said superior court may approve, conditioned for the payment of said tax and interest thereon at the rate of seven per cent per annum commencing at the expiration of eighteen months from the death of the decedent at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, and conditioned further, that if said bond be not renewed and the returns made as herein provided, the amount of said tax and interest thereon shall immediately become due and payable. Said bond shall be filed in the office of the county clerk of the proper county and a certified copy thereof shall be immediately transmitted to the state controller; provided, further, that such person or persons or body politic or corporate, or trustees, shall enter into such security within a period of ninety days after the entry of the order or decree fixing the inheritance tax charged against such transfer, or within such period thereafter as the court may in its discretion permit, and shall make a full and verified return of such property to said court and file the same in the office of the county clerk within one year from the date of such order or decree fixing tax, and at such times thereafter as the court on the application of the state controller may require, and renew such security every five years after the date of the approval thereof. Upon the approval of said bond as herein provided, said tax shall cease to be a lien upon the property so transferred. If such security shall not be renewed before the expiration of each five-year period, said bond shall immediately become due and payable and if the same be not paid forthwith, the attorney general shall file an action in the name of the people of the state on the relation of the controller, to recover the same and the penalties thereunder and no demand for payment shall be necessary before the institution of such suit.

Whenever it shall be made to appear to the satisfaction of the court that any surety on such bond or undertaking has for any reason become insufficient, the court may on motion of the state controller, after such notice to such person or persons, body politic or corporate, or trustees as the court may require, order the giving of a new undertaking with sufficient sureties in lieu of such insufficient undertaking. In case such new undertaking so required shall not be given within the time required by such order, or in case the sureties thereon fail to justify thereon when required, all rights obtained by the filing of such original undertaking, or subsequent undertaking, shall cease and the amount of said tax and interest thereon shall immediately become due and payable.

Estates in expectancy.

(4) Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

(5) Where an estate or interest can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

Future or contingent estate. Determination of value.

(6) The value of every future, or contingent or limited estate, income or interest, shall, for the purposes of this act be determined by the rule, methods and standards of mortality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interest and contingencies shall be five (5) per cent per annum. The insurance commissioner shall without a fee on the application of any superior court or of any inheritance tax appraiser determine the value of any future or contingent estate, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's application or other facts to him submitted by said appraiser or said court and certify the same in duplicate to such court or appraiser, and his certificate thereof shall be conclusive evidence that the method of computation therein is correct. When an annuity or a life estate is terminated by the death of the annuitant or life tenant, and the tax upon such interest has not been fixed and determined, the value of said interest for the purpose of taxation under this act shall be the amount of the annuity or income actually paid or payable to the annuitant or life tenant during the period for which such annuitant or life tenant was entitled to the annuity or was in possession of the life estate.

Collection of tax by administrator.

§ 9. (1) Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the

tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

Sale of property to pay tax.

(2) All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

Payment within 30 days.

(3) Every sum of money retained by an executor, administrator, or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending.

Treasurer's receipt.

§ 10. Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor, in triplicate, one copy of which he shall deliver to the person paying said tax, and the original and one copy thereof he shall immediately send to the controller of state, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said controller shall retain one of said receipts and the other he shall countersign and seal with the seal of his office, and immediately transmit to the clerk of the court fixing such tax. And an executor, administrator, or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless a receipt so sealed and countersigned by the controller, or a copy thereof, certified by him, shall have been filed with the court. Any person shall, upon payment to the county treasurer of the sum of fifty cents, be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act.

Refund of tax.

§ 11. (1) If any debts shall be proved against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the superior court having jurisdiction, on notice to the state controller, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer; or if such tax has been paid to such county treasurer, such officer shall refund out of any inheritance tax moneys in his hands or custody such equitable proportion of the tax, and credit himself with the same in the account required to be rendered by him under this act.

Assessing tax on amount wrongfully deducted.

(2) Where it shall be proved to the satisfaction of the superior court that deductions for debts were allowed upon the appraisal, since proved to have been erroneously allowed, it shall be lawful for such superior court to enter an order assessing the tax upon the amount wrongfully or erroneously deducted.

Refund of tax when order modified or reversed. Application within one year.

(3) If, after the payment of any tax in pursuance of an order fixing such tax, made by the superior court having jurisdiction, such order be modified or reversed by the superior court having jurisdiction within two years from and after the date of

entry of the order fixing the tax, or be modified or reversed at any time on an appeal taken therefrom within the time allowed by law on due notice to the state controller, the county treasurer shall refund to the executor, administrator, trustee, person or persons by whom such tax was paid, the amount of any moneys paid or deposited on account of such tax in excess of the amount of tax fixed by the order modified or reversed, out of any inheritance tax moneys in his hands or custody, and credit himself with the same in the account required to be rendered by him to the controller on his semiannual settlement; but no application for such refund shall be made after one year from such reversal or modification, unless an appeal shall be taken therefrom, in which case no such application shall be made after one year from the final determination on such appeal or of an appeal taken therefrom, and the representatives of the estate, legatees, devisees or distributees entitled to any refund under this section shall not be entitled to any interest upon such refund, and the state controller shall deduct from the fees allowed by this act to the county treasurer the amount theretofore allowed him upon such overpayment.

Refund of tax erroneously paid.

(4) When any amount of said tax shall have been erroneously paid, the superior court having jurisdiction, on application after notice to the state controller, and on satisfactory proof to it, shall by order require the county treasurer to refund and pay to the executor, administrator, trustee, person or persons who had paid any such tax in error the amount of such tax so erroneously paid; provided, that all applications for such repayment of such tax so erroneously paid shall be made within one year of the date of the entry of the order fixing tax or of the decree of final distribution of the estate. Such refund shall be made by said treasurer out of any inheritance tax moneys in his hands or custody and he shall credit himself with the same in the account required to be rendered by him to the controller on semiannual settlement; and the state controller shall deduct from the fees allowed by this act to the county treasurer the amount theretofore allowed him upon such erroneous payment.

(5) This section, as amended, shall apply to appeals and proceedings now pending and taxes heretofore paid in relation to which the period of one year from such reversal or modification has not expired when this section, as amended, takes effect.

Examination of books, etc. Penalty for divulging information.

§ 12. (1) Whenever the state controller shall have reasonable cause to believe that a tax is due under the provisions of this act, upon any transfer of any property, and that any person, firm, institution, company, association or corporation has possession, custody or control of any books, accounts, papers or documents relating to or evidencing such transfer, the state controller or inheritance tax attorney, or any assistant inheritance tax attorney of the inheritance tax department, is hereby authorized and empowered to inspect the books, records, accounts, papers and documents of any such person, firm, institution, company, association or corporation, including the stock transfer book of any corporation, for the purpose of acquiring any information deemed necessary or desirable by said state controller or such inheritance tax attorney or assistant inheritance tax attorneys, for the proper enforcement of this act, and for the collection of the full amount of tax which may be due the state hereunder. Any and all information acquired by said state controller or said inheritance tax attorney or assistant inheritance tax attorneys shall be deemed and held by said state controller and said inheritance tax attorney and assistant inheritance tax attorneys and each of them, as confidential, and shall not be divulged, disclosed or made known by them or any of them except in so far as may be necessary for the enforcement of the provisions of this act. Any controller or ex-controller, or inheritance tax attorney or ex-inheritance tax attorney, or assistant inheritance tax attorney or ex-assistant inheri-

tance tax attorney, who shall divulge, disclose or make known any information acquired by such inspection and examination aforesaid, except in so far as the same may be necessary for the enforcement of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than ninety days, or both.

Penalty for refusing to permit examination.

(2) Any officer or agent of any firm, institution, company, association or corporation having or keeping an office within this state, who has in his custody or under his control any book, record, account, paper or document of such firm, institution, company, association or corporation, and any person having in his custody or under his control such book, record, account, paper or document who refuses to give to the state controller, or said inheritance tax attorney, or any of said assistant inheritance tax attorneys, lawfully demanding, as provided in this section, during office hours to inspect or take a copy of the same, or any part thereof, for the purposes hereinabove provided, a reasonable opportunity so to do, shall be liable to a penalty of not less than one thousand dollars nor more than twenty thousand dollars, and in addition thereto shall be liable for the amount of the taxes, interest and penalties due under this act on such transfer, and the said penalties and liabilities for the violation of this section may be enforced in an action brought by the state controller in any court of competent jurisdiction.

Consent of controller to transfer of decedent's stock.

§ 13. (1) No corporation organized or existing under the laws of this state, shall transfer on its books or issue a new certificate for any share or shares of its capital stock belonging to or standing in the name of a decedent or in trust for a decedent or belonging to or standing in the joint names of a decedent and one or more persons, without the written consent of the state controller or person by him in writing authorized to issue such consent.

Trust companies, etc., to retain amount to pay tax. Notice of transfer.

(2) No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control or custody or under partial control or partial custody securities, deposits, assets or property belonging to or standing in the name of a decedent who was a resident or nonresident, or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives, agents, deputies, attorneys, trustees, legatees, heirs, successors in interest of said decedent or to any other person or persons, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed thereon under this act and unless notice of the time and place of such delivery or transfer be served upon the state controller and county treasurer at least ten days prior to said delivery or transfer; provided, that the state controller, or person by him in writing authorized so to do, may consent in writing to said delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation hereunder to give such notice or to retain any portion of said securities, deposits or other assets in their possession or control. And it shall be lawful for the state controller or county treasurer, personally or by representatives, to examine said securities, deposits or assets at the time of said delivery or otherwise.

Penalty for failure to comply.

(3) Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons, liable to a penalty of not more than twenty thousand dollars, and in addition thereto said safe deposit company, trust company, corporation, bank or other institution, person or persons shall be liable for the amount of the taxes, interest and penalties due under this act on said securities, deposits, or other assets above mentioned, and said penalties and liabilities of said safe deposit company, corporation, bank or other institution, person or persons for the violation of this section may be enforced in an action brought by the state controller in any court of competent jurisdiction.

Inheritance tax appraisers. Penalty for taking other than fee allowed.

§ 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. Every such inheritance tax appraiser (in addition to any fees paid him as appraiser under section one thousand four hundred forty-four of the Code of Civil Procedure) shall be paid for his services out of any inheritance tax moneys in the hands of the treasurer of the county in which he may be acting, a reasonable compensation, to be fixed by the superior court of said county, or a judge thereof, and, together with said compensation, said appraiser shall be allowed his actual and necessary traveling and other incidental expenses, and the fees paid such witnesses as he shall subpoena before him, said expenses and fees to be allowed by said superior court or a judge thereof; provided, that any claim for any such services or expenditure, must before payment, first receive the approval of the state controller; and provided, further, that in any probate proceeding in which the executor or administrator shall have failed to have had the inheritance tax appraiser act as one of the appraisers under section one thousand four hundred forty-four of the Code of Civil Procedure and to have paid him his fees therefor, the expense of making the inheritance tax appraisal in this act provided for shall be paid out of said estate, and the executor or administrator thereof shall be liable for said fee. Any such appraiser who shall take any fee or reward, other than such as may be allowed him by law, from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail ninety days or both, and in addition thereto the court shall dismiss him from such service.

Jurisdiction of superior court.

§ 15. The superior court in the county in which is situate the real property of a decedent, who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such nonresident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act; the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other; provided, that the superior court having acquired jurisdiction in probate of the estate of a decedent shall hear and determine in said probate proceedings all questions in relation to any tax arising under the provisions of this act: (a) Upon property passing in said probate proceedings. (b) Upon any other property transferred, within the meaning of subdivision three of section two or any other provisions of this act, to any person, institution or corporation taking any property under and by virtue of said probate proceedings.

Appointment of inheritance tax appraisers in probate proceedings. Powers of referee.**Witnesses. Evidence. Report to superior court.**

§ 16. (1) When any superior court, having jurisdiction in probate of the state of any decedent, or a judge of such court, shall, in accordance with section one thousand four hundred forty-four of the Code of Civil Procedure, appoint the appraiser or appraisers in said section provided for, said superior court or judge thereof shall also at the same time designate and appoint an inheritance tax appraiser (unless such designation and appointment be previously made) to ascertain and report to said superior court the amount of inheritance tax due upon any property passing in said probate proceeding, or a lien thereon, or upon any other property transferred within the meaning of subdivision (3) of section two of this act, or under any other provision of this act, to any person, institution or corporation taking property under and by virtue of said probate proceedings, together with such other or additional information as shall assist said court in the determination of said tax. Thereupon said inheritance tax appraiser shall have all the powers of a referee of said superior court, and shall have jurisdiction to require the attendance before him of the executor or administrator of said estate, or any person interested therein, or any other person whom he may have reason to believe possesses knowledge of the estate of said decedent, or knowledge of any property transferred by said decedent within the meaning of this act, or knowledge of any facts that will aid said appraiser or the court in the determination of said tax. For the purpose of compelling the attendance of such person or persons before him, and for the purpose of appraising any property or interest subject to, or liable for any inheritance tax hereunder, and for the purpose of determining the amount of tax due thereon, the said inheritance tax appraiser is hereby authorized to issue subpoenas compelling the attendance of witnesses before him. Any person or persons who shall be served with a subpoena, issued by said inheritance tax appraiser, to appear and testify or to produce books and papers, and who shall refuse and neglect to appear and testify or to produce books and papers relevant to such appraisalment, as commanded in such subpoena, shall be guilty of a contempt of court. And he may examine and take the evidence of such witnesses or of such executor or administrator, or other person under oath concerning such property and the value thereof, and concerning the property or the estate of such decedent subject to probate, and concerning any transfer made by such decedent within the meaning of this act. Upon the completion of his inheritance tax appraisalment in any probate proceeding, the inheritance tax appraiser shall make a report in writing to the superior court of the clear market value of the several interests in the estate of the decedent, and shall report the amount of inheritance or transfer tax chargeable against, or a lien upon such interests, acquired by virtue of said probate proceedings or by any transfer within the meaning of this act, to any person, institution or corporation acquiring any property by virtue of said probate proceedings together with such other facts as may advise the court in regard thereto, or which the court may require, and may return to said superior court such depositions as he may have had reduced to writing, exhibits, or other testimony or information taken before him, or submitted to him.

Notice of filing report. Order confirming report. Hearing objections.

(2) Upon the filing of said report said appraiser shall mail a copy thereof to the state controller and the clerk of said superior court shall on said day or the next succeeding judicial day give notice of such filing to all persons interested in such proceedings by causing notices to be posted in at least three public places in the county, one of which must be the place where the court is held, and in addition thereto shall mail to the state controller and to all persons chargeable with any tax in said report who have appeared in such proceeding, a copy of said notice. At any time after the expiration of ten days thereafter, if no objection to said report be filed, the said superior court or

a judge thereof, may, without further notice give and make its order confirming said report and fixing the tax in accordance therewith. At any time prior to the making of said order, any person interested in said proceeding (including the state controller) may file objections in writing to said report. Thereupon said superior court shall, by order, fix a time, not less than ten days thereafter, for the hearing thereof, and shall direct the clerk of said superior court to give such notice thereof as it shall deem necessary; provided, that a copy of such notice and of such objections shall be forthwith mailed to the state controller, county treasurer and inheritance tax appraiser. Upon the hearing of said objections, said court may make such order as to it may seem meet and proper in the premises.

Order that no inheritance taxes due.

(3) If, upon examination of the executor or administrator of said estate or other persons familiar with the affairs of such decedent, or from other information before him, it shall appear to the inheritance tax appraiser that there is no inheritance tax due out of said estate or a lien upon any property or interest therein, said appraiser may so certify to the superior court, and at any time thereafter, if no objection to said certificate shall have been filed, said superior court or a judge thereof may, without further notice, make an order or decree that there are no inheritance taxes due out of said estate or upon any interest therein or may make such different order as may to it seem meet in the premises. Such order shall be conclusive only as to such property as may have been returned in the inventory or inventory and appraisement in said probate proceedings.

Determination of taxability of transfer.

§ 17. (1) If it shall appear to the superior court upon petition of the state controller that any transfer has been made within the meaning of this act, and the taxability thereof, and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof may be determined, said court shall issue a citation ordering and directing the persons who may appear liable therefor or known to own any interest in or part of the property transferred, to appear before said court or before an inheritance tax appraiser to be designated by said order at a time and place in said order named, not less than ten days nor more than one year from the date of such order, to be examined, under oath by said court or by said appraiser as the case may be, concerning said transfer and all facts connected therewith, and concerning the property transferred and the character and value thereof.

Examination by appraiser. Report of findings.

If said person or persons shall be directed to appear before said appraiser said appraiser shall, at the time and place in said order named, or at such time and place to which said appraiser may adjourn said hearing, proceed to examine said person or persons and such witnesses as said appraiser may subpoena before him, and for the purpose of said hearing, and for the purpose of ascertaining any facts concerning the taxability of said transfer or any taxes due on account of such transfer, said appraiser shall have the powers of a referee of said court, and, is hereby authorized to issue subpoenas compelling the attendance of witnesses before him, and to administer oath, and to take the evidence of such witnesses under oath concerning such property and the value thereof and concerning such transfer. Said appraiser shall report to said court his findings and conclusions in relation to said transfer and said tax, and may return to said court, any depositions, exhibits or other testimony or information taken before him or exhibited to him. The procedure subsequent to the filing of said report shall conform to subdivision (2) of section sixteen of this act.

Service.

Except as herein otherwise provided, the service of such citation and the time, manner and proof thereof, and the hearing and determination thereon, and the hearing and determination upon the facts returned in such report, and the enforcement of the determination or decree, shall conform to the provisions of chapter twelve, title eleven, part three of the Code of Civil Procedure, and the clerk of the court shall, upon the request of the state controller, furnish, without fee, one or more transcripts of such decree, and the same shall be docketed and filed by the county clerk of any county in the state, without fee, in the same manner and with the same effect as provided by section six hundred seventy-four of said Code of Civil Procedure for filing a transcript of an original docket.

Hearing by court.

The superior court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases.

Petition to determine taxability.

(2) Verified petitions may be filed by any interested party with the superior court, alleging and admitting that a transfer within the meaning of this act has been made and the taxability thereof and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof, may be determined, and that the petitioner desires such determination and desires to pay said tax, if any be due. Upon the filing of such petition the superior court or a judge thereof shall by order designate and appoint an inheritance tax appraiser to ascertain and report to said court the amount of the inheritance tax, if any, due by said petitioner on account of such transfer, and shall fix a time and place, not less than ten days thereafter, for the hearing of said matter before said inheritance tax appraiser, a copy of which petition and order shall be forthwith mailed to the state controller, and shall refer said petition and said matter to said inheritance tax appraiser who shall have all of the powers of a referee of said court, including the powers prescribed in subdivision (1) of section sixteen of this act. The procedure subsequent to said reference to said appraiser shall conform to the provisions of subdivisions (1) and (2) of section sixteen of this act.

Compensation of appraiser.

In the event that final judgment is rendered in said proceeding, ascertaining and determining that no inheritance tax is due on account of said transfer or that the amount of the tax to which said transfer is liable, is less than twenty dollars the court shall, in addition to the amount of the tax, if any, include in such judgment and assess against the petitioner reasonable compensation for said inheritance tax appraiser, not exceeding the sum of ten dollars, and the necessary traveling and incidental expenses of said appraiser.

Action to quiet title.

(3) Actions may be brought against the state by any interested person for the purpose of quieting the title to any property against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes nor chargeable with any tax under this act. No such action shall be maintained where any proceedings are pending in any court in this state

wherein the taxability of such transfer and the liability therefor and the amount thereof may be determined. All parties interested in said transfer and in the taxability thereof shall be made parties thereto and any interested person who refuses to join as plaintiff therein may be made a defendant. Summons for the state in said action shall be served upon the state controller.

Hearing by appraiser.

At any time after issue is joined in such action the court, on its own motion, or upon the motion of any interested party, may by order appoint and designate an inheritance tax appraiser to hear said matter and report to the court thereon and shall in such order fix a time and place for the hearing of said matter before said inheritance tax appraiser, and direct notice of such time and place to be given in such manner as the court shall deem proper, and shall refer said matter to said inheritance tax appraiser who shall have all of the powers of a referee of said court, including the powers prescribed in subdivision (1) of section sixteen of this act. The procedure subsequent to said reference to said appraiser shall conform to the provisions of subdivisions (1) and (2) of section sixteen of this act.

Judgment in favor of state.

Should the court determine that the property described in the complaint is subject to the lien of said tax and that said property has been transferred within the meaning of this act, the court shall award affirmative relief to the state in said action, and judgment shall be rendered therein in favor of the state, ascertaining and determining the amount of said tax, and the person or persons liable therefor, and the property chargeable therewith or subject to lien therefor, and shall assess against such person or persons reasonable compensation for said inheritance tax appraiser and his necessary traveling and incidental expenses.

Actions commenced where.

(4) Actions under this section shall be commenced in the superior court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the superior court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein.

No fees charged.

(5) No fee shall be charged said state controller by any public officer in this state for the filing or recording of any petition, lis pendens, decree or order, or for the taking of oaths or acknowledgments in any proceeding taken under this act; nor shall any undertaking be required from or costs charged against the state controller or the state of California in any such proceeding.

Orders have force of judgments in civil actions.

§ 18. The orders, decrees and judgments fixing tax or determining that no tax is due, mentioned in this act, shall have the force and effect of judgments in civil actions. Except as otherwise herein provided, the provisions of the Code of Civil Procedure relative to judgments, new trials, appeals, attachments and execution of judgments, so far as applicable, shall govern all proceedings taken under this act. Nothing in this section shall preclude the state from relief herein provided for, which may be inconsistent with the provisions of the Code of Civil Procedure.

Taxes paid to state treasurer.

§ 19. The treasurer of each county shall collect all taxes and moneys that may be due and payable under this act and pay the same to the state treasurer (excepting such

moneys as he may pay out from time to time pursuant to the provisions of this act) and the state treasurer shall give him a receipt therefor; of which collection and payment he shall make a report, under oath, to the controller, between the first and fifteenth days of May and December of each year, stating for what estate paid, and in such form and containing such particulars as the controller may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of June and January of each year he shall pay interest at the rate of ten per centum per annum.

Percentage of tax retained by county treasurer.

§ 20. The treasurer of each county shall be allowed to retain, on all taxes paid and accounted for by him each year under this act, in addition to his salary or fees now allowed by law, three per centum of the first fifty thousand dollars so paid and accounted for by him, one and one-half per centum on the next fifty thousand dollars so paid and accounted for by him, and one-half of one per centum on all additional sums so paid and accounted for by him; provided, that no county treasurer shall be entitled to retain to his own use more than the sum of two hundred dollars out of the inheritance taxes paid on account of any transfer or transfers made by, or resulting from the death of, any one decedent, nor more than five thousand dollars out of the total inheritance taxes accounted for in any one year.

State controller may employ counsel.

§ 21. The state controller, whenever he shall be cited as a party in any proceeding or action to determine any tax under this act provided, or whenever he shall deem it necessary for the better enforcement of this act to make any special employment to secure evidence of evasion of said tax, or to commence or appear in any proceeding or action to determine any tax hereunder, may, by and with the consent and approval of the attorney general, make such special employment or designate and employ counsel or attorney in or out of this state to represent him on behalf of the state, and, by and with such consent of the attorney general, he is hereby authorized to incur the necessary expense for such employment and any reasonable and necessary expense incident thereto. And the county treasurer is hereby authorized and directed to pay out of any funds which may be in his hands on account of this tax, on presentation of a sworn itemized account and on certificate of the state controller and attorney general, all expenses incurred as in this section above provided, but no expense for such special employment or legal services, up to and including the entry of the order of the court fixing the tax and the same becoming final, shall exceed ten per centum of the tax and penalties collected; provided, that all reasonable and necessary expenses incurred, in any legal action or proceeding in any court of this state or on any appeal therefrom, other than attorney's fees, including expense of serving processes and printing and preparing of necessary legal papers, may be allowed and paid in the manner above provided, even though no tax be recovered in such action or proceeding, and the limitations herein made shall not apply thereto.

Disposition of taxes collected.

§ 22. All taxes levied and collected under this act, up to the amount of two hundred fifty thousand dollars annually, shall be paid into the treasury of the state, for the uses of the state school fund, and all taxes levied and collected in excess of two hundred fifty thousand dollars annually shall be paid into the state treasury to the credit of the general fund thereof.

Penalty for failure to perform duty.

§ 23. Every officer who fails or refuses to perform, within a reasonable time, any and every duty required by the provisions of this act, or who fails or refuses to make and deliver within a reasonable time any statement or record required by this act,

shall forfeit to the state of California the sum of one thousand dollars, to be recovered in an action brought by the attorney general in the name of the people of the state on the relation of the controller.

Constitutionality.

§ 24. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Acts repealed. Pending suits, etc., not affected.

§ 25. An act entitled "An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and by any act hereby repealed and for suits to quiet title against claims of liens arising hereunder or under an act hereby repealed to be known as the 'inheritance tax act'; to repeal an act entitled 'An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection, and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of liens, arising hereunder; to repeal an act entitled 'An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers; to provide for its collection, and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of liens arising hereunder''; to repeal an act entitled 'An act to establish a tax on collateral inheritances, bequests and devises, to provide for the collection and to direct the disposition of its proceeds,' approved March 23, 1893, and all amendments thereto, and to repeal all acts and parts of acts in conflict with this act, approved March 20, 1905, and all amendments thereto, and all acts and parts of acts in conflict with this act,' approved April 7, 1911''; approved June 16, 1913, and all amendments thereto, and all acts and parts of acts in conflict with this act are hereby expressly repealed; provided, however, that such repeal shall in nowise affect any suit, prosecution or proceeding pending at the time this act shall take effect, or any right which the state of California may have at the time of the taking effect of this act, to claim a tax upon any property under the provisions of the act or acts hereby repealed, for which no proceeding has been commenced, and where no proceeding has been commenced to collect any tax arising under any act hereby repealed the procedure to collect such tax shall conform to the provisions hereof; nor shall such repeal affect any appeal, right of appeal in any suit pending, or orders fixing tax, existing in this state at the time of the taking effect of this act.

1. Constitutionalilty — Title includes deeds, etc.—The act is not unconstitutional because the provision imposing a tax on property transferred by deed, payable on the death of the decedent, is not to be included within the phrase "collateral inheritances, bequests, and devises," since, if declared unconstitutional, it could not invalidate the whole section.—In re Campbell's Estate, 143 Cal. 623, 77 Pac. 674.

2. Same—Due process—Property of resident of California in Massachusetts.—The inheritance tax law of 1905, under the provisions of which payment of the tax is required upon personal property in Massachusetts belonging to a resident of Califor-

nia, is not obnoxious to the fourteenth amendment of the constitution of the United States, as a deprivation of property without due process of law.—Estate of Hodges, 170 Cal. 492, 150 Pac. 344, L. R. A. 1916A, 837.

3. Same—Same—Vesting of tax in state at death of decedent.—The act of 1893 is not violative of due process on the ground that it vests in the state the right to the tax at the death of the decedent, since it provides a means of ascertaining the amount of the tax, and for notice and appraisal.—Trippet v. State, 149 Cal. 521, 8 L. R. A. (N. S.) 1210, 86 Pac. 1084.

4. Same—Unlawful discrimination.—The

act of 1905 is not unconstitutional because in requiring the exemption to be taken from the first \$25,000, it discriminates against persons who succeed to larger amounts.—In *re* Timken's Estate, 158 Cal. 51, 109 Pac. 608.

5. Same—Same.—The act of 1893 held not unconstitutional as making an unlawful discrimination, in disregarding the provisions of section 1386, Civil Code, allowing children of brothers and sisters to take by representation.—In *re* Wilmerding's Estate, 117 Cal. 281, 49 Pac. 181.

6. Same—Exemption of inheritances not exceeding \$500.—The act of 1893 held not unconstitutional because exempting from the tax inheritances not exceeding \$500.—In *re* Wilmerding's Estate, 117 Cal. 281, 49 Pac. 181.

7. Same—Equal protection.—The act of 1893 is not unconstitutional as denying the equal protection of the laws, on the ground that brothers and sisters are subjected to the burden of the tax, while the wife or widow of a son and husband of a daughter, are exempt.—*Campbell v. California*, 200 U. S. 87, 50 L. ed. 382, 26 Sup. Ct. Rep. 182.

Sustaining: In *re* Campbell's Estate, 143 Cal. 623, 77 Pac. 674.

8. Same—Application to other than collateral inheritance taxes.—So far as it attempts to impose other than taxes on collateral inheritances the act of 1893, as amended in 1895, is void as obnoxious to section 24, article IV, of the constitution, as to the subjects and titles of acts.—*Wirringer v. Morgan*, 12 Cal. App. 26, 106 Pac. 425.

9. Same—Same—"Collateral" defined.—The word "collateral" as used in the act is construed in support of the constitutionality of the act of 1893 to apply to a devise to any person not in the direct line of relationship, though the person is not akin to the deceased.—In *re* Campbell Estate, 143 Cal. 623, 77 Pac. 674.

10. Same—Retroactive effect—Intervening life estate.—The legislature can not subsequently lawfully impose a succession tax upon a fully executed transfer of title reserving to the grantor a life estate, such tax accruing at the termination of the life estate, merely because the grantee was debarred by the intervening life estate from actual possession, the fee having vested absolutely on the delivery of the deed.—*Hunt v. Wicht*, 174 Cal. 205, 208, L. R. A. 1917C, 961, 162 Pac. 639.

11. Same—Same—Same—Transfer fully executed.—Where a deed passes the present title to property, with a retention of a life estate in the grantor, the legislature is without power subsequently to impose a succession tax upon such fully executed transfer of title, such tax to accrue upon the termination of the grantor's life estate, simply because the grantee was debarred by the intervening life estate from taking possession.—*Hunt v. Wicht*, 174 Cal. 205, 208, L. R. A. 1917C, 961, 162 Pac. 639.

12. Same—Reservation of life estate—Vesting of title absolutely—In contempla-

tion of death—Without adequate consideration.—It is immaterial so far as a subsequently imposed succession tax is concerned whether the transfer was made "in contemplation of his (the grantor's) death and without valuable consideration" or not, the transfer being absolute, notwithstanding the reservation of a life estate in the grantor, and the title vesting upon the delivery of the deed.—*Hunt v. Wicht*, 174 Cal. 205, 210, L. R. A. 1917C, 961, 162 Pac. 639.

13. Same—Amendment of 1897.—The amendment of 1897, exempting certain classes of corporations and relatives from the collateral inheritance tax, is not unconstitutional as a local or special statute.—In *re* Stanford's Estate, 126 Cal. 112, 45 L. R. A. 788, 54 Pac. 259.

14. Same—Same—Invalid as to distinction between residents and non-residents.—The amendment of 1897 is invalid in so far as it makes a distinction between residents and non-residents.—In *re* Stanford's Estate, 126 Cal. 112, 45 L. R. A. 788, 54 Pac. 259; In *re* Mahony's Estate, 133 Cal. 180, 85 Am. St. Rep. 155, 65 Pac. 389.

15. Same—Same—Same—Construction when provision eliminated.—Under the clause of the amendment of 1897, exempting from the collateral inheritance tax a "niece or nephew when a resident of this state" is to be construed, without the residence clause, as exempting both nieces and nephews along with other relatives.—In *re* Stanford's Estate, 126 Cal. 112, 45 L. R. A. 788, 54 Pac. 259. But see same case, (Cal.) 58 Pac. 462.

Overruled: In *re* Mahony's Estate, 133 Cal. 180, 85 Am. St. Rep. 155, 65 Pac. 389.

16. Same—Same—Same—Not void—Case overruled or limited.—The decision in the case of In *re* Mahony's Estate, 133 Cal. 180, 65 Pac. 389, 85 Am. St. Rep. 155, is overruled or limited and the provision in question held not to be void, but that the exemption is extended to non-residents.—In *re* Johnson's Estate, 139 Cal. 532, 96 Am. St. Rep. 161, 73 Pac. 424.

17. Same—Same—Provision as to exemption of prior tax invalid.—So far as it exempts from tax already accrued under the act certain persons and corporations, the amendment of 1897 violates section 31, article IV, of the constitution.—In *re* Stanford's Estate, 126 Cal. 112, 45 L. R. A. 788, 54 Pac. 259, 58 Cal. 462; In *re* Martin's Estate, 153 Cal. 225, 94 Pac. 1053.

18. Same—Tax becomes property of state on the death of the decedent—Creates vested right in state.—Under the act of 1893 the tax becomes the property of the state on the death of the decedent within the meaning of section 31, article IV, of the constitution.—In *re* Stanford's Estate, 126 Cal. 112, 45 L. R. A. 788, 54 Pac. 259, 58 Pac. 462.

And creates a vested right in the state at that time.—*Trippet v. State*, 149 Cal. 521, 8 L. R. A. (N. S.) 1210, 86 Pac. 1084.

19. Same—Retroactive effect invalid.—The act of 1913 is invalid so far as it attempts to impose a tax on transfers made

prior to its enactment, and as to such transfers the act in force at the time of the transfer controls.—In re Estate of Potter, 61 Cal. Dec. 273.

20. Same—Same—Increase of tax on vested transfers.—The legislature has no power to increase the tax after the transfer has become vested, because such action would amount to a taking without compensation.—In re Estate of Potter, 61 Cal. Dec. 273.

20a. Same—Act of 1913 controls in case of subsequent deaths.—The inheritance tax imposed by the act of 1913 controls in case of the testator's death subsequent to its enactment, notwithstanding the will was made prior.—In re Estate of Potter, 61 Cal. Dec. 273.

21. Inheritance tax, defined.—An inheritance tax is a charge on succession by inheritance or transfer by will.—McDougald v. Low, 164 Cal. 107, 127 Pac. 1027.

22. Inheritance tax not property tax, but tax on right of succession.—An inheritance tax is not a tax on property but on the right of succession.—In re Kennedy's Estate, 157 Cal. 517, 29 L. R. A. (N. S.) 428, 108 Pac. 280.

23. Same.—The inheritance tax is a charge upon succession by inheritance or transfer by will.—McDougald v. Low, 164 Cal. 107, 110, 127 Pac. 1027.

24. Succession tax on beneficial interest of each beneficiary.—The tax is a succession tax on the beneficial interest of each beneficiary.—In re Estate of Miller, 61 Cal. Dec. 19, 61 Cal. Dec. 90, 195 Pac. 413.

25. Phrase "which shall pass by will or by the intestate laws," defined.—The phrase "which shall pass by will or by the intestate laws" used in the act of 1905, means to pass by virtue and force of the law governing testate or intestate succession.—In re Kennedy's Estate, 157 Cal. 517, 29 L. R. A. (N. S.) 428, 108 Pac. 280.

26. Act of 1893—Limited to collateral inheritance taxes by its title.—The act of 1893 was limited in its application to collateral inheritances by its title.—Wirringer v. Morgan, 12 Cal. App. 26, 106 Pac. 425.

27. Act of 1905—Scope of act.—Under section 1 of the inheritance tax act of 1905, such tax is imposed upon all property passing by will or by the intestate laws of this state, and upon all property of a non-resident decedent, which, regardless of its mode of transfer or succession shall be within the state.—McDougald v. Lilienthal, 174 Cal. 698, 699, 164 Pac. 387.

28. Property liable to tax—Homestead carved out of community estate.—A homestead carved out of community property in the lifetime of the husband, the title to which vested in the wife at his death, is liable for the inheritance tax under the law of 1913, section 2.—Estate of Stewart, 174 Cal. 547, 548, 163 Pac. 902.

28a. Same—Homestead and allowance—Not taxable under act of 1905.—A homestead and an allowance set apart by the court does not "pass by will" but by the order of the court and is not taxable under

the act of 1905.—In re Kennedy's Estate, 157 Cal. 517, 29 L. R. A. (N. S.) 428, 108 Pac. 280.

29. Community property—Wife's share subject to tax.—The share of the surviving wife in the community property is subject to the tax under the act of 1905.—In re Moffitt's Estate, 153 Cal. 359, 20 L. R. A. (N. S.) 207, 95 Pac. 653.

30. Same—Shares of stock in California corporation subject to tax, without regard to situs.—Shares of stock in a California corporation are subject to the inheritance tax provided in the act of 1905, without regard to the place where the certificates are kept.—McDougald v. Lilienthal, 174 Cal. 698, 701, 164 Pac. 387.

31. Same—Does not depend on local proceedings.—The imposition of the inheritance tax provided by section 2 of the inheritance tax of 1905, upon the property of a non-resident decedent lying in this state does not depend upon local proceedings in probate, ancillary or otherwise.—McDougald v. Lilienthal, 174 Cal. 698, 701, 164 Pac. 387.

32. Same—Situs of stock in state of incorporation.—The situs of stock in a corporation is in the state of the incorporation, for the purposes at least of the inheritance tax law, and any bequest thereof, which results in its actual transfer in kind should subject it to payment of the tax upon its actual value.—McDougald v. Low, 164 Cal. 107, 110, 127 Pac. 1027.

33. Same—Stock of domestic corporation.—The situs of stock in a domestic corporation is in the state for the purpose of the inheritance tax, and a bequest thereof which results in its transfer in kind is subject to tax on its actual value.—McDougald v. Low, 164 Cal. 107, 127 Pac. 1027.

34. Same—Same—Stock passes in kind.—Where the property of an estate having a situs in this state is not in fact resorted to for the payment of debts and expenses of administration, but passes in kind to the legatee, and there are no debts due creditors in this state, and the estate in the state of the domicile is ample to pay all debts and expenses of administration, no deduction should be made from the actual value of the property that actually passes to the legatee.—McDougald v. Low, 164 Cal. 107, 110, 127 Pac. 1027.

34a. Property of non-residents—Imposition on property in state only.—The legislature did not intend by the inheritance tax law of 1911 to impose a tax upon the property of a non-resident unless it was property in the state.—Estate of McCahill, 171 Cal. 482, 484, 153 Pac. 930.

34b. Same—Bond never in state, belonging to non-resident.—Bonds of a foreign corporation not doing business in this state, belonging to a non-resident and not brought to the state for any local business purpose, do not constitute property within the state, subject to the payment of inheritance taxes under the law of 1911, although physically present in a safe deposit box in the state at the time of the

owner's death.—Estate of McCahill, 171 Cal. 482, 484, 153 Pac. 939.

34c. Same—Residence and domicile—Determination for purpose of tax.—In determining the question of residence for the purpose of fixing an inheritance tax declarations of deceased as to residence and domicile must give way when inconsistent with actual conduct.—Estate of Harkness, 176 Cal. 537, 538, 169 Pac. 78.

34d. Same—Situs in California.—In fixing the tax to be paid under the inheritance tax law of 1905 upon the property of a decedent non-resident situated in California, where the estate is perfectly solvent, no deduction should be made on account of non-resident creditors or the expenses of administration in the state of the decedent's domicile not shown to have been paid out of California assets.—McDougald v. Low, 164 Cal. 107, 111, 127 Pac. 1027.

35. Same—"Full faith and credit clause"—Tax on properties in California.—The decree of distribution in the court of decedent's domicile, does not, under the full faith and credit clause of the constitution, preclude the state of California from imposing a tax upon property within its boundaries covered by such decree, an inheritance tax included.—McDougald v. Labenthal, 174 Cal. 698, 702, 164 Pac. 387.

36. Property not subject to tax—Joint bank deposits, which, with accumulations belong to husband and wife, and become the property absolutely of the survivor on the death of one of them under section 16 of the bank act of 1909 do not pass to such survivor by inheritance or succession but by virtue of the estate originating at the time of their creation, and are not subject to the payment of an inheritance tax under the inheritance tax law of 1911, as a part of the husband's estate.—McDougald v. Boyd, 172 Cal. 753, 755, 159 Pac. 168.

37. Same—Same.—As to subjection of joint bank account to payment of inheritance tax under law of 1905.—Kelly v. Woolsey, 177 Cal. 325, 339, 170 Pac. 837.

38. Same—Same—Establishment out of community property funds not a transfer or a testamentary disposition.—The creation of a joint bank account with deposits of community funds, is neither a testamentary disposition nor a transfer of such funds to vest upon death in the surviving cotenant, made in contemplation of death within the purview of the inheritance tax law of 1905 (Stats. 1905, p. 341).—Estate of Gurnsey, 177 Cal. 211, 214, 170 Pac. 402.

38a. Same—Exemption granted charitable corporations extends to foreign companies.—The exemption granted by subdivision 1, section 7, inheritance tax law of 1915 (Stats. 1915, p. 421) to certain corporations devoted to charitable work, extends to foreign as well as domestic corporations.—In re Estate of Fiske, 178 Cal. 116, 172 Pac. 390; Chambers v. Princeton University, 178 Cal. 116, 117, 172 Pac. 390; In re Estate of Jones, 178 Cal. 311, 172 Pac. 979.

39. Transfer—Burden is on state.—The state has the burden of showing that a transfer is subject to the tax.—In re Minor's Estate, 180 Cal. 291, 4 A. L. R. 456, 180 Pac. 813.

40. Same—Two conditions required.—The act of 1911 requires that a transfer should be both without a valuable and adequate consideration, and either in contemplation of death or intended to take effect at death.—Estate of Box, 181 Cal. 607, 186 Pac. 133.

41. Same—"In contemplation of death"—Meaning construed.—The phrase "contemplation of death" in the inheritance tax law of 1905, is not to be construed in the limited sense of that expectancy which actuates a person in making a gift causa mortis.—Abstract, etc., Co. v. State of California, 173 Cal. 691, 694, 161 Pac. 264.

42. Same—Same—Transfer made in.—In view of section 27 of the inheritance tax act of 1905 as amended in 1911 certain gifts by a husband to his wife made at a time when afflicted with a mortal disease, and with full knowledge of the character of his ailment, one made two days before he underwent a grave surgical operation, and the other subsequently upon the recurrence of the disease and about five months before his death, must be considered to have been made in contemplation of death, and liable to the tax imposed by the act.—Estate of Reynolds, 169 Cal. 600, 601, 147 Pac. 268.

43. Same—Act of 1905—"In contemplation of death," defined.—The phrase "In contemplation of death" in the act of 1905, does not refer to the general expectation of death entertained by all, but refers to the motive for the transfer without which it would not have been made.—Spreckels v. State, 30 Cal. App. 363, 158 Pac. 549.

44. Same—"Contemplation of death" defined.—The phrase "contemplation of death" means the expectancy of death which actuates the mind of a person on the execution of a will, not that which actuates a gift causa mortis.—In re Minor's Estate, 180 Cal. 291, 4 A. L. R. 456, 180 Pac. 813.

45. Same—In contemplation of death—Liability for tax determined by law in force at the time of transfer.—The question of liability to inheritance taxes by virtue of a transfer in contemplation of death must be determined by the law in force at the time the title to the property vests in the transferee by virtue of the transfer.—Estate of Gurnsey, 177 Cal. 211, 214, 170 Pac. 402.

46. Same—Finding—"In contemplation of death"—Question for trial court—Finding sustained.—The question as to whether a transfer was made in contemplation of death was one for the trial court, and its findings thereon are to be disturbed only where there was no evidence sufficient to sustain them, and in the present case the evidence was held sufficient to sustain a finding that a man eighty-three years who transferred property to his wife one and one-half years before his death, did not make such transfer in contemplation of death within the meaning of the act.—Mc-

Dougald v. Wulzen, 34 Cal. App. 21, 166 Pac. 1033.

47. Same—Adequacy of consideration must be considered.—In determining whether a transfer of property was made in contemplation of death within the meaning of the inheritance tax law of 1905, the adequacy of the consideration is an essential element to be considered.—Abstract, etc., Co. v. State of California, 173 Cal. 691, 694, 161 Pac. 264.

48. Same—Transfer made for valuable and adequate consideration not subject to tax.—A transfer of shares of stock made for a valuable and adequate consideration, is not subject to the tax, even though made in contemplation of death.—Nickel v. State, 179 Cal. 126, 175 Pac. 641.

49. Same—"Valuable and adequate consideration"—Absence essential to obligation to pay tax.—The absence of valuable and adequate consideration is just as essential to the obligation to pay the tax as is the contemplation of death or the intention of the transferor that possession or enjoyment shall be postponed until death, and the officer seeking to recover the tax under subdivision 3 of section 1 of the act must show that there was not a valuable and adequate consideration for the transfer.—McDougald v. Boyd, 172 Cal. 753, 757, 159 Pac. 168.

50. Same—Same—Transfer to children by husband and wife.—A conveyance of property to children by a husband and wife held to have been upon a valuable and adequate consideration in contemplation of law.—Estate of Brix, 181 Cal. 667, 186 Pac. 135.

51. Same—Same.—The rule applicable in specific performance cases should control in determining whether a transfer was made for adequate consideration, and exact equality of consideration is not required.—Estate of Brix, 181 Cal. 667, 186 Pac. 135.

52. Same—Transfer without adequate and valuable consideration—Stock transferred with "valuable" but without "adequate" consideration.—The fact that a son was equitably entitled to certain shares of stock which formed a part of a larger number transferred to him by his father, and that he allowed his father the dividends thereon, is a "valuable" consideration for such transfer, but not an "adequate" consideration within the meaning of the inheritance tax act of 1905.—Estate of Felton, 176 Cal. 663, 668, 169 Pac. 392.

53. Same—Finding cured failure of appraiser to find lack of adequate consideration.—The failure of the inheritance tax appraiser to find that a gift made by the deceased in his lifetime was without adequate consideration was cured by a finding to that effect made by the superior court after a hearing de novo.—Estate of Felton, 176 Cal. 663, 669, 169 Pac. 392.

54. Same—"Valuable and adequate consideration"—Transfer not made for.—The transfer from a father to his son, of property valued at one hundred thousand dollars, upon consideration that the son

would pay indebtedness aggregating thirty thousand dollars due on such property, and pay his father six hundred dollars per month during life, the father being afflicted with a mortal ailment, was not made for "a valuable and adequate consideration" within the meaning of the inheritance tax law, and was liable for the payment of the tax prescribed.—Estate of Reynolds, 169 Cal. 600, 603, 147 Pac. 268.

55. Same—Postponement of transfer until death of transferor—Showing required.—To subject a transfer of property to the payment of taxes under the inheritance tax law of 1905, it is essential that such transfer should be made with the intent that the possession and enjoyment of the property was to be postponed until the death of the transferor, and this intent must be proved; but it may be shown by circumstances from which it may be reasonably inferred, as well as express declarations.—Kelly v. Woolsey, 177 Cal. 325, 334, 170 Pac. 837.

55a. Same—Same—Not wholly determined by written instrument.—In ascertaining whether a transfer of property is subject to taxation under the inheritance tax law of 1905, the character of the transaction is not wholly determined by the terms of the written instrument employed to accomplish the transfer; but parol evidence of the real agreement is permitted with a latitude similar to that indulged to show a resulting trust, or to transform a deed absolute on its face into a mortgage.—Kelly v. Woolsey, 177 Cal. 325, 329, 170 Pac. 837.

56. Same—Possession retained by transferor—Intention to postpone date of transfer.—The mere fact that the transferor remains in possession and enjoyment, by sufferance, or permission, or at the request of the transferee, does not, of necessity, establish an intent or agreement to postpone possession and enjoyment until the transferor's death, where there are circumstances justifying a reasonable inference that there was no such intent.—Kelly v. Woolsey, 177 Cal. 325, 334, 170 Pac. 837.

57. Same—Conveyance in consideration of care and support for life.—Where property is conveyed in consideration of the support of the grantor by the grantee during the life of the former, and the present title is conveyed, and the property passes in possession and enjoyment at the date of the conveyance, no intention to evade, the tax appearing, the transfer is not taxable, even though the deed is not recorded until the grantor's death.—Kelly v. Woolsey, 177 Cal. 325, 328, 170 Pac. 837.

58. Same—Act of 1905 does not inhibit ordinary transfers.—The inheritance tax law of 1905 was not intended to inhibit ordinary transfers, by gift or otherwise, if not made in contemplation of death, or not postponed in enjoyment or possession until the death of the donor or grantor, but only to preclude, so far as possible, an evasion of the inheritance tax, whether fraudulent or not, and to secure to the state its reve-

nue on all transfers which have their occasion in the death of the transferer.—*Kelly v. Woolsey*, 177 Cal. 325, 328, 170 Pac. 837.

59. Transfer under act of 1913 not taxable as transfer.—The transfer of property under the act of 1913 is not taxable as a transfer but as a transfer in contemplation of death, and is in lieu of transfer at death.—*In re Estate of Potter*, 61 Cal. Dec. 273.

60. Same—Taxability governed by law in force at the time of transfer.—The question as to the taxability of a transfer is determined by the law in force at its date.—*Estate of Blix*, 181 Cal. 667, 186 Pac. 135.

61. Same—Same.—The law in force at the time of the transfer controls, as to whether the transfer is taxable and the amount thereof.—*Nickel v. State*, 179 Cal. 126, 175 Pac. 641.

62. Same—Consideration—Allegation and proof required.—The state must allege and prove that the consideration for the transfer was not valuable or adequate.—*Nickel v. State*, 179 Cal. 126, 175 Pac. 641.

63. Same—"Contemplation of death"—Question for jury.—The question as to whether the transfer was one made in contemplation of death is one for the jury, in an action to quiet title against the state.—*Nickel v. State*, 179 Cal. 126, 175 Pac. 641.

64. Computation of tax—Based on value of succession.—The amount of the tax is based on the value of the succession, which is the value of the property to the beneficiary after satisfying lawful charges.—*In re Hite's Estate*, 159 Cal. 392, Ann. Cas. 1912C, 1014, 32 L. R. A. (N. S.) 1167, 113 Pac. 1072.

65. Same—Same—Value of property lost through misappropriation must be included in computing the amount of the tax.—*In re Hite's Estate*, 159 Cal. 392, Ann. Cas. 1912C, 1014, 32 L. R. A. (N. S.) 1169, 113 Pac. 1072.

66. Same—Same—Value of property at death of decedent.—The tax is computed on the value at decedent's death, subsequent increase or decrease is immaterial.—*In re Hite's Estate*, 159 Cal. 392, Ann. Cas. 1912C, 1014, 32 L. R. A. (N. S.) 1167, 113 Pac. 1072.

67. Same—Market value of stock.—Where a gift of corporate stock was to take effect in possession at donor's death, the market value at that date is the proper basis for fixing the tax.—*Estate of Felton*, 176 Cal. 663, 666, 169 Pac. 392.

68. Same—Stock of family corporation.—The proper way to establish the value of the stock of a family corporation, for purposes of inheritance taxation, is to ascertain the value of the property represented, and assign to each share its proportionate worth.—*Estate of Felton*, 176 Cal. 663, 668, 169 Pac. 392.

69. Same—"Net clear value."—The inheritance tax act contemplates that the tax should be computed upon the basis of the net clear value of the property.—*In re Estate of Miller*, 61 Cal. Dec. 19, 90, 195 Pac. 413.

70. Same—Valuation of land.—In fixing the value of land for the determination of the amount of the inheritance tax due thereon the opinions of the witnesses qualified by their knowledge of the subject as competent testimony; but they can not, upon direct examination be allowed to testify as to particular transactions, such as sales of adjoining lands of like quality and location, or for the land in question, or any part of it; but such testimony may be admitted on cross-examination for the purpose of testing the witness' knowledge, and impeaching his opinion.—*Estate of Ross*, 171 Cal. 64, 66, 151 Pac. 1138.

71. Same—No difference between transfer inter vivos and transfer by death.—For the purpose of computing the tax there is no difference between a transfer inter vivos and a transfer by death.—*In re Miller's Estate*, 61 Cal. Dec. 19, 90, 195 Pac. 413.

72. Same—Exemption deducted from first \$25,000.—In computing the amount of the tax under the act of 1905, the exemption is deducted from the first \$25,000.—*In re Timken's Estate*, 153 Cal. 51, 109 Pac. 608.

See, also, *Estate of Ball*, 153 Cal. 715, 96 Pac. 366.

73. Same—Law in force at time of death governs.—The law in force at the time of the death of the decedent governs in determining the amount of tax due under the act.—*In re Woodard's Estate*, 153 Cal. 39, 94 Pac. 242.

74. Same—The amount of the tax is to be determined by the rate established by the act in force at the time the gift in contemplation of death was made, and not by the act in force at death of donor.—*Estate of Felton*, 176 Cal. 663, 669, 169 Pac. 392.

75. Same—Act of 1905—Gifts—Property inherited—Act of 1913.—Where the tax upon property received by gift is to be computed under the act of 1905, and that upon property inherited, under the act of 1913, the gift and the inheritance must be treated as two separate entities.—*Estate of Felton*, 176 Cal. 663, 670, 169 Pac. 392.

76. Same—Tax levied by sister state deducted before computation of state tax.—The amount of the inheritance tax levied by the state of Nevada should be deducted in determining the amount of a transfer tax on stock of a Nevada corporation.—*In re Miller's Estate*, 61 Cal. Dec. 19; 61 Cal. Dec. 90, 195 Pac. 413.

77. Same—Federal tax deducted before computation of state tax.—The federal tax should be deducted in determining the net clear value.—*In re Miller's Estate*, 61 Cal. Dec. 19; 61 Cal. Dec. 90, 195 Pac. 413.

78. Same—Property taken both by transfer and inheritance—Tax collected as a whole.—Where property is taken both by will and by a previous transfer, the entire amount of the tax under the act of 1913 is to be assessed and collected as a whole.—*In re Estate of Porter*, 61 Cal. Dec. 273.

79. Collection of tax—Act of 1905—Court's order as to amount of tax conclusive.—When, under the act of 1905, the court

has heard and determined the amount of the tax, its order is conclusive, and leaves the state controller no discretion to refuse to seal and countersign a receipt by the county treasurer made pursuant to such order.—*Becker v. Nye*, 8 Cal. App. 129, 96 Pac. 333.

80. Same—No order for distribution until tax paid.—An order for distribution of the estate should not be made until the production of a receipt showing payment of the tax, whether a method of enforcing the payment of the tax remains under the repealing act of 1905, or not.—*In re Lander's Estate*, 6 Cal. App. 744, 93 Pac. 202.

81. Procedure to collect tax—Construed and interpreted.—Statutory procedure in the collection of the inheritance tax due from estates in probate construed and interpreted.—*Estate of Haskins*, 170 Cal. 267, 149 Pac. 576.

82. Same—Same.—The inheritance tax law of 1911 (713) prescribes in detail the procedure required in the matter of estates in probate, and the state controller may insist that this procedure be followed, and on an appeal by that officer from an order settling a final account and distributing an estate, on the ground that there is an inheritance tax due the state and that the statutory procedure has not been followed, the order will be reversed, notwithstanding the amendment of the decree by nunc pro tunc order directing fixing the amount of the inheritance tax and directing its payment.—*Estate of Haskins*, 170 Cal. 267, 149 Pac. 576.

83. Same—Procedure in invitum—Showing of compliance with statute required.—Proceedings for the collection of a tax are in invitum, and in order to collect the tax the government or other agency seeking to recover must show that all the conditions upon which the obligation to pay rests have been strictly fulfilled.—*McDougald v. Boyd*, 172 Cal. 753, 756, 159 Pac. 168.

84. Same—Burden of showing non-liability not on heir or transferee.—The statute does not assume to relieve from the payment of a tax otherwise imposed, and there is no question of an exemption, and the rule that the burden is on the claimant to establish his right to an exemption has no application.—*McDougald v. Boyd*, 172 Cal. 753, 757, 159 Pac. 168.

85. Statute of limitations—Retroactive effect to remove bar of statute—Section 4 of act of 1913, inoperative.—Section 4 of the revised inheritance tax act of 1913 is inoperative to remove the bar of the statute of limitations from actions that were barred at the time it was enacted.—*Chambers v. Gallagher*, 177 Cal. 704, 707, 171 Pac. 931.

86. Same—Inheritance tax law of 1893 as it stood in 1902.—The statute of limitations was applicable to actions on the liability of executors for inheritance taxes, under the inheritance tax law of 1893, as it

stood in 1902.—*Chambers v. Gallagher*, 177 Cal. 704, 705, 171 Pac. 931.

87. Same—Began to run thirty days after final settlement.—The statute of limitations began to run in favor of an executor upon his liability for inheritance taxes upon the expiration of thirty days from the final settlement of the estate, at all events.—*Chambers v. Gallagher*, 177 Cal. 704, 171 Pac. 931.

88. Same—Same—Demurrer lies to action after bar has fallen.—A demurrer lies to an application by the district attorney to recover taxes from an executor under the inheritance tax law (Stats. 1893, p. 193) as it stood in 1902; in the same manner and for the same causes as in ordinary civil actions.—*Chambers v. Gallagher*, 177 Cal. 704, 705, 171 Pac. 931.

89. Appeal—State may appeal as interested party from order of court fixing the amount of the inheritance tax under the act of 1905.—*Becker v. Nye*, 8 Cal. App. 129, 96 Pac. 333.

90. Same—Amendment of 1897—Appeal taken prior to, must be decided under amendment.—An appeal under the act of 1893 taken before the amendment of 1897, exempting certain classes, but not decided until afterwards, must be decided under the amendment.—*In re Stanford's Estate*, 126 Cal. 112, 45 L. R. A. 788, 54 Pac. 259, 58 Pac. 462.

91. Illegitimate children—Adopted by father—Not subject to collateral inheritance tax.—Illegitimate children, adopted by their father, are not "collateral heirs," and their inheritances from him are not subject to the tax.—*Wirringer v. Morgan*, 12 Cal. App. 26, 106 Pac. 425.

92. Children exempt, both natural and adopted.—The collateral inheritance tax act of 1893 excludes from the tax bequests to children, whether natural or adopted.—*In re Winchester's Estate*, 140 Cal. 468, 74 Pac. 10.

93. Inheritance, succession and collateral inheritance taxes.—As to taxes on succession and collateral inheritances, see notes to *In re Howe*, 2 L. R. A. 825; *Wallace v. Meyers*, 4 L. R. A. 171; *Com. v. Ferguson*, 10 L. R. A. 240; *In re Romaine*, 12 L. R. A. 401; *Magoun v. Illinois, etc., Bank*, (U. S.) 42 L. ed. 1037.

Editor's note: Charitable corporations, foreign—Statute imposing inheritance tax upon, as to property received by them by gift, bequest, or devise, constitutional.—*Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. Rep. 888, 70 N. E. 957. See *In re Estate Prime*, 136 N. Y. 347, 32 N. E. 1091, 18 L. R. A. 713; *In re Estate Balleis*, 144 N. Y. 132, 38 N. E. 1007.

Constitutionality of inheritance-tax law.—See *Mager v. Grima*, 49 U. S. (8 How.) 490, 493, 12 L. ed. 1168; *Horn Silver Min. Co. v. New York*, 143 U. S. 305, 36 L. ed. 164, 12 Sup. Ct. Rep. 403; *United States v. Perkins*, 163 U. S. 625, 41 L. ed. 287, 16 Sup. Ct. Rep. 1073; *Eldman v. Martinez*, 184 U. S. 578, 46 L. ed. 697, 22 Sup. Ct. Rep. 515.

See note, 41 Am. St. Rep. 580-585; brief in 50 L. R. A. 92.

Inheritance tax is not on property, but on the succession.—In re Estate Dows, 167 N. Y. 227, 88 Am. St. Rep. 509, 60 N. E. 439, 52 L. R. A. 433.

See 28 L. R. A. 178; 39 L. R. A. 170.

On lands placed in partnership.—People v. Moir, 207 Ill. 180, 99 Am. St. Rep. 205, 69 N. E. 905.

Property conveyed in lifetime subject to.—People v. Moir, 207 Ill. 180, 99 Am. St. Rep. 205, 69 N. E. 905.

Illinois inheritance-tax law.—See People

v. Moir, 207 Ill. 180, 99 Am. St. Rep. 205, 69 N. E. 905.

Iowa inheritance-tax law.—See Gilbertson v. Ballard (Iowa, Oct. 26, 1904), 101 N. W. 108.

Maine inheritance-tax law.—See State v. Hamlin, 86 Me. 495, 41 Am. St. Rep. 569, 30 Atl. 76.

New York inheritance-tax law.—See In re Estate Prime, 136 N. Y. 347, 32 N. E. 1091, 18 L. R. A. 713; In re Estate Balleis, 144 N. Y. 132, 38 N. E. 1007.

Ohio inheritance-tax law.—See Humphreys v. State, 70 Ohio St. 67, 101 Am. St. Rep. 888, 70 N. E. 957.

INHERITANCE TAX—LIEN ENFORCEMENT ACTIONS.

ACT 5093—An act authorizing the bringing of actions on behalf of the state for the purpose of enforcing the lien or liens of taxes under an act entitled “An act to establish a tax on collateral inheritances, bequests, and devises, to provide for its collection, and to direct the disposition of the proceeds,” approved March 23, 1893, and the several acts amendatory thereof; and to authorize the bringing and prosecution of actions against the state, for the purpose of quieting title against claims of liens made by or upon behalf of the state under the said act and the acts amendatory thereof, and to regulate the procedure in such actions.

History: Approved March 20, 1905, Stats. 1905, p. 374. This act is probably superseded by later inheritance tax acts, particularly that of 1917 (Stats. 1917, p. 880).

Action may be brought to collect by district attorney. Parties defendant.

§ 1. In all cases where any tax has become or shall hereafter become a lien upon any property under or by virtue of any of the provisions of an act entitled “An act to establish a tax on collateral inheritances, bequests and devises, to provide for its collection and to direct the disposition of the proceeds,” approved March 23, 1893, and the several acts amendatory thereof, the district attorney of the county in which the estate of the decedent mentioned in said act and the acts amendatory thereof is being administered or has been administered in probate proceedings, may, whenever any property of said estate has been distributed without the payment to the state of all or any part of the taxes payable on account thereof under said act and the acts amendatory thereof, bring and prosecute an action or actions in the name of the state as plaintiff, for the purpose of enforcing such lien or liens against all or any of the property subject thereto. In any such action the owner of any property or of any interest in property against which the lien of any such tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was deraigned through any such decedent by will or succession or by decree of distribution of the estate of such decedent, and any lienor or encumbrancer subsequent to the lien of such tax may be made a party defendant. The enumeration in this section of the persons who may be made defendants shall not be deemed to be exclusive, but the joinder or nonjoinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases.

Actions to quiet title against state.

§ 2. Actions may be brought against the state for the purpose of quieting the title to any property, against the lien or claim of any tax or taxes under said act of March 23, 1893, and the several acts amendatory thereof, or for the purpose of having it determined that any property is not subject to any lien for taxes under said act and the acts amendatory thereof. In any such action, the plaintiffs may be any administrator or executor of the estate or will of any decedent who has died since the said act of

March 23, 1893, went into effect, or who may hereafter die, whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee or devisee of any such decedent, or trustee of the estate or of any part of the estate of such decedent, or distributee of the estate or of any part of the estate of any such decedent, and any assignee, grantee or successor in interest of any of such persons, and all or any other persons who might be made parties defendant in any action brought under the provisions of section 1 of this act, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise parted with all or any interest in or title to the property, or any thereof, involved in any such claim or lien before the commencement of such action. All or any of the persons in this action enumerated may be joined or united as parties plaintiff. The enumeration in this section of the persons who may be made parties shall not be deemed to be exclusive, but the joinder or nonjoinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant.

Actions, where commenced.

§ 3. All actions under sections 1 and 2 of this act shall be commenced in the superior court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the superior court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned in said sections 1 and 2.

Service of summons.

§ 4. Service of summons in the actions mentioned in section 2 hereof shall be made on the secretary of state and on the district attorney of the county in which the estate of the decedent mentioned in said section is being administered, or has been administered in probate proceedings, and it shall be the duty of said district attorney to defend all such actions.

Procedure and practice.

§ 5. The procedure and practice in all actions brought under this act, except as otherwise provided in this act, shall be governed by the provisions of the Code of Civil Procedure in relation to civil actions, so far as the same shall or may be applicable, including all provisions relating to motions for new trials and appeals.

Remedies.

§ 6. The remedies provided in this act shall be in addition to and not exclusive of any remedies provided in the said act of March 23, 1893, and the several acts amendatory thereof.

1. Statute of limitations—Action must be commenced within the three-year period.—The action authorized must be commenced within the three-year period of section 338, subdivision 1, Code of Civil Procedure, after the death of the donor.—*Chambers v. Gibson*, 178 Cal. 416, 173 Pac. 752.

Citations: *Trippet v. State*, 149 Cal. 521, 523, 530, 86 Pac. 1084; *Estate of Lander*, 6 Cal. App. 744, 746, 747, 93 Pac. 202.

See notes under Act 5092.

COUNTY SPECIAL TAX FOR CERTAIN PURPOSES.

ACT 5098—An act empowering boards of supervisors of any of the several counties of the state of California to levy a special tax for the purpose of displaying the products and industries of any county in the state at domestic or foreign expositions, for the purpose of encouraging immigration and increasing trade in the products of the state.

History: Approved March 23, 1901, Stats. 1901, p. 589.

Special tax for encouraging immigration.

§ 1. The boards of supervisors of the several counties within the state of California, or any of them, are hereby authorized and empowered to levy a special tax on the taxable property within their respective counties, for the purpose of creating a fund not exceeding ten thousand dollars in any one year in any one county, to be used for collecting, preparing, and maintaining an exhibition of the products and industries of the county at any domestic or foreign exposition, for the purpose of encouraging immigration and increasing trade in the products of the state of California; provided, the total tax levies for such purposes in any one year shall not exceed two cents on each one hundred dollars of taxable property in the county, according to the assessment-roll.

MUNICIPAL SPECIAL TAX FOR SPECIFIC PUBLIC IMPROVEMENTS.

ACT 5099—An act providing for the levy of a special tax for specific public improvements within municipalities.

History: Became a law under constitutional provision without governor's approval, March 15, 1901, Stats. 1901, p. 296.

Levy of special tax for specific improvements in municipalities.

§ 1. Whenever it shall be determined by the legislative body of any municipality within the state of California that the public interest of such municipality demands the acquisition, construction or completion of any municipal improvement, including bridges, waterworks, water rights, sewers, light or power works or plants, buildings for municipal uses, fire apparatus and street work, or other works, property or structures necessary or convenient to carry out the objects, purposes and powers of the municipality, the cost of which will be too great to be paid out of the revenues of the municipality to be received during the fiscal year, or years, in which such improvement is proposed to be made, a special tax, not to exceed the sum of fifty cents on each one hundred dollars, may be levied on the property assessed for purposes of taxation within said municipality, which said rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied therein.

Proposition must be submitted to vote.

§ 2. Before said tax shall be levied by the legislative body of a municipality, the question of the levy of such tax shall be submitted to the voters of the municipality at any general or special municipal election, or at a special election to be held for that purpose, and if two-thirds of the votes cast upon the proposition of levying such tax shall be in favor of the levy thereof, then the levy shall be made; otherwise, the tax shall not be levied. Upon the ballots used at such election, the proposition to be voted for shall be stated in appropriate words and the same arranged so that the voter may indicate his choice upon the proposition. If a special election is held, the same shall be held and conducted as are other elections within the municipality.

Legislative body to adopt ordinance. What ordinance to contain.

§ 3. At least two weeks before such election is held the legislative body of the municipality shall adopt an ordinance calling and providing for the same, wherein it shall be stated:

1. The nature of the proposed improvement for the cost of which the special tax shall be levied;
2. The total amount of money to be raised for such improvement;
3. The annual rate of taxation to be levied.

Levy of special tax.

§ 4. At the time fixed by law for the levying of taxes within the municipality, the legislative body thereof shall include the special tax herein provided for, which shall

be the rate specified in the ordinance calling said election, nor shall it be levied for a longer period of years than shall be sufficient to raise the amount of money specified in said ordinance. The proceeds of said special tax shall be set apart in a special fund and shall only be expended for the purposes of making the improvement stated in said ordinance; provided, that any balance remaining after said improvement shall have been fully completed and paid for may be transferred to the general fund of the municipality.

Does not repeal what acts.

§ 5. This act shall not be deemed to repeal, conflict with or modify any provision of any statute of this state concerning the incurring of a bonded indebtedness of municipalities for public improvements.

§ 6. This act shall take effect immediately.

MUNICIPAL TAXATION.

ACT 5100—An act to provide for the levy and collection of taxes by and for the use of municipal corporations and cities incorporated under the laws of the state of California, except municipal corporations of the first class, and to provide for the consolidation and abolition of certain municipal offices, and to provide that their duties may be performed by certain officers of the county, and fixing the compensation to be allowed for such county officers for the services so rendered to such municipal corporations.

History: Approved March 27, 1895, Stats. 1895, p. 219. Amended March 20, 1905, Stats. 1905, p. 429; May 13, 1913, in effect August 10, 1913, Stats. 1913, p. 441; April 30, 1919, in effect July 22, 1919, Stats. 1919, pp. 160, 187. Prior act of March 2, 1891, Stats. 1891, p. 22, was probably superseded, if not repealed by the present act.

Levy and collection of city tax by county officials permitted. To fix amount to be raised.

§ 1. Any municipal corporation or city in this state, except municipal corporations of the first class, shall have power to elect, by ordinance adopted by the board of trustees, common council, or other legislative body, or the electors, of such city or municipal corporation, that the duties of assessing property and collecting taxes provided by law to be performed by the assessor and the tax collector of such city or municipal corporation shall be performed by the county assessor and the county tax collector of the county in which such city or municipal corporation is situated. A certified copy of such ordinance shall be filed with the auditor of the county in which such city or municipal corporation is situated on or before the first Monday in the month of February immediately following the adoption of such ordinance, and thereafter all assessments made by the county assessor, as the same may be equalized or corrected by the board of supervisors or state board of equalization, shall be used as a basis for the levy of the taxes of such city or municipal corporation, and said taxes shall be collected by the assessor and tax collector of such county at the same time and in the manner county taxes are collected, until such city or municipal corporation shall by ordinance elect not to have such duties performed by said assessor and tax collector for any longer time. Whenever any city or municipal corporation shall elect to avail itself of the provisions of this act relative to assessments and collection of taxes, the board of trustees, common council or other legislative body of such city or municipal corporation shall have the power, and it shall be their duty, before making the levy provided to be made by section 4 hereof, to fix by ordinance the amount of money necessary to be raised by taxation upon the taxable property therein as a revenue to carry on the various departments of such municipal corporation or city for the current year, not to exceed the limit fixed by law, and to pay the bonded or other indebtedness of such municipal corporation or city, or any portion or district thereof; and, whenever,

in any municipal corporation or city electing to avail itself of the provisions of this act, relative to assessment and collection of taxes, there is any district or portion of said municipal corporation or city in which there must be levied a rate of taxation different from the rate to be levied in any other district or portion of such municipal corporation or city, the board of trustees, common council, or other legislative body of such municipal corporation or city shall cause to be filed on or before the 1st Monday of July of each year with the county auditor of the county in which such municipal corporation or city is situated, a description of the exterior boundaries of each district or portion of such municipal corporation or city in which there must be levied a rate different from the rate to be levied in any other district or portion of such municipal corporation or city, and the said county auditor shall transmit to the said board of trustees, common council or other legislative body, at the same time that he shall transmit a statement in writing of the total assessed valuation of all property within said municipal corporation or city, as required by section 3 hereof, a statement in writing showing separately the total assessed valuation of all property in each of said districts or portions of such municipal corporation or city. [Amendment approved May 31, 1913, Stats. 1913, p. 441. In effect August 10, 1913.]

Duties of city treasurer may be performed by county treasurer.

§ 2. The board of trustees, common council, or other legislative body of any municipal corporation or city in this state, except municipal corporations of the first class, shall have power to elect that the duties of the city treasurer of such city or municipal corporation, shall be performed by the county treasurer of the county in which such city or municipal corporation is situated; and whenever such board of trustees, common council or other legislative body shall by ordinance so determine such duties shall be performed by the treasurer of the county in which such city or municipal corporation is situated. Certified copies of such ordinance shall be served on the auditor, tax collector, and treasurer of such county, and such ordinance shall also prescribe the manner in which money shall be drawn out of the various funds belonging to said city or municipal corporation, in the hands of the treasurer. [Amendment of April 30, 1919. In effect July 22, 1919, Stats. 1919, p. 161.]

County auditor to render statement of value of all property.

§ 3. The county auditor must, on or before the second Monday in August of each year, transmit to the board of trustees, common council, or other legislative body of such municipal corporation or city within such county, a statement in writing, showing the total value of all property within each municipal corporation or city, respectively, which value shall be ascertained from the assessment-books of such county for such year, as equalized and corrected by the board of supervisors of such county.

Rates fixed each year.

§ 4. Each board of trustees, common council, or other legislative body of such city or municipal corporation, shall, not later than the last Tuesday in August of each year, fix the rate of taxes, or rates of taxes, if different portions or districts require different rates, designated in the number of cents upon each one hundred dollars, using as a basis the value of the property as assessed by the county assessor as the same may be equalized, and so returned to such board by the county auditor as required by section three of this act, which rate, or rates, of taxation shall be sufficient to raise the amount so fixed by such board as required by section one of this act, and the expense of collection, which acts by said board are declared to be a valid assessment of such property and a valid levy of such rates so fixed. Such city or municipal board must immediately thereafter transmit to the county auditor of the county in which such city or municipal corporation is situated a statement of such rate or rates so

fixed by said body. [Amendment approved May 31, 1913, Stats. 1913, p. 443. In effect August 10, 1913.]

Auditor to compute taxes to be paid. Collection and payment to treasurer.

§ 5. The auditor must then compute and enter in a separate column in the assessment-book, to be headed "City Tax, City of" (naming it), the respective sums in dollars and cents to be paid as a municipal or city tax on the property therein enumerated and assessed as being in any municipal corporation or city, using the rate of levy so fixed by such municipal board, and the assessed value as found in such assessment-book. Such taxes so levied shall be collected at the same time and in the same manner as state and county taxes; and when collected the net amount as ascertained by sections 6 and 7 of this act shall be paid to the treasurer of the municipal corporation or city to which it respectively belongs; under the general requirements and penalties provided by law for the settlement of other taxes; provided, however, that when such city has by ordinance, a certified copy of which has been served upon the tax collector of such county, elected to avail itself of the provisions of section 2 of this act, then such tax-collector shall pay the money belonging to such city or municipal corporation over to the treasurer of the county in which such city or municipal corporation is situated.

Duty of auditor and tax collector relating to levy and collection of tax.

§ 6. The county auditor and county tax collector shall file with the board of supervisors itemized statements showing the additional expense to their offices of assessing and collecting these local taxes, and upon the filing of such statements the board of supervisors shall, by an order spread upon the minutes, deduct such expenses from the taxes of such municipal corporation or city, while in the hands of the county tax collector, and transfer the same into the county salary fund; provided, that not more than one per cent shall be charged for collecting the first twenty-five thousand dollars so collected, and one-fourth of one per cent for all sums over that amount.

Amended 1905, Stats. 1905, p. 429.

Additional expenses, how paid.

§ 7. Whenever the board of trustees, common council, or other legislative body of any municipal corporation or city in this state has elected to avail itself of the provisions of section 2 of this act, the board of supervisors of such county shall also reserve as and for the expenses of the county treasurer, incurred by reason of the imposing of these duties upon him, the sum of one-fourth of one per cent, which sum shall be deducted from the money collected by the county tax collector, and covered in to the county treasurer into the county salary fund.

Duties of assessor and collector transferred. Offices abolished.

§ 8. Whenever any municipal corporation or city shall have availed itself of the provisions of this act relative to assessments and collection of taxes, all duties other than the assessing of the property of such city or municipal corporation theretofore performed by the city assessor shall be transferred to, and be performed by, the clerk of such city or municipal corporation, or such other officer as such city or municipal corporation by ordinance shall determine, and all duties other than the collection of taxes theretofore performed by the city tax collector shall be transferred to, and be performed by, the city marshal or chief of police of such city or municipal corporation, or such other officer as such city or municipal corporation shall by ordinance determine; and thereafter the offices of city assessor and tax collector may by ordinance be abolished. And whenever any city or municipal corporation shall have availed itself of the provisions of section 2 of this act the office of city treasurer may be by ordinance

abolished. [Amendment approved May 31, 1913, Stats. 1913, p. 443. In effect August 10, 1913.]

Redemption of property through county auditor.

§ 8a. Whenever any municipal corporation elects or has heretofore elected to avail itself of the provisions of this act relating to the assessing and collecting by the county of taxes for such municipal corporation, redemption of property which after such election has been made has been sold to such municipal corporation on account of non-payment of taxes shall be effected through the office of the county auditor. [New section added April 30, 1919. In effect July 22, 1919, Stats. 1919, p. 187.]

Collection of unpaid taxes.

§ 9. The collection of unpaid taxes levied on any property by any city or municipal corporation that shall have elected to avail itself of the provisions of this act relative to assessments and collection of taxes, shall be enforced by the sale of such property in the same manner and at the same time, and upon the same penalties, as property sold for non-payment of county taxes, and real property so sold may be redeemed within the same time and upon the same terms as property sold for the non-payment of county taxes; and whenever any real property situate in such city or municipal corporation has been sold for taxes and has been redeemed, the money paid for such redemption shall be apportioned by the county auditor to such city or municipal corporation in the proportion which the tax due such city or municipal corporation bears to the total tax for which such real property was sold. [Amendment approved May 31, 1913, Stats. 1913, p. 443. In effect August 10, 1913.]

Consolidation of offices with counties under charter.

§ 9a. Any county organized under a charter for its own government, framed under the provisions of section seven and one-half of article XI of the constitution of the state of California; or any city or town situated within said county, organized or incorporated under the provisions of section six of said article; or any city or town situated within said county heretofore or hereafter organized by charter authorized by section eight of said article shall have the power to prescribe, whenever such county charter so provides and the said county consents thereto, such other consolidation of county and municipal officers and the assumption and discharge of such functions thereof, as may be consistent with, and subject to said constitution. [New section approved May 31, 1913, Stats. 1913, p. 444. In effect August 10, 1913.]

Repeal of conflicting acts.

§ 10. All acts and parts of acts in conflict with the provisions of this acts are hereby repealed.

§ 11. This act shall take effect immediately.

1. Intent of act—Sale for delinquent tax valid.—The clear intent of the act was to provide for the collection of municipal taxes by the use of the usual tax collecting machinery of the Political Code, and hence a sale for delinquent taxes under the act is valid.—*Griggs v. Hartzoke*, 13 Cal. App. 429, 109 Pac. 1104.

2. Same—Not to provide for merging city with county business.—It was not the intention of the act to provide for the merging of the city and county business, but merely to make the county officers ex-officio officers of the city for the pur-

poses of the act.—*Madary v. Fresno*, 20 Cal. App. 91, 128 Pac. 340.

3. Same—Change of valuation by state board of equalization.—When a city has elected to come under the act, but has not elected, under section 3671, to take as a basis the assessment as equalized by the state board, and the rate is fixed by the board of trustees in the manner prescribed by the act, a subsequent charge by the state board of equalization by increasing the valuation, did not authorize a corresponding increase by the city.—*Madary v. Fresno*, 20 Cal. App. 91, 128 Pac. 340.

REASSESSMENT AND EQUALIZATION ACT OF 1893.

ACT 5102—An act in relation to reassessment of property, the equalization of the same, and the collection of taxes thereon, in cases where a former assessment made since eighteen hundred and seventy-nine is illegal or invalid, or where the proceedings for the collection of such taxes have been ineffectual by reason of error, irregularity, or invalidity, and such taxes have not been paid.

History: Approved March 23, 1893, Stats. 1893, p. 290.

Reassessment in certain cases. How made. Entered on rolls. Rates of taxation.

§ 1. Every assessment of property made after the year one thousand eight hundred and seventy-nine which is invalid, or may hereafter be adjudged to be, by reason of any illegality, invalidity, or irregularity declared or existing, in the assessment of such property, or in the mode provided for the assessment thereof, shall be remade, and the property reassessed and equalized for each year for which such assessment is invalid as aforesaid, and for the year for which the assessment of such property was invalid as aforesaid, and such reassessment and equalization shall be made by the same officers and boards at the same time or times, as are now prescribed by law for the assessment and equalization of property, of the same classes or kinds as the property which hereby is required to be reassessed. The assessment and equalized assessment of such property shall be entered on the several assessment-rolls or books in the same manner that assessments of such property are or were required by law to be entered for the year or years during which such reassessments shall be made. And there is hereby levied for state purposes the same rates of taxation for each of such respective years as were heretofore levied upon such property for each of said years for said state purposes.

Tax rates for respective years.

§ 2. All taxes for counties, cities and counties, and other taxing districts, shall be levied by the proper board or boards upon the property mentioned in the first section of this act, at the same rates for each respective year as were levied upon property for each of said years after the year eighteen hundred and seventy-nine.

Equalization of reassessments. Who to collect. Delinquency credits.

§ 3. All property authorized to be reassessed by this act shall be reassessed and equalized by the proper officers and boards at the value to which and to the person or corporation to whom or to which such property ought, for each of such years, to have been assessed, under such rules of notice and at the times and in the modes as are prescribed for the assessment and equalization of like classes of property; and the assessment and equalization thereof, and the levy and collection of taxes thereunder, shall be made by the proper officers at the time, upon like notice and in the manner now or hereafter provided by law for making assessments and equalizing the same and for the levy and collection of taxes on like classes of property; and if the taxes so relieved shall become delinquent, there shall be added thereto and the amount thereof the same percentage as a penalty for such delinquency, as is added to other delinquent taxes on like classes of property, and such delinquent taxes and penalties added thereto shall be collected by the proper officers in the manner now or hereafter provided by law for the collection of delinquent taxes and penalties upon like classes of property; the collectors of such taxes to allow as credits thereon all payments heretofore made on the tax as first levied.

No limitation for actions.

§ 4. There shall be no limitation or limitations as to the time in which actions for the collections of taxes levied under this act may be commenced, and all the provisions

of law now or hereafter provided in respect to the assessments, equalization, levy, and collection of taxes shall, where applicable, apply to reassessments, equalization and relieves and collections of taxes made under the provisions of this act.

Construction of act.

§ 5. This act shall apply to taxes for revenue only, and not to assessments for local improvements or street purposes.

§ 6. This act shall take effect and be in force on and after its passage.

Reassessment of railroad property.—After assessment under sections 3664-3669.—The state board of equalization has no power under this act to reassess the property of a railroad company which has been regularly assessed in accordance with sections 3664-3669, of the Political Code, since such an assessment would not be invalid.—Co-

lusa Co. v. Glenn Co., 124 Cal. 498, 57 Pac. 477.

Citations: Colusa County v. Glenn County, 117 Cal. 434, 440, 49 Pac. 457; County Colusa v. County Glenn, 124 Cal. 498, 500, 57 Pac. 477; San Diego v. Riverside, 125 Cal. 495, 498, 58 Pac. 81; Coutts v. Cornell, 147 Cal. 560, 564, 82 Pac. 194; San Diego Realty Co. v. Cornell, 150 Cal. 637, 640, 89 Pac. 603.

COMPENSATION FOR THE COLLECTION OF DELINQUENT TAXES.

ACT 5103—An act authorizing the payment of compensation or commission to persons employed by the state controller and attorney general or by boards of supervisors of the different counties, to collect delinquent state and county taxes, and legalizing all payments made for that purpose.

History: Approved March 26, 1895, Stats. 1895, p. 94.

§ 1. That all sums heretofore paid by the state to any person for compensation or commission to persons for collecting delinquent state and county taxes in pursuance of an agreement by such persons with the state controller and attorney general for such collections, and all sums heretofore paid by any board of supervisors out of the county treasury as compensation or commissions for collecting such delinquent taxes in pursuance of an agreement by such persons with such boards of supervisors, are hereby approved and legalized.

§ 2. This act shall take effect and be in force from and after its passage.

TAX COMMISSIONS AND FEES ABOLISHED.

ACT 5105—An act to abolish commissions or fees paid by the state for the assessment, equalization, auditing, and collection of ad valorem taxes.

History: Approved March 14, 1899, Stats. 1899, p. 102. This act is identical with the act of February 23, 1893, Stats. 1893, p. 5, except as to §§ 2 and 3, which are not in the former act. It is assumed that it was enacted to relieve the doubt, suggested in *Yolo v. Colgan*, 132 Cal. 265, that the former act was repealed by the county government act of 1893, but it was held in that case that this was not true. In any event the act of 1893, was superseded by the present act.

Fees for collecting ad valorem taxes abolished.

§ 1. All commissions or fees paid by the state to the officers of any county, or city and county, for services rendered in the assessment, equalization, auditing, and collection of ad valorem taxes, are hereby abolished; provided, that this shall not affect the commissions paid to the assessor of the several counties for services rendered in the collection of personal property taxes, as provided by chapter eight of the Political Code, or the mileage allowed to the treasurer of the several counties, or cities and counties, in making settlements with the state, as provided by section three thousand eight hundred and seventy-six of the Political Code.

Repeal of conflicting acts.

§ 2. All acts or parts of acts in conflict with this act are hereby repealed.

§ 3. This act shall take effect from and after its passage.

SUITS FOR TAX COMMISSIONS AND FEES PROHIBITED.

ACT 5106—An act to prevent the maintenance against the state or any officer thereof by any county or county officer, of any action or proceeding for the collection or recovery of any money alleged to be due such county or any officer thereof for services rendered in the assessment, equalization, auditing, and collection of ad valorem taxes.

History: Approved February 16, 1899, Stats. 1899, p. 9.

Suits in ad valorem tax cases prohibited.

§ 1. No action or proceeding shall hereafter be maintained by any county or county officer against the state or any state officer for the collection or recovery of any money alleged to be due such county or any officer thereof for services rendered in the assessment, equalization, auditing, and collection of ad valorem taxes, and all such actions and proceedings heretofore commenced and now pending, and all such actions or proceedings that may hereafter be instituted, shall be dismissed by the court in which the same may be pending upon its own motion.

Commissions of assessor and mileage of treasurer not affected.

§ 2. Nothing in this act shall be held to affect the commissions paid to the assessor of the several counties for services rendered in the collection of personal property taxes, or the mileage allowed to the treasurer of the several counties or cities and counties in making settlements with the state.

Repeal of conflicting acts.

§ 3. All acts or parts of acts in conflict with any of the provisions of this act are hereby repealed.

§ 4. This act shall take effect and be in force from and after its passage.

Citation: County of Yolo v. Colgan, 132 Cal. 265, 277, 84 Am. St. Rep. 41, 64 Pac. 403. See Act 5105 and historical note.

PAYMENT OF TAX COMMISSIONS AND FEES PROHIBITED.

ACT 5107—Prohibiting the payment of money by the state to counties and cities and counties for the collection of taxes.

History: Approved March 4, 1899, Stats. 1899, p. 56. This act, with the two acts immediately preceding, Acts 5105, 5106, have the same purpose, and should be considered together.

§ 1. No money shall be paid by the state to any county or city and county of the state on account of any claim based upon the collection of taxes heretofore made by any county or city and county of the state or the officers thereof.

§ 2. This act shall take effect immediately.

ASSESSMENT OF ANIMALS PASTURING IN ANOTHER COUNTY.

ACT 5109—An act concerning the assessment of animals.

History: Approved March 30, 1872, Stats. 1871-72, p. 754. Not repealed by the Political Code, respecting the assessment of personal property: Rosasco v. Tuolumne Co., 143 Cal. 430. See Kerr's Cyc. Political Code, § 3637.

Assessment of animals temporarily pasturing in any county.

§ 1. Whenever any person residing in any county of the state, and owning any neat cattle, horses, mules, sheep, or goats therein, shall drive the same from the county where he resides into any other county, for the purpose of temporarily pasturing the same, all such animals shall be assessed in and for the county where such owner resides, although the said animals shall not be at the time of said assessment in said county in which he may so permanently reside; and such owner shall include such

animals in his assessment list, and the assessor of the county where such stock are so temporarily grazed shall list the same, with a full description of each kind and the number of the same; and for the purpose of making such list, the assessor shall have power, and it is hereby made his duty, to examine on oath the person or persons owning or having charge of such cattle, horses, mules, sheep, or goats, touching their number, ownership, and to whom and in what county, if any, they have been assessed for taxation. The list made out as aforesaid by the assessor, together with a full statement of the same, shall be signed and sworn to by the person or persons owning or having in charge such stock.

Duties of assessors and treasurers.

§ 2. The assessor shall file a copy of said list of such stock with the county treasurer of his county, and another copy with the treasurer of the county in which the said stock was first listed and assessed for taxation. Upon filing the lists aforesaid, with the sworn statement therein that the stock specified in said lists has been pastured or used in the county mentioned therein during the grazing season, with the treasurer of the county in which it was assessed for taxation, said treasurer shall pay, on the order of the treasurer of the county in which the stock was so pastured or used, one-half of the amount of taxes paid in on the said stock, less the cost of collection.

Repeal of conflicting acts.

§ 3. All acts or parts of acts in conflict with this act, so far as they are in conflict with this act, are hereby repealed.

§ 4. This act shall take effect from and after its passage.

1. **Cattle "temporarily pasturing"—Assessable in home county.**—Aside from the provisions of this act, section 3628, Political Code, and section 10, article XIII of the constitution require that cattle "temporarily pasturing" in a county, were not subject to assessment there, but in the county where they were permanently located.—*Rosasco v. Tuolumne Co.*, 143 Cal. 430, 77 Pac. 148.

ASSESSMENT OF MIGRATORY LIVESTOCK.

ACT 5110—An act to regulate the assessment of migratory herds or bands of livestock, and to provide for an equitable distribution of the taxes derived therefrom.

History: Approved March 16, 1874, Stats. 1873-74, p. 376. Supplemented April 1, 1876, Stats. 1875-76, p. 797.

1. **Constitutionality—Act held unconstitutional.**—The act is unconstitutional.—*People ex rel. Long v. Townsend*, 56 Cal. 633.

2. **Migratory stock—Duty of assessor—Time of removal from county.**—It is the duty of the assessor to demand of the owner of migratory stock, when he makes

the assessment, as to whether the stock will be removed from the county during the year, and if he fails to do so, the owner is not required to do so, whatever its intentions may be at the time of the assessment, or subsequently, as to such removal.—*People ex rel. Murphy v. Shippee, McKee & Co.*, 53 Cal. 675.

TAX DEEDS VALIDATED.

ACT 5116—An act to legalize, confirm, and validate tax deeds made to the state of California for delinquent taxes, and deeds made to purchasers of property sold under and in pursuance of the provisions of sections 3897 and 3898 of the Political Code.

History: Approved April 15, 1909, Stats. 1909, p. 920.

Validating tax deeds.

§ 1. That all deeds to the state of California based upon delinquent tax sale since the year 1894 and where the five years allowed by law for redemption of the property had expired, and which said deeds were not executed within the time prescribed by any law of this state, and all deeds to purchasers of property made by tax-collectors

under and in pursuance of the provisions of sections three thousand eight hundred and ninety-seven and three thousand eight hundred and ninety-eight of the Political Code, wherein the notice of sale was mailed but not registered as required by law, be, and such deeds hereby are, legalized, confirmed, and validated, and the same shall be construed and operate at all times and upon all occasions in law in the same manner as if such matters and things had been properly performed in the first instance.

Deeds in litigation not affected.

§ 2. This act shall not apply to any tax deed which was or is in litigation at the time this act takes effect.

CERTIFICATES OF SALES AND TAX DEEDS VALIDATED.

ACT 5117—An act to confirm, validate and legalize certificates of tax sales and tax deeds executed to the state of California for property sold and deeded thereto for nonpayment of taxes.

History: Approved February 28, 1903, Stats. 1903, p. 63.

§ 1. That all certificates of tax sales and tax deeds made to this state by the county tax collector, which certificates and deeds are based upon the sale of property for nonpayment of taxes, and which certificates and deeds fail to recite the correct date, or any date, when the right of redemption will expire, or had expired, or which certificates recite an incorrect date when the state would be entitled to a deed, be and they are hereby confirmed, validated, and legalized, and the same shall be construed and operate at all times and upon all occasions in law in the same manner as if such matters and things required by law had been recited therein and performed in the first instance; provided, that in all cases five years shall have elapsed between the date of sale of the property to the state for nonpayment of taxes and the date of the execution of such deed.

§ 2. This act shall take effect immediately.

1. Constitutionality — Not special or local law.—The act is not a local or special act, and not objectionable to either subdivision 13, or 14, section 25, article IV, of the constitution.—Baird v. Monroe, 150 Cal. 560, 89 Pac. 352.

See, also, Carter v. Osborn, 150 Cal. 620, 89 Pac. 608.

2. Same—Due process—Five-year limitation.—The act is not unconstitutional as in violation of due process of law, in providing that after five years the property owner had no absolute right to redeem.—Baird v. Monroe, 150 Cal. 560, 89 Pac. 352.

See, also, Carter v. Osborn, 150 Cal. 620, 89 Pac. 608.

3. Same—Cured deed previously made.—The act was retroactive in operation and validated a tax deed which recited no date of redemption to the state previously made.—Baird v. Monroe, 150 Cal. 560, 89 Pac. 352.

See, also, Carter v. Osborn, 150 Cal. 620, 89 Pac. 608; Peck v. Fox, 154 Cal. 744, 99 Pac. 189.

4. Retroactive operation—Cure defect as of date of deed.—The act operated retroactively to cure defective proceedings as of the date of the deed.—Schamblin v. Means, 6 Cal. App. 261, 91 Pac. 1020.

5. Error in tax sale certificate cured by act.—Error in a tax sale certificate in fixing the date when the five-year period of redemption would expire was cured by this act.—Bank of Lemoore v. Fulgham, 151 Cal. 234, 90 Pac. 936; Stanton v. Hotchkiss, 157 Cal. 652, 108 Pac. 864.

6. The act was cited in the following cases: Fox v. Townsend, 152 Cal. 51, 91 Pac. 1004; Wetherbee v. Johnston, 10 Cal. App. 264, 101 Pac. 802; Deets v. Hall, 163 Cal. 249, 124 Pac. 1007.

SUITS FOR DELINQUENT PERSONALTY TAXES.

ACT 5118—An act authorizing and providing for suits for the collection of delinquent taxes due upon personal property.

History: Approved March 13, 1903, Stats. 1903, p. 130.

Collection of personal property taxes by suit.

§ 1. Each county and city and county may sue in its own name for the recovery of any and all moneys due or hereafter to become due as delinquent taxes upon any and

all personal property, where no real property is assessed as security for the payment of such personal property taxes, or where, in the judgment of the board of supervisors, there is not sufficient real property assessed to secure the payment of such personal property taxes, whether the same be for county or city and county, and state purposes, or either of them, and for all penalties due upon said taxes for nonpayment thereof.

Evidence.

§ 2. On the trial of any such suit the assessment-roll of said county or city and county, or a copy of any entry therein duly certified, showing unpaid taxes against the defendant, or, in cases where the defendant is sued in a representative capacity, against any person or estate he represents, shall be prima facie evidence of the plaintiff's right to recover.

Pending actions.

§ 3. All actions now pending for the collection of such taxes may be carried on and prosecuted under the provisions and in accordance with this act.

Conflicting acts repealed.

§ 4. All acts and parts of acts in conflict with this act are hereby repealed, but the method of collecting such taxes herein provided shall not be deemed to be the exclusive method, nor shall the provisions of this act in any manner abrogate or modify the provisions of sections 3831 or 3899 of the Political Code of the state of California.

§ 5. This act shall take effect and be in force immediately from and after its passage.

Recovery of delinquent taxes by suit under former statutes.—Under former statutes for collection of delinquent taxes by suit and recovery of costs, see *People v. Latham*, 52 Cal. 598, 601; *Harper v. Rowe*, 53 Cal. 233, 236; *People v. Latham*, 53 Cal. 386.

FORM OF COMPLAINT IN SUITS FOR DELINQUENT TAXES.

ACT 5119—An act prescribing the form of complaint in actions to recover delinquent taxes, and to authorize the bringing of suits therefor.

History: Approved April 23, 1880, Stats. 1880, p. 136 (Ban. ed., p. 402).

Form of complaint in action for delinquent taxes.

§ 1. In any action that may be hereafter commenced in any county, or city and county, in this state, for the collection of delinquent taxes for any fiscal year, the complaint may be in the following form, and shall be legally sufficient, and on the trial thereof the duplicate assessment-roll for any said fiscal year, of said county, or city or county, or a copy of any entry therein duly certified, showing unpaid taxes against the defendant, or in cases where the defendant is sued in a representative capacity against any person or estate he represents, shall be prima facie evidence of the plaintiff's right to recover:

(Title of court.) (Name of plaintiff) vs. (name of defendant.) Plaintiff avers that defendant is indebted to plaintiff in the sum of \$..... (naming the amount for county, or city and county), taxes, with five per cent penalty added thereto for the nonpayment thereof, and interest thereon at the rate of two per cent per month from the (date), and fifty cents costs of advertising. Plaintiff further avers that defendant is indebted to plaintiff in the further sum of \$..... (naming amount, for state taxes, with five per cent penalty added thereto for the nonpayment thereof, and interest thereon at the rate of two per cent per month from (date), and fifty cents costs of advertising, which said taxes were duly assessed and levied upon (the real or personal) property of said defendant, to wit: (describe property as assessed), for the fiscal year (naming the year). Wherefore, plaintiff prays judgment against said defendant, for said several sums, with interest and penalty as aforesaid, and costs of suit.

(Signature of attorney.)

And in any case where the defendant is sued in a representative capacity, such other

further or additional allegations as may be necessary to charge him in such capacity; and it is further provided, that any county, or city and county, where such taxes are delinquent, may sue in its own name for the recovery of delinquent taxes, whether the same be for county, or city and county, and state purposes, or taxes, or either of them.

§ 2. This act shall take effect and be in force from and after its passage.

Editor's note: It is held in *San Diego v. Southern Pac. R. Co.*, 108 Cal. 46, 40 Pac. 1052, that the foregoing act is repealed by section 3670, Political Code, as amended in 1883, so far as relates to actions against railroads by counties or cities and counties.

In *San Bernardino v. Southern Pac. R. Co.*, 137 Cal. 659, 660, 661, 70 Pac. 782, it is said that the act is wholly inconsistent with the Political Code as to collection of taxes upon railroad property.

The form prescribed for the complaint may be sufficient in other actions, where a municipality is authorized to bring actions. But see, also, *Los Angeles County v. Ballerino*, 99 Cal. 593, 595, 32 Pac. 581, 34 Id. 329; (statute of limitations) *Clark v. City*

of *San Diego*, 144 Cal. 361, 77 Pac. 973; and *Henry v. Garden City Bank & Tr. Co.*, 145 Cal. 54, 60, 78 Pac. 228.

See, also, *County of Sacramento v. Central Pac. R. R. Co.*, 61 Cal. 250, 253, 254, 256, 257, 258; *San Mateo Co. v. Oullahan*, 69 Cal. 647, 648, 11 Pac. 386; *San Francisco v. Luning*, 73 Cal. 610, 612, 15 Pac. 311; *Modoc Co. v. Churchill*, 75 Cal. 172, 173, 16 Pac. 771; *San Luis Obispo County v. White*, 91 Cal. 432, 434, 24 Pac. 864, 27 Pac. 756; *Wm. Ede Co. v. Heywood*, 153 Cal. 615, 620, 621, 22 L. R. A. (N. S.) 562, 96 Pac. 81; *City of Los Angeles v. Glassell*, 4 Cal. App. 43, 46, 47, 87 Pac. 241; *Lantz v. Fishburn*, 17 Cal. App. 583, 588, 120 Pac. 1068.

CORPORATION TAX ACT.

ACT 5122—An act to carry into effect the provisions of section 14 of article XIII of the constitution of the state of California as said constitution was amended November 8, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations, banks and insurance companies for the benefit of the state, all relating to revenue and taxation.

History: Approved April 1, 1911, Stats. 1911, p. 530. Amended February 3, 1913, Stats. 1913, p. 3; June 12, 1913, Stats. 1913, p. 615; January 28, 1915, Stats. 1915, p. 3; May 29, 1915, Stats. 1915, p. 937. §§ 3664-3671d, new sections added to the Political Code May 11, 1917, Stats. 1917, p. 336, as a revision of and a substitute for this act. See *Kerr's Cyc. Political Code*, §§ 3664-3671d.

The act of May 11, 1917. Stats. 1917, p. 336, contained the following section:

Substitute act.

§ 38. This act is a revision of and substitute for the act entitled "An act to carry into effect the provisions of section fourteen of article thirteen of the constitution of the state of California as said constitution was amended November 8, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations, banks and insurance companies for the benefit of the state, all relating to revenue and taxation," approved April 1, 1911, and amendments thereof; provided, however, that nothing herein contained shall affect any tax heretofore levied or assessed in accordance with the provisions of said act and amendments thereof; and provided, further, that all laws in force prior to the taking effect of this act and providing for the levy and collection of such taxes shall, for the purpose of the collection of such taxes, remain in full force and effect. [Stats. 1917, p. 370.]

ASSESSMENT AND COLLECTION OF TAXES IN FREEHOLDERS' CHARTER MUNICIPALITIES.

ACT 5126—An act to provide for the assessment of property in cities governed under freeholders' charters, framed under the provisions of the constitution of this state, for the municipal taxes of such cities, and for the equalization and correction of such assessment by county officers, for the collection and enforcement of the payment of such taxes, including delinquent taxes, by such officers, for the sale and redemption from sale of property sold for the non-payment of such taxes, and for the performance by county officers of the duties of officers of such cities respecting said matters; and to provide for the compensation to be paid to counties by such cities for the services performed by such county officers for such cities under the provisions of this act.

History: Approved June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 499.

Assessment, collection, etc., of city taxes by county officers authorized.

§ 1. The duties of the officers of any city governed under a freeholders' charter framed, ratified and approved in accordance with the provisions of the constitution of this state, with respect to the assessment of property in such city for the municipal taxes thereof, to the equalization and correction of such assessment, to the collection, payment and enforcement of such taxes, including delinquent taxes, and to the redemption of such property from sale or other penalty for the non-payment of such municipal taxes, shall be performed by officers of the county in which such city is situated, when such performance is required of them as in this act provided.

Duty of county officers to assess, collect, etc., city taxes.

§ 2. Whenever the charter of any city mentioned in section one of this act, or any amendment to such charter, or any ordinance of such city authorized by and adopted under such charter or amendment thereto, shall provide that the duties of the council, or other legislative body, assessor, tax collector or other officers of such city with respect to the assessment of property in such city for the municipal taxes thereof, to the equalization and correction of such assessment, to the collection, payment and enforcement of such taxes, including delinquent taxes, and to the redemption of such property from sale or other penalty for non-payment of the municipal taxes of such city, shall be performed by certain designated officers of the county in which such city is situated, as set forth in such charter, or amendment thereto, or in such ordinance, it shall be the duty of such county officers so designated to perform such duties in accordance with the provisions of this act; provided, however, that the several county officers so designated to perform such duties for such city shall be officers who respectively perform duties of the same character as the officers of such city whose duties are to be performed by such county officers.

Copy of charter, etc., filed with supervisors. Separate list of property in annexed territory. Statement showing separate boundaries.

§ 3. Upon the taking effect of any such charter, charter amendment or ordinance of such city, providing that the duties of the officers of such city with respect to the matters mentioned in section two of this act shall be performed by the officers of the county in which such city is situated, a copy thereof, certified by the city clerk of such city, shall be filed with the board of supervisors of such county, on or before the first Monday in February immediately following the taking effect of such charter, charter amendment or ordinance. The board of supervisors shall thereupon cause notice of such charter, charter amendment or ordinance to be given to the several county officers designated therein, and thereafter the assessment list of all property within such city,

as contained in the assessment roll made annually by the county assessor and equalized and corrected by the county board of supervisors, of all property assessed for taxation for county purposes in such county shall be the assessment roll of the property within such city assessed for the purpose of the municipal taxes of such city, and such assessment roll shall be used as the basis for the levy of such municipal taxes. If, subsequent to the incorporation of such city, additional territory has been added thereto, as originally incorporated, either by annexation of new territory thereto, or by the consolidation of other municipal corporations therewith, it shall be the duty of the county assessor in making the assessment of the property in such city, to list separately the property situated within the limits of such city as originally incorporated, and the property situated within the boundaries of each such subsequent addition of territory thereto, and each such separate list shall be so headed and indicated in such assessment roll that all property within the original limits of such city shall appear therein as being so situated, and all property situated within any territory subsequently added thereto by any such annexation or consolidation, shall appear therein as being so situated, and the date of each such addition of territory shall also be specified therein. As soon as practicable after the first Monday in March next succeeding the taking effect of such charter, charter amendment or ordinance, the city clerk of such city shall deliver to the county assessor of such county, a statement in writing showing, separately, the exterior boundaries of said city, as originally incorporated, and the exterior boundaries of each body of new territory subsequently added thereto, as aforesaid, together with the date of each such addition of new territory; and as soon as practicable after the first Monday in March of each succeeding year, a like statement shall be so delivered showing the boundaries of any new territory so added to such city since the delivery of the last preceding statement, together with the date of such addition of new territory.

County auditor's statement of property valuations. Rates. Collection. Weekly payments to city treasurer.

§ 4. The county auditor of the county in which such city is situated must, on or before the second Monday in August of each year, transmit to the council or other legislative body of such city a statement in writing showing the total assessed valuation of all property within such city, which value shall be ascertained from the assessment roll of such county, equalized and corrected by the board of supervisors thereof in the manner provided by law, and showing the total assessed valuation of all property within the limits of such city as originally incorporated, and the total assessed valuation, separately, of all property in each body of new territory so added to such city subsequent to the original incorporation thereof. Upon the delivery to the county auditor, not later than the first day of September, of each year, of a statement, certified by the city clerk of such city, showing the levy, or rate or rates per cent of taxes levied by the council or other legislative body of such city, for all municipal purposes for such year, including amounts required for the payment of interest and sinking funds for the bonded indebtedness of such city, and showing separately, the rate of taxes so levied upon all property within the limits of such city as originally incorporated, and the rate upon all property within the boundaries of each portion of such city added thereto subsequent to the original incorporation thereof as aforesaid, the county auditor must compute and enter in a separate column in the assessment books of the property in such city, for such year, to be headed "City tax, city of," (stating name of city), the several sums in dollars and cents to be paid as a municipal tax on the property therein enumerated and assessed as being in such city, using the rate or rates of levy as fixed by the legislative body thereof, and the assessed value as found in such assessment books. Such taxes so levied shall be collected by the county tax collector, at the same time and in the same manner as the county taxes of such county. On Monday

of each week, the county tax collector shall pay to the treasurer of such city, the amount of all taxes so collected by such county tax collector for and on behalf of such city, during the preceding week, after making the deduction therefrom hereinafter specified; and whenever any delinquent city taxes, together with costs and penalties thereon, have been paid to the county treasurer, or whenever any property in such city has been sold for the non-payment of the city taxes thereon, and has been redeemed, the county treasurer shall likewise pay to the treasurer of such city, on Monday of each week, the amount of such delinquent taxes, and all costs and penalties thereon so collected by such county treasurer during the preceding week, and the money collected for any such redemption, after making the deductions therefrom hereinafter specified.

Sale of city property for taxes.

§ 5. Whenever the duties of the officers of any city with respect to the assessment of property therein for the municipal taxes of such city and to the collection of such taxes, are performed by county officers under the provisions of this act, the collection of unpaid municipal taxes of such city, levied on any property by such city, shall be enforced by the sale of such property in the same manner and at the same time, and upon the same penalties, as property sold for non-payment of county taxes, and real property so sold may be redeemed within the same time and upon the same terms as property sold for the non-payment of county taxes; and whenever any real property situate in such city has been sold for taxes and has been redeemed, the money paid for such redemption shall be apportioned by the county auditor to, and shall be paid to, such city in the proportion which the tax due such city bears to the total tax for which such real property was sold; provided, however, that upon the taking effect of any charter, charter amendment, or ordinance to the effect mentioned in section two of this act, all taxes of such city that shall have been levied prior thereto, including delinquent taxes, shall be collected, the payment thereof enforced in the same manner and upon the same penalties, and property may be sold for the non-payment thereof and may be redeemed from such sale in the same manner and under the same conditions as provided by the laws in force in said city at the time of the taking effect of such charter, charter amendment or ordinance; and such officers of such city as may be provided under the charter or ordinance thereof, shall collect and enforce the payment of such taxes, including delinquent taxes, and do any and all things that may be necessary in the sale of property for the non-payment of such taxes and in the redemption thereof from such sale.

Repeal of ordinance.

§ 6. Whenever any charter provision, or any ordinance of the character mentioned in section two of this act shall be repealed, the duties authorized by such charter provision or ordinance so repealed to be performed by officers of the county in which such city is situated, shall thereupon cease to be performed by such officers; provided, however, that upon such repeal, all taxes of said city that shall have been levied prior thereto, including delinquent taxes, shall, as in this act provided, be collected, the payment thereof enforced in the same manner and upon the same penalties, and property may be sold for the non-payment thereof and may be redeemed from such sale, in the same manner and under the same conditions as provided by laws applicable to the collection and enforcement of the payment of county taxes, including delinquent taxes, and to the sale and redemption from sale of property sold for the non-payment of county taxes; and the officers of such county shall have all the powers and perform all the duties relative thereto as may be provided by law in the case of county taxes and the sale and redemption from sale of property for the non-payment thereof.

Compensation of county. Limit.

§ 7. The amount of compensation to be charged by and paid to any county for the performance of services contemplated by the provisions of this act, for and on behalf of any city in such county, shall be fixed by agreement between the board of supervisors of such county and the legislative body of such city; provided, however, that such compensation shall in no event exceed one-half of one per cent of all moneys collected for such city as in this act provided. The board of supervisors shall, by an order spread upon its minutes, direct that the county tax collector and the county treasurer shall deduct from all taxes or moneys in their hands, collected for or on behalf of such city, and before the payment thereof to the treasurer of such city as in this act provided, the percentage thereof to be charged by such county for the services mentioned in this act, and such percentage so deducted shall be paid into or transferred to such fund of the county and in such manner as the board of supervisors shall direct.

Act provides alternative method.

§ 8. This act shall in no wise affect any other act or acts providing that duties of officers of cities may be performed by county officers; and if any such act or acts provide for or apply to the performance by county officers of the duties of officers of cities governed under freeholders' charters, this act is intended to, and does provide an alternative method by which the duties of the officers of any such city with respect to the matters mentioned in section two of this act may be performed by officers of the county in which such city is situated.

TAX COMMISSION ACT OF 1915.

ACT 5128—An act authorizing and providing for an investigation and report upon the matter of revenue and taxation, and making an appropriation therefor.

History: Approved May 10, 1915. In effect August 8, 1915, Stats. 1915, p. 432. Amended May 10, 1917. In effect July 27, 1917. Stats. 1917, p. 301. Prior act of March 20, 1905, Stats. 1905, p. 390, and the appropriation acts of March 13, 1907, Stats. 1907, p. 245, and March 25, 1909, Stats. 1909, p. 779, for a similar purpose are assumed to have been superseded by the present act or to have expired or become obsolete by reason of the accomplishment of their purpose, or by failure of the legislature to continue the appropriations.

Appropriation, investigation, revenue and taxation.

§ 1. The sum of seventy-five thousand dollars, or as much thereof as may be necessary, is hereby appropriated out of any money in the state treasury, not otherwise appropriated, to be used at the direction of the governor for the purpose of investigating and reporting upon the matter of revenue and taxation as set forth hereinafter.

Governor may appoint experts to investigate systems. Report of findings. Relative burden of general property and corporation property. Loss of revenue to counties.

§ 2. The governor may direct any state officer, or appoint or authorize the employment of any expert or other assistants as may be necessary, to investigate the systems of revenue and taxation in force in this and other states, and particularly to examine into any and all matters appertaining to the subjects of revenue and taxation in this state. The findings and conclusions of such investigations and recommendations as to necessary changes in the existing systems in this state shall be reported to the legislature at its session in January, 1917. There shall also be made a special investigation and report upon the matter of the relative burden of taxes borne by general property values and corporation property values taxed directly by the state under the existing system of taxation. There shall also be made a special investigation and report upon the matter of reimbursements to counties which sustain loss of revenue by the withdrawal of railroad property under the provisions of section fourteen of article XIII of

the constitution; said investigation to be pursued with the object of ascertaining and determining what legal and equitable adjustment, if any, should be made in the settlement of such losses, as provided by law, and whether other losses have accrued under the provisions of said section fourteen of article XIII of the constitution.

Powers of investigators.

§ 3. Such officers or appointees provided for in section two of this act are hereby authorized and empowered, at the direction of the governor:

(1) To do any and all things necessary to make a full and complete investigation in accordance with this act.

(2) To require the attendance of persons and the production of papers before them or any one thereof and to take testimony under oath and administer oaths in the same manner that any court in this state may.

(3) To require reports from all state, county and municipal officers as to matters of revenue and taxation appertaining to their respective offices, and to examine the records and papers of any such official as to any matter of revenue and taxation.

Duty of state, county, city officers to report.

§ 4. It is hereby made the duty of any officer referred to in subdivision three of section three of this act to promptly make report when requested so to do and any such officer who shall fail or refuse to make such report promptly shall be guilty of a misdemeanor.

Duties of tax commission.

§ 5. The officers and appointees provided for in section two of this act shall perform such duties as the governor may deem necessary to further the objects of senate joint resolution number three, adopted by the legislature January 26, 1917, and chapter number thirty-two of the laws of one thousand nine hundred seventeen. [New section added May 10, 1917. In effect July 27, 1917, Stats. 1917, p. 301.]

VALIDATION OF ASSESSMENTS.

ACT 5129—An act to confirm, validate and legalize assessments of property and taxes due thereunder entered and contained in assessment books or rolls from which assessment books or rolls the clerk of the board of supervisors and auditor omitted to attach and enter the affidavit or certificate, or both such certificate and affidavit, required by the provisions of sections three thousand six hundred eighty-two and three thousand seven hundred thirty-two of the Political Code, and to confirm, validate and legalize all sales, certificates of sale, tax deeds, or other tax conveyances issued under and based upon any such assessments and taxes.

History: Approved April 1, 1915. In effect August 8, 1915, Stats. 1915, p. 23.

Defective tax assessments validated.

§ 1. All assessments of property heretofore duly and legally assessed, entered, and contained in any assessment book or roll of any county, which said assessment book or roll is defective by reason of the omission of the clerk of the board of supervisors and the county auditor, or either or both of them, to attach and affix to said assessment book or roll the affidavit or certificate, or both such affidavit and certificate, required by the provisions of section three thousand six hundred eighty-two and three thousand seven hundred thirty-two of the Political Code, and any and all taxes duly levied and extended upon the assessment of any property so entered and contained in any such assessment book or roll, and any sale, certificate of tax sale, tax deed, or other tax conveyance duly given and issued based upon any assessment, or tax or tax delinquency

entered and contained in any such assessment book or roll, are hereby confirmed, validated and legalized, and the same shall be construed and operate at all times and upon all occasions in law in the same manner as if such matters and things required by law had been properly performed, attached and affixed in the first instance.

§ 2. This act shall not apply to any assessment, tax, tax deed, or other tax conveyance which was or is in litigation at the time this act takes effect.

DESTRUCTION BY FIRE OF CERTAIN REPORTS AND DOCUMENTS AUTHORIZED.

ACT 5130—An act authorizing the state board of equalization to destroy by fire certain reports and other documents.

History: Approved April 13, 1915. In effect August 8, 1915. Stats. 1915, p. 64.

Tax rolls destroyed after four years.

§ 1. All reports for state taxation, including copies of operative assessment rolls of the several cities, counties, and cities and counties, made to and filed with the state board of equalization under the provisions of an act entitled "an act to carry into effect the provisions of section fourteen of article thirteen of the constitution of the state of California as said constitution was amended November 8, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations, banks and insurance companies, for the benefit of the state, all relating to revenue and taxation," approved April 1, 1911, or under the provisions of any act amendatory of said act, shall be retained and kept on file by said board for a period of four years from the time of the receipt thereof, and after the elapse of said period may be destroyed by fire.

DUPLICATE AND EXCESS PAYMENTS OF TAXES.

ACT 5131—An act to provide for the payment into the county treasury of any moneys now held by county tax collectors which represent duplicate or excess payments of taxes on property in their respective counties, and to provide for the distribution and repayment of such moneys when so paid, and to provide for the payment, repayment and distribution of any duplicate or excess collections which may be made hereafter.

History: Approved April 12, 1917. In effect July 27, 1917. Stats. 1917, p. 116.

County tax collector to pay excess taxes to treasurer.

§ 1. It shall be the duty of every county tax collector, within thirty days after this act takes effect, to pay into the treasury of his county any moneys which said tax collector may have on hand, representing duplicate or excess payments of taxes on property within his county, including such as may have been collected during a previous term or terms, as well as during his present term of office. If the records of the tax collector show the fact, there shall be filed with the county auditor at the time of such payment a description of each piece of property for which such duplicate tax payments were collected and the amount of the tax collected for each such piece of property in excess of the tax regularly levied and collected on such property in any one year.

Recovery of excess payments. Allowance of claim.

§ 2. Within five years from the time of such payment into the county treasury by the tax collector, any person holding a tax receipt showing the payment to a county tax collector of taxes in any one year on any given property in the county in excess of the taxes which have been regularly levied and collected upon said property for said year, may recover the excess over and above the tax regularly levied and collected on

such property for such year, by filing with the board of supervisors a claim therefor, and surrendering with such claim the tax receipt for such excess payment. If the duplicate payment of taxes in excess of the regularly levied taxes shall have been paid by different persons, the party first filing such claim and receipt for the excess payment, shall be entitled to the refund. If, upon examination by the board of supervisors, it is found that such claim has been filed within the five years and represents a payment in excess of the taxes regularly levied and collected for any given piece of property in the county for any given year and the amount thereof has been paid into the county treasury by the tax collector as aforesaid, the board of supervisors shall allow the said claim for the excess payment to the person entitled thereto.

Moneys credited to general fund.

§ 3. All moneys paid to the county treasurer by the county tax collector as herein provided, shall be placed to the credit of the general fund of the county.

Duty of tax collector.

Whenever any duplicate or excess payment of taxes is made hereafter, it shall be the duty of the tax collector to retain same for thirty days and if not refunded as hereinafter provided to pay the same into the county treasury on the first Monday of each month thereafter, and at the same time file with the county auditor a description of the property upon which said taxes have been collected, the excess amount collected for each piece so described and the name of the person to whom the property is assessed at the time such excess payment is made. Such duplicate or excess payment of taxes shall be placed to the credit of the general fund of the county and within five years the party making the same, or in the event the payments are made by different parties, the party first filing his claim therefor in the manner and form hereinbefore provided, may secure a refund of such duplicate or excess payment; provided, however, that during such thirty day period, the tax collector may adjust any mistakes in the payment of taxes by returning to the party or parties, making such duplicate or excess payments the amount thereof.

Suit by district attorney.

§ 5. If any tax collector shall refuse to comply with the provisions of this act, the district attorney of the county is hereby authorized to begin suit against the county tax collector to recover any sums in the possession of said county tax collector representing said duplicate or excess payment of taxes, and the statute of limitations shall not be a defense to the maintenance of any such action.

DAILY PAYMENT OF EXCESS TAXES AUTHORIZED—REFUNDING OF SUCH PAYMENTS.

ACT 5132—An act permitting daily payment into the county treasury of duplicate or excess payments of taxes made to the tax collector and providing for the refund of such payments.

History: Approved May 5, 1917. In effect July 27, 1917. Stats. 1917, p. 248.

Daily payments of excess taxes.

§ 1. The county tax collector, notwithstanding the provisions of any other statute enacted at the forty-second session of the legislature of this state, may pay daily into the county treasury under the provisions of section four thousand one hundred one a of the Political Code all duplicate or excess payments of taxes hereafter made to him on property within the county; and all such duplicate and excess payments so paid

into the county treasury shall be subject to refund under the provisions of section three thousand eight hundred four of the Political Code.

TEHACHAPI.

See Act 3094, note.

CHAPTER 384.

TEHAMA COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3960.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

- ACT 5135. TRESPASSING ANIMALS.
- 5138. SUPPORT OF CEMETERIES.
- 5140. REFUNDING COUNTY DEBT.
- 5141. PARTITION FENCES.
- 5142. TRANSCRIBING RECORDS.
- 5147. COUNTY CHARTER.

TRESPASSING ANIMALS.

ACT 5135—An act to protect agriculture and prevent trespassing of animals in.

History: Approved March 30, 1874, Stats. 1873-74, p. 853. Amended March 31, 1876, Stats. 1875-76, p. 643. Modified March 7, 1878, Stats. 1877-78, p. 176.

The code commissioners say of this act: "Modified and probably repealed by 1877-78, p. 176, c. CXXXVI, and 1897, p. 198. See the estray law of 1901, p. 603." But see editor's note to the chapter on "Estrays."

SUPPORT OF CEMETERIES.

ACT 5138—An act for the support of certain cemeteries in Tehama county.

History: Approved April 1, 1872, Stats. 1871-72, p. 872. This act provided for the election by the Odd Fellows and Masons of trustees in the Red Bluff and Tehama cemeteries.

This act provided for the election by the Odd Fellows and Masons of trustees in the Red Bluff and Tehama cemeteries.

REFUNDING COUNTY DEBT.

ACT 5140—An act to provide for refunding the debt of the county of Tehama, funded under the act approved March 30, 1864.

History: Approved February 26, 1876, Stats. 1875-76, p. 69. This act authorized the issuance of bonds for the purpose indicated.

This act authorized the issuance of bonds for the purpose indicated.

PARTITION FENCES.

ACT 5141—An act concerning partition fences in the counties of Colusa and Tehama counties.

History: Approved March 11, 1876, Stats. 1875-76, p. 207. This act provided for the procedure in compelling the erection of a partition fence.

This act provided the procedure to compel the erection of a partition fence. **Height of partition fences,** see tit. "Fences," Act 1496.

TRANSCRIBING RECORDS.

ACT 5142—An act authorizing transcribing records of Tehama county from the records of Colusa, Shasta, and Butte counties.

History: Approved March 31, 1859, Stats. 1859, p. 151.

COUNTY CHARTER.

ACT 5147—Charter of the county of Tehama, state of California.

History: Voted for and ratified at an election held on the 26th of October, 1915. Filed with secretary of state March 9, 1917. Stats. 1917, p. 1877.

TEHAMA, TOWN OF.

See Act 3094, note.

CHAPTER 385.

TELEGRAPH LINES.

References: Altering telegram, see Kerr's Cyc. Penal Code, § 620.

Arrest by telegraph, see Kerr's Cyc. Penal Code, §§ 850, 851.

Bribing operator, see Kerr's Cyc. Penal Code, § 641.

Contractual rights, see Kerr's Cyc. Civil Code, provisions as to contractual rights in general.

Damages for refusal to take, send, and deliver, message, see Kerr's Cyc. Civil Code, § 2209.

Disclosing contents of telegram, see Kerr's Cyc. Penal Code, § 619.

Employee using information, see Kerr's Cyc. Penal Code, § 639.

Exemption from jury duty, see Kerr's Cyc. Code Civil Procedure, § 200.

Forging telegram, see Kerr's Cyc. Penal Code, § 474.

Malicious injury to lines, see Kerr's Cyc. Penal Code, §§ 591, 600.

Obligation to receive, send and deliver message, see Kerr's Cyc. Civil Code, §§ 2161, 2162.

Opening telegram, see Kerr's Cyc. Penal Code, § 621.

Service of process by telegraph, see Kerr's Cyc. Code Civil Procedure, § 1017.

Tapping wires, see Kerr's Cyc. Penal Code, § 640.

Telegrams as evidence, see Kerr's Cyc. Code Civil Procedure, rules of evidence in general.

Telegraph and telephone companies, see Kerr's Cyc. Civil Code, §§ 536, et seq.

Wilful neglect to send telegram, see Kerr's Cyc. Penal Code, § 638.

Wilfully postponing delivery, see Kerr's Cyc. Penal Code, § 638.

CONTENTS OF CHAPTER.

ACT 5158. ATLANTIC AND PACIFIC TELEGRAPH LINE.

5159. SAN JOSE TO SAN BERNARDINO TELEGRAPH LINE.

5160. LOS ANGELES TO WILMINGTON TELEGRAPH LINE.

5161. TELEGRAPH COMMUNICATION BETWEEN AMERICA AND ASIA.

ATLANTIC AND PACIFIC TELEGRAPH LINE.

ACT 5158—An act providing for the construction of a telegraph line between the Atlantic and the Pacific.

History: Approved February 20, 1866, Stats. 1865-66, p. 102.

SAN JOSE AND SAN BERNARDINO TELEGRAPH LINE.

ACT 5159—An act providing for the construction of a telegraph line from San Jose to San Bernardino.

History: Approved March 20, 1866, Stats. 1865-66, p. 308. Amended and supplemented March 30, 1868, Stats. 1867-68, p. 530.

LOS ANGELES TO WILMINGTON TELEGRAPH LINE.

ACT 5160—An act authorizing telegraph between Los Angeles and Wilmington.

History: Approved February 13, 1872, Stats. 1871-72, p. 87.

TELEGRAPH COMMUNICATION BETWEEN AMERICA AND ASIA.

ACT 5161—An act to facilitate telegraphic communication between America and Asia.

History: Approved February 12, 1872, Stats. 1871-72, p. 97.

This act granted certain rights and privileges to Cyrus W. Field, Darius O. Mills, and others, and their successors.

CHAPTER 386.

TENEMENT HOUSES.

References: See tits. "Buildings"; "Dwelling Houses"; "Hotels."

CONTENTS OF CHAPTER.

ACT 5166. STATE TENEMENT HOUSE ACT.

STATE TENEMENT HOUSE ACT.

ACT 5166—An act to regulate the erection, construction, reconstruction, moving, alteration, maintenance, use and occupancy of tenement houses, and the maintenance, use and occupancy of the premises and land on which tenement houses are erected or located, in all parts of the state of California, including incorporated towns, incorporated cities, and incorporated cities and counties, and to provide penalties for the violation thereof; and repealing an act entitled "An act to regulate the building and occupancy of tenement houses in incorporated towns, incorporated cities, and cities and counties, and to provide penalties for the violation thereof, and repealing an act entitled 'An act to regulate the building and occupancy of tenement houses in incorporated towns, incorporated cities, and cities and counties, and to provide penalties for the violation thereof,' approved April 16, 1909, statutes of California of 1909, page 948," approved April 10, 1911, statutes of California of 1911, page 860, and approved June 13, 1913, statutes of California, 1913, page 737, and approved May 29, 1915, statutes of California, page 952, and all acts amendatory thereof.

History: Approved May 31, 1917. In effect September 1, 1917. Stats. 1917, p. 1473. Prior acts on same subject: (1) Act approved April 16, 1909, Stats. 1909, p. 948, which was repealed by (2) act of April 10, 1911, Stats. 1911, p. 860. Entire act amended June 13, 1913, Stats. 1913, p. 737, and again, May 29, 1915, Stats. 1915, p. 952; and repealed by the present act.

Title.

§ 1. This act shall be known as the "state tenement house act" and its provisions shall apply to all parts of the state of California, including incorporated towns, incorporated cities, and incorporated cities and counties.

Duty of building department.

§ 2. It shall be the duty of the "building department" of every incorporated town, incorporated city, and incorporated city and county, to enforce all the provisions of this act pertaining to the erection, construction, reconstruction, moving, conversion, alteration and arrangement of tenement houses and to issue the certificate of "final completion" hereinafter provided.

Duty of housing department.

It shall be the duty of the "housing department" or if there is no housing department the health department of every incorporated town, incorporated city, and incorporated city and county to enforce all of the provisions of this act pertaining to the maintenance, sanitation, ventilation, use and occupancy of tenement houses after said tenement houses have been erected, constructed, or altered, as the case may be, and the certificate of "final completion" has been issued by the building department, and to issue the "permit of occupancy" as hereinafter provided.

In case no such departments.

In the event that there is no building department or no housing department or health department in an incorporated town, incorporated city or incorporated city and county, it shall be the duty of the officer or officers who are charged with the enforcement of ordinances and laws regulating the erection, construction or alteration of buildings, or the maintenance, sanitation, ventilation or occupancy of buildings, or of the police, fire or health regulations in said incorporated town, incorporated city or incorporated city and county to enforce all of the provisions of this act.

Enforcement.

In every county it shall be the duty of the officer or officers who are charged with the enforcement of ordinances or laws regulating the erection, construction or alteration of buildings, or of the maintenance, sanitation, occupancy and ventilation of buildings, or of the police, fire or health regulations in said county, to enforce all of the provisions of this act outside of the limits of any incorporated town or incorporated city.

Every incorporated town, incorporated city, or incorporated city and county in the state of California shall have, and it is hereby empowered and given authority to designate and charge by ordinance any other department or officer than the department or officers mentioned herein, with the enforcement of this act, or any portion thereof.

Powers of commission of immigration and housing.

The commission of immigration and housing of California shall have, and it is hereby empowered and given authority to enforce the provisions of this act, which do not pertain to the actual erection, construction, reconstruction, moving, alteration or arrangement of tenement houses in all incorporated towns, incorporated cities and incorporated cities and counties, and counties in the state of California, whenever said commission finds or discovers a violation or violations of the provisions of this act and notifies the local department or officer, or departments or officers who are charged with the enforcement of the provisions of this act, in writing, of such violation or violations, and the said local department or officer, or departments or officers, fail, neglect or refuse to enforce the provisions of the said act within thirty days thereafter; provided, however, that the said commission of immigration and housing of California shall enforce the provisions of this act only in the instances specified in said written notice.

Unlawful to construct tenement house contrary to act.

§ 3. It shall be unlawful for any person, firm or corporation, whether as owner, agent, contractor, builder, architect, engineer, superintendent, foreman, plumber, tenant, lessee, lessor, occupant, or in any other capacity whatsoever, to erect, construct, reconstruct, alter, build upon, move, convert, use, occupy or maintain, or to cause, permit or suffer to be erected, constructed, reconstructed, altered, built upon, moved, converted, used, occupied or maintained any tenement house or any portion thereof contrary to the provisions of this act, or to commit or maintain or cause or permit to be committed or maintained any nuisance in or upon any tenement house or any portion thereof, or any of the premises, yards or courts which are a part thereof, or which are required by the provisions of this act; or to do or cause to be done, or to use or cause to be used, any privy, sewer, cesspool, plumbing or house drainage affecting the sanitary condition of any tenement house or any portion thereof, or of the premises thereof, contrary to any of the provisions of this act.

Alterations.

§ 4. It shall be unlawful for any person to make any alterations or changes, or reconstruction work of any kind whatsoever, to any tenement house erected prior to

the passage of this act, or to any tenement house hereafter erected, or to increase the height or the percentage of the lot occupied, in any manner which would be inconsistent with any of the provisions of this act, or in violation of the said provisions of this act, or in any manner to diminish the size of the yards, courts or shafts or the size of windows or skylights, or to remove any stairway or fire escape, or to obstruct the egress from such building or from the hallways or stairways, or to do anything that would affect the ventilation and sanitation of the building, contrary to any of the provisions of this act.

Building converted to use as tenement house.

§ 5. A building not erected for, or which is not used as a tenement house at the time of the passage of this act, if hereafter converted to or altered for such use, shall thereupon become subject to all of the provisions of this act affecting tenement houses hereafter erected.

Building moved.

A building used as a tenement house at the time of the passage of this act, if moved, shall be made to conform to all of the provisions of this act affecting tenement houses hereafter erected, in so far as they pertain to the percentage of lot occupied and the size of outer courts, inner courts bounded by a lot line, and yards.

Building reconstructed.

It shall be unlawful to reconstruct any tenement house which is hereafter damaged by fire or the elements to an extent in excess of fifty-one (51) per cent of its physical proportions, unless the said building is made to conform to all of the provisions of this act affecting tenement houses hereafter erected.

Penalty for violation.

§ 6. Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine not exceeding five hundred dollars, or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment, and in addition to the penalty therefor, shall be liable for all costs, expense and disbursements paid or incurred by the department, by any of the officers thereof, or by any agent, employee or contractor of same, in the prosecution of such violation. The costs, expense and disbursements by this section provided shall be fixed by the court having jurisdiction of the matter.

Procedure.

Except as herein otherwise specified, the procedure for the prevention of violations of this act, for the vacation of tenement houses or premises unlawfully occupied, or for the abatement of a nuisance in connection with a tenement house or the premises thereof, shall be as set forth in the charter and ordinances of the municipality in which the procedure is instituted.

Permit to erect tenement house. Application.

§ 7. In every incorporated town, incorporated city, and incorporated city and county, it shall be unlawful to commence or to proceed with the erection, construction, reconstruction, conversion, or alteration of a tenement house, or to move or to build upon a tenement house, or to convert a building or any portion thereof into use as a tenement house, without first obtaining a permit in writing so to do from the department charged with the enforcement of this act. Any person, firm or corporation desiring such a permit shall file an application therefor with the department charged with the enforcement of this act. Said application shall give a detailed statement in writing,

verified under oath by the person making the same, of the erection, construction, reconstruction, moving, conversion or alteration, as the case may be, upon blanks or forms to be furnished by the said department. The said application must be accompanied with a full, true and complete set of the plans of the tenement house or alteration, or work proposed, as the case may be, together with a set of specifications describing the materials proposed to enter into the construction of the proposed work, also a plan of the lot on which such building is proposed to be erected, constructed, reconstructed, converted, altered, or moved, as the case may be. Such statement shall give in full the name and address by street and number of the owner or owners, also the name and address of the architect and of the contractor, if there be such an architect or contractor; also shall give such other data and information as in the judgment of the department charged with the enforcement of this act is deemed necessary.

Affidavit. Permit issued. Revocation.

The affidavit to said application shall allege that the plans and specifications are true and contain a correct description of the proposed tenement house, lot and proposed work. If any person other than the owner makes such affidavit, such person shall not be recognized except that he allege in his affidavit that he is authorized and empowered by the said owner to act for him and to sign the required affidavit. Said department charged with the enforcement of this act shall cause all such plans, specifications and statements to be examined, and if it appears that they conform to the provisions of this act, shall then issue a permit to the person submitting the same. Said department may, from time to time, approve changes in any plans, specifications or statements previously approved by it; provided, that all changes when so made shall be in conformity with the provisions of this act. Said department shall have the power to revoke or cancel any permit or approval that it has previously issued in case of any refusal, failure or neglect of the person to whom such permit or approval has been issued to comply with any of the provisions of this act, or in case any false statement or misrepresentation is made in any of the said plans, specifications or statements submitted or filed for such permit or approval. The erection, construction, reconstruction, moving, alteration or conversion of any such tenement house, as the case may be, shall be made in accordance with the plans, specifications and statements submitted or filed and for which the permit is issued.

Plans kept on premises.

A true copy of the plans, specifications and other information submitted or filed, upon which a permit is issued, with the approval of the department with which they are filed, stamped or written thereon shall be kept upon the premises of the tenement house or work for which the said permit is issued, from the commencement of the said building or work to the final completion of same, and shall be subject to inspection at all times by proper authorities.

Permit for nominal alterations.

The department charged with the enforcement of this act may, at its discretion, issue a permit in case of nominal alterations or repairs, when application is made therefor, in writing, by the owner or his agent, when the making of said nominal alterations and repairs do not affect any structural feature or the sanitation or the ventilation of the tenement house, without requiring the filing of plans or specifications.

The issuance or granting of a permit or approval by the department charged with the enforcement of this act under the authority of this section shall not be deemed or construed to be a permit or an approval of the violation of any of the provisions of this act.

Expiration of permit.

Every permit or approval which is issued by the department charged with the enforcement of this act, but under which no work has been done within ninety days from the date of issuance, or where work has been suspended for a period of ninety days, shall expire by limitation and a new permit shall be obtained before the work may be done.

“Certificate of final completion” and “permit of occupancy.”

§ 8. In every incorporated town, incorporated city, and incorporated city and county, it shall be unlawful to occupy or to permit to be occupied, any tenement house hereafter erected, constructed, reconstructed, altered, converted or moved, as the case may be, or any portion thereof, for human habitation until the issuance of a “certificate of final completion” and a “permit of occupancy” by the department or departments charged with the enforcement of this act.

It shall also be unlawful to occupy any existing tenement house until a permit of occupancy has been issued by the department designated to issue such permit.

Renewal of permit of occupancy.

Every permit of occupancy shall be renewed each calendar year by the department designated to issue the said permit; provided, that no structural alterations or changes have occurred since the issuance of the certificate of final completion; and provided, that all other provisions of this act have been complied with.

Certificate issued.

Any person desiring a certificate shall file a notice with the department charged with the enforcement of this act. Said department shall cause an inspection to be made of the said tenement house or portion thereof, or work described in the said notice, within ten days after written application therefor, and shall issue a “certificate of final completion” if it is found that all the provisions of this act, regulating the erection, construction, alteration or moving, as the case may be, have been complied with.

Permit issued.

The department charged with the enforcement of this act and designated to issue the permit of occupancy shall issue the said “permit of occupancy” upon application, in writing, therefor by the owner or his agent, and upon the filing by the owner or his agent of such statements or records required by the department, after the “certificate of final completion” has been issued; provided, that no violations have occurred since the issuance of the certificate of final completion, or, in the case of a tenement house erected prior to the passage of this act, and for which no certificate of final completion has been issued, then after the said department has caused an inspection to have been made of the said tenement house and has found that all of the provisions of this act applying to such tenement house have been complied with.

All permits and certificates shall be made in duplicate and a copy shall remain on file in the department issuing them.

Tenement house occupied without permit nuisance.

Any tenement house hereafter erected, altered, converted or moved, which is occupied, or any portion thereof which is occupied for human habitation, prior to a “certificate of final completion” or a “permit of occupancy,” being issued, shall be deemed a nuisance, and the department or departments charged with the enforcement of this act may cause it to be vacated until the said certificate of completion and permit of occupancy have been obtained in accordance with the provisions of this act.

Power to enter tenement house.

§ 9. The department or departments charged with the enforcement of this act in any incorporated town, incorporated city, incorporated city and county, or county, and the authorized officers, agents or employees of such department or departments, may, whenever necessary, enter tenement houses or portions thereof, or the premises thereof, within the corporate limits of such towns, cities, cities and counties, or counties, for the purpose of inspecting such buildings, in order to secure compliance with the provisions of this act and to prevent violations thereof.

The members of the commission of immigration and housing of California and the agents, officers or employees of said commission may, whenever necessary, enter tenement houses or portions thereof, or the premises thereof, for the purpose of inspecting such buildings in order to secure compliance with the provisions of this act and to prevent violations thereof.

The owner or his authorized agent may, whenever necessary, enter tenement houses, or portions thereof, or the premises thereof, owned by him, to carry out any instructions or to perform any work required to be done by the provisions of this act.

Definitions.

§ 10. For the purpose of this act, certain words and phrases are defined as follows, unless it shall be apparent from their context that they have a different meaning:

Words used in the singular include the plural, and the plural, the singular.

Words used in the present tense include the future.

Words used in the masculine gender include the feminine, and the feminine, the masculine.

Words "building department," "housing department," "health department," "department charged with the enforcement of this act," "fire commissioner," shall be construed as if followed by the words, "of the incorporated town, incorporated city, incorporated city and county, or county," as the case may be, in which the tenement house is situated.

"Apartment" is a room or suite of rooms which is occupied, or is intended or designed to be occupied by one family for living and sleeping purposes.

"Approved" means whatever material, appliance, appurtenance, or other matter meets the requirements and approval of the department charged with the enforcement of this act, or which is approved by local ordinance of the municipality in which the building is situated, or any appliance, appurtenance, or other matter which conforms to the requirements of, and bears the approval of the "national board of fire underwriters"; provided, however, that no such material, appliance, appurtenance, or other matter shall be deemed "approved" for use where, or in such a manner as would be inconsistent with the intent, or specific provisions of this act.

"Basement" is any story or portion thereof partly below the level of the curb or the actual adjoining ground level, the ceiling of which in no part is less than seven feet above the curb level or actual adjoining ground levels. If the adjoining ground is excavated to or below the curb level, or to or below the adjoining natural ground level, such excavated space shall have not less than the minimum width and length required in this act for outer courts.

Every basement is a story.

"Building" is a tenement house.

"Building department" means the commissioner of buildings, superintendent of buildings, chief inspector of buildings, or any officer or department charged with the enforcement of ordinances and laws regulating the construction and alteration of buildings or structures.

"Cellar" is any story or portion thereof, the ceiling of which in any part is less than seven feet above the curb level and actual adjoining ground levels.

"Court" is an open, unoccupied space other than a yard on the lot on which is situated a tenement house. A court, one entire side or end of which is bounded by a front yard, a rear yard or a side ward, or by the front of lot, or by a street or a public alley, is an "outer court." Every court which is not an "outer court" is an "inner court."

Every court shall be open and unobstructed to the sky from a point not more than two feet above the floor line of the lowest story in the building in which there are windows from rooms or apartments abutting the said court, except that a cornice on the building may extend into an "outer court" two inches for each one foot in width of such court, and a cornice may extend into an "inner court" one inch for each one foot in width of such court.

"Curb level" is the curb level opposite the center of the "front of lot."

Wherever the word "department" is used it means the building department, the housing department, the health department or such other department or officer, or departments or officers, who are charged with the enforcement of the provisions of this act.

"Family" is one person living alone or a group of two or more persons living together in an apartment, whether related to each other by birth or not.

"Fireproof tenement house."

"Fireproof tenement house" is a building wherein all the exterior and interior loads or strains are transmitted to the foundation by means of concrete, reinforced concrete, brick, stone, or by means of a skeleton framework of steel or iron, the exterior walls, inner court walls and roof constructed of concrete, reinforced concrete, brick, stone or hollow terra cotta tile; where all the structural steel or iron is thoroughly fireproofed by concrete, cement plaster, tile, brick or sandstone, not less than two inches thick; where all the interior partitions are constructed of either hollow terra cotta tile blocks, gypsum blocks, brick, concrete, reinforced concrete, or of metal studs lathed with metal lath and plastered not less than three-quarters inch thick including the lath, or of metal studs lathed with approved plaster board and plastered not less than three-quarters inch thick including the plaster board, or constructed of wire glass not less than one-fourth inch thick, set in metal frames and sash, and all other materials used in the said building are of approved incombustible material, except that the glass in windows, transoms, or doors may be plain glass, and except that doors, frames, sash and the usual trim of rooms, hallways, corridors and passageways may be of wood, and except that wood floors may be placed on top of the floors constructed of incombustible materials, except in the stairways and public hallways.

"Housing department" is any department or commission charged with the enforcement of ordinances or laws regulating the occupancy and maintenance of tenement houses, hotels or dwelling house buildings; and where no such department is maintained, shall be deemed to be the health commissioner, the department of health, health officer, or similar department charged with the enforcement of laws and ordinances relating to the protection of the public health.

"Kitchen" is any room in any apartment used or intended or designed to be used for cooking purposes and for the preparation of food.

"Lot."

"Lot" is a parcel or area of land on which is situated a tenement house, together with the land, yards, courts and unoccupied spaces for such a tenement house as

required by this act; all of which land shall be owned by or be under the absolute lawful control and in the lawful possession of the tenement house.

A lot situated at the junction of two or more intersecting streets, with a boundary line thereof bordering on each of the two streets, is a "corner lot." All parts of the width of such a corner lot which are distant more than seventy-five feet from the junction point of the two or more intersecting streets, shall be deemed to be an "interior lot." The owner or his authorized agent may designate either street frontage as being the front of such corner lot for the purpose of determining the width thereof.

A lot which has only one boundary line bordering on a public street is an "interior lot."

"Rear lot" is a parcel or area of land having no boundary line bordering on a street, or having less than one-half of its width as a boundary line bordering on a street.

"Front of lot" is the boundary line of lot bordering on the street. In case of a corner lot, either of such boundary lines may be the "front of lot."

"Rear of lot" is the boundary line of lot opposite the "front of lot."

"Depth of lot" is the mean distance from the "front of lot" to the "rear of lot."

"Nuisance" embraces public nuisance as known at common law or in equity jurisprudence, and whatever is dangerous to human life or detrimental to health, and shall also embrace the overcrowding with occupants of any room, insufficient ventilation, or illumination, or inadequate or insanitary sewerage or plumbing facilities, or uncleanness, and whatever renders air, food or drink unwholesome or detrimental to the health of human beings.

"Occupied space."

"Occupied space" is all the space covered by a tenement house, including outside stairways, platforms, fire escapes, balconies, fire towers, chimneys, stacks, vent shafts, not exceeding thirty-two square feet in area, cornice, or any part thereof, which projects into an inner court more than one inch for each one foot in width of such court, or which projects into an outer court or yard more than two inches for each one foot in width of such outer court or a yard, except that outside stairways, platforms and balconies constructed of open metal work and fire escapes may extend not exceeding four feet beyond the exterior walls of the building into a front or rear yard, and except that a retaining wall may extend not to exceed twelve inches into a yard or court. For the purpose of determining occupied space, the area of the building shall be taken at the lowest story or portion thereof used for living or sleeping purposes.

"Person" is a natural person, his heirs, executors, administrators or assigns; and also includes a firm, partnership or corporation, its or their successors or assigns.

"Public hallway" is a hallway, corridor, passageway or vestibule not within an apartment, and includes stairways, landings and platforms.

"Rear tenement house" is a tenement house on a "rear lot."

"Semifireproof tenement house."

"Semifireproof tenement house" is a building with all exterior walls and walls of inner and outer courts constructed of brick, stone, concrete, reinforced concrete or hollow terra cotta tile; except that the walls of an inner court, which court is surrounded on four sides by the same building, may be constructed as provided in this act for such inner courts; interior partitions and floors constructed of approved incombustible materials or of wood, with all ceilings, partitions, soffits of stairways, and outside stringers of open stairways and stair wells metal lathed and plastered not less than three-quarters inch thick including the lath or lathed with an approved plaster board plastered not less than three-quarters inch thick including the plaster board; in

which all finished floors, frames, doors and the usual trim of rooms and hallways may be built of wood and the roof of which shall be covered with at least a composition fire-retardant material.

“Shall.” Whenever this word is used it shall be mandatory.

“Street” is any public street, alley, thoroughfare or park having a minimum width of sixteen feet, measured from the “front of lot” to the opposite “front of lot,” and which shall have been dedicated or deeded to the public for public use.

“Tenement house.”

“Tenement house” is any house or building, or portion thereof, more than one story in height, which is designed, built, rented, leased, let or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other and doing their cooking in the said building; provided, however, that any building not more than two stories in height which is designed, built, rented, leased, let or hired out to be occupied, or is occupied, as the home or residence of not more than four families, and the said building is so arranged that each of the said families live independently of each other, and the building is constructed and arranged so that a separate section is, or may be, kept as a home or residence of a separate family, and each such section has an entirely independent and separate entrance, and if a stairway is required, one such stairway leading to each section from the street or from an outside vestibule on the level of the first floor of said building is a separate stairway, and with no room, hallway, bathroom, water-closet, or kitchen used in common by two or more families occupying the said building, shall be deemed not to come within the definition of a “tenement house.”

“Wooden tenement house.”

“Wooden tenement house” is a building which does not fully comply with the requirements for a “fireproof” or a “semifireproof” tenement house as defined in this act, and shall include all frame and all veneered buildings.

In every such building all ceilings and walls and partitions of public hallways, soffits of interior stairways and the outside stringers of open stairways, and stair wells shall be metal lathed and plastered not less than three-quarters inch thick including the lath, or lathed with an approved plaster board plastered not less than three-quarters inch thick including the plaster board.

“Yard.”

“Yard” is a portion of a lot on which is situated a tenement house and which is unoccupied by the building and extends from the ground up (except where otherwise provided by this act) open and unobstructed to the sky; except that outside stairways, platforms and balconies constructed of open metal work and fire escapes may extend not more than four feet into such yards. If such yard is between the front line of the building and the front boundary line of the lot, it is a “front yard.” If it is between the extreme rear line of the building and the rear of the lot, it is a “rear yard.” If it extends from the rear yard to the front yard or front of the lot, it is a “side yard.”

Front yard.

§ 11. No tenement house shall hereafter be erected on, or moved on to, a rear lot. No building for any purpose shall hereafter be erected in front of any tenement house unless there shall be left unoccupied a front yard extending from the front of the rear tenement house to the front line of lot bordering on the street.

Such front yard shall not be in any part less in width than fifty per cent of the actual width of the rear tenement house.

Height.

§ 12. No fireproof tenement house hereafter erected shall exceed one hundred fifty feet in height, nor more than one and one-half times the width of the widest street to which the lot on which it is situated abuts.

No semifireproof tenement house hereafter erected shall exceed six stories at any point, nor more than sixty-five feet in height (except as hereinafter provided), nor more than one and one-half times the width of the widest street to which the lot on which it is situated abuts.

No wooden tenement house hereafter erected shall exceed three stories at any point nor more than thirty-six feet in height (except as hereinafter provided), nor more than one and one-half times the width of the widest street to which the lot on which it is situated abuts.

The width of the street, for this purpose, shall be measured from the extreme front of the building to the front of lot opposite, across the street.

For the purposes of this section a basement is a story.

Height defined.

The height of a fireproof tenement house is the perpendicular distance from the curb level or adjoining ground levels to the highest point of the roof. The height of a semifireproof or of a wooden tenement house is the perpendicular distance from the curb level or adjoining ground levels to the lowest point of the finished ceiling of the top story; provided, that in the case of a semifireproof tenement house situated on a lot with the ground sloping downward from the facade at which the measurement is taken the height of the building shall not at any point exceed sixty-five feet above the curb level measured on the facade facing the street, nor shall the height of the building at any point of the grade exceed seventy-five feet above the adjoining curb in case of a corner lot, or above the level of the ground in the case of an interior lot, and in the case of a wooden tenement house situated on a lot with the ground sloping downward from the facade at which the measurement is taken the height of the building shall not at any point exceed thirty-six feet above the curb line measured on the facade facing the street, nor shall the height of the building at any point of the grade exceed forty-six feet above the adjoining curb in the case of a corner lot or above the level of the ground in the case of an interior lot.

Per cent of lot left unoccupied.

§ 13. On every corner lot on which a tenement house is hereafter erected, at least ten per cent of such lot shall be left unoccupied; provided, however, that if such corner lot extends through from one street to another street, one-half of the narrowest street to which said lot abuts may be considered as a part of the lot in computing the percentage of lot to be left unoccupied; except that if such one-half of the narrowest street is greater than the rear yard required for such tenement house, then only as much of the said street as is required for the rear yard shall be considered as part of the lot for the purpose of computing the percentage of lot to be left unoccupied.

On every interior lot on which a tenement house is hereafter erected, at least twenty-five per cent of such lot shall be left unoccupied; provided, however, that if such interior lot extends through from one street to another street, one-half of the narrowest street to which such lot abuts may be considered as a part of the lot in computing the percentage of lot to be left unoccupied; except that if such one-half of the narrowest street is greater than the rear yard required for such tenement house, then only as much of the said street as is required for the rear yard shall be considered as part of the lot for the purpose of computing the percentage of lot to be left unoccupied.

Rear yard.

§ 14. Immediately behind every tenement house hereafter erected there shall be a rear yard extending across the entire width of the lot.

Yard serving two tenement houses.

§ 15. In no event shall any yard or court be made to serve the purpose of two tenement houses hereafter erected, or of an existing tenement house and a tenement house hereafter erected, unless such yard or court, as the case may be, is of the full size required for two tenement houses, and then only in the event that such ward or court, as the case may be, is located on the same lot and owned by or in the absolute lawful control and in the lawful possession of the tenement house it proposes to serve.

Distance between buildings.

Where a tenement house, now or hereafter erected, stands upon a lot, no other building shall hereafter be placed upon the front or rear of that lot, unless the minimum distance between such buildings shall be at least ten feet, and two additional feet shall be added to such minimum distance of ten feet for every story more than one in height of the highest building on such lot.

Depth of rear yard.

§ 16. The depth of a rear yard shall be measured at right angles from the extreme rear line of the building toward the rear lot line.

Minimum depth of rear yard on interior lot.

§ 17. On every interior lot on which a tenement house is hereafter erected there shall be provided a rear yard. Such yard shall extend from the ground clear and unobstructed to the sky, and shall extend across the entire width of the lot; except that outside stairways, platforms and balconies constructed of open metal work and fire escapes may extend not more than four feet into such yard. The minimum depth of such rear yard shall be as follows:

<i>Height of building measured from top of wall to floor of yard at point abutting the rear yard.</i>		<i>Depth of rear yard.</i>
Not exceeding	36 feet.....	10 feet
Not exceeding	48 feet.....	11 feet
Not exceeding	60 feet.....	12 feet
Not exceeding	72 feet.....	14 feet
Not exceeding	84 feet.....	16 feet
Not exceeding	96 feet.....	18 feet
Not exceeding	108 feet.....	20 feet
Not exceeding	120 feet.....	22 feet
Not exceeding	132 feet.....	24 feet
Not exceeding	150 feet.....	26 feet

Provided, however, that if such interior lot extends through from one street to another street or public alley, one-half of the narrowest street or public alley to which said lot abuts may be considered as a part of the lot in computing the rear yard required by this section.

Minimum depth of rear yard on corner lot.

§ 18. On every corner lot on which a tenement house is hereafter erected there shall be provided a rear yard. Such yard shall extend from the lowest floor which is used for living or sleeping apartments, clear and unobstructed to the sky, and shall extend across the entire width of such lot; except that outside stairways, platforms and bal-

conies constructed of open metal work and fire escapes may be extended not more than four feet into such yard. The minimum depth of such rear yard shall be as follows:

<i>Depth of corner lot.</i>	<i>Dept of rear yard.</i>
Not exceeding 100 feet.	Not less than 10 per cent of the depth of the lot nor less than 5 feet, nor less than the minimum width required for an outer court, based on the number of stories in such building.
Exceeding 100 feet.	Not less than 10 feet nor less than the minimum width required for an outer court, based on the number of stories in such building.

Provided, however, if such corner lot extends through from one street to another street, or to a public alley, one-half of the narrowest street or public alley to which such lot abuts may be considered as a part of the lot in computing the rear yard required by this section.

Passageway to street.

§ 19. Every rear yard required by this act and not bordering on a street or public alley and without direct access thereto shall have access to a street or public alley by means of an unobstructed passageway not less than three feet six inches in clear width, nor less than seven feet in clear height; and if such passageway or any portion thereof passes through a building, such portion thereof shall be built of approved incombustible materials, or shall be lathed with metal lath or approved plaster board and be plastered not less than three-quarters inch thick including the lath or plaster board, or shall be lined with not less than number twenty-six (gauge) galvanized iron, and shall be drained and lighted.

Excavated front yard.

§ 20. Every front yard which is excavated below the level of a curb or below the adjoining ground level for the purpose of furnishing light and ventilation to a basement shall in no part be less in width and length than required for outer courts.

Width of side yard.

§ 21. The width of every side yard shall be not less than the width required for an outer court except that the provisions of this act regarding the maximum lengths of an outer court shall not apply to a side yard; provided, that if there is a side yard on both sides of the building, connected one with the other across the rear of the building by the rear yard, then the width of the side yards may be reduced twelve inches.

Minimum size of outer court.

§ 22. The minimum size of every outer court for a tenement house hereafter erected shall be as follows:

<i>Height of building based on the full number of stories in the building measured upward from and including the lowest story in which there is an apartment or apartments.</i>	<i>Minimum width of court.</i>	<i>Maximum length of court.</i>
1 story	4 ft. 0 in.	16 ft. 0 in.
2 stories	4 ft. 0 in.	16 ft. 0 in.
3 stories	4 ft. 6 in.	25 ft. 0 in.
4 stories	5 ft. 6 in.	30 ft. 0 in.
5 stories	6 ft. 0 in.	35 ft. 0 in.
6 stories	8 ft. 0 in.	35 ft. 0 in.
7 stories	10 ft. 0 in.	40 ft. 0 in.
8 stories	12 ft. 0 in.	40 ft. 0 in.
9 stories	13 ft. 0 in.	40 ft. 0 in.
10 or more stories.....	14 ft. 0 in.	40 ft. 0 in.

There shall be added to the minimum width of each such outer court six inches for each five feet or fractional part thereof in excess of the maximum length; provided, however, that the maximum lengths herein provided shall not apply when the outer court is bonded on one side for its entire length by a lot line; provided, further, that if an outer court is bounded by a public alley or public park, the width of such public alley or public park may be considered a part of the lot in determining the required width of the outer court.

Minimum size of inner court.

§ 23. The minimum size of every inner court for tenement houses hereafter erected shall be as follows:

<i>Height of building based on the full number of stories in the building measured upward from and including the lowest story in which there is an apartment or apartments.</i>	<i>Minimum width of court.</i>	<i>Minimum area of court in square feet.</i>
1 story	6 ft. 0 in.	75 square feet
2 stories	6 ft. 0 in.	75 square feet
3 stories	7 ft. 0 in.	120 square feet
4 stories	8 ft. 0 in.	160 square feet
5 stories	12 ft. 0 in.	250 square feet
6 stories	16 ft. 0 in.	400 square feet
7 stories	20 ft. 0 in.	625 square feet
8 stories and more.....	24 ft. 0 in.	840 square feet

Provided, however, that the minimum size of every inner court which is bounded on one side for its entire length by a lot line may be as follows:

<i>Height of building based on the full number of stories in the building measured upward from and including the lowest story in which there is an apartment or apartments.</i>	<i>Minimum width of court.</i>	<i>Minimum area of court.</i>
1 story	5 ft. 0 in.	75 square feet
2 stories	5 ft. 0 in.	75 square feet
3 stories	6 ft. 0 in.	120 square feet
4 stories	7 ft. 0 in.	160 square feet
5 stories	9 ft. 0 in.	250 square feet
6 stories	16 ft. 0 in.	400 square feet
7 stories	20 ft. 0 in.	625 square feet
8 stories and more.....	24 ft. 0 in.	840 square feet

Every inner court hereafter constructed and every inner court or vent shaft now in any tenement house shall be provided with a door or window at or near the bottom thereof, giving sufficient access to such court or vent shaft as to enable it to be properly cleaned out.

Recess.

§ 24. Every recess from a court, yard or street in a tenement house hereafter erected shall, unless it conforms to the requirements of this act for an inner court, or an outer court, be not less in width than its depth. Every such recess shall be open and unobstructed to the sky from a point not more than two feet above the floor line of the lowest story in the building in which there are rooms the said recess proposes to serve.

Intakes for inner court.

§ 25. Every inner court in a tenement house hereafter erected shall be provided with one or more horizontal intakes at the bottom of the court, as follows:

<i>Inner court areas.</i>	<i>Minimum number of intakes.</i>	<i>Net aggregate area of intakes.</i>
Each not exceeding 300 square feet.....	One	19½ square feet
Each not exceeding 800 square feet.....	Two	40 square feet
Each exceeding 800 square feet.....	Two	60 square feet

Every such intake shall always extend directly to the front of lot or front yard, or rear yard, or to a side yard, or to a street, or to a public alley or public park. Whenever more than one intake is required, one such intake shall extend to the front of lot or front yard, and one to the rear yard, public alley, public park, or to the other street, and the court ends of the air intakes shall be as far apart as possible.

Each such intake shall consist of an unobstructed duct or passageway having a minimum width of three feet in all its parts and a minimum height of six feet six inches.

Construction.

Every such intake shall be constructed of approved incombustible materials, or shall be lined with at least number twenty-six (gauge) galvanized iron on the inside thereof. Such air intakes may be closed at each end with a gate or grill having not less than seventy-five per cent of open work.

In case the inner court does not extend below the second floor level, then each such air intake may consist of an unobstructed open duct, constructed of approved incombustible materials or lined with at least number twenty-six (gauge) galvanized iron on the inside thereof, having an interior area of not less than nineteen and one-half square feet, and in no dimension less than twelve inches, and covered at each end with a wire screen of not less than one inch mesh.

Every air intake shall be drained and so constructed and arranged as to be readily cleaned out.

Cellars.

§ 26. In no tenement house shall any room in the cellar be constructed, altered, converted or occupied for living or sleeping purposes.

Every cellar shall be illuminated and ventilated. The walls and floor of every cellar hereafter constructed, which are below the ground level, shall be made waterproof and dampproof, and whenever deemed necessary, and so ordered by the department charged with the enforcement of this act, the walls and ceilings thereof shall be plastered.

Basements.

§ 27. In no tenement house shall any room in the basement be constructed, altered, converted or occupied for living or sleeping purposes, unless such room conforms to all of the requirements of this act for rooms in other parts of the building and that the ceiling of each such room be in all parts not less than seven feet above the adjoining ground level.

Every basement shall be illuminated and ventilated. The walls and floors of every basement hereafter constructed, which are below the ground level, shall be made waterproof and dampproof, and whenever deemed necessary, and so ordered by the department charged with the enforcement of this act, the walls and ceilings thereof shall be plastered.

Ventilation beneath floor.

§ 28. In every tenement house hereafter erected, the lowest floor thereof shall be at least eighteen inches above the surface soil adjoining and under the floor, and the entire space under such floor shall be kept dry, drained, clean and free from any accumulation of rubbish, debris or filth.

Floor made impervious to rats.

Such space under the floor shall be enclosed and provided with a sufficient number of openings with removable screens or similar provisions of a size to insure ample ventilation; provided, however, that in any such building the lowest floor thereof may be less than eighteen inches above the surface soil, but in no case less than six inches, except where masonry floors are laid directly on the soil, if the said floor is made impervious to the ingress of rats or other vermin as follows:

(a) Foundation walls shall be constructed of concrete or of brick or stone or other masonry laid in a good mortar or constructed of some other equally as rat proof material.

(b) The said foundation walls shall be not less than six inches in thickness at the top nor less than twelve inches in thickness at the bottom, nor extend less than twelve inches below the surface soil, and, except where masonry floors are laid directly on the soil, shall extend not less than six inches above the surface soil.

(c) Every opening in the foundation walls, for ventilation or for other purposes, shall be made rat proof with suitable metal screens or with some other similar rat proof material. Door or window openings in such walls shall have tight fitting doors or windows.

(d) The said lowest floor or differing levels thereof, forming a complete floor between the outside walls of the building, shall be constructed either of masonry, or covered with concrete not less than one and one-half inches thick, or constructed of two layers of flooring with a layer of galvanized iron or galvanized iron wire cloth or other approved equally as rat proof material placed between the two layers of flooring. Or, in lieu of the floor being constructed as herein prescribed, the entire ground area under the floor shall be covered with concrete not less than two inches thick, except where the surface of the soil is composed of rock. The rat-proofing material shall always extend under the plates of the exterior walls and supporting partitions.

(e) All openings throughout the said floor for chimneys, plumbing, water pipes, or for any other purpose, shall be closed up tight in the same manner and with the same kind of materials as required under the plates of the exterior walls and supporting partitions, and if the rat-proofing material used for closing of openings is other than masonry, it shall extend beyond and underlap the flooring all around the opening, not less than two inches.

Floor area of rooms.

§ 29. In every apartment in every tenement house hereafter erected there shall be at least one room containing not less than one hundred twenty square feet of superficial floor area, and every other room shall contain at least ninety square feet of superficial floor area, except water-closet, bath or slop-sink compartments, and except kitchens, closets, recesses from rooms, or dressing rooms.

Every kitchen shall contain not less than fifty square feet of superficial floor area.

Width and height.

Every room shall at every point be not less than seven feet in width, nor less than nine feet in height, measured from the finished floor to the finished ceiling; except that attic rooms and rooms where sloping ceilings occur need be nine feet in height in but one-half the area of the room; provided, however, that the provisions of this para-

graph shall not apply to water-closet, bath or slop-sink compartments, nor to closets, nor to recesses from rooms, nor to dressing rooms, nor shall the provisions of this paragraph as to minimum width apply to kitchens.

Water-closets, etc.

Every water-closet compartment shall be not less than thirty-six inches in clear width, and every such water-closet compartment, bath or slop-sink compartment, or closet, or recess from a room, or dressing room, shall have a height of not less than seven feet six inches, measured from the finished floor to the finished ceiling. Every closet, recess from a room, or dressing room, which contains more than twenty-five square feet of superficial floor area (built-in dressers, clothes presses and similar features which are a substantial part of the structure shall not be deemed to be a part of the floor area of a closet, recess from a room) or dressing room shall conform to all of the provisions of this act as to rooms, and shall contain not less than ninety square feet of superficial floor area.

Curtains.

No part of any room in any tenement house shall hereafter be enclosed or subdivided wholly, or in part, by a curtain, portiere, fixed or movable partition, or other contrivance or device, for any purpose contrary to any of the provisions of this act.

Entertainment, amusement or reception rooms hereafter constructed, altered or converted in any tenement house shall conform to the provisions of section thirty-three of this act.

Windows.

§ 30. In every tenement house hereafter erected every room, kitchen, and every water-closet compartment, toilet or shower room, and bath or slop-sink room (except in the cellar) shall have at least one window of the area hereinafter required opening directly upon a street, or upon a yard or court, of the dimensions specified in this act and located on the same lot.

Opening into vent shaft. Opening through porch.

All windows required by this act shall be located so as to properly light all portions of the rooms, and shall be made so as to open in all parts and so arranged that at least one-half of each such window may be opened unobstructed; provided, however, that the windows required by this section in a water-closet compartment, toilet or shower room, and bath or slop-sink room, may open directly into a vent shaft, such vent shaft to be of the minimum size and constructed of the materials and in the manner prescribed by section sixty-one of this act; provided, further, that windows required to open onto a street, yard, or an outer court, except windows from kitchens, may open through porches, provided that said porches do not exceed seven feet in depth measured at right angles to the windows and that at least seventy-five per cent of the entire side of the porch, bounded by the street, yard, or outer court, is left open except that the open space may be enclosed with mosquito screens.

Window area.

§ 31. In every tenement house hereafter erected the total window area in each room except in a water-closet compartment, bath, toilet, slop-sink room or shower room shall be at least one-eighth of the superficial floor area of the room.

The aggregate window area in each room shall be not less than twelve square feet, and no single window shall be less than six square feet in area.

All measurements for window area shall be taken to outside of sash.

§ 32. In every tenement house hereafter erected each window in a water-closet compartment or bath, toilet or slop-sink room, or shower room, shall be not less than three

square feet in area. The aggregate area of windows for each such compartment or room shall be not less than six square feet. In each such compartment or room containing more than one water-closet, bath, urinal or slop-sink, the aggregate window area shall be equivalent to three square feet for each water-closet, bath, urinal or slop-sink therein, except that at no time need the aggregate window area exceed one-fourth of the superficial floor area of such compartment or room.

[Window area of amusement, entertainment, or reception room.]

§ 33. In every tenement house hereafter erected, the total window area in each room used for the purpose of amusement, entertainment or as a reception room, or any room used for similar purposes, which room has a superficial floor area not exceeding one hundred eighty square feet, shall be at least one-eighth of the superficial floor area of such room.

Every such room which has a superficial floor area exceeding one hundred eighty square feet shall have an aggregate window area not less than that required for a room of one hundred eighty square feet of superficial floor area.

Ventilation by fan exhaust system.

Amusement, entertainment or reception rooms and rooms used for similar purposes, in lieu of being provided with windows, as in this section prescribed, may be provided with a fan exhaust system of ventilation. Such fan exhaust system of ventilation shall consist of independent inlet ducts, extending from the outer air to each such room and exhaust ducts extending from each such room to the outer air above the highest roof of the building.

All of the inlet ducts and exhaust ducts shall be constructed of galvanized iron or other smooth-surfaced, nonabsorbent material and so arranged that they may be readily cleaned out.

The exhaust ducts shall always be connected to an exhaust fan mechanically operated, so designed and operated as to provide a complete change of air in not to exceed fifteen minutes for each such room.

Penalty for failure to maintain system.

Any person in charge of a building in which a system of fan exhaust ventilation, as in this section is required, who fails, neglects or refuses to operate and maintain the said system of ventilation in good order and repair so that the ventilation (complete change of air) herein specified is provided in each such room at all times, shall be deemed guilty of a misdemeanor and subject to all of the penalties fixed by this act.

Height of amusement rooms.

Every amusement, entertainment or reception room, or any room used for similar purposes, shall have a minimum height between the finished floor and the finished ceiling of not less than nine feet. No such room or part thereof shall be used for living or sleeping apartments, except that said room or part thereof complies with all of the other provisions of this act, for living and sleeping apartments.

Windows in public hallway.

§ 34. In every tenement house hereafter erected, every public hallway on any floor where there are more than three apartments shall have at least one window opening directly upon a street, or upon a yard or a court of the dimensions specified in this act and located on the same lot; such windows shall be at the end of the public hallway and placed so as to secure the maximum light into the hallway; provided, however, that in tenement houses not exceeding two stories in height, the public hallway may, in lieu of such windows, be lighted and ventilated by one or more skylights constructed in accordance with the provisions of this act.

Every window required by this act in a public hallway shall be not less than twenty-nine inches in clear width, nor less than fifty-eight inches in height, and the finished sill of same shall not be more than thirty inches above the adjoining finished floor. Every such window shall be made so as to open and so arranged that at least one-half of the window may be opened unobstructed.

Skylight.

Every skylight provided for in this section shall have an effective horizontal area of glass of not less than fifteen square feet, and shall have ridge ventilators or fixed or movable louvres so as to provide a ventilating area of not less than five hundred square inches. Such skylights shall be so located that no portion of the hallway be distant more than twenty feet (measured from a vertical line) from a skylight opening.

Any part of a public hallway which is offset, recessed, or cut off from any other part of a hallway where such offset or recess is more in length than one and one-half times the width of the public hallway from which it offsets or recesses, shall be deemed a separate public hallway within the meaning of this section.

French windows.

French windows or doors, if arranged to open and glazed to give the areas of opening and glass required by this act for windows in public hallways, may be used in lieu of windows therein.

Ventilating skylight.

§ 35. In every tenement house two or more stories in height hereafter erected, where there are more than three apartments on any one floor, there shall be provided at the roof over each stairway a ventilating skylight, placed directly as practicable over same, having a minimum effective horizontal area of glass at least twenty square feet in area for buildings two stories in height, and the area of glass in such skylight shall be increased at a ratio of six square feet for each additional story in height. In every such skylight the ventilating area shall be not less than five hundred square inches.

Every such skylight and the ventilating openings and the shutters and the closing and opening devices for the ventilating openings shall be made of approved incombustible materials, and so arranged that the entire ventilating area may be readily opened from at least the topmost and first story levels, except that in tenement houses not exceeding four stories in height the ventilators may be arranged so as to open from at least the first story, or the ventilators may be fixed permanently in an open position.

Skylights as in this section prescribed may be omitted in case that windows are provided of the size fixed by section thirty-four hereof and located adjoining the stairways, and that each window adjoining the stairway be provided with an open louver or ventilator providing a ventilating area of not less than one hundred square inches or such louver or ventilator may be placed in the roof over the stairway, in which event the ventilating area shall be not less than five hundred square inches.

Whenever a skylight is required as in this section provided there shall be constructed a stair well, the clear open area of which shall be at each floor equal to one-third of the area of glass in the skylight.

Water-closets.

§ 36. In every tenement house hereafter erected, every apartment shall be so arranged that access may be had to every living room, and to at least one water-closet compartment, without passing through a bedroom; provided, however, that nothing in this section shall be so construed as to prohibit passing through a bedroom in going from a kitchen to a bathroom or water-closet compartment.

Water-closet for each apartment.

§ 37. In every tenement house hereafter erected there shall be installed one water-closet within each apartment located in a separate compartment or located in a compartment with a bathtub, shower or lavatory, used exclusively by the occupants of the apartment.

No door or other opening to a water-closet compartment shall open from or into any room in which food is prepared or stored. The walls enclosing a water-closet compartment shall be well plastered or constructed of some nonabsorbent material, except that the ordinary wood trim of openings may be used in such compartment. Every such compartment shall be provided and equipped with a full door, properly hung, and provided with a lock or bolt to lock same.

Waterproof floor.

The floor of every such water-closet compartment shall be made waterproof with asphalt, tile, marble, terrazzo, cement, or some other similar nonabsorbent material, and such waterproofing shall extend not less than six inches on the vertical walls of the room. No water-closet fixture shall be enclosed with woodwork.

In tenement house already erected.

§ 38. In every tenement house erected prior to the passage of this act there shall be provided at least one water-closet in a separate compartment, located on the public hallway of the same floor, for every three apartments or fractional part thereof on such floor which are not provided with private water-closets. Where two or more water-closets are required by the provisions of this section to be located on a public hallway, one of such water-closets shall be distinctly marked "for men," and one of the water-closets distinctly marked "for women"; provided, however, that the housing department charged with the enforcement of this act may exempt any tenement house existing at the time of the passage of this act from fully complying with the provisions of this paragraph when, in its discretion, such deviation will not be detrimental to the health of the occupants thereof or to the sanitation of the said tenement house or premises.

Nothing in this section shall be construed as permitting such exemptions to apply to any addition or extension to any tenement house.

Every water-closet hereafter placed in a tenement house erected prior to the passage of this act shall comply with every provision of this act relative to water-closets installed in tenement houses hereafter erected, except that if a water-closet is installed in the top story of any such building, the compartment in which it is installed may be ventilated by a skylight with fixed louvres in lieu of a window; provided, however, that a new water-closet may be installed to replace a defective or antiquated fixture in the same location.

Sewer connection required.

Every tenement house erected prior to the passage of this act, or hereafter erected, where a connection with the sewer is possible, shall discontinue the use of any school sink, privy vault or any similar receptacle used to receive fecal matter, urine or sewage, and every such receptacle shall be completely removed and the place where it was located be properly disinfected. All such receptacles shall be replaced by individual water-closets of durable nonabsorbent material, properly connected, trapped, vented and provided with flush tanks, the same as is required, by the provisions of this act, in tenement houses hereafter erected.

Bathtub or shower.

§ 39. In every tenement house hereafter erected there shall be a bathtub or shower within each apartment, and such bathtub or shower shall be located in a separate com-

partment, or there may be provided one such bathtub or shower in a separate compartment for every three such apartments which are not provided with private baths or showers; provided, that said bathtub or shower is on the same floor and is accessible from each apartment through the public hallway.

In every tenement house hereafter erected there shall be at least one kitchen sink within each apartment.

The walls, floors and openings to every bath, shower or slop-sink room hereafter constructed shall conform to all of the provisions of this act relative to the waterproofing of the walls and floors, and of the construction of the doors of water-closet compartments in tenement houses hereafter erected.

In tenement house already erected.

§ 40. In every tenement house erected prior to the passage of this act there shall be provided at least one bathtub or shower in a separate compartment, located on the same floor, for every five apartments, or fractional part thereof, which are not provided with private baths or showers, on each such floor, and there shall be provided at least one kitchen sink in each apartment; provided, however, that the department charged with the enforcement of this act may exempt any tenement house existing at the time of the passage of this act from fully complying with the provisions of this section when, in its discretion, such deviation will not be detrimental to the health of the occupants thereof or to the sanitation of the said tenement house or premises; provided, further, that no such exemption shall apply to any addition or extension to a tenement house.

Running water.

§ 41. In every tenement house hereafter erected every plumbing fixture shall be provided with running water, and there shall be provided faucets, with running water, sufficient in number so that all of the yards, courts and passageways may be washed. Faucets shall be of the hose bibb type, not less than three-quarters inch size.

Sewer connection.

Every plumbing fixture affecting the sanitary drainage system in tenement houses hereafter erected, shall be properly connected with the street sewer, if a street sewer exists in the street abutting the lot on which the building is located and is ready to receive connections. When it is impracticable to connect such plumbing fixtures with a street sewer, then the plumbing fixtures shall be connected and drained into a cesspool constructed satisfactorily to the department charged with the enforcement of this act; or some other means of sewage disposal satisfactory to the department charged with the enforcement of this act may be made until such time as it may become practicable and possible to connect with the street sewer.

In tenement house already erected.

§ 42. In every tenement house erected prior to the passage of this act, every plumbing fixture shall be provided with running water, and there shall be provided faucets, with running water, sufficient in number so that all of the yards, courts and passageways may be washed. Faucets shall be of the hose bibb type, not less than three-quarter inch size.

In case no running water. Privy.

§ 43. Water-closets, baths, showers, sinks, slop-sinks, faucets and other plumbing fixtures required by this act need not be installed in the event that the tenement house hereafter erected or an existing tenement house, as the case may be, is situated where there is no running water and where there is no practical means of sewage disposal, until such time as it becomes practicable and possible to obtain running water and

means of sewage disposal; provided, in every such case the department charged with the enforcement of this act shall decide whether or not it is practicable and possible to provide running water and proper means of sewage disposal. A special permit in writing shall be obtained in every such case from the department charged with the enforcement of this act, which permit shall be made in duplicate, and a copy thereof shall remain on file in the department issuing it; provided, further, that proper, separate toilet facilities for each sex shall be provided for the use of the occupants of such building. Such facilities shall be made sanitary. A privy, or toilet other than a water-closet, erected under the authority of this section shall consist of a pit at least three feet deep, with suitable shelter over the same to afford privacy, and protection from the elements. The openings of the shelter and pit shall be enclosed by mosquito screening, and the door to the shelter shall be made to close automatically by means of a spring or other device. No privy pit shall be allowed to become filled with excreta to nearer than one foot from the surface of the ground, and the excreta in the pit shall be covered with earth, ashes, lime or similar substances at regular intervals. All drainage water shall be conveyed from the premises by means of a covered drain to a covered cesspool.

Plumbing fixtures made sanitary.

§ 44. In every tenement house hereafter erected all plumbing fixtures affecting the sanitary drainage system shall be properly trapped and vented and made sanitary in every particular. In any tenement house hereafter erected, and in any tenement house erected prior to the passage of this act no plumbing fixtures shall be enclosed with woodwork, but the space under and around same must be left entirely open. All woodwork enclosing a water-closet, sink, slop-sink, wash tray or lavatory shall be removed and the floor and wall surface beneath and around such water-closet, sink, slop-sink, wash tray or lavatory shall be maintained in good repair, and if of wood, well painted with a light colored paint of sufficient body to make it nonabsorbent. All wooden seats, attached to water-closet bowls, shall be varnished or enameled, or by some other method be made nonabsorbent.

Plumbing fixtures.

In every tenement house hereafter erected water-closets shall have earthenware bowls and shall have earthenware seats integral with the bowls, or wooden seats varnished or enameled so as to be nonabsorbent, or seats made of some nonabsorbent material attached directly to the bowls. No wooden wash trays or wooden kitchen sinks shall be permitted in such buildings. All plumbing connections hereafter made in buildings shall be of standard lead, iron, steel or brass; and every gas and water service connection hereafter made shall be of steel or iron, and shall be equipped with cut-off valves placed outside of the building and such cut-off valves shall be readily accessible.

Whenever any plumbing fixture becomes insanitary the department charged with the enforcement of this act is hereby empowered to order the same removed and to order that it be replaced by a fixture conforming to the provisions of this act.

Two means of egress.

§ 45. Every tenement house hereafter erected, three or more stories in height and in which there are three or more apartments on any one floor, shall be so designed and constructed that every apartment in such building shall have not less than two means of egress, either by stairways or fire escapes, constructed in accordance with the provisions of this act. Such means of egress shall be accessible from every apartment, either directly or through a public hallway, and so located that should one egress be or become blocked, the other egress shall be available.

Stairways.

§ 46. Every tenement house hereafter erected shall have not less than two stairways.

Every fireproof tenement house hereafter erected shall have not less than one stairway, not less than three feet six inches wide, for each six thousand square feet, or fractional part thereof, of floor area in any one floor above the first floor thereof.

Every semifireproof tenement house hereafter erected shall have not less than one stairway, not less than three feet six inches wide, for each four thousand square feet, or fractional part thereof, of floor area in any one floor above the first floor thereof.

Every wooden tenement house hereafter erected shall have not less than one stairway, not less than three feet six inches wide, for each three thousand square feet, or fractional part thereof, of floor area in any one floor above the first floor thereof.

Every tenement house hereafter erected shall have not less than one stairway leading from the outside to every basement or cellar thereof.

Computing number of stairways required.

§ 47. The largest floor area above the ground floor shall be used as the basis for computing the number of stairways required in every tenement house hereafter erected; provided, that if all floors above the largest floor area of the building are diminished in area, the stairway or stairways from that portion of the building containing a smaller area may be computed on the basis of the largest floor area in that portion of the building.

Location of stairways.

§ 48. All stairways hereafter constructed shall be located so as to furnish the best means of egress from the building, and shall be as far removed from each other as practicable, and shall be as follows:

Access to stairway shall be provided at every floor by means of a public hallway, corridor, or passageway, and the public hallway, corridor, passageway and stairway from the ground exit level to the top story or roof shall be accessible at all times.

No stairway shall abut on more than one side of an elevator shaft, except on the lowest and topmost stories, provided that the stairway is so located that it can be approached from the street entrance without passing by or in front of the open side of the said elevator shaft.

No stairway shall be located over a steam boiler, gas meter or gas heater or furnace, unless such boiler, gas meter, gas heater, or furnace be located in a room, the walls and ceiling of which are constructed as required for a boiler room by section sixty-three of this act. No stairway leading from any other portion of the building shall terminate in or pass through a boiler room.

Construction of stairways.

§ 49. Every stairway hereafter constructed shall be as follows: have a rise of not more than eight inches and a run of not less than nine inches, without change in the run or rise between floors; and shall be provided with head room of not less than six feet six inches measured from the nearest nosing of the stairway to the nearest soffit.

The depth of every landing in a stairway shall be not less than the width of the stairway, and all treads shall be of equal width for every run of stairs, and shall not vary in width in the width of the stairs.

Stairways required by this act shall be continuous from the ground floor level to the top story, i. e., the flights of such stairways shall be constructed one directly above the

other, or shall be constructed so that each flight shall be in plain view of each succeeding flight; provided, however, that half of the stairways from the upper floors may terminate at the second floor, in the event that the stairways from the first to the second floor be increased in width not less than fifty per cent.

Every stairway shall have at least one handrail, and if the stairway be five feet or more in width, shall have a handrail on each side thereof.

The underside and soffits of wooden stairways and the outside stringers of open stairways except outside stairway, in semifireproof and wooden tenement houses shall be metal lathed and plastered not less than three-quarters inch thick including the lath, or lathed with an approved plaster board and plastered not less than three-quarters inch thick including the plaster board.

The width of stairways shall be measured in the clear of all projections except the baseboards, and except that handrails and newel posts may project not more than four inches.

Space under stairway.

§ 50. No closet of any kind shall be constructed in any tenement house under any wooden stairway, but such space shall be kept entirely open, and be kept clean and free from all encumbrances; or such space shall be effectually closed with walls of studs, lathed and plastered, with no door or opening of any kind therein; provided, however, that the provisions of this section as to a closet under a stairway shall not apply to any tenement house not more than two stories in height, in which not more than two families live above the first floor thereof.

Stairway to roof.

§ 51. In every tenement house hereafter erected more than two stories in height, the stairway nearest to the main entrance of the building shall be carried to the roof level and shall give egress to the roof through a penthouse or roof structure.

In every such building not exceeding two stories in height there shall be constructed a scuttle in the public hallway near the stairway. Such scuttle shall be not less than two feet by three feet in area, and shall be cut through the ceiling and roof.

Penthouses over stairways shall be built either of fireproof materials or of wood studs, lathed with metal lath or approved plaster board and plastered not less than three-quarters inch thick including the lath or plaster board on the inside and outside thereof; or such penthouses may be covered in the same manner and with the same kind of materials as required by this act for the doors from such penthouses.

The door to the roof from a penthouse or roof structure shall be self-closing and shall open outward to the roof, and shall be covered on both sides and edges with tin or other metal.

The frames and trim of such door opening shall be similarly constructed and all glass in such door shall be wired glass not less than one-fourth inch thick.

In tenement house already erected.

Every tenement house of more than two stories in height, erected prior to the passage of this act, shall have in the roof a penthouse or a scuttle, which scuttle shall be not less than two feet by three feet in area, located in the ceiling of a public hallway. There shall be provided a stairway or a stationary ladder, leading from the top floor of such tenement house to the roof thereof. Such stairway or stationary ladder shall be made readily accessible to all the tenants of the building. No scuttle or penthouse door shall at any time be locked with a key, but may be fastened on the inside by a movable bolt or lock.

Hallways, etc., from stairways.

§ 52. Public hallways, landings and corridors from stairways shall be of the same width and measured in the same manner as the stairways, as provided in section fifty hereof.

Fire escapes.

§ 53. On every tenement house hereafter erected more than two stories in height, which contains more than three apartments, there shall be provided at least one fire escape. If such tenement house exceeds three thousand square feet of floor area on any one floor above the second floor thereof, such building shall be provided with one additional fire escape for each four thousand square feet of floor area or fractional part thereof.

Types of fire escapes.

Fire escapes required by this act shall be of one of the following types:

Type 1. Metallic throughout and fastened securely to the exterior walls of the building, with a balcony at each story above the first story thereof, with inclined stairways connecting all balconies and a goose-neck ladder connecting the topmost balcony to the roof. The lowest balcony of such fire escape to be not more than fourteen feet above the street or ground level directly under same.

All metallic balconies shall be not less than forty-four inches in width nor less than thirty-three square feet in area. The stairway openings therein shall be not less than twenty-one inches wide and forty inches in length. The balcony balustrade shall be not less than thirty-four inches high, with no opening in such balustrade greater than eight inches in horizontal dimension.

There shall be no opening greater than one inch in width in a fire escape balcony platform, except the stair well opening.

There shall be no opening greater than one inch in width in the lowest fire escape balcony platform, except that there be attached a counterbalanced or permanent ladder reaching to the street or ground below.

Every balcony platform shall be fastened to the outside walls of the building by building in and anchoring to such walls the balcony platform and the balustrade framing, or by securely bolting same thereto. Every balcony shall be supported by brackets, braces, or struts fastened to or built in and anchored to the walls.

The inclined stairways shall be not less than eighteen inches in width and placed in no part nearer than twenty-one inches from the face of the wall. Such inclined stairways shall have an inclination of not less than four inches and not more than six inches horizontally to each twelve inches of vertical height. The treads shall be not less than four inches wide, placed not more than twelve inches apart. Each side of such stairways shall be provided with a handrail not less than one inch in diameter fastened to the stair stringers and continued around the well hole openings of balcony platform.

Types of fire escapes.

The goose-neck ladder shall be not less than fifteen inches wide and extend vertically from the topmost balcony to three feet above the fire wall or roof above, and then be brought down and fastened to the inside face of the fire wall or to the roof. The rungs of the goose-neck ladder shall be not less than five-eighths inch round iron or steel, placed not more than fourteen inches apart. The goose-neck ladder shall be securely braced and fastened to the outside wall, and in no case shall such ladder pass in front of any opening in the wall to the interior of the building. The cornice opening for the passage of such ladder shall be not less than twenty-four inches in width and twenty-four inches in the clear outside of the ladder.

Such fire escape shall be framed and riveted or bolted together in a solid, substantial manner and properly supported, braced and fastened to the outside walls so as to be rigid, durable and secure and carry the loads imposed.

All metallic fire escapes shall be painted with not less than two coats of good, durable paint; or such fire escapes may be galvanized.

Type 2. Metallic ladders and stairways conforming to the provisions set forth for type one and with reinforced concrete or iron or steel fireproofed balconies, with fastenings of similar materials. Such balconies to measure the full size inside of balustrades. Floor openings and well holes provided and protected similarly to the requirements for metallic balconies.

Enclosed spiral fire escape.

Type 3. Any type of an enclosed approved metallic spiral fire escape which consists of a rigid form of an inclined chute or chutes constructed entirely of incombustible material; securely attached to the outside walls of building; provided with proper means of ingress thereto from the building and egress therefrom at the bottom; having means enabling firemen to reach the roof thereby from the ground; equipped with standpipes; painted the same as provided for metallic fire escapes; and satisfactory to the department charged with the enforcement of this act as being as solid, substantial and durable and as fireproof in construction, and providing at least as safe and efficient means of escape from the building for the occupants thereof, and furnishing all the protection and utility of the metallic fire escapes described as "type one" in this act.

Fire and smoke towers.

Type 4. Fire and smoke towers, consisting of a fire escape stairway not less than twenty inches in width, constructed of reinforced concrete, iron or steel, or a combination of these materials; and in all other details as required in this act for metallic fire escape stairways; said stairways being continuous the full height of the building from the first floor exit level to the roof, and with handrails on each side thereof the full length of same. Such stairways to be constructed at a point adjoining the exterior walls of the building and be entirely enclosed with walls of brick, terra cotta tile, concrete or reinforced concrete not less than twelve inches thick; such walls to be continuous from the basement up to and extending three feet above the roof of the building, with no covering of any kind over same, and with no openings in the walls of such tower into the building. The enclosing walls of such tower not to be used to carry or support any floor joist, beam, girder or other structural feature of the building, nor to be chased for any pipe, conduit or other purpose; to have an exit from the enclosure at the first floor line opening directly to a street or yard, and having an entrance by means of an outside balcony at each floor, such balconies to have a solid floor and in all other details and kind of materials to be as in this act required for metallic fire escape balconies. The balconies to be located and arranged to connect with a door opening from a public hallway in the interior of the building and with a door opening leading from the balcony to the tower, such door opening from the building to the balcony and from the balcony to the tower to be not less than thirty inches wide by seventy-two inches high and be equipped with metal-lined doors and with a frame and threshold of such door openings constructed of fireproof materials.

Fire and smoke towers.

Type 5. A fire and smoke tower in every way similar to "type four" of this section, except that instead of the outside balcony there be built a vestibule with enclosing walls continuous with and of the same kind of materials and of the same thickness as the enclosing walls of the fire tower; that the vestibule opening be direct from a public hallway and be equipped with metal-lined doors. The vestibule floor to be of masonry

construction. The enclosure to have an opening at each floor through the exterior wall of the building, such opening to extend from the floor to the ceiling and be not less in width than three-fourths of the width of the tower, said opening to be protected with an open metallic balustrade similar to that specified for metallic fire escape balconies.

Stairway and fire escape combined.

§ 54. In any tenement house hereafter erected in which there is constructed a fire escape of "type four" or "type five," as prescribed in this act, such fire escape may be used and constructed as a stairway and a fire escape combined; provided, that there is at least one other stairway or one other fire escape constructed in accordance with the provisions of this act, in the said building.

Location of fire escapes.

§ 55. Every fire escape required by this act shall be located on the building so as to furnish the best means of escape therefrom for the occupants, and at least one such fire escape shall be located on a street front. Every fire escape shall have egress thereto from a public hallway or passageway not less than three feet wide, or such fire escapes in lieu of being located on a public hallway, shall be so located that each apartment has direct egress thereto without passing through another apartment, or if a public parlor, public lobby or similar room is connected directly with the public hall, corridor or passageway through a clear and unobstructed opening, without doors, then egress may be had thereby to a fire escape. Signs both pointing towards and marking the locations of fire escapes shall be placed on each floor.

Computing number of fire escapes required.

§ 56. The largest floor area above the second floor shall be used as a basis for computing the number of fire escapes required by this act; provided, that if all floors above the largest floor area are diminished in size, the number of fire escapes from that portion of the building containing the smaller area may be computed on the basis of the largest floor area in that portion of the building.

Strength of platform, etc.

§ 57. All parts of each balcony platform of a fire escape shall be designed to carry, in addition to the dead load thereof, a live load of one hundred pounds per square foot over the entire area thereof (using outside dimensions) and the live and dead loads from the ladders or stairs supported thereon.

Each ladder shall be designed to withstand a horizontal pressure of one hundred pounds per square foot.

Each stairway shall be designed to carry, in addition to the dead load thereof, a live load of one hundred fifty pounds per square foot of horizontal projection.

Top rails of balcony balustrades shall be designed to withstand a horizontal pressure of one hundred pounds per lineal foot of railing.

Each balcony shall be independently supported.

All fastenings of fire escape balconies to the building shall be designed to carry twenty-five per cent greater load than the total dead and live loads carried by the balconies. The balcony anchorage shall be direct to the structural steel or iron members of the balustrades and platforms extended into the walls and anchored into the structural work of the building.

The level of the inside sill of the door or window giving access to a fire escape balcony or the balcony floor shall be not more than thirty inches above the adjoining floor in the building. Every such door or window opening shall be not less than twenty-nine inches in clear width, nor less than fifty-eight inches in height.

Where double-hung windows are used in such openings, the lower sash shall be at least the size of the upper sash and shall slide to the top of such opening. Any lock used on any such window shall be of a type which can be readily opened from the interior of the building without the use of a key or other tool.

Readily accessible.

§ 58. Every fire escape in or on tenement houses hereafter erected, or in or on tenement houses erected prior to the passage of this act, shall at all times be maintained in good order and repair, well painted and clear and unobstructed at all times, and be readily accessible.

Standpipes.

§ 59. On every tenement house hereafter erected four or more stories in height, there shall be provided one or more metallic standpipes. Each such standpipe shall be not less than four inches in internal diameter, and shall have a Siamese inlet valve near the sidewalk or the ground directly under same, and an outlet valve at each story above the first story and on the roof.

One such standpipe shall be placed on or in the exterior walls of the building at one fire escape on each street frontage, and the outlet valves shall be readily accessible from the balconies of the fire escape.

The inlet and outlet valves on every standpipe shall be threaded and brought to a size which will meet the standard connections of the local fire department of the municipality in which such tenement house is being erected.

The standpipes required by this section need not be installed in any tenement house which is situated where there is no running water and where it is not practicable or possible to obtain water for efficient use of such standpipes in case of fire, until such time as it is practicable and possible to obtain running water; and the department charged with the enforcement of this act shall decide whether or not it is possible or practicable to obtain running water.

Elevator shafts enclosed.

§ 60. In every fireproof tenement house hereafter erected, every elevator shaft, dumb-waiter shaft or other interior shaft shall be enclosed in walls constructed of concrete, reinforced concrete, brick, terra cotta tile or other similar hard incombustible materials, or shall be constructed of metal studs lathed either with metal lath or an approved plaster board and plastered on both sides so as to make a solid partition not less than two inches thick.

In every semifireproof or wooden tenement house hereafter erected, every such shaft shall be enclosed by walls constructed as provided by this act for fireproof tenement houses, or such walls may be constructed with wood studs, with wood firestops the same size as the studs, cut in between the studs at each floor and half way between each floor, lathed on both sides with metal lath or an approved plaster board and be plastered not less than three-quarters inch thick including the lath or the plaster board.

Every opening from any shaft into the building shall be equipped with a metal door and with door frame and trim entirely of metal; or such door and door frame shall be constructed of wood covered with metal on the shaft side thereof and if there is any glass therein, such glass shall be wired glass not less than one-fourth ($\frac{1}{4}$) inch thick. Every door or window therein shall be made to close tight, and every door except elevator doors therein shall be self-closing.

Every window in such shaft shall be of wired glass, not less than one-fourth ($\frac{1}{4}$) inch thick, set in a metal sash or a sash metal covered on the shaft side thereof. At the roof over every elevator shaft there shall be constructed a ventilating skylight or a ventilator with open louvres.

Vent shafts enclosed.

§ 61. In every tenement house hereafter erected every vent shaft shall be enclosed with walls constructed the same as required by this act for elevator shaft in the same class of building. Such vent shafts may, in a semifireproof or wooden tenement house, be lined on the outside thereof (weather side) with metal in lieu of metal lath and plaster; also, that portion of such shaft extending from the ceiling joists to the top thereof may be lined with metal in the same manner as is required for the weather side of such vent shaft.

Every opening from any vent shaft into the building or any window therein, shall be equipped in the same manner as required by this act for elevator shafts in the same class of building.

Plaster on the weather side of any such shaft shall be cement plaster.

Every vent shaft required by this act shall be not less than four feet in any direction and be at least sixteen square feet in area. If such vent shaft exceeds fifty feet in height, measured from the bottom to the top of the walls of such shaft, then such vent shaft shall throughout its entire height be increased in area three square feet for each additional ten feet or fractional part thereof above fifty feet.

Every such vent shaft shall be provided with an air intake or duct at or near the bottom thereof, communicating with the street or yard or a court. Such intake shall be not less than three square feet in total area, and may be divided into not more than three separate ducts running between the joists or otherwise, and shall in all cases be placed as nearly horizontal as possible. Every such intake or duct shall be constructed of approved fireproof material or shall be of metal or metal lined, and be provided with a wire screen of not less than one inch mesh at each end. Plumbing, gas, steam or other similar pipes may be placed in such vent shaft.

Every such vent shaft shall have a door or a window at or near the bottom of the shaft, so arranged as to permit of its being readily cleaned out.

Walls of inner court.

§ 62. The walls of every inner court in a fireproof tenement house hereafter erected shall be constructed of concrete, reinforced concrete, brick, terra cotta tile or other similar hard incombustible material. In a semifireproof or in a wooden tenement house such inner court walls, if surrounded on four sides by the walls of the same building, shall be constructed as provided for fireproof tenement houses, or may be of wood studs, with wood firestops the same sizes as the studs, cut in between the studs at each floor and half way between each floor, lathed on both sides with metal lath, or an approved plaster board, and be plastered not less than three-quarters inch thick including the lath or the plaster board. Plaster on the weather side of such inner court walls shall be cement plaster, or such inner court walls may be lined on the weather side with not less than the number twenty-six (gauge) metal, in lieu of metal lath and plaster.

Boiler room.

§ 63. In every tenement house hereafter erected, every boiler used for purposes of heating the building, using fuel other than gas, and every heating furnace or water-heating apparatus, using oil for fuel, shall be installed in a room, the walls of which room shall be built of concrete, reinforced concrete, brick, stone or terra cotta tile, not less than six (6) inches thick, and such walls shall extend from the floor of the boiler room to the ceiling over same. The entire ceiling of such room shall be built of similar materials as the walls, or shall be built with a double ceiling, with a space of not less than seven-eighths ($\frac{7}{8}$) inch between the two ceilings; each ceiling shall be metal lathed or lathed with an approved plaster board and be plastered not less than three-quarters inch thick, including the lath or plaster board. The floor of a boiler room shall be of concrete not less than two (2) inches thick.

Doors in boiler room.

Any door in the wall of such room shall be a fire-resisting door, constructed of three (3) thicknesses of seven-eighths ($\frac{7}{8}$) inch by not more than six (6) inches, tongued and grooved, matched redwood boards entirely covered on the sides and edges with lock-jointed tin; every such door shall be self-closing, so hung as to overlap the walls of the room at least three (3) inches, and any glass in any such door or any glass in any window or opening in the walls of a boiler room shall be wired glass, not less than one-fourth ($\frac{1}{4}$) inch thick, set in a metal or metal covered sash.

All such doors shall have hinges, hangers, latches and other hardware of wrought iron, bolted to the doors, and shall have steel tracks, when sliding doors are used, with wrought-iron stops and binders bolted through the wall. Swinging doors shall have wall eyes of wrought iron, built into or bolted through the wall.

Every such boiler room shall have a sill across each door not less than four (4) inches high. Such sill shall be of masonry, and the doors shall overlap same at least three (3) inches, or in lieu of a masonry sill a steel or iron sill may be used, in which case the bottom of the door shall close tight on top of same. Every swinging door in a boiler room shall open outward from the boiler room.

Where oil or other fluid fuel is burned, the oil or other fluid fuel shall not be fed by a gravity flow.

Garage.

§ 64. In every tenement house hereafter erected any portion of such building, in which there is kept or stored any automobile or automobiles, shall be a room, the enclosing partitions of which shall be built of concrete, reinforced concrete, brick, stone or terra cotta tile, not less than six (6) inches thick, or may be of wood studs lined on the automobile storage room side with redwood boards not less than seven-eighths ($\frac{7}{8}$) of an inch thick covered with asbestos paper one-eighth ($\frac{1}{8}$) of an inch thick, and then covered with No. 26 (gauge) galvanized iron, and such enclosing partitions shall extend from the floor of the room to the ceiling of the same. The entire ceiling of such room shall be built of material similar to that used in the construction of its walls, or shall be either metal lathed and be well plastered or be lathed with an approved plaster board and be well plastered. The floor of every such room shall be of concrete not less than two (2) inches thick.

Every door, window or other opening in the walls of such room, opening to the interior of the building, shall be protected in the same manner as required by section sixty-three hereof for doors, windows and other openings in a boiler room.

Additional room or hallway.

§ 65. In any tenement house erected prior to the passage of this act, every additional room or hallway that is hereafter constructed or created, may be of the same height as the other rooms or hallways on the same story of such tenement house.

Windows in tenement already erected.

§ 66. Every room in a tenement house erected prior to the passage of this act shall, if the said room be hereafter occupied for living or sleeping purposes, have a window of an area not less than eight square feet, opening directly upon a street, a yard, a court or upon a vent shaft not less than twenty-five square feet in area, which vent shaft shall in no part be less than four feet wide and open and unobstructed, without roof or skylight over same; except that if such room be located on the top floor of the building, such room may be ventilated by a skylight with fixed louvres directly to the outer air, or may have a window opening upon a vent shaft not less than ten square feet in area, if such window from the room be not more than three feet below the top of the wall of such vent shaft.

Every public hallway in every tenement house erected prior to the passage of this act, which does not conform to the provisions for public hallways in buildings hereafter erected, shall be provided with light and ventilation to the outer air. Such light and ventilation shall be provided by the placing of windows or skylights, or by making such alterations as in the judgment of the housing department may be deemed necessary to accomplish the result.

Cooking in bath, etc., unlawful.

§ 67. It shall be unlawful for any person to cook or to prepare food, or to permit or suffer any person to cook or to prepare food in any bath, shower, slop-sink or toilet room, water-closet compartment; or in any closet, or recess from a room, or dressing room, which does not conform to all the provisions of this act as to size of kitchens and windows opening to a street, yard or court, or in any other place in such building which, in the judgment of the department charged with the enforcement of this act, is detrimental to the proper sanitation of such building.

Sleeping in cellar, etc., unlawful. Floor space for each occupant.

It shall be unlawful for any person to live or sleep, or permit or suffer any person to live or sleep in any cellar, bath or shower compartment or slop-sink room, water-closet compartment, hallway, closet, kitchen, recess from a room or dressing room, except when such recess from a room or dressing room has not less than ninety square feet of superficial floor area and complies with every other requirement of this act for rooms, or in any other place which, in the judgment of the department charged with the enforcement of this act, would be dangerous or prejudicial to life or health by reason of want of light, windows, ventilation, drainage, or on account of dampness or offensive, obnoxious or poisonous odors, or in any room that shall be so overcrowded as to afford less than the following floor space for each occupant, in accordance with the age of the said occupant:

<i>Number of Persons over 12 years of age.</i>	<i>Number of persons under 12 years of age.</i>	<i>Superficial floor area required.</i>
1 or	2.....	60 square feet
2 or	4.....	120 square feet
3 or	6.....	180 square feet
4 or	8.....	240 square feet
5 or	10.....	300 square feet
6 or	12.....	360 square feet

Additional floor area in the same ratio shall be provided for additional persons.

Lighting of hallways, etc.

§ 68. In every tenement house there shall be installed and kept burning from sunrise to sunset throughout the year artificial light sufficient in volume to properly illuminate every public hallway, stairway, fire escape egress, elevator, passageway, public water-closet compartment, or toilet room, whenever there is insufficient natural light to permit a person to read in any part thereof.

In every tenement house there shall be installed and kept burning from sunset to sunrise throughout the year artificial light sufficient in volume to properly illuminate every public hallway, stairway, fire escape egress, elevator, public water-closet compartment, or toilet room and exterior passageway on the lot.

Light colored material on walls.

§ 69. The walls and ceilings of every sleeping room in every tenement house shall (except when there is sufficient natural light to permit a person to read in any part thereof during daytime) be calcimined or painted or papered with a light-colored material, and such calcimine, paint or paper, as the case may be, shall be renewed as often as necessary to maintain the same of a light color and clean and free from vermin.

The walls of courts and shafts, unless built of light-colored materials, shall be painted of a light color or whitewashed, and such painting or whitewashing shall be renewed as often as is necessary to maintain the same of a light color.

Repapering.

§ 70. No wall, partition or ceiling of any room in any tenement house shall be repapered, calcimined, or have any other covering placed thereupon unless the old wall paper or other covering shall have first been removed therefrom, and the said wall, partition or ceiling cleaned, disinfected and freed from bugs, insects or vermin.

Repairs.

§ 71. Every tenement house shall be maintained in good repair. The roofs shall be kept waterproof and all storm or casual water properly drained and conveyed therefrom to the street sewer, storm drain or street gutter.

All portions of the lot about a tenement house, including the yards, areaways, vent shafts, courts and passageways, shall be properly graded and drained; and whenever the department charged with the enforcement of this act deems it necessary for the protection of the health of the occupants of such building, or for the proper sanitation of the premises, it may require that the said lot, yards, areaways, vent shafts, courts and passageways be graveled or properly paved and surfaced with concrete, asphalt or similar materials.

Metal mosquito screening.

§ 72. There shall be provided, whenever it is deemed necessary for the health of the occupants of any tenement house or for the proper sanitation or cleanliness of any such building, metal mosquito screening of at least sixteen mesh, set in tight-fitting removable sash, for each exterior door, window or other opening in the exterior walls of the building.

Garbage, cans.

§ 73. In every tenement house there shall be provided by the occupants, or tenants, such number of tight metal receptacles with close-fitting metal covers for garbage, refuse, ashes and rubbish as may be deemed necessary by the department charged with the enforcement of this act, or in lieu of such metal receptacles there may be constructed a garbage chute or shaft approved by the housing department. Each of said receptacles shall be kept in a clean condition by the occupants, or tenants and in the case of a chute or shaft by the person in charge or in control of the building.

Rooms, etc., to be kept clean.

§ 74. Every room, hallway, passageway, stairway, wall, partition, ceiling, floor, skylight, glass window, door, carpet, rug, matting, window curtain, water-closet compartment or room, toilet room, bathroom, slop-sink, or wash-room, plumbing fixture, drain, roof, closet, cellar, or basement in any tenement house or on the lot, yard, court or any of the premises thereof, shall be kept in every part clean and sanitary and free from all accumulation of debris, filth, rubbish, garbage or other offensive matter.

Swill, etc., not to be deposited in plumbing fixtures.

No person shall, or cause or permit any person to, deposit any swill, garbage, bottles, ashes, cans or other improper substances in any water-closet, sink, slop-hoper, bathtub, shower, catch-basin, or in any plumbing fixture connection or drain therefrom; or otherwise to obstruct the same; or to place or cause or permit to be placed any filth, urine or other foul matter in any place other than the place provided for same; or to keep or cause or permit to be kept any urine or filth or foul matter in any room or apartment in any tenement house, or in or about the said building or premises thereof, for such length of time as to create a nuisance.

Beds kept clean.

§ 75. In every tenement house, every part of every bed, including the mattress, sheets, blankets and bedding, shall be kept in a clean, dry, and sanitary condition, free from filth, urine or other foul matter, in or upon the same; and free from the infection of lice, bedbugs or other insects.

Dangerous articles not to be kept.

§ 76. In no tenement house or any part thereof, or in the lot, yard, court or any portion thereof, shall there be kept, stored or handled any article dangerous or detrimental to life or to the health of the occupants thereof; nor shall there be stored, kept or handled any feed, hay, straw, excelsior, cotton, paper stock, rags or junk, except upon a written permit so to do, obtained from the fire commissioner or other department authorized to issue such permit. Every such permit shall be deemed to be a public record, made in duplicate, and a copy thereof shall remain on file in the office of the fire commissioner or department issuing the same.

Animals not to be kept.

§ 77. No horse, cow, calf, swine, sheep, goat, rabbit, mule or other animal, chicken, pigeon, goose, duck or other poultry shall be kept in any tenement house or any part thereof; nor shall any such animal or poultry, nor shall any stable be kept or maintained on the same lot, yard, court or premises of a tenement house or within twenty feet of any window or door or such building, nor shall there be hereafter constructed, altered, converted or maintained in any tenement house any public automobile garage or machine shop, or automobile repair shop.

Bakery.

No bakery or place of business in which fat is boiled shall be constructed or maintained in any tenement house, unless such bakery or place of business in which fat is boiled is constructed of approved fireproof materials, with no openings connecting into the tenement house, and so separated and arranged as to prevent odors from entering such building.

[Connection forbidden with building where liquors, drugs, paints or oils are stored, etc.]

No tenement house shall be connected with or have any door, window or transom opening to any part of a building wherein spirituous liquors, drugs, paint or oil are stored or kept for the purpose of sale or otherwise.

Housekeeper in charge.

§ 78. In every tenement house in which eight (8) or more families reside, and in which the owner does not live, there shall be a janitor, housekeeper or other responsible person, who shall reside in such tenement house or on the same lot or premises thereof and have charge of same.

Action to abate nuisance. Authority to execute order.

§ 79. In case any tenement house, or any part thereof, is constructed, altered, converted or maintained in violation of any provisions of this act or of any order or notice of the department charged with its enforcement, or in case a nuisance exists in any such tenement house or building or structure, or upon the lot on which it is situated, said department may institute any appropriate action or proceeding to prevent such unlawful construction, alteration, conversion or maintenance, to restrain, correct or abate such violation or nuisance, to prevent the occupation of said tenement house, building or structure, to prevent any illegal act, conduct or business in or about such tenement house or lot. In any such action or proceeding said department may, by affidavit set-

ting forth the facts, apply to the superior court, or to any judge thereof, for an order granting the relief for which said action or proceeding is brought, or for an order enjoining all persons from doing or permitting to be done any work in or about such tenement house, building, structure or lot, or from occupying or using the same for any purpose, until the entry of final judgment or order. In case any notice or order issued by said department is not complied with, said department may apply to the superior court or to any judge thereof, for an order authorizing said department to execute and carry out the provisions of said notice, or order, to remove any violation specified in said order or notice, or to abate any nuisance in or about such tenement house, building, or structure, or the lot upon which it is situated. The court, or any judge thereof, is hereby authorized to make any order specified in this section. In no case shall the said department or any officer thereof or the municipal corporation be liable for costs in any action or proceeding that may be commenced in pursuance of this act.

Fine a lien.

§ 80. Every fine imposed by judgment under section six of this act upon a tenement house owner shall be a lien upon the house in relation to which the fine is imposed, from the time of the filing of a certified copy of said judgment in the office of the recorder of the county in which said tenement house is situated, subject only to taxes and assessments and water rates, and to such mortgage and mechanics' liens as may exist thereon prior to such filing; and it shall be the duty of the department charged with the enforcement of the provisions of this act, upon the entry of such judgment, to file forthwith the copy as aforesaid, and such copy upon filing shall be forthwith indexed by the recorder in the index of mechanics' liens.

Notice of pendency of action.

§ 81. In any action or proceeding instituted by the department charged with the enforcement of this act, the plaintiff or petitioner may file, in the county recorder's office of the county where the property affected by such action or proceeding is situated, a notice of the pendency of such action or proceeding. Said notice may be filed at the time of the commencement of the action or proceeding, or at any time afterwards before final judgment or order, or at any time after the service of any notice or order issued by said department. Such notice shall have the same force and effect as the notice of pendency of action provided for in the Code of Civil Procedure. Each county recorder with whom such notice is filed shall record it and shall index it in the name of each person specified in a direction subscribed by an officer of the department instituting such action or proceeding. Any such notice may be vacated upon the order of a judge of the court in which such action or proceeding was instituted or is pending. The recorder of the county where such notice is filed is hereby directed to mark such notice, and any record or docket thereof as canceled of record, upon the presentation and filing of a certified copy of such order.

Name of owner, etc., filed.

§ 82. Every owner of a tenement house and every lessee of the whole house, or other person having control of a tenement house, shall file in the housing department a notice, containing his name and address, and also a description of the property, by street and number and otherwise, as the case may be, in such manner as will enable the department charged with the enforcement of this act easily to find the same; and also the number of apartments in each house, the number of rooms in each apartment, and the number of families occupying the apartments. In case of a transfer of any tenement house, it shall be the duty of the grantee of said tenement house to file in the housing department a notice of such transfer, stating the name of the new owner, within thirty days after such transfer. In case of the devolution of the said property

by will, it shall be the duty of the executor and the devisee, if more than twenty-one years of age, and in case of devolution of such property by inheritance without a will, it shall be the duty of the heirs, or in case all the heirs are under age, it shall be the duty of the administrator of the deceased owner of said property, to file in said department a notice, stating the death of said owner and the names of those who have succeeded to his interests, within thirty (30) days after the death of the decedent, in case he died intestate, and within thirty days after the probate of his will, if he died testate.

Name of agent filed.

§ 83. Every owner, agent or lessee of a tenement house shall file in the housing department a notice containing the name and address of such agent of such house, for the purpose of receiving service of process, and also a description of the property, by street and number or otherwise, as the case may be, in such manner as will enable the department charged with the enforcement of this act easily to find the same. The name of the owner or lessee may be filed as agent for this purpose.

Index of names.

§ 84. The names and addresses filed in accordance with sections eighty-two and eighty-three hereof shall be indexed by the housing department in such a manner that all of those filed in relation to each tenement house shall be together and readily ascertainable. Said indices shall be public records, open to public inspection during business hours.

Time of service.

§ 85. Every notice or order in relation to a tenement house shall be served five days before the time for doing the thing in relation to which it shall have been issued.

Manner of service.

§ 86. In any action brought by any department charged with the enforcement of this act in relation to a tenement house, for injunction, vacation of the premises or other abatement of nuisance, or to establish a lien thereon, it shall be sufficient service of summons to serve the same as notices and orders are served under the provisions of the Code of Civil Procedure.

Minimum requirements. Supplementary laws.

§ 87. The provisions of this act shall be held to be the minimum requirements adopted for the protection, the health and the safety of the community, and for the protection, the health and the safety of the occupants of tenement houses. Nothing in this act contained shall be construed as prohibiting the local legislative body of any incorporated town, incorporated city, incorporated city and county, or county, from enacting, from time to time, supplementary ordinances or laws imposing further restrictions, or providing for fees to be charged for permits, certificates, or other papers required by this act; but no ordinance, law, regulation or ruling of any municipal department, authority, officer or officers, shall repeal, amend, modify or dispense with any of the provisions of this act.

Repealed.

All statutes of the state and all ordinances of incorporated towns, incorporated cities, incorporated cities and counties, and counties, as far as inconsistent with the provisions of this act, are hereby repealed; provided, that nothing in this act contained shall be construed as repealing or abrogating any present law or ordinance of any incorporated town, incorporated city, incorporated city and county, or county in the state which further restricts the percentage of the lot to be covered by a tenement house, the number of stories or height of such tenement house or number of apartments therein, the

occupation thereof, the materials to be used in its construction, or increasing the size of the yards or courts, the floor space to each person occupying a room, the requirements as to sanitation, ventilation, light and protection against fire.

Powers of cities not abrogated.

Nothing in this act contained shall be construed as abrogating, diminishing, minimizing or denying the power of any incorporated town, incorporated city, incorporated city and county, or county, by ordinance or law, to further restrict the percentage of the lot to be covered by a tenement house within said municipality, the number of stories or height of such tenement house or number of apartments therein, the occupation thereof, the materials to be used in its construction, or increasing the size of the yards or courts, the floor space to each person occupying a room, the requirements as to sanitation, ventilation, light and protection against fire.

Constitutionality.

§ 88. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

In effect, when.

§ 89. This act shall take effect and be in force from and after September 1, 1917.

Repealed.

§ 90. The act entitled "An act to regulate the building and occupancy of tenement houses in incorporated towns, incorporated cities, and cities and counties, and to provide penalties for the violation thereof and repealing an act entitled 'An act to regulate the building and occupancy of tenement houses in incorporated towns, incorporated cities, and cities and counties, and to provide penalties for the violation thereof' approved April 16, 1909, statutes of California of 1909, page 948," approved April 10, 1911, statutes of California, 1911, page 860, and approved June 13, 1913, statutes of California, 1913, page 737, and approved May 29, 1915, Statutes of California, page 952, and all acts amendatory thereof are hereby repealed.

1. Constitutionality—Different regulations for buildings already, and those to be, erected.—The tenement house act of 1911 is not invalid on account of unjustifiable discrimination because of different regulations as to buildings already existing and those to be erected.—Matter of Stoltenberg, 165 Cal. 789, 791, 134 Pac. 971.

See, also, same case, 21 Cal. App. 722, 132 Pac. 841.

2. Same—Police power.—The legislature is authorized under the police power to regulate tenement houses for the purpose of safeguarding health and lessening the fire hazard.—Matter of Stoltenberg, 165 Cal. 789, 791, 134 Pac. 971.

See, also, same case, 21 Cal. App. 722, 132 Pac. 840.

3. Same—Improvement of private property not a municipal affair.—Matters relating to the construction of improvements on private property within a city is not a "municipal affair."—May v. Craig, 13 Cal. App. 368, 109 Pac. 842.

4. Same—Municipal building regulations—General law paramount.—The provisions of a municipal ordinance relating to building construction on private property, which merely exact additional requirements to those prescribed by state law, will be sustained, otherwise, if they conflict with state law, the latter will prevail.—May v. Craig, 13 Cal. App. 368, 109 Pac. 842.

THEATERS.

See Kerr's Cyc Civil Code, §§ 53, 54.

CHAPTER 387.

THISTLE.

CONTENTS OF CHAPTER.

ACT 5177. PROPAGATION OF SCOTCH AND CANADIAN THISTLE.

PROPAGATION OF SCOTCH AND CANADIAN THISTLE.

ACT 5177—An act to prevent the propagation of the Scotch or Canada thistle in the counties of Humboldt, Siskiyou, Klamath, Del Monte, and Alameda.

History: Approved March 2, 1872, Stats. 1871-72, p. 214.

CHAPTER 388.

TIDE LANDS.

References: See, generally, tits. "Public Lands"; "Swamp and Overflowed Land Districts."

Tide lands in particular, see particular title.

CONTENTS OF CHAPTER.

ACT 5184. STATE BOARD OF TIDE LAND COMMISSIONERS ABOLISHED.

STATE BOARD OF TIDE LAND COMMISSIONERS ABOLISHED.

ACT 5184—An act to abolish the state board of tide land commissioners, and to repeal sections 365 and 698 of the Political Code.

History: Approved February 4, 1876. Amendments 1875-76, p. 15.

Board abolished.

§ 1. The state board of tide land commissioners is hereby abolished.

Records turned over to surveyor general.

§ 2. All books, maps, papers, and documents belonging to the archives of said board, and all other property of the state under its custody, must be deposited with and kept and preserved by the surveyor general of the state.

Repeal of sections of Political Code.

§ 3. Sections 365 and 698 of the Political Code are hereby repealed.

Repeal of prior act.

§ 4. An act entitled "An act supplementary to and amendatory of An act supplementary to and amendatory of an act entitled An act to survey and dispose of certain salt marsh and tide lands belonging to the state of California," approved March 30, 1868, also an act approved April 1, 1870, approved March 30, 1874, is hereby repealed.

§ 5. This act shall take effect and be in force from and after its passage.

CHAPTER 389.

TIME.

CONTENTS OF CHAPTER.

ACT 5187. MORATORIUM ACT OF 1906.

MORATORIUM ACT OF 1906.

ACT 5187—An act to extend the time for the performance of any act or the taking of any proceeding appointed, required or limited by or in pursuance of law to be performed or taken on any day or within any time in the month of June, 1906, prior to the last day of said month.

History: Approved June 3, 1906, Stats. 1906 (ex. sess.), p. 8.

§ 1. Any act or proceeding appointed, required or limited by or in pursuance of law to be performed or taken on any day or within any time in the month of June, 1906, prior to the last day of said month, may be performed or taken on any day not later than the tenth day of July, A. D. 1906, with the same effect as if it had been performed or taken on the day or within the time wherein such act or proceeding was so appointed, required or limited to be performed. The provisions of this act shall not apply to criminal actions.

§ 2. This act shall take effect immediately.

1. Undertaking on appeal filed in time.—Where an undertaking on appeal should have been filed in the month of June, 1906, by virtue of this act the time to file the same had not expired on July 9, 1906, when the undertaking in the present case was filed.—In re Sutro's Estate, 152 Cal. 249, 92 Pac. 486, 1027.

2. Uncertainty caused by act—Courts not to insist on technicalities.—The act caused much uncertainty as to the time for doing acts required to be done in the matter of appeals, and courts should not insist upon technicalities in that respect.—Estate of Sutro, 152 Cal. 249, 92 Pac. 486, 1027.

3. Street improvement contract executed

in time.—A street improvement contract, executed about three months after the time prescribed by the Vrooman act, but within the time allowed by governor's proclamation as to holidays from April 19 to June 2, 1906, and the present act, was valid.—Rogers Co. v. Workman, 10 Cal. App. 612, 103 Pac. 154.

4. Act does not extend time of redemption by subsequent creditor.—The act does not have the effect to extend the time within which redemption may be made by a subsequent judgment creditor from a prior execution sale against the same debtor.—Summers v. Hammill, 17 Cal. App. 493, 120 Pac. 63.

CHAPTER 390.

TITLES.

References: See tits. "Aliens"; "State."

CONTENTS OF CHAPTER.

ACT 5192. "McENERNEY ACT."

5193. McENERNEY ACT—SUPPLEMENTARY ACT.

5194. TORRENS LAND TITLE AND TRANSFER ACT, LAND TITLE LAW.

5196. REGULATION OF LAND TITLES.

5197. SETTLEMENT OF TITLES IN BRANCIFORTE.

5198. QUIETING TITLE TO LANDS IN NAPA AND SOLANO COUNTIES.

5199. SETTLEMENT OF TITLES IN BENICIA.

"McENERNEY ACT."

ACT 5192—An act to provide for the establishment and quieting of title to real property in case of the loss or destruction of public records.

History: Approved June 16, 1906, Stats. 1906 (ex. sess.), p. 78. Amended March 6, 1909, Stats. 1909, p. 163; February 3, 1911, Stats. 1911, p. 6; May 9, 1913, Stats. 1913, p. 135; April 6, 1917, Stats. 1917, p. 80. Supplemented March 23, 1907, Stats. 1907, p. 950. (See post, Act 5193.)

Title to real property when public records are destroyed.

§ 1. Whenever the public records in the office of the county recorder of any county have been, or shall hereafter be, lost or destroyed, in whole or in any material part, by flood, fire or earthquake, any person who claims an estate of inheritance, or for life in, and who is by himself or his tenant, or other person, holding under him, in the actual and peaceable possession of any real property in such county, or of any real property now in another county but which was formerly in the county of which all or a material part of the records were lost or destroyed as aforesaid, in the event that the records so lost or destroyed included all or a material part of the public records in the office of said county recorder covering all or a material part of the time when said last mentioned real property was in the county whose records were so lost or destroyed, may bring and maintain an action in rem against all the world, in the superior court for the county in which such real property is situate, to establish his title to such property and to determine all adverse claims thereto. Any number of separate parcels of land claimed by the plaintiff may be included in the same action. [Amendment of April 6, 1917. In effect July 27, 1917, Stats. 1917, p. 80.]

Action, how commenced.

§ 2. The action shall be commenced by the filing of a verified complaint, in which the party so commencing the same shall be named as plaintiff, and the defendants shall be described as "all persons claiming any interest in, or lien upon the real property herein described, or any part thereof," and shall contain a statement of the facts enumerated in section one of this act, a particular description of such real property, and a specification of the estate, title, or interest of the plaintiff therein.

Filing of complaint and issue of summons.

§ 3. Upon the filing of the complaint, a summons must be issued under the seal of the court, which shall contain the name of the court and county in which the action is brought, the name of the plaintiff and a particular description of the real property involved, and shall be directed to "all persons claiming any interest in, or lien upon the real property herein described, or any part thereof," as defendants, and shall be substantially in the following form:

"In the superior court of the state of California in and for the county (or city and county) of"

Action No.

..... Plaintiff,

vs.

All persons claiming any interest in, or lien upon, the real property herein described or any part thereof, Defendants.

The people of state of California, to all persons claiming any interest in, or lien upon, the real property herein described or any part thereof, defendants, greeting:

You are hereby required to appear and answer the complaint of, plaintiff, filed with the clerk of the above-entitled court and county, within three months after the first publication of this summons, and to set forth what interest or lien, if any, you have in or upon that certain real property or any part thereof, situated in the county (or city and county) of, state of California, particularly described as follows: (Here insert description.)

And you are hereby notified that, unless you so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint, to wit: (Here insert a statement of the relief so demanded.)

Witness my hand and the seal of said court, this day of, A. D.

(Seal)

.....
Clerk."

Publication of summons.

§ 4. The summons shall be published in a newspaper of general circulation published in the county in which the action is brought. The newspaper in which such publication is to be made shall be designated by an order of the court or a judge thereof to be signed and filed with the clerk. No other order for the publication of the summons shall be necessary, nor shall any affidavit therefor be required, nor need any copy of the complaint be served, except as hereinafter required. The summons shall be published at least once a week for a period of two months, and to each publication thereof shall be appended a memorandum in substance as follows:

“The first publication of this summons was made in (here insert name) newspaper on the day of A. D.,” (inserting the date).

And if the affidavit provided for in section five of this act discloses the name of any person claiming an interest in the property, or a lien thereon adverse to the plaintiff, that fact, together with the name and address (if given) of said person shall be stated in a memorandum to be appended to the summons in substance as follows:

“The following persons are said to claim an interest in, or lien upon said property adverse to plaintiff” (giving their names and addresses as above provided). A copy of the summons, together with a copy of the foregoing memoranda, shall be posted in a conspicuous place on each separate parcel of the property described in the complaint within fifteen days after the first publication of the summons.

Affidavit.

§ 5. At the time of filing the complaint, the plaintiff shall file with the same his affidavit, fully and explicitly setting forth and showing (1) the character of his estate, right, title, interest or claim in, and possession of the property, during what period the same has existed and from whom obtained; (2) whether or not he has ever made any conveyance of the property, or any part thereof, or any interest therein, and if so when and to whom; also a statement of any and all subsisting mortgages, deeds of trust, and other liens thereon; (3) that he does not know and has never been informed of any other person who claims or who may claim, any interest in, or lien upon, the property or any part thereof, adversely to him, or, if he does know or has been informed of any such person, then the name and address of such person. If the plaintiff is unable to state any one or more of the matters herein required, he shall set forth and show, fully and explicitly, the reasons for such inability. Such affidavit shall constitute a part of the judgment-roll. If the plaintiff be a corporation, the affidavit shall be made by an officer thereof. If the plaintiff be a person under guardianship the affidavit shall be made by his guardian.

Service of summons on resident of this state. Non-resident.

§ 6. If the said affidavit discloses the name of any person claiming any interest in, or lien upon, the property adverse to the plaintiff, the summons shall also be personally served upon such person if he can be found within the state, together with a copy of the complaint and a copy of said affidavit during the period of the publication of the summons; and to the copy of the summons delivered to any such person there shall be appended a copy of the memorandum provided for in section 4 hereof.

If such person resides out of this state a copy of the summons, memoranda, complaint and affidavit shall be within fifteen days after the first publication of the summons deposited in the United States postoffice, inclosed in a sealed envelope, postage prepaid, addressed to such person at the address given in the affidavit or if no address be given therein, then at the county seat at the county in which the action is brought. If such person resides within this state and could not with due diligence be found within

the state, within the period of the publication of the summons, then said copies aforesaid shall be mailed to him as above provided forthwith upon the expiration of said period of publication.

Jurisdiction of court.

§ 7. Upon the completion of the publication and posting of the summons and its service upon and mailing to the persons, if any, upon whom it is hereby directed to be so specially served the court shall have full and complete jurisdiction over the plaintiff and the said property and of the person of every one having or claiming any estate, right, title or interest, in or to, or lien upon, said property, or any part thereof, and shall be deemed to have obtained the possession and control of said property for the purposes of the action, and shall have full and complete jurisdiction to render the judgment therein which is provided for in this act.

Answer to complaint.

§ 8. At any time within three months from the first publication of the summons, or within such further time, not exceeding thirty days as the court may, for good cause, grant, any person having or claiming any estate, right, title or interest, in or to, or lien upon, said property or any part thereof, may appear and make himself a party to the action by pleading to the complaint. All answers must be verified and must specifically set forth the estate, right, title, interest, or lien so claimed.

Record of pendency of action.

§ 9. The plaintiff must, at the time of filing the complaint, and every defendant claiming any affirmative relief must, at the time of filing his answer, record in the office of the recorder of the county in which the property is situated, a notice of the pendency of the action containing the object of the action or defense, and a particular description of the property affected thereby; and the recorder shall record the same in a book devoted exclusively to the recordation of such notices and, if the property is still situated in the same county in which the records were destroyed, shall enter, upon a map or plat of the parcels of land, to be kept by him for that purpose, on that part of the map or plat representing the parcel or parcels so described a reference to the date of the filing of such notice and, when recorded, to the book and page of the record thereof. [Amendment of April 6, 1917. In effect July 27, 1917, Stats. 1917, p. 80.]

Judgment not to be given by default.

§ 10. No judgment in any such action shall be given by default; but the court must require proof of the facts alleged in the complaint and other pleadings.

Judgment. Certified copy of judgment.

§ 11. The judgment shall ascertain and determine all estates, rights, titles, interests and claims in and to said property and every part thereof, whether the same be legal or equitable, present or future, vested or contingent, or whether the same consist of mortgages or liens of any description and shall be binding and conclusive upon every person who, at the time of the commencement of the action, had or claimed any estate, right, title, or interest in or to said property, or any part thereof, and upon every person claiming under him by title subsequent to the commencement of the action. A certified copy of the judgment in such action shall be recorded in the office of the recorder of the county in which said action was commenced, and any party or the successor in interest of any party to said action may, at his option, file for record in the office of the recorder of such county the entire judgment-roll in said action.

Rules of practice.

§ 12. Except as herein otherwise provided, all the provisions and rules of law relating to evidence, pleading, practice, new trials and appeals applicable to other civil actions shall apply to the actions hereby authorized.

At any time after the issuance of the summons, any party to the action may take depositions therein in conformity to law upon notice to the adverse party sought to be bound by such depositions and who have appeared in the action (if any) and upon notice filed with the clerk. The depositions may be used by any party against any other party giving or receiving the notice (except the clerk), subject to all just exceptions.

Numbering and indexing of actions.

§ 13. The clerk shall number consecutively in a distinct series, all actions hereby authorized and shall keep an index and register thereof, devoted exclusively to such actions.

Judgment entered prevents further action.

§ 14. Whenever judgment in an action hereby authorized shall have been entered as to any real property, no other action relative to the same property or any part thereof maintained under this act shall be tried until proof shall first have been made to the court that all persons who appeared in the first action or their successors in interest have been personally served with the papers mentioned in section 6 of this act, either within or without this state more than one month before the time to plead expired.

Executor, guardian, etc., may maintain action.

§ 15. An executor, administrator or guardian or other person holding the possession of property in the right of another, may maintain, as plaintiff, and may appear and defend in the action herein provided for.

County includes what.

§ 16. The word "county" whenever used in this act includes and applies to a consolidated city and county.

Remedies deemed cumulative.

§ 17. The remedies provided for by this act shall be deemed cumulative, and in addition to any other remedy now or hereafter provided by law for quieting or establishing title to real property.

Actions, when to be commenced.

§ 18.

This section was repealed in 1913, p. 135. The repealing section read: "It being the intention of the legislature of the state of California to remove the limit of time within which actions may be commenced under the provisions of this act." The time originally allowed to bring suit had been extended in 1909, p. 163, and in 1911, p. 6.

§ 19. This act shall be in force thirty days after its passage.

Filing papers nunc pro tunc in suits to quiet title under the McEnerney act, see Kerr's Cyc. Code Civ. Proc., § 1046a.

Constitutionality and construction.—The constitutionality of this act was upheld in Title Document and Restoration Co. v. Kerrigan, 150 Cal. 289, 119 Am. St. Rep. 199, 8 L. R. A. (N. S.) 682, 88 Pac. 356. This case was followed in American Land Co. v. Zeiss, decided by United States District Judge Van Fleet on September 14, 1908. This latter case was appealed to the United States circuit court of appeals, which referred the question of the constitutional-

ity of the statute to the United States supreme court. The supreme court of the United States upheld the constitutionality of the act. See American Land Co. v. Zeiss, 219 U. S. 47, 55 L. ed. 82, 31 Sup. Ct. Rep. 200.

Consult, also, Robinson v. Kerrigan, 151 Cal. 40, 121 Am. St. Rep. 90, 12 Ann. Cas. 829, 90 Pac. 129, and Hoffman v. Superior Court, 151 Cal. 388, 90 Pac. 931.

Character of possession: Lofstad v. Murasky, 152 Cal. 64, 91 Pac. 1008.

Form and sufficiency of affidavit: Hoffman v. Superior Court, 151 Cal. 388, 90 Pac. 939;

Soher v. Cabannis, 161 Cal. 548, 119 Pac. 911; Hynes v. All Persons, 19 Cal. App. 188, 125 Pac. 253; Potrero Nuevo Land Co. v. All Persons, 158 Cal. 731, 112 Pac. 303.

Mandamus to compel order for publication of summons: Matter of Ford, 160 Cal. 334, 347, Ann. Cas. 1912D, 1267, 35 L. R. A. (N. S.) 882, 116 Pac. 757.

Grantor in deed of trust intended as security for loan of money may maintain action under the act: C. A. Warren Co. v. All Persons, 153 Cal. 771, 96 Pac. 807.

Judgment in as evidence of title: Dore v. Southern Pac. Co., 163 Cal. 182, 124 Pac. 817.

Vacation of decree, sufficiency of evidence: Davidson v. All Persons, 18 Cal. App. 723, 124 Pac. 570.

Default not based on personal service, time to move to set aside: Boland v. All Persons, 160 Cal. 486, 117 Pac. 547.

Right of vendee to return of deposit on destruction of records: Cabrera v. Payne, 10 Cal. App. 675, 103 Pac. 176.

See, also, generally, Kaufman v. All Persons, 16 Cal. App. 388, 117 Pac. 586.

1. Constitutionality—Due process of law.—The act affords such safeguards to unknown owners as satisfy the due process clause of the constitution.—American Land Co. v. Zeiss, 219 U. S. 47, 55 L. ed. 82, 31 Sup. Ct. 200.

Same case: 191 Fed. 125, 111 C. C. A. 605.

2. Same—Same.—Undisclosed and unknown claimants are dangerous to stability of titles to real estate, and are not deprived of due process by being compelled to establish title by judicial proceeding on adequate published notice, if given opportunity to be heard.—American Land Co. v. Zeiss, 219 U. S. 47, 55 L. ed. 82, 31 Sup. Ct. Rep. 200.

Same case: 191 Fed. 125, 111 C. C. A. 605.

3. Same—Same.—See, also, Priest v. Trustees, etc., 232 U. S. 615, 58 L. ed. 757, 34 Sup. Ct. Rep. 443.

4. Same—Same.—The act is not violative of due process of law either because of the service provided for or because the procedure is not judicial.—Title, etc., Co. v. Kerrigan, 150 Cal. 289, 119 Am. St. Rep. 199, 8 L. R. A. (N. S.) 682, 88 Pac. 356.

5. Same—Same.—See Mills v. Denver, etc., Co., 198 Fed. 142; Riley v. Pearson, 120 Minn. 210, L. R. A. 1916D, 7, 139 N. W. 364; Rodriguez v. La Cueva Ranch Co., 17 N. M. 257, 134 Pac. 231; Hunt v. Hay, 214 N. Y. 582, 108 N. E. 852; In re Grand Boulevard, etc., 212 N. Y. 544, 106 N. E. 632; Barkenthien v. People, 212 N. Y. 44, 105 N. E. 810.

6. Same—Not local or special.—The act is not local or special, either because the proceedings are distinctive, or because they are limited in their application to cases where the record was destroyed by the fire of 1906.—Title, etc., Co. v. Kerrigan, 150 Cal. 289, 119 Am. St. Rep. 199, 8 L. R. A. (N. S.) 682, 88 Pac. 356.

7. Same—Not special legislation.—The act is not unconstitutional as special legislation because it divides property owners

into two classes, those with actual possession and those having constructive possession.—Lofstad v. Murasky, 152 Cal. 64, 91 Pac. 1008.

8. Same—Section 1, article III, constitution.—The act is not violative of section 1, article III, of the constitution, on the ground that the action is not judicial and not within the power of that department of the governmental system.—Title, etc., Co. v. Kerrigan, 150 Cal. 289, 119 Am. St. Rep. 199, 8 L. R. A. (N. S.) 682, 88 Pac. 356.

9. Purpose of act.—The purpose of the act is to quiet the title existing at the time the action is commenced against the claims of all persons.—Davidson v. All Persons, etc., 18 Cal. App. 723, 124 Pac. 570.

10. Action in rem—Judgment conclusive.—The action is in rem and the judgment, if valid on its face, is absolutely conclusive of all private rights.—Berton v. All Persons, etc., 176 Cal. 610, 170 Pac. 151.

11. Burden of showing title on plaintiff.—A plaintiff in a McEnerney suit can not prevail unless he shows title in himself, and, if he has no title, he can not complain that some other person without title asserts an interest in the property.—Hart v. All Persons, etc., 20 Cal. App. 664, 148 Pac. 236.

12. "Estate of inheritance"—Grantor of deed of trust given for security has such estate.—The grantor of a deed of trust given as security retains an "estate of inheritance" within the meaning of the act, notwithstanding the provisions of sections 863-866 of the Civil Code.—Charles A. Warren Co. v. San Francisco Savings Union, 153 Cal. 771, 96 Pac. 807.

13. Same—Same—Section 5 implies authority to bring the suit.—The language of section 5 implies that such a person is entitled, under the act, to bring a suit to quiet title.—Charles A. Warren Co. v. San Francisco Savings Union, 153 Cal. 771, 96 Pac. 807.

14. Owner of reversionary interest in fee.—Where land granted to the city of San Francisco for ninety-nine years, under the act of March 26, 1851, and afterwards the state's reversion in fee was conveyed to plaintiff's prior grantor, under the act of May 18, 1853, plaintiff held such an estate in the land as entitled him to bring a suit under the act to establish his title, though the technical relation of landlord and tenant did not exist between plaintiff and these in possession under the term.—Potrero, etc., Co. v. All Persons, etc., 158 Cal. 731, 112 Pac. 303.

15. "Persons," means neither the state nor the city and county of San Francisco.—The word "persons" does not apply to the state, nor to the city and county of San Francisco, so as to determine rights in a dedicated street.—Berton v. All Persons, etc., 176 Cal. 610, 170 Pac. 151.

16. Affidavit—Insufficient.—An affidavit averring that plaintiff did not have physical possession of the premises, that his only possession was the constructive possession accompanying the legal title, and that such

constructive title had never been disturbed, was insufficient to show actual possession.—*Lofstad v. Murasky*, 152 Cal. 64, 91 Pac. 1008.

17. Same—Same.—An affidavit averring that the title to the property was conveyed by the state to one P., and thereafter, through divers mesne conveyances to plaintiff, who was the owner and holder thereof, and has been for the last ten years or more, was held not to show how long plaintiff had owned and enjoyed the property, nor describe or characterize the person from whom title was obtained.—*Potrero, etc., Co. v. All Persons, etc.*, 158 Cal. 731, 112 Pac. 303.

18. Same—Sufficient.—An affidavit averring simple possession, without describing its character, held sufficient to give the court jurisdiction, the word "character" in section 5, having no reference to possession.—*Cohar v. Cabaniss*, 161 Cal. 548, 119 Pac. 911.

19. Same—Same.—An affidavit, averring plaintiff's interest and possession, showing who were her grantors, and under what decree she became entitled to possession, held sufficient under the provisions of section 5 of the act.—*Soher v. Cabaniss*, 161 Cal. 548, 119 Pac. 911.

20. Same—Same.—The affidavit in the present case held to be sufficient.—*Hynes v. All Persons, etc.*, 19 Cal. App. 185, 125 Pac. 253.

21. Same—Not necessary to set forth every probative fact.—It is sufficient that the affidavit contains such a full and complete statement of plaintiff's interest as will enable the defendants to verify the same, prevent fraud, and safeguard their rights, and it is not necessary to set forth every probative fact relating to plaintiff's estate.—*Hynes v. All Persons, etc.*, 19 Cal. App. 185, 125 Pac. 253.

22. Same—Description of property.—Where the summons and complaint particularly described the property, it is sufficient if the affidavit embraces the description by reference.—*Hynes v. All Persons, etc.*, 19 Cal. App. 185, 125 Pac. 253.

23. Same—Showing of diligence not required to give—Affidavit sufficient.—The act does not require a showing of diligence in making inquiries to ascertain if there are others claiming interests in the property in order to give the court jurisdiction, and an affidavit of plaintiff that he did not know and had never been informed that any other person claimed an interest adverse to him was sufficient.—*Hoffman v. Superior Court*, 151 Cal. 386, 190 Pac. 939.

24. Adverse possession not required to be proved.—Adverse possession need not be proved as a prerequisite to the relief prayed.—*Larsen v. All Persons, etc.*, 165 Cal. 407, 132 Pac. 751.

25. Same—Actual possession and occupancy sufficient against a trespasser.—Actual possession and occupancy under claim of ownership, for any period, enables the possessor to quiet title against a trespasser,

or one establishing no title in himself.—*Hart v. All Persons, etc.*, 26 Cal. App. 664, 148 Pac. 236.

26. Possession held sufficient.—The fact that the lot was not occupied after the fire, but that a watchman visited the ruins of the building, that had formerly stood thereon daily, until September 21, 1906, can not be said to show such lack of actual possession as to prevent the plaintiff from bringing a McEnerney suit.—*Vanderbilt v. All Persons, etc.*, 163 Cal. 507, 126 Pac. 158.

27. Lis pendens.—The notice required by the McEnerney act was the *lis pendens* provided by the Code of Civil Procedure.—*Davidson v. All Persons, etc.*, 18 Cal. App. 723, 124 Pac. 570.

28. Rules of practice applicable to appeals in other civil cases, apply.—The rules of practice relating to appeals under the McEnerney act are those applicable to other civil actions.—*Potrero, etc., Co. v. All Persons*, 155 Cal. 371, 101 Pac. 12.

29. Service of summons—Equal to personal service.—Service of summons as provided in the act is as effective as personal service.—*Bradford v. Trapp*, (Cal. App.) 193 Pac. 584.

30. Summons—Omission of names of adverse parties.—The omission of the names and addresses of adverse claimants from the summons was held not fatal where the only adverse party mentioned in the affidavit appeared and disclaimed any interest in the property.—*Hynes v. All Persons, etc.*, 19 Cal. App. 185, 125 Pac. 253.

31. Default—Attempt to open.—Attempt to open default McEnerney decree.—*Boland v. All Persons, etc.*, 160 Cal. 486, 117 Pac. 547; *Osmont v. All Persons*, 165 Cal. 537, 133 Pac. 480.

32. Same — Motion granted. — Motion granted in the following cases: *Davidson v. All Persons, etc.*, 18 Cal. App. 723, 124 Pac. 570.

33. Judgment must be several and independent. — The judgment under the McEnerney act must be several and independent.—*Potrero, etc., Co. v. All Persons*, 155 Cal. 371, 101 Pac. 12.

34. Action to set aside decree—Complaint insufficient.—A complaint in equity seeking to set aside a McEnerney decree on the ground of fraud and the ignorance of the alleged actual owner, plaintiff's predecessor in interest, which alleges such ignorance on information and belief merely, is insufficient.—*Dowling v. Spring Valley Water Co.*, 174 Cal. 218, 219, 162 Pac. 894.

35. Same—Same.—In a suit in equity to set aside a McEnerney decree, an allegation that the assessment rolls of the county showed the land assessed to plaintiff's predecessor does not justify the allegation on information and belief that fraud was committed by defendant's agents when they deposited in the McEnerney suit that they knew of no adverse claimants.—*Dowling v. Spring Valley Water Co.*, 174 Cal. 218, 221, 162 Pac. 894.

36. Same—Fraud must be pleaded and proved—Plea on information and belief in-

sufficient.—Where it is sought in equity to set aside a McEnerney decree on the ground of fraud, such fraud must be clearly pleaded and proved, and it is not sufficient to plead

it on information and belief unless the facts upon which such belief is founded is also pleaded.—*Dowling v. Spring Valley Water Co.*, 174 Cal. 218, 221, 162 Pac. 894.

McENERNEY ACT, SUPPLEMENTARY ACT.

ACT 5193—An act supplementary to the act approved June 16, 1906, entitled “An act to provide for the establishment and quieting of title to real property in case of the loss or destruction of public records,” providing for the making and recordation of notice of ownership or claim to real property.

History: Approved March 23, 1907, Stats. 1907, p. 950. Supplementary to McEnerney act. (See ante, Act 5192.)

Claim of title to real property when records are lost.

§ 1. In any case where the title to real property might be established or quieted under the provisions of the act to which this act is supplementary, any person or corporation who is or claims to be the owner of such real property or of any interest therein or lien thereon may, by himself or by his agent, duly authorized by letter of attorney theretofore recorded in the office of the county recorder of the county or city and county where such property is situated, sign, verify and file for record in the office of the said county recorder a notice in substantially the following form, to wit:

“Notice of ownership and claim to real property under an act of the legislature of the state of California approved (here insert the date of the passage of this act), 1907.

“Notice is hereby given that (here insert name of claimant), whose residence is at (here insert street and number, city or town, county and state of residence), is the owner of an interest in the real property situated in the (here insert name of city or town if the property be located in a city or town), county of (here insert name of county or city and county in which property is located), state of California, described as follows, to wit: (here insert a particular description of real property)

“The character of the interest in said real property owned by the claimant is (here insert description of the character of interest in or lien upon the real property) and the said interest was obtained from (here insert the name of the party from whom said interest was obtained), and at the time and in the manner following (here insert time at which and manner in which said interest was acquired)

Said notice shall be signed by the claimant or by his agent, as hereinbefore provided, and shall be verified by the oath of the party signing it, to the effect that all of the statements therein contained are true to the knowledge of said party.

Duty of recorder.

§ 2. Upon the filing of said notice for recordation the said recorder shall forthwith record said notice in a book devoted exclusively to the recordation of such notices, and shall properly index the same with reference to the name of the claimant, and shall enter upon a map or plat of the parcels of land in the county (which said map or plat shall be kept by him for that purpose and be devoted exclusively thereto), on that part of the map or plat representing the parcel or parcels described in said notice, a reference to the date of the filing of said notice for recordation, and, when recorded, to the book and page of the record thereof. From and after three days after the filing of said notice for record, all persons who may thereafter begin actions under the provisions of the act to which this act is supplementary, shall be deemed to have notice of the facts stated in said notice, but neither the filing of said notice for record nor its recordation shall be deemed to give constructive notice to any other person or for

any other purpose than as herein prescribed. The original of said notice shall remain on file in the office of said county recorder.

In actions relating to real property, claimants in notice must be named.

§ 3. Any person who, from and after three days after the date of the filing of such notice for record, shall begin any action relating to the real property described in such notice, to perfect or establish his title thereto, or to any part thereof, or any interest therein, under the provisions of the act to which this act is supplementary, must name the claimant in such notice, or any person who is a successor in interest of such claimant under a subsequently duly recorded written instrument, judgment or decree, as a party said to claim an interest in or lien upon the property adverse to the plaintiff in such action in the affidavit and in the memorandum appended to the summons provided for in the act to which this act is supplementary, and must cause such claimant, or such successor in interest of such claimant, by virtue of a subsequently duly recorded written instrument, judgment or decree, to be duly served with summons in such action, in the manner provided by the act to which this act is supplementary, otherwise neither the said action nor any judgment or decree which may be given or made therein shall in any wise affect the title or interest in the property described in such notice, owned by the claimant named therein at the time of the filing thereof, or by any successor in interest of such claimant by virtue of a written instrument, judgment or decree duly recorded subsequently to the filing of such notice and prior to the commencement of the action; provided, however, that the failure to name said claimant or such successor in interest, as aforesaid, in said affidavit or memorandum, or to serve such claimant or such successor in interest, shall not affect the validity of the judgment or decree rendered in such action as to any other persons, but such judgment or decree shall be valid and binding upon all persons except such claimant or such successor in interest.

Executor may record notice.

§ 4. An executor, administrator or guardian, or other person holding the possession of property in the right of another, may make, sign, verify and file for record the notice and affidavit in this act provided for on behalf of the estate or interest which he represents.

Act supplementary to act of 1906.

§ 5. This act shall be supplementary to the act approved June 16, 1906, entitled "An act to provide for the establishment and quieting of title to real property in case of the loss or destruction of public records."

§ 6. This act shall take effect immediately.

TORRENS LAND TITLE AND TRANSFER ACT. "LAND TITLE LAW."

ACT 5194—An act for the certification of land titles and the simplification of the transfer of real estate.

History: Approved March 17, 1897, Stats. 1897, p. 138. Entire act amended by an initiative measure, known as the "Land Title Law," at the general election of November 3, 1914, and approved. In effect December 19, 1914, Stats. 1915, p. 1932.

The amended act is as follows:

LAND TITLE LAW.

[County recorders to be registrars of title.]

§ 1. Recorders and ex officio recorders in the several counties of this state shall be registrars of titles in their respective counties, and their deputies shall be deputy registrars. All laws relative to recorders and their deputies, including their compensation, clerk hire, and expenses, shall extend to registrars and their deputies, so far as

the same may be applicable, except as otherwise provided in this act. Registrars of titles shall be county officers within the meaning of the laws of this state.

[Official bonds.]

§ 2. The official bonds now required by law to be given by recorders before entering upon the discharge of their duties, shall also apply to and cover the faithful discharge of their duties as registrars, and of their deputies, whether such additional condition be specifically provided for in such bonds or not; provided, however, that recovery on such bond be had only for damages sustained through the gross or willful negligence or gross or willful neglect of duty or gross or willful mismanagement on the part of such recorder or registrar or any of his deputies.

[Deputies.]

§ 3. Deputies may perform any and all duties of the registrar, in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar.

[Registrars and deputies prohibited from practicing law.]

§ 4. Registrars and deputy registrars are prohibited from practicing law, or acting as attorneys or counselors at law, or having as a partner a lawyer or any one who acts as such, or from acting as searches of title under this act, excepting only such deputies as may be appointed as attorneys pursuant to the provisions of section 108 of this act.

[Land brought under operation of act.]

§ 5. All land may be brought under the operation of this act by the owner or owners of any estate or interest therein, whether legal or equitable (other than an undivided share or an easement) by filing with the county clerk his or her or their verified petition to the superior court of the county within which such land is situated, which petition shall set forth the following facts, to wit: The full name, occupation, residence, and post-office address of the applicant or applicants, and where any applicant appears by any representative because of any disability, also, the full name, occupation, residence and post-office address of the person so representing the applicant and the reasons for his so acting; if the application is by a corporation, its name, when and where incorporated, its principal place of business and the names and post-office addresses of its president and secretary, or if none, its executive officers; whether or not the applicant is married and if married, the full name and residence of the husband or wife; and if unmarried, whether he or she has been married, and if so, how the marriage relation terminated, and if the marriage relation was terminated by annulment or divorce, where and by what court; that each of the applicants is of the full age of twenty-one years and free from any disability, or if a minor or under disability, his age and the nature of such disability; a description of the land; the value at which the land and permanent improvements, if any, were assessed on the last assessment for county taxation; and if the application is by more than one person, any one of whom claims title in severalty to any part of the land described in the petition, the particular part of the land to which each petitioner severally claims title; a statement of the estate or interest which each applicant has or claims and whether or not the same is community property or is subject to a homestead or to any easement, lien or incumbrance and if so the name and post-office address, if known, of each holder thereof, the nature and the amount of the same, and if recorded, the book and page of the record; a statement of whether or not the land is occupied and if so, the full name and post-office address of each occupant and what interest he has or claims; a statement of any other person who has any estate or claims any interest in the or any part of the land, in law or equity, in possession, remainder, reversion or expectancy and the names and post-office addresses, if known, of every such person together with the names and post-office addresses of all the owners of adjoining lands, so far as the same can be ascer-

tained upon diligent inquiry. If the application is by a husband or wife and the property is community property or is subject to a homestead, both spouses must join in the application; persons who collectively claim to own the entire legal estate in fee simple to the or any part of the land may join in the petition; a corporation may apply by its duly authorized agent; the estate of a deceased person by the administrator or executor and a minor or other person under disability by his legally appointed guardian, but the person in whose behalf the application is made shall be named as applicant. Land constituting a single parcel and lying partly in two or more counties may be included in one application, which may be made in either county in which the land lies, but the certificate issued therefor must be filed with the registrars of all the counties within which such land is situate.

[Identification of land in municipality by map, etc.]

§ 6. If said land is part of a city, town or subdivision of which a map or plat made and verified as required by the then existing laws of the state of California or an official map is on file in the office of the county recorder and upon such map the land appears in such manner that it can be identified thereon by reference, the application may refer to such map. In all cases where said land can not be identified by reference to such map or where no such map is on file in the office of the county recorder, a plat or plan of survey of the land made by the county or a licensed surveyor must accompany the application. Such survey must show the boundaries of the land and its relation to adjoining lands and streets and any encroachments if any. The court may, in any case, before decree, require a survey to be made for the purpose of determining exact boundaries. If the application describes the land as bounded by a public or private way, it shall state whether or not the applicant claims any and what land within the limits of the way and whether the applicant desires to have the line of the way determined.

If it appears by the petition that the applicant, either by himself or by himself and his predecessors in interest, has been in the actual, exclusive and adverse possession of the or any part of the land described, continuously for more than five years next preceding the filing of the petition claiming to own the same in fee against the world, and that he has or that he and his predecessors in interest have paid all taxes of every kind legally levied or assessed against such property during said period, the petition must then also state the character of such possession and the applicant must prove the same to the satisfaction of the court on the hearing. Each application must be accompanied by an abstract of title to all land which does not appear by said petition to have been adversely held as hereinabove provided. When the title to the or any of the land described has been previously determined by a final decree of a court of competent jurisdiction, no abstract regarding the same need antedate such decree.

[Titles previously insured.]

When the title to the or any of the land described has been previously insured by a corporation transacting business in insuring titles to real estate and a policy of insurance has been issued by said corporation and at the time of the issuance of said policy, said company had fully complied with all laws of the state of California, such policy may be made the starting point of any abstract to be filed under the provisions of this act and the abstract of title so to be presented need only commence at the date of such title insurance policy and the verification thereof hereinafter provided need only apply to the portion of said abstract subsequent to the date of said title insurance policy, but must include all defects or exceptions stated in said policy.

[Abstracts verified.]

All abstracts herein referred to must be verified by the searcher making the same, as in proceedings in partition, or if made by a corporation, by the certificate of such corporation, under its seal. Where actual, exclusive and adverse possession and pay-

ment of taxes is alleged but not proved to the satisfaction of the court on the hearing, the court may require an abstract of the title as herein provided to be furnished which shall then be used in the same manner as if such abstract had been filed with the application.

[Bond of abstracters who have not fully complied with law.]

No person, nor any corporation which, at the time has not fully complied with the provisions of the laws of the state of California, shall be authorized to make or furnish such abstracts of title until after entering into an undertaking with two or more sufficient sureties to the people of the state of California in a sum not less than \$10,000.00, which may be increased from time to time by order of the court whenever it shall appear to such court that by reason of the number of abstracts of title which any one person or corporation is making or furnishing under one bond, the state is not sufficiently secured thereby.

[Recording of bonds.]

Such bond shall be recorded in the record of official bonds in the recorder's office of the county. Said bond shall be conditioned to pay all damages and costs which the state may sustain by reason of any error or insufficiency in said or any of said abstracts. The sureties on such bond shall qualify as provided in section ten hundred and fifty-seven of the Code of Civil Procedure and the sufficiency of the bond and of the sureties thereon shall be approved by a judge of the superior court of the county where such bond is to be filed. The sureties upon such bond may become severally liable in portions of not less than five hundred dollars each, making in the aggregate at least two sureties for the whole sum.

[Endorsement by clerk of time of presentation.]

Upon any petition hereunder being filed, the clerk shall immediately endorse thereon the exact time of its presentation and shall enter the same in a book kept for that purpose known as the land register docket.

[No mortgage, lien, charge or lesser estate than fee simple to be registered unless the fee simple is first registered.]

§ 7. No mortgage, lien, charge, or lesser estate than a fee simple shall be registered unless the fee simple to the same land is first registered. It shall not be an objection to bringing land under this act, that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien, or charge; but every such lesser estate, mortgage, lien, or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens, and charges as are so noted, except as herein provided.

[Registration of tax title, when.]

§ 8. No title derived through sale for any tax or assessment shall be entitled to be first registered, unless it shall appear to the satisfaction of the court upon the hearing of the application that the applicant or those through whom he claims title, have been in the actual, exclusive and adverse possession of the land under such title at least five successive years and have paid all taxes and assessments legally levied thereon during said period. But the foregoing shall not apply to any title derived through sale by the state of California of any property which has been sold by the state for taxes and held by the state for the period provided by law.

[Amendment of petition.]

§ 9. The application may be amended only by petition verified as in the case of the original. Such amendment may be ordered by the court on its own motion, or upon the motion of any person interested in the proceedings.

[Filing of application sufficient notice to subsequent purchasers, etc., without lis pendens.]

§ 10. The filing of the application in the office of the county clerk shall be sufficient notice of the same to all subsequent purchasers or incumbrancers without the filing of a lis pendens in the office of the recorder.

[Examination of abstracts by court.]

§ 11. The court shall, in its discretion, where one or more abstracts are presented with the petition, examine them itself or refer the same as provided in section 18 of this act. If it shall appear to the court from an examination of the abstract or abstracts or from the report of the examiner of titles or from the petition where no abstracts are required, that the title to the land described in the application appears to be substantially as alleged, the court shall order notice to be given as provided in this act.

[Notice of petition, etc.]

§ 12. When the court shall order notice given, a notice must be issued, under the seal of the court, which shall contain the name of the court and the county in which the action is brought, the name or names of the applicant or applicants and a particular description of the land involved, which notice shall be directed to all parties appearing by the petition or the petition and abstract or by the report of the examiner of titles, if any, to have any interest in the land or any part thereof and which notice shall contain a statement that the petition has been filed by the applicant or applicants for the registration of the title to the land described therein as provided by this act and praying for a decree declaring the applicant or applicants to be the owner in fee of such land in accordance with the prayer of said petition and which notice shall direct all whom it may concern to appear and answer said petition within ten days after personal service if served within the county or within thirty days if served elsewhere and that otherwise the court will grant said petition and direct registration of the title to said land in accordance with the terms of this act and that said person so served will be forever barred from disputing the same. When the notice is issued, service thereof shall be made as follows: In all cases said notice shall be published in a newspaper of general circulation published in the county, to be designated by the court, for four successive weeks; if the notice be published in a daily newspaper, publication therein once a week for four successive weeks shall be sufficient. All parties who have not joined in the petition or assented thereto in writing and who appear by the petition or petition and abstract or report of the examiner of titles to be interested in the fee, all occupants named in the petition and the husband and wife of the applicant, if married, shall be personally served with a copy of the notice, attached to a copy of the petition, if they reside in the state and can, with reasonable diligence, be found and served therein. All owners of adjoining lands who have not given their written consent to the hearing of the petition and who reside in the state and can, with reasonable diligence, be found and served therein, shall be served with a copy of said notice, without a copy of said petition, personally.

[Notice to non-residents.]

As to all persons who have not joined in the petition or who have not in writing assented to the hearing thereof, who do not reside in the state or who can not, with reasonable diligence, be found and served therein, a copy of such notice, without a copy of the petition, shall, within thirty days after the first publication of such notice, be sent to such party at his last known place of residence, by mail, postage prepaid and if his last known place of residence can not with reasonable diligence be ascertained, then such notice must be mailed to him in care of the county clerk of the county in which the land is situated; provided, however, that as to all such persons so to be

served by mail who appear by the petition or petition and abstract or report of the examiner of titles to be interested in the fee, a copy of the petition shall be attached to the copy of the notice mailed to them as herein provided; provided, further, that no copy of abstract, order or map need be served with any notice.

[Appearance and objection by person claiming interest.]

All persons who claim an interest may appear and object to the granting of the application and if such objection is sustained, the costs of the same shall be paid by the applicant; if not, by the person so objecting. The time for appearance shall be ten days after personal service within the county; thirty days after personal service out of the county and in the state; all persons not required by this section to be served personally shall have sixty days after the first publication of such notice within which to appear.

[Assent of person claiming interest.]

All persons having or claiming any interest in the land or any part thereof may assent in writing to the registration thereof and the person thus assenting need not be named as a defendant in the registration proceeding, or, if already named as a defendant, need not be served with notice therein. Such assent shall be executed and acknowledged in the manner now required by law for the execution and acknowledgment of a deed and shall be filed with the clerk of the court.

[Guardians, appointment of.]

§ 13. Upon the petition of the applicant or of any person interested in the proceedings, the court shall appoint a disinterested person to act as guardian ad litem for minors and other persons under disability and for all persons not in being who may appear to have any interest in or lien upon the land. If the petition prays to have the line of any public way determined, notice shall be given to the mayor or other presiding officer of any incorporated city or town in which such way is situated or if such way be situated outside of any incorporated city or town, then to the chairman or presiding officer of the board of supervisors of the county in which such way lies, by delivering to such mayor or other presiding officer or to the chairman or presiding officer of such board of supervisors a copy of such notice personally. If the land borders on a navigable stream or on an arm of the sea or if it otherwise appears from the application or the proceedings that the state may have a claim adverse to that of the applicant, notice shall be given in the same manner to the attorney general. The court may also cause such other or further notice of the application to be given as it may deem necessary and proper.

[Hearing of petition.]

§ 14. After the notice required to be given by this act has been given and the time for all persons to appear has expired, the court shall set the petition down for hearing upon notice to all persons who have appeared as is required in other civil actions and shall proceed to determine the title to all the land described in the petition and of all persons who may have any interest therein or in any part thereof and whether or not the or any part of the land, the title to which is so determined is the separate or community property of the party found to be the owner and whether or not the title to the or any part of the land is held in any special capacity and shall make, give and enter a decree confirming the title of the person found to be the owner whether he be the applicant or any other person who may, in the proceeding, ask to have his title registered and shall order the registration of all such land.

[Trial of issues by jury.]

Upon the trial of any issue of fact raised by the verified pleading of any person claiming by such pleading to have an interest in the or any part of the land or appur-

tenances, such issue shall, upon demand of any party appearing, be submitted to a jury in the same manner and to the same extent as such issue can, under general law and the constitution of the state, be submitted to a jury trial in like matters and, when so submitted, the verdict of the jury shall have the same force and effect as is provided by general law upon the submission of like issues to a jury.

[Recitals of decree.]

§ 15. Every decree shall state whether or not the owner of the land directed to be registered is married or unmarried and, if married, the full name of the spouse; if the owner is under a disability, it shall state the nature of the disability and the person acting for him and the source of his authority and if a minor, it shall state his age and in whose custody his estate then is; it shall also contain an accurate description of the land to which the court shall determine title and shall set forth the estate of the owner and also, in such a manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments and other incumbrances, including the rights of husband or wife, if any, to which the land or the owner's estate therein is subject and may contain any other facts properly to be determined by the court. The decree shall be stated in a form convenient for transcription upon the certificate of title and any lien or other charge against the property, if recorded, shall be referred to by book and page of the record.

[Appeals.]

Any party aggrieved by such decree may appeal therefrom in the manner now or hereafter provided by law for appeals in civil actions; such decree shall be filed with the clerk and a certified copy thereof filed with the registrar, who shall thereupon issue a certificate of title to each person declared by said decree to be the owner of any parcel of land in severalty and said registrar's act in filing said decree and issuing said certificates shall have the effect of bringing said land under the operation of this act as herein provided as of the date of filing of the petition. Said certificate shall contain a description of the property registered and shall also show the character of the ownership and whether or not the land is separate or community property and if community the names of both husband and wife, the nature, amount and order of the liens and incumbrances and other charges against the same and any other interest or condition which shall be found to exist by the decree.

[Decree in rem. Effect of decree.]

§ 16. A decree of the court ordering registration shall be in the nature of a decree in rem, shall forever quiet the title to the land therein ordered registered and shall be final and conclusive as against the rights of all persons, known and unknown, to assert any estate, interest, claim, lien or demand of any kind or nature whatsoever, against the land so ordered registered or any part thereof, except only as in this act provided.

[Inclusion of decree in proceedings to quiet title, partition land or administer estates of deceased persons.]

§ 17. Whenever any proceeding is hereafter commenced in the superior court of any county by any person or persons either for themselves or in a representative capacity, wherein it is sought to quiet, establish title to, partition land or to administer upon any estate of a deceased person where the estate consists in whole or in part of land, and in which proceeding the court has or can acquire jurisdiction of such land in rem, any decree rendered in any such proceeding quieting or establishing the title to any land or partitioning or distributing land may order such land registered under this act whenever, in such proceeding, notice of the intention to include an order of registration

thereof in any such decree shall have been published and service thereof made on all persons interested in the manner required by this act and when, in the application for such notice, in such proceeding, the facts required to be set forth by sections 5 and 6 of this act are alleged.

[Appointment of examiner of titles. Shall be an attorney in good standing.]

§ 18. Upon the filing of the petition or thereafter, the court may, in its discretion, appoint an examiner of titles to whom any abstract or abstracts may be referred for examination. Such examiner of titles shall be an attorney in good standing, skilled in the examination of titles and admitted to practice before the supreme court of the state for at least five years preceding his appointment. The compensation of such examiner shall be agreed upon between the applicant or other parties and the examiner or if not agreed upon shall be fixed by the court and such compensation shall be paid by the person or persons in whose favor registration is granted as a part of the cost of the proceedings. More than one examiner may be appointed in any county if desired.

[Duties of examiner of title.]

§ 19. Whenever an examiner of titles is appointed and any abstract is referred to him for examination, he shall proceed to examine into the title of the land described in the application and shall investigate all facts pertaining to the title which shall be brought to his notice and shall file a written report with the court together with a certificate of his opinion upon the title. No decree shall be entered by the court in cases where a reference is had, until the written opinion of such examiner shall be filed. The court shall not be bound by any report of such examiner but may require other or further proof.

[Withdrawal of application and return of abstracts of title, etc.]

§ 20. Any applicant may, upon payment of all fees due, withdraw his application at any time prior to the hearing thereof and upon the written request of such applicant and the order of the court, the clerk shall return to the applicant all abstracts of titles, deeds, and other instruments, except depositions or affidavits deposited by him for the purpose of supporting his application.

[In case of death or disability of applicant, proceedings continued by representative or successor in interest.]

§ 21. In case of the death or any disability of the applicant, the court, on motion, may allow the proceeding to be continued by or against his representative or successor in interest. In case of any other transfer of interest the proceeding may be continued in the name of the original applicant, or the court may allow the person to whom the transfer is made to be substituted in the proceeding.

[Duties of registrar upon filing decree.]

§ 22. Immediately upon the filing with the registrar of the certified copy of the decree ordering registration, he shall proceed to register the title in accordance with the directions of the decree and issue a certificate or certificates of title in the manner therein directed and the registrar shall also immediately make an entry in a book kept by him for that purpose showing the name of the person to whom the certificate was issued, its number, the day, hour and minute of its issuance, the name of the person to whom the duplicate certificate was delivered and the book and page where the original certificate is entered or recorded. In said book there shall be provided a place for the signature of the person to whom a certificate is issued upon giving receipt for such certificate as provided for by section 30 of this act and where in cases where such receipt is not signed in the presence of the registrar, the same may be pasted. Such

receipts when so signed and witnessed or acknowledged shall be prima facie evidence of the genuineness of the owner's signature.

[Certificate of title.]

§ 23. Every first and subsequent certificate of title shall be in duplicate and numbered consecutively and bear date the year, month, day, hour, and minute of its issue, and shall be under the hand and official seal of the registrar. One copy of said certificate shall be retained by the registrar and be known as the original, and the other shall be delivered to the owner, or person acting for him, and be known as the duplicate. The certificate shall state whether the owner, except in the case of a corporation, executor, administrator, assignee, or other trustee, is married or not married, and, if married, the name of the husband or wife. If the owner is a minor, it shall state his age; if under any other disability, the nature of the disability. If issued to an executor or administrator, the certificate shall show the name of the deceased testator or intestate; if to an assignee in insolvency or trustee in bankruptcy the name of the insolvent or bankrupt. The registrar shall note at the end of the certificate, original and duplicate, in such manner as to show and preserve their priorities, the particulars of all estates, mortgages, liens, incumbrances, and charges to which the owner's title is subject.

[Form.]

§ 24. No particular form of certificate of title is required, but the same may be, subject to such changes as the case may require, substantially in the following form:

State of California,
County of..... } ss.
A. B. (state occupation and residence, giving street and number), state of California (if an administrator, give the name of the deceased; if a minor, give his age; if under other disability, state its nature), married to (name of husband or wife, or if not married so state), is the owner of an estate in fee simple (or as the case may be) in the following land (insert description contained in the decree). Subject, however, to the estates, easements, liens, incumbrances, and charges hereunder noted. (In case of trust, condition, or limitation, say "in trust," or "upon condition," or "with limitation," as the case may be.)

1. Mortgage to for the sum of \$....., dated, payable after date, with interest at per cent per, interest payable
2. Mechanics lien in favor of X. Y. for \$....., filed
3. Assessment for improvement of street. Amount \$..... due

(Any other incumbrances or charges.)

In witness whereof, I have hereunto set my hand and caused my official seal to be affixed, this day of

.....,
Registrar of Titles in and for the County
of, State of California.

[SEAL]

[Certificate to tenants in common.]

§ 25. In all cases where two or more persons are entitled as tenants in common to an estate in registered land, such persons may receive one certificate for the entirety, or each may receive a separate certificate for his undivided share.

[Issuance of one certificate in accordance with owner's request to cover one or several tracts of land.]

§ 26. Upon the application of any registered owner of land held under separate certificates of title, or under one certificate, and delivering up of such certificate or certificates of title, the registrar may issue to such owner a single certificate of title for the whole of such land, or several certificates, each containing a portion of such land, in accordance with such application, and as far as the same may be done consistently with any regulations at the time being in force, respecting the certificates of land that may be included in one certificate of title; and upon issuing any such certificate of title said registrar shall indorse on the last previous certificate of title of such lands so delivered up a memorial, setting forth the occasion of such cancellation and referring to the volume and folium of the new certificate or certificates of title so issued.

[Issuance of duplicate certificate in case of loss of original.]

§ 27. In the event of a duplicate certificate of title being lost, mislaid, or destroyed, the owner may apply to the court for an order upon the registrar to issue a certified copy of the original certificate or registration. Upon the hearing of such application, the court may order such notice to be given to such persons and for such time as it may deem proper. If the court is satisfied that the applicant is the person named in the original certificate on file in the registrar's office, and that the duplicate certificate has been lost, mislaid, or destroyed, the court shall make an order directing the registrar to issue a certified copy of the original certificate to the applicant. A certified copy of such order shall be filed in the registrar's office, who shall thereupon issue to such applicant a certified copy of the original certificate, with the memorials and notations appearing upon the register, and shall note upon the register the fact, cause and date of such issue and shall also mark upon such certified copy: "Owner's certified copy, issued in place of lost (mislaid, or destroyed, as the case may be) certificate," and such certified copy shall stand in the place of, and have like effect as, the missing duplicate certificate. In case of a lost certificate, no transfer of the land shall be made until such certified copy is issued by the registrar. A certified copy of the certificate of title may be issued by the registrar for use as evidence, upon the receipt by him of an order therefor made by the court; provided, that such certified copy shall have written or stamped across the face thereof the words "for use as evidence only." The issuance of such certified copy and the purpose thereof shall also be noted upon the original certificate by the registrar.

[Correction of certificate.]

§ 28. If an owner's name or description is incorrectly registered, or becomes changed (e. g. by marriage, adoption, divorce, etc.), the court, upon the filing of an application and proof of facts in the manner set forth in section twenty-seven of this act, and the production by the owner of the duplicate certificate, shall order the registrar to issue a new certificate, with such changes as the case may require.

[“Register of titles.”]

§ 29. The registrar shall keep a book, to be known as the "register of titles," wherein he shall enter all original certificates of title, in the order of their numbers, with appropriate blanks for the entry of memorials and notations allowed by this act. Each certificate, with such blanks, shall constitute a separate folium of such book. All memorials and notations that may be entered upon the register under the terms of this act shall be entered upon the folium constituted by the last certificate of title of the land to which they relate. Each certificate of title shall be numbered the same as the folium of the register on which the registration of the title of which it is a duplicate, is entered.

[Receipt for duplicate certificate.]

§ 30. Before the delivery of any duplicate certificate of title, a receipt for it shall be required, to be signed by the owner. Where such receipt is signed in the presence of the registrar or a deputy, it shall be witnessed by such officer. If signed elsewhere, it shall be acknowledged before any officer authorized to take acknowledgments of deeds.

[Registration of title.]

§ 31. In every case of first registration of land or an estate or interest therein the same shall be deemed to be registered under this act, when the registrar shall have marked upon the certificate of title, in duplicate, the volume and folium of the register in which the original may be found.

[Transfer of registered land deemed registered, when.]

§ 32. Every transfer of registered land shall be deemed to be registered under this act, when the new certificate to the transferee shall have been marked, as in the case of the first registration; and all other dealing shall be considered as registered when the memorial or notation shall have been entered in the register upon the folium constituted by the existing certificate of title of the land. But, for the protection of the transferee or person claiming through any transfer or dealing, the registration shall relate back to the time of filing in the registrar's office the deed, instrument, or notice, pursuant to which the transfer, memorial or notation is made.

[Person aggrieved may bring action against register.]

§ 33. Any person feeling himself aggrieved by the action of the registrar, or by his refusal to act in any manner pertaining to the first registration of land, or any subsequent transfer, or charge upon the same, or failing or neglecting, or refusing to file any instrument, or to enter or cancel any memorial or notation, or to do any other thing required of him by this act, may file a complaint in the superior court making the registrar and other persons, whose interest may be affected, parties defendant, and the court may proceed therein as in other cases, and make such order or decree as shall be according to equity and the purport of this act. A certified copy of such order or decree shall be presented to the registrar, who shall file the same and make such entry thereof as by this act required.

[Title of registered owner. Limitations and exceptions.]

§ 34. The registered owner of any estate or interest in land brought under this act shall, except in case of fraud to which he is a party, or of the person through whom he claims without valuable consideration paid in good faith, hold the same subject only to such estates, mortgages, liens, charges, and interests as may be noted in the last certificate of title in the registrar's office, and free from all others, except:

1. Any subsisting lease or agreement for a lease for a period not exceeding one year, where there is actual occupation of the land under lease. The term "lease" shall include a verbal letting.

2. All land embraced in the description contained in the certificate which has theretofore been legally dedicated as or declared by a competent court to be a public highway.

3. Any subsisting right of way or other easement, created within one year before issue of the certificate upon, over, or in respect of the land.

4. Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.

5. Such right of action or claim as is allowed by this act.

6. Liens, claims, or rights arising under the laws of the United States, which the statutes of California can not require to appear of record upon the register.

[No title by adverse possession to registered land.]

§ 35. After land has been registered, no title thereto adverse or in derogation to the title of the registered owner shall be acquired by any length of possession.

[No duty of transferee of registered land to inquire into circumstances or consideration of his transferer's title.]

§ 36. Except in case of fraud, and except as herein otherwise provided, no person taking a transfer of registered land, or any estate or interest therein, or of any charge upon the same, from the registered owner, shall be held to inquire into the circumstances under which, or the consideration for which, such owner or any previous registered owner was registered, or be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand, or interest; and the knowledge that any unregistered trust, lien, claim, demand, or interest is in existence shall not of itself be imputed as fraud.

[In case of fraud person defrauded shall have usual rights and remedies.]

§ 37. In case of fraud, any person defrauded shall have all rights and remedies that he would have had if the land were not under the provisions of this act; provided, that nothing contained in this section shall affect the title of a registered owner who has taken bona fide for a valuable consideration, or of any person bona fide claiming through or under him.

[When registration void.]

§ 38. If a deed or other instrument is registered, which is forged, or executed by a person under legal disability, such registration shall be void; provided, that the title of a registered owner, who has taken bona fide for valuable consideration, shall not be affected by reason of his claiming title through some one, the registration of whose right or interest was void, as provided in this section.

[No unregistered estate to prevail against title of registered owner.]

§ 39. No unregistered estate, interest, power, right, claim, contract, or trust shall prevail against the title of a registered owner taking bona fide for a valuable consideration, or of any person bona fide claiming through or under him.

[Certificate of registered owner conclusive, when.]

§ 40. In any suit for specific performance brought by a registered owner of any land under the provisions of this act against a person who may have contracted to purchase such land, not having notice of any fraud or other circumstances which, according to the provisions of this act, would affect the right of the vendor, the certificate of title of such registered owner shall be held in every court to be conclusive evidence that such registered owner has a good and valid title to the land, and for the estate or interest therein mentioned or described.

[Certificate of registered owner conclusive, when—continued.]

§ 41. In any action or proceeding brought for ejectment, partition, or possession of land, the certificate of title of a registered owner shall be held in every court to be conclusive evidence, except as herein otherwise provided, that such registered owner has a good and valid title to the land, and for the estate or interest therein mentioned or described, and that such registered owner is entitled to the possession of said land.

[Register as evidence and as conclusive evidence.]

§ 42. The register of any land, and duly certified copies thereof, shall, except as herein otherwise provided, be received in law and in equity as evidence of the facts therein stated, and as conclusive evidence that the person named therein as owner is entitled to the land for the estate or interests therein specified.

[Memorial to be carried forward until canceled.]

§ 43. Whenever a memorial has been entered, as permitted by this act, the registrar shall carry the same forward upon all certificates of title until the same is canceled in some manner authorized by this act.

[All dealings, etc., after registration subject to terms of act.]

§ 44. All dealings with land, or any estate or interest therein, after the same has been brought under this act, and all liens, incumbrances, and charges upon the same subsequent to the first registration thereof, shall be deemed to be subject to the terms of this act, and to such amendments and alterations as may hereafter be made. The bringing of land under this act shall imply an agreement which shall run with the land, that the same shall be subject to the terms and provisions of this act and of the amendments and alterations thereof.

[Limitation of action.]

§ 45. No person shall commence any action at law or in equity for the recovery of land, or assert any interest or right in, or lien or demand upon the same, or make entry thereon adversely to the title or interest certified in the first certificate bringing the land under the operation of this act after one year following the first registration. It shall not be an exception to this rule that the person entitled to bring the action or make the entry is deceased, an infant, lunatic, or is under any disability, but action may be brought by such person by his next friend or guardian or by the administrator or the executor of a deceased person. It shall be the duty of the guardian, if there is any, to bring action in the name of his ward whenever it is necessary to preserve or enforce the ward's rights in registered land; provided, however, before such action shall proceed, it must be made to appear to the court that the person bringing such action or those under whom he claims, had no actual notice of the proceedings to register such lands in time to appear and file his objections or assert his claim. The provisions of this section shall in no way affect or disturb the rights of any person in said land, acquired subsequent to the registration thereof, bona fide and without knowledge and for a valuable consideration.

[Registration of land belonging to estates of deceased persons.]

§ 46. In all estates of deceased persons the administrator or executor may file a petition to the court in the probate proceedings, praying for the registration of all land belonging to the estate in fee simple, setting forth the facts required to be set forth by sections 5 and 6 of this act together with a description of all the land of which the deceased died seized which is sought to be registered.

The court, by reason of its general jurisdiction shall, in probate, have power and jurisdiction to do any and all things necessary to determine the title to the land and all adverse interests therein to the same extent as said court has in independent proceedings under this act. Upon the filing of such petition the court must direct notice of the filing of said petition to issue as provided by this act and the administrator or executor shall publish and serve such notice upon all persons required by this act to be served and in the manner therein specified.

Every decree of final or partial distribution of land sought to be registered, wherein upon the hearing of such petition, after said notice has been given, the court shall find the title to such land to be such as to entitle it to be registered under this act, may direct all such land to be registered in the name of the distributee or distributees in fee simple, which decree shall be authority to the registrar of the county in which any such land is situated to register the same and issue his certificate of registration to such distributee or distributees. If any land sought to be registered in any proceeding under this act lies in any county other than the county in which said estate is being admin-

istered, a certified copy of said petition shall forthwith be filed with the registrar of every county in which any of such land may be situated and such copy, when filed, shall be notice of such application to all persons dealing with said land.

[Filing instruments seeking to affect registered lands, conditions of.]

§ 47. Any instrument offered for filing with the registrar of any county, seeking to affect registered land, must have noted thereon a statement of the facts that the land sought to be affected is registered land, with the name of the registered owner and with the number or numbers of the certificate or certificates of the last registration thereof. Otherwise none of such instruments shall be filed, nor shall the same affect the title of the or any part of the land sought to be affected, nor will the same impart any notice thereof to the registered owner or to any person dealing with such land.

[Conveyances of registered land.]

§ 48. A registered owner of land desiring to transfer his whole estate or interest therein, or some distinct part or parcel thereof, or some undivided interest therein, or to grant out of his estate an estate for life, may execute to the intended transferee a deed or instrument of conveyance in any form authorized by law for that purpose. And upon filing such deed or other instrument in the registrar's office, and surrendering to the registrar the duplicate certificate of title, the transfer shall be complete and the title so transferred shall vest in the transferee; thereupon, the registrar shall issue in duplicate and register, as hereinbefore provided, a new certificate, certifying the title to the estate or interest in the land desired to be conveyed to be in the transferee, and shall note upon the original and duplicate certificates the date of the transfer, the name of the transferee, and the volume and folium in which the new certificate is registered, and shall stamp across the original and surrendered duplicate certificate the word "canceled," in whole or in part, as the case may be.

[Issuance of new certificate to grantee of registered land.]

§ 49. When only a part of the land described in a certificate is transferred, a new certificate shall be issued to the grantee for the part transferred to him and another one shall be issued to the grantor for the part remaining in him; provided, however, that if the land consists of a tract divided into subdivisions designated by numbers or letters on a plat of said subdivision, filed with the recorder, duly verified as required by law, on which plat so filed the measurements of all boundaries of each subdivision appear, the registrar may, upon request of the grantor, make a new certificate to the grantee of one or more of such subdivisions and instead of issuing a new certificate for the remainder to the grantor, may enter upon the original certificate and upon the owner's duplicate, a memorandum of such transfer, in red ink, setting forth the fact that the particular subdivision, describing it by numbers or letters as the same is described in said plat, has been granted and that such certificate is canceled as to such subdivision. Every certificate with such memorandum endorsed thereon shall be as effectual for the purpose of showing the grantor's title to the remainder of the land not conveyed as if the old certificate had been canceled and a new one for the remainder issued; such process may be repeated as long as there is convenient space upon the original certificate and the owner's duplicate thereof for making such memoranda of transfers of subdivisions.

[Duty of register as to filing instruments.]

§ 50. The registrar shall mark as filed every deed, mortgage, lease, and other instrument which may be filed in his office, in the order of its receipt, and shall note thereon at the date of filing the minute, hour, day, and year it is received. When the date of filing any instrument is required to be entered upon the register, it shall be the same as that endorsed upon such instrument.

[Instruments, etc., to be kept on file. Certified copies.]

§ 51. All instruments, notices, and papers required or permitted by this act to be filed in the office of the registrar, shall be retained and kept in such office, and shall not be taken therefrom except by a subpoena duces tecum issued to and served upon the registrar by a court of record. But the registrar, on demand, the proper fee being tendered therefor, shall deliver to any person a copy or copies of such an instrument, with all memoranda, memorials, and indorsements thereon, duly certified under his hand and seal of office. The registrar shall, however, upon all such copies, indorse thereon in writing across the face thereof, in red ink, "copy, no rights conveyed hereby."

[Certified copies of instruments as evidence.]

§ 52. Every copy of original instruments so certified as provided for in the last preceding section, shall be received in all cases in place of the original, and as evidence have the same force and effect as the original instrument.

[Forms of instruments.]

§ 53. Like forms of deeds, mortgages, leases, and other instruments as are now or may hereafter be sufficient in law for the purpose intended, may be used in dealing with registered land and any estate or interest therein. Such instrument shall give the number of the certificate of title of the land described therein. But an indorsement, duly acknowledged, upon the duplicate certificate of title, substantially in the following form, viz.: "I,, grant to the real property described in this certificate. Witness hand and seal this day of, ..," shall be sufficient to transfer the property in said certificate described.

[Residence of grantee, endorsement of on instruments. Notices and processes, issuance, service and proof of service of.]

§ 54. Every deed or other voluntary instrument which is presented for registration including the endorsement of a certificate of title, shall contain or have endorsed upon it the full name, residence and post office address of the grantee or other person who acquires or claims an interest under such instrument. Any change in the residence or post office address of such person shall be endorsed by the registrar upon the original instrument, upon receiving a written statement of such change, duly acknowledged. Notices and processes issued in relation to registered land after original registration, may be served upon any person in interest by mailing them to the address so given, and shall be binding, whether he resides within or without the state. The certificate of the clerk that he has served such notice shall be conclusive proof of such service; but the court may, in any case, order different or further service, by publication or otherwise.

[Conveyance take effect only by way of contract, and authority to register same.]

§ 55. A deed, mortgage, lease, or other instrument purporting to convey, transfer, mortgage, lease, charge, or otherwise deal with registered land, or any estate or interest therein, or charge upon the same, other than a will or a lease not exceeding one year where the land is in the actual possession of the lessee or his assigns, shall take effect only by way of contract between the parties thereto, and as authority to the registrar to register the transfer, mortgage, lease, charge, or other dealing upon compliance with the terms of this act. On the filing of such instrument, the land, estate, interest, or charge shall become transferred, mortgaged, leased, charged, or dealt with according to the purport and terms of the deed, mortgage, lease, or other instrument. The registrar shall immediately, upon the filing of such instrument, stamp or write upon the

original and duplicate certificates of title the word "transferred," "mortgaged," "leased," or otherwise, as the case may require, with the date of filing such instrument and sign such endorsement.

[No transfer registered, if land sold for any tax or assessment.]

§ 56. No transfer of title to land or any estate or interest therein shall be registered if the last original certificate shows that the land in such certificate described, or any part thereof, has been sold for any tax or assessment, unless such transfer is intended to be subject to such tax sale, in which case it shall be so stated in the certificate issued upon such transfer and no transfer of any homestead which has not been theretofore released or extinguished of record shall be made unless both spouses join therein.

[Community property can not be transferred, etc., without written consent of both spouses.]

§ 57. Community property registered under this act as such can not be transferred, mortgaged, encumbered or otherwise disposed of by the registered owner thereof without the written consent of both spouses.

[Affidavit of transferee as to married state required.]

§ 58. The transferee shall furnish the registrar with an affidavit stating whether the transferee (except when the latter is a corporation, executor, administrator, or assignee) is married or not married, and if married, the name of the husband or wife, and whether or not the property is community property, and the fact shall be recorded on the certificate of title by the registrar before the transfer is made on the register. If the transferee be an executor or administrator, the certificate shall give the name of the deceased testator or intestate, and if the transferee be an assignee or trustee, the name of the insolvent or bankrupt.

[Mortgages, etc.]

§ 59. Every mortgage, lease, contract to sell, or other instrument intended to create a lien, incumbrance, or charge upon registered land, or any interest therein, shall be a charge thereon immediately upon registration thereof.

[Registration of instruments, conditions of, and duty of registrar.]

§ 60. On the filing of an instrument intended to create a charge in the registrar's office and upon the production of the duplicate certificate of title, whenever it appears from the original certificate of title that the person intending to create the charge has the title and right to create such charge and the person in whose favor the same is sought to be created is entitled by the terms of this act to have the same registered, the registrar shall enter upon the original and duplicate certificates a memorial of the purport thereof, and the date of filing the instrument, with a reference thereto by its file number, which memorial shall be signed by the registrar. The registrar shall also note upon the instrument on file the number of the certificate of title where the memorial is entered. No new certificate of title shall be entered and no memorandum shall be made upon any certificate of title by the registrar in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate of title is presented with such instrument, except in cases expressly provided for in this act, or upon the order of the court, for cause shown, and whenever such order is made, a memorial thereof shall be entered upon the new certificate of title and on the owner's duplicate. The production of the owner's duplicate certificate, whenever a voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar to issue a new certificate or to make a memorial in accordance with

such instrument and the new certificate or the memorial shall be binding upon the registered owner and upon all persons claiming under him in favor of every purchaser for value in good faith.

[When mortgage, etc., is in duplicate, triplicate, or more parts, only one need be filed. Duty of register.]

§ 61. When any mortgage, lease, or other instrument creating or dealing with a charge upon registered land, or any estate or interest therein, is in duplicate, triplicate, or more parts, only one of the parts need be filed and kept in the registrar's office; but the registrar shall note upon the register whether the same is in duplicate, triplicate, or as the case may be, and shall also mark upon the others "mortgagee's duplicate," "lessor's duplicate," "lessee's duplicate," or as the case may be, and note upon the same the date of filing and the volume and folium of the register where the memorial is entered, and deliver them to the parties entitled thereto.

[Registrar may make duplicates.]

§ 62. When an instrument is not executed in a sufficient number of parts for the convenience of the parties, the registrar may make and deliver to each of the parties entitled thereto certified copies of the instrument filed in his office, with the indorsements thereon, marking the same "mortgagee's certified copy," "lessor's certified copy," or as the case may be, and shall note upon the register the fact of issuing such copies. Such certified copies shall have the same force and effect and be treated as duplicates.

[Transfer or assignment of charges in registered land.]

§ 63. The holder of any charge upon registered land, desiring to transfer the same or any part thereof, may execute an assignment of the whole or any part thereof. The assignment of a part only must state whether the part transferred is to be given priority, to be deferred, or to rank equally, with the remaining part. Upon such assignment being filed in the office of the registrar, and the production of the duplicate or certified copy of the instrument creating the charge held by the assignor, the registrar shall enter in the register opposite the charge a memorial of such transfer, and how it ranks, with a reference to the assignment by its file number; he shall also note upon the instrument on file in his office intended to be transferred, and upon the duplicate or certified copy thereof produced, the volume and folium where the memorial is entered, with the date of the entry. The transferee shall be entitled to have a certified copy of the instrument of transfer, with the indorsement thereon, and in case of the transfer of the entire charge, the duplicate or certified copy of the instrument creating the charge.

[Release or discharge or surrender of charge on registered land.]

§ 64. A release, discharge, or surrender of a charge, or any part thereof, or of any part of the land charged, may be effected in the same way as above provided in the case of a transfer. In case only a part of the charge or of the land is intended to be released, discharged, or surrendered, the entry shall be made accordingly; but when the whole is released, discharged, or surrendered at the same or several times, the registrar shall stamp across the instrument on file, and the memorial thereof, and the duplicate or certified copy produced, the word "canceled."

[Enforcement of charges and foreclosure of mortgages, etc., on registered land.]

§ 65. All charges upon registered land, or any estate or interest in the same, may be enforced as now or hereafter allowed by law, and all laws with reference to the foreclosure and release or satisfaction of mortgages shall apply to mortgages upon registered land, or any estate or interest therein, except as herein otherwise provided, and except that until notice of the pendency of any suit to enforce or foreclose such charge is

filed in the registrar's office, and a memorial thereof entered on the register, the pendency of such suit shall not be notice to the registrar, or any person dealing with the land.

[Conveyances, etc., of registered land by attorneys in fact.]

§ 66. Before any person can convey, charge, or otherwise deal with registered land, or any estate or interest therein, as attorney in fact for another, the deed or instrument empowering him so to act shall be filed with the registrar, and a memorial thereof entered upon the original duplicate certificates. If the attorney shall so desire, the registrar shall deliver to him a certified copy of the power of attorney, with the indorsements thereon. Revocation of a power may be registered in like manner.

[Transfers in trust of registered land.]

§ 67. Whenever a deed or other instrument is filed in the registrar's office for the purpose of effecting a transfer of, or charge upon, registered lands, or any estate or interest therein, and it appears from such instrument that the transfer or charge is to be in trust, or upon any condition or limitation therein expressed, the registrar shall note in the certificate, and the duplicate thereof, or memorial, the words "in trust," or "upon condition," or "with limitations," as the case may be, but no entry need be made of the particulars of any such trust, conditions, or limitations.

[When trustee may deal with registered land as owner.]

§ 68. The trustee or transferee in any such instrument named, if the instrument contains the words "with power of sale," shall have power to deal with the land as the owner thereof; and a bona fide purchaser, mortgagee, or lessee is not bound to inquire into or determine whether or not the acts of such trustee are in accordance with the terms and conditions of the trust. When such power is conferred, the registrar shall note upon the certificate and duplicate thereof the words "with power of sale."

[When trust instrument does not contain phrase "with power of sale." Memorial conclusive evidence, when.]

§ 69. If, however, such instrument does not contain the words "with power of sale," such trustee shall have no power to sell or otherwise deal with the land without an order of court so to do, duly given and made, a certified copy of which said order shall be filed with the registrar, and a memorial thereof entered upon the certificate of title, which shall be conclusive evidence as against all persons that the authority of such trustee was duly exercised in accordance with the true intent and meaning of the trust, condition, or limitation.

[Trustee under will, powers of.]

§ 70. A trustee under any will admitted to probate, unless such power shall have been expressly withheld by the terms of such will, shall have power to deal with any registered land held by him in trust as fully in every respect as if such lands belonged to him individually.

[Distribution, etc., of registered land in jurisdiction of court.]

§ 71. The distribution, transfer, leasing, mortgaging, or other change in the status of the title of registered land that is within the jurisdiction of any court by reason of the pendency of probate, insolvency, or equity proceedings, shall be made under the same conditions and limitations as now or hereafter provided by the law of this state.

[Order of court to make distribution, etc.]

§ 72. The court in its order or decree making such distribution, transfer, leasing, mortgaging, or other change in the status of the title of registered land, shall direct

the registrar to issue a certificate of title, or to note a memorial of the transaction, as the case may require, in accordance with such order or decree.

[Duty of executor, etc.]

§ 73. The executor, administrator, assignee, receiver, or other person acting under the direction of said court, shall file with the registrar a certified copy of such order or decree, also the deed, lease, mortgage, or other instrument executed in accordance with such order or decree, and also a certified copy of the order or decree confirming such sale, lease, mortgage, or other transaction, when such confirmation is required by law.

[Power of executors, etc.]

§ 74. Executors, administrators, trustees in bankruptcy, and assignees in insolvency shall have no power of sale of lands registered in their names as such, without an order of court obtained for that purpose. Before any certificate can be issued to the purchaser, such sales shall be reported for confirmation to the court under whose authority such executor, administrator, or assignee is acting, and if confirmed a duly certified copy of the order of confirmation shall be filed in the office of the registrar, and a memorial thereof entered upon the certificate of title. Upon the filing of the certified copy of such order of confirmation and the entry of such memorial, the registrar shall issue a certificate to the purchaser at such sale, which certificate, in addition to the usual contents thereof, shall refer to the said order of confirmation. Such order of confirmation shall be conclusive evidence that the sale was in all respects conducted in accordance with law, and the purchaser shall not be bound to inquire into the regularity of the proceeding, or power to make such sale.

[Order directing registration of words "with power of sale."]

§ 75. If a testator, by his will, has provided that the executor thereof shall have a power of sale of real estate, the court shall direct the registrar to register the words "with power of sale," in respect of the land of the deceased, and such executor shall have power to sell such land without an order of court so to do, but such sales must be confirmed by the court in the manner now or hereafter provided by the law of this state, and a duly certified copy of the order of such confirmation shall be filed with the registrar before any certificate of title can be issued to the purchaser of such land.

[Certificate of title conclusive.]

§ 76. Thereupon the registrar shall issue the certificate of title, or note the memorial, as the case may require; and such certificate of title or memorial noted shall be conclusive evidence in favor of all persons thereafter depending thereon.

[Sale of registered land for taxes or assessments.]

§ 77. A purchaser of registered lands sold for any tax or assessment, shall, within five days after such purchase, file in the office of the registrar a written notice of such purchase. And thereupon the registrar shall enter a memorial thereof upon the certificate of title, and shall mail to each person named in the certificate, and in the memorials thereon, a copy of said notice, a sufficient number of said copies to be furnished to the registrar by said purchaser at the time of filing said notice. In case the state or a municipal corporation becomes the purchaser of land sold for any tax or assessment, the tax collector or other officer attending to such purchase, shall, within five days thereafter, file with the registrar a notice to that effect. And thereupon the registrar shall enter a memorial thereof upon the register, and shall mail notices to interested parties, as in the case of an individual purchaser. Unless such notice is filed as herein provided, the land shall be forever released from the effect of such sale, and no deed shall be issued in pursuance thereof.

[Registration of tax deed.]

§ 78. A tax deed of registered land, or of any estate or interest therein, issued in pursuance of any sale for a tax or assessment made after the taking effect of this act, may be presented by the holder thereof to the registrar, who shall thereupon enter upon the register a memorial of such deed; but such deed, unless the same shall have been issued to the state, shall have only the effect of an agreement for the transfer of the title, and before any certificate of title shall be issued for the land described in such deed, the holder thereof must file with the clerk of the superior court an application for a decree showing the title to said land to be vested in him.

[Notification of persons in interest, etc.]

§ 79. All persons appearing upon the register to be interested in said land, and also the person who appears by the tax collector's books to have paid the tax or assessment last paid before the sale on which the deed is issued, shall be notified; and any person claiming an interest in the land may, upon the hearing of such application, show, as cause why a certificate of title should not issue to the holder of said deed, any fact that might be shown in law or in equity on his behalf to set aside such tax deed, and the applicant shall be required to show affirmatively that all the requirements of the statute to entitle him to a deed have been complied with.

[Decree and issuance of certificate.]

§ 80. Such application shall be heard by the court, which shall render a decree showing the condition of the title to such land, and who is the owner thereof, and upon presentation to him, of a duly certified copy of such decree, the registrar shall issue a certificate for said land in accordance with the terms and conditions of said decree.

[Tax deed to state or municipal corporation.]

§ 81. In case a tax deed of registered land is issued to the state or any municipal corporation, in pursuance of any sale for a tax assessment made after the taking effect of this act, the registrar shall, upon the filing of such deed in his office, cancel the certificate for the land in said deed described, and issue a new certificate to the purchaser.

[Service of notice required by § 79. Proof of service and publication.]

§ 82. The notice required by section seventy-nine shall be served upon persons interested in the manner provided in this act for the service of notice of applications for original registrations. Proof of such service and publication must be made in the manner now or hereafter required by the laws of this state.

[Cancellation of memorial of sale.]

§ 83. Upon presentation to him of a certificate of redemption from any tax sale, the registrar shall cancel the memorial of said sale upon the certificate of title.

[Proof in proceedings for partition.]

§ 84. In proceedings for partition of registered land, proof must be made that all persons, shown by the register of title to be interested in the land, have been made parties to such proceeding.

[Filing judgment or decree in partition and issuance of certificates of title.]

§ 85. On confirmation of the report of the commissioners setting off registered lands in proceedings for partition, it shall be the duty of the parties to whom the lands are allotted, to cause a certified copy of the judgment or decree to be filed with the registrar. Thereupon the registrar shall transfer the same upon the register, and issue certificates of title to the persons entitled thereto, as shown by said decree.

[Filing certificate of officer making sale in partition.]

§ 86. Whenever, in proceedings for partition of registered land, the court shall order a sale of such land, and the same is sold under such order, the purchaser shall file with the registrar a certified copy of the order confirming said sale, together with certificate of the officer making the sale, that the terms of the sale have been complied with. Thereupon, the registrar shall transfer said land upon the register, and issue a certificate of title to the purchaser therefor.

[Mortgage by tenant in common of undivided interest.]

§ 87. When a tenant in common has given any mortgage, or granted any other lien or interest upon his undivided interest, and the same is set off in severalty in proceedings in partition, such mortgage, lien, or other interest shall attach only to the lands so set off, and the registrar shall note the same upon a new register of title, and a new certificate of title, and shall indorse a memorandum of the partition upon the instrument creating such lien, mortgage, or other interest, if the same be on file in his office, before a new certificate of title shall be issued therefor.

[Sale under execution, etc., and issuance of certificate.]

§ 88. Whenever registered land shall be sold to satisfy any judgment, decree, or order of court, the purchaser shall file with the registrar a duly certified copy of the order of sale, or of the order confirming such sale, when the same needs to be confirmed by the court, and also the certificate, if any, of the officer, that the terms of sale have been complied with, and thereupon the registrar shall transfer the land to him, and issue a new certificate of title therefor to said purchaser.

[A suit, etc., not a lis pendens until the filing of notice thereof with register.]

§ 89. No suit, bill, or proceeding at law or in equity for any purpose whatever, affecting registered land, or any estate, or interest therein, or any charge upon the same, shall be deemed to be lis pendens or notice to any person dealing with the same until notice of the pendency of such suit, bill, or proceeding shall be filed with the registrar and a memorial thereof entered by him upon the register of the last certificate of the title to be affected; provided, however, this section shall not apply to attachment proceedings when the officer making the levy shall file his certificate as herein-after provided.

[Dismissal of suit, etc.]

§ 90. When any suit, bill, or proceeding affecting registered lands has been dismissed or otherwise disposed of, or any judgment, decree, or order has been satisfied, released, reversed or modified, or any levy of execution, attachment, or other process has been released, discharged, or otherwise disposed of, it shall be the duty of the sheriff, or the clerk of the court in which such proceedings were pending, or had, as the case may be, forthwith, under his hand, and, if the clerk, under the seal of the court, to certify to and file with the registrar, an instrument showing such discharge or release. Upon the same being filed, the registrar shall enter a memorial of such discharge on the register. The costs of such certificate and memorial shall be taxed as other costs in the case.

[Filing copy of judgment prerequisite to affect registered land.]

§ 91. No judgment, or decree, or order of any court shall be a lien on or in any wise affect registered land, or any estate or interest therein, until a certified copy of such judgment, decree, or order, under the hand and official seal of the clerk of the court in which the same is of record, is filed in the office of the registrar, and a memorial of the same is entered upon the register of the last certificate of the title to be affected.

[Attachment levy.]

§ 92. Whenever registered land is levied upon by virtue of any writ of attachment, execution, or other process, it shall be the duty of the officer making such levy forthwith to file with the registrar a certificate of the fact of such levy, a memorial of which shall be entered upon the register; and no lien shall arise by reason of such levy until the filing of such certificate and the entry in the register of such memorial, any notice thereof, actual or constructive, to the contrary notwithstanding.

[Notice of mechanics' liens.]

§ 93. Notices of liens under the provisions of the mechanics' lien laws of this state shall be filed in the registrar's office, and a memorial thereof entered by him upon the register, as in the case of other charges, and such liens may be enforced as now or hereafter allowed by law. Until such notice is so filed and registered, no lien shall be deemed to have been created.

[Street improvement assessments.]

§ 94. When in a city, town, or county, an ordinance, resolution, or order is passed or made, to lay out, establish, alter, widen, grade, regrade, relocate, or construct or repair a street, sidewalk, drain, or sewer, or to make any other public improvement, or to do any work, the whole or a portion of the expense for which assessments may be made upon real estate, if any registered land or any land included in an application for registration then pending is affected by the act or proceeding and liable to such assessment, the clerk of the board passing such ordinance, resolution, or order must, within five days after the passage of such ordinance, resolution, or order, file in the registrar's office a notice of the passage thereof, and a memorial must thereupon be noted on the register. In case of the repeal of such ordinance, resolution, or order, the clerk of said board, and in case of the satisfaction of any lien thereunder, the superintendent of streets or other officer required by law to collect and receive such assessments, must within five days thereafter, notify the registrar, in writing, who shall thereupon cancel such memorial.

[Memorial of lien must be filed.]

§ 95. No statutory or other lien shall be deemed to affect the title to registered land until after a memorial thereof is entered upon the register, as herein provided.

[Certificate of dismissal of suit, etc.]

§ 96. The filing in the registrar's office of a certificate of the clerk of the court in which any suit, bill, or proceeding shall have been pending, or any judgment or decree is of record, that such suit, bill or proceeding has been dismissed or otherwise disposed of, or the judgment, decree, or order has been satisfied, released, reversed, or overruled, or of any sheriff or other officer that the levy of any execution, attachment, or other process certified by him has been released, discharged, or otherwise disposed of, shall be sufficient to authorize the registrar to cancel or otherwise treat the memorial of such suit, bill, proceeding, judgment, decree, or levy, according to the purport of such certificate.

[Corrections, alterations and erasures.]

§ 97. After a title has been registered and a certificate issued therefor, or after a memorandum, notation, or memorial has been made on the register of title and has been attested, no correction, alteration, or erasure shall be made therein or thereof, except in the manner herein provided.

[Termination of registered interests. Proceedings upon.]

§ 98. A registered owner or other person in interest or the registrar, may at any time apply by petition to the court, upon the ground that registered interests of any

description, whether vested, contingent, expectant or inchoate, have terminated and ceased or that new interests have arisen or been created which do not appear upon the certificates or that there is an error or omission in any certificate or memorial, or that any certificate or memorial has been made, entered, indorsed, issued, or canceled by mistake, or that the name of any person on the certificate has been changed by divorce, adoption, or other than by marriage as provided for in section 28 of this act, or that any owner, registered as married, has ceased to be such, or that a corporation which owned registered land has been dissolved and has not legally conveyed the same after its dissolution, or upon any other reasonable ground, for an order correcting or altering any certificate to comply with the true facts as shown by the petition and proof adduced and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest. The court shall issue an order summoning all persons registered as interested in the lands to which such certificate or memorial relates, to appear at an appointed time and place and produce their duplicate certificates and show cause why such omissions, or mistake, or change, or alteration, should not be corrected or made. The registrar shall, upon receiving notice of such petition, enter a memorial of such application upon the certificate of title affected. If at the time and place appointed all such persons appear and consent, the court may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms, requiring security if necessary, as it may consider proper. If such persons, or any of them, fail to appear or do not consent, the court may proceed to hear testimony and if it appears to the satisfaction of the court that the relief as petitioned for should be granted, it shall order and direct the registrar to make such corrections or modifications on such certificates or memorials as may be necessary. A certified copy of such order of the court shall be filed in the registrar's office before any such corrections or modifications shall be entered or made. When such action has been caused by the fault or neglect of the registrar, the costs of such proceedings shall be paid by the county out of the fees collected by the registrar under the provisions of this act that go into the county treasury; if by the fault of the person registered as interested in such land, by such person. The provisions of this section shall not give the court authority to open the original decree of registration and nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser who holds a certificate for value and in good faith, or his heirs or assigns without his or their written consent.

[Questions of doubt referred to court.]

§ 99. When the registrar is in doubt or when the parties in interest fail to agree as to the proper memorial to be made in respect of any deed, mortgage or other voluntary instrument presented for registration, the question shall be referred to the court for decision, either on the certificate of the registrar stating the question, or upon the suggestion in writing of any party or parties in interest; and the court, after due notice to all parties in interest and a hearing, if necessary or proper, shall enter an order prescribing the form of the memorial to be made by the registrar, who shall make the memorial accordingly.

[Fees.]

§ 100. For services performed under the provisions of this act, there shall be paid to the registrar the following fees:

Subdivision 1. For filing decree directing land to be brought under the operation of this act, including original registration and issuing original certificate of title and duplicate and the filing of all instruments connected therewith, for each separate parcel of land affected, one dollar. For each subsequent registration and issuing of certificate of title, including one duplicate and the filing of all instruments connected therewith, for each separate parcel of land affected, one dollar. For filing certified

copy of any petition filed in the superior court of another county in probate proceedings or any notice of any action in another county wherein registration of land is asked for, one dollar. For the entry of each memorial on the register, including the filing of all instruments and papers connected therewith and the endorsement upon the duplicate certificate, for each separate parcel of land affected, fifty cents. For filing copy of will with letters testamentary or filing copy of letters of administration with or without will annexed and entering memorial thereof, one dollar. For the cancellation of each memorial or charge, appearing on one certificate, twenty-five cents. For each certificate showing the condition of the title to all land appearing on one certificate, three dollars. For filing any instrument or furnishing a certified copy of any instrument or writing on file not herein specially provided for, the same fees which are allowed by law to recorders for like services.

Subdivision 2. In addition to the fees provided in subdivision 1, for services performed by the registrar there shall be paid to him the following fees: Upon the original registration of any land, a sum equivalent to one-tenth of one per cent of the assessed value of the land including permanent improvements thereon as the same were valued for county taxation the last time said land and permanent improvements or either thereof were assessed for county taxes next preceding the filing of the petition.

Subdivision 3. All the fees collected by the registrar under the provisions of subdivision 1 of this section shall be accounted for, paid, disbursed and disposed of by him in the manner that fees collected by him as county recorder are now or may hereafter be by law accounted for, paid, disbursed and disposed of. All fees collected under the provisions of subdivision 2 of this section shall be paid by the registrar, between the first and fifth days of the month following receipt thereof, to the treasurer of the state, to be by him accumulated as and for an assurance fund. Should there be a surplus in any year derived from fees hereunder other than those provided to be paid to the state treasurer for an assurance fund, such surplus shall be carried into the general fund and be subject to appropriation for any purpose. In case such fees shall not amount to the sum required for the administration of this act, the deficiency shall be paid from any funds in the county treasury, not otherwise appropriated. All books, blanks, papers and other things necessary, including clerks for the purpose of carrying out the provisions of this act, shall be furnished by the board of supervisors at the expense of the county.

[Right of eminent domain not affected. Proceedings.]

§ 101. Nothing in this act shall be construed to in any wise affect or modify the exercise of the right of eminent domain. When any suit or proceeding shall have been brought in the exercise of such right for the taking of registered land, or any interest therein, or to test the validity of any such taking, or to ascertain and establish the amount of damage by reason of any such taking, it shall be the duty of both parties to the proceeding to see that a certified copy of the judgment or decree therein is duly filed and a memorial thereof entered upon the register; but in the case of an assessment of damages, no such memorial shall be entered by the registrar until such damages have been paid, in which event the register shall also show the payment of such damages; provided, however, that the deposit with the treasurer, as allowed by law, of such damages, shall be deemed a payment thereof, and in such case the treasurer shall forthwith file with the registrar a certificate of such deposit, and thereupon a memorial thereof shall be entered upon the register. Upon the filing of the certified copy of the order or decree of the court and the payment of damages, the registrar shall note on the register of title of the owners whose lands have been appropriated, a description of the land so appropriated, and shall register in the name of the person, corporation, or other body entitled thereto, the title of the land taken, and issue a certificate therefor.

[Property indices.]

§ 102. The registrar shall keep property indices, the pages of which shall be divided into columns, showing, first, the section or subdivision; second, the range or block; third, the township or lot; fourth, any further description necessary to identify the land; fifth, the name of the registered owner; sixth, the volume; and seventh, the page of the register in which the lands are registered.

[Name indices.]

§ 103. He shall also keep name indices, the pages of which shall be divided into columns, showing in alphabetical order, first, the names of all registered owners and all other persons interested in or holding charges upon registered land; second, the nature of the interest; third, a brief description of the land; fourth, the volume; and fifth, the page of the register in which the lands are registered.

[Suits for partition.]

§ 104. An owner of an undivided interest in registered lands may bring an action for the partition thereof. A notice of such action shall, at the time of the commencement thereof, be filed with the registrar and a memorial entered by him upon the register. A certified copy of any judgment or decree rendered in pursuance of such action shall be filed with the registrar, who shall thereupon issue new certificates in accordance therewith.

[“Torrens title assurance fund.”]

§ 105. Subdivision 1. The state treasurer shall keep all sums paid to him by the registrars under the provisions hereof in a separate fund to be known as the “Torrens title assurance fund,” and shall keep the same invested and reinvested in bonds of the United States or of the state of California or of any county or municipality thereof the income derived from said investment to be, as the same is received, added to said fund. Said treasurer shall render to the governor, at least once in each fiscal year, a full and detailed report, showing all receipts, disbursements and investments on account of such fund.

Subdivision 2. Any person who, without fraud or negligence on his part, is deprived of any interest or estate in land through the operation of any provisions of this act or by reason of the fraud, forgery, negligence, omission, mistake or misfeasance of any person, and who is precluded from recovering such interest or estate, may commence an action in the superior court of the county in which the land or a part thereof is situated, to recover not over the fair market value of the interest or estate of which he has been so deprived. If such deprivation has been caused solely by reason of any act of any registrar or deputy registrar in the performance of official duty as such, the state treasurer, in his official capacity, shall be the sole defendant. If such deprivation has been caused either wholly or in part by any person or persons other than such registrar or deputy registrar, while acting in the official performance of duty as such, such person or persons shall be joined as defendants with said state treasurer. In any such action said court shall have jurisdiction, after due service of summons, as provided in ordinary actions in said court, to determine the reason of such deprivation and to render judgment therein accordingly, either against said state treasurer alone or against him and all or any of the other defendants. In any action where there are defendants other than said state treasurer against whom judgment has been rendered, execution shall first issue against such other defendants and upon the return of such execution unsatisfied, either in whole or in part and upon it appearing to the satisfaction of the court that said execution cannot be satisfied out of the property belonging to such judgment creditors other than said state treasurer, or where judgment is had against said state treasurer alone, said court shall make its order directing the pay-

ment of the amount due out of the assurance fund, and such order shall constitute the warrant for the payment of the same, and the state controller shall thereupon audit and certify the amount of such claim in the same manner as other claims against the state are audited, and the state treasurer shall thereupon pay the amount of said claim out of the assurance fund without any other act or resolve making an appropriation therefor. If the assurance fund is at any time insufficient to pay the amount of any judgment in full, so much thereof as can be paid out of such fund shall be paid, and the unpaid balance shall bear interest at the legal rate and shall be paid out of the first moneys coming into such assurance fund. The attorney general shall defend the state treasurer in all actions brought under the provisions hereof; if the person who is deprived of land or of any estate or interest therein in the manner above stated, has a right of action or other remedy for the recovery thereof, he shall exhaust such remedy before resorting to the action herein provided. The provisions of this section shall not deprive the plaintiff of any action in tort which he may have against any person for loss or damage or deprivation of land, or any estate or interest therein, but if such plaintiff elects to pursue his remedy in tort and also brings an action under the provisions of this section, the action against said state treasurer shall be held in abeyance to await the final result of such action in tort; in every case in which payment has been made by the state treasurer under the provisions of this section, the state shall be subrogated to all the rights of the plaintiff against any other parties or securities, and the state treasurer shall enforce the same in behalf of the state. Any amounts recovered by reason of such subrogation shall be paid into the state treasury to the account of the Torrens title assurance fund, after deducting therefrom the proper expenses in recovering the same.

Subdivision 3. The assurance fund shall not be liable to pay for any loss, damage or deprivation occasioned solely by a breach of trust on the part of any registered owner who is trustee, or by the improper exercise of any power of sale in a mortgage, nor shall any plaintiff recover as compensation under the provisions of this act more than the fair market value of the land or of the estate or interest held by him at the time when he suffered the damage, loss or deprivation complained of. Actions for compensation out of the assurance fund under the provisions of this act shall be commenced within four years from the time when the right of action accrued or they shall be forever barred; provided, that if at the time the right of action accrued, the person entitled to bring such action is a minor, or insane, or imprisoned, such person or any one claiming under him may commence such action within two years after the removal of such disability.

[Defrauded person may have usual rights and remedies.]

§ 106. In the case of fraud, any person defrauded shall have all rights and remedies that he would have had if the lands were not under the provisions of this act; provided, that nothing contained in this section shall affect the title of a registered owner who has taken bona fide for a valuable consideration, or of any person bona fide claiming through or under him.

[In case of appeal clerk shall notify registrar.]

§ 107. In case of an appeal from any proceeding under this act, or from any judgment, order, or decree affecting registered lands, the clerk of the court in which the notice of appeal is filed shall forthwith notify the registrar thereof, and thereupon the registrar shall enter upon the register a memorial of such appeal.

[Appointment of deputies.]

§ 108. The county recorders or registrars in the several counties shall have and they are hereby granted the power to appoint, whenever the business in their respective

offices under this act shall, in their opinion, justify the same, one or more deputies, each of whom shall be an attorney admitted to practice before the supreme court of the state of California for at least five years prior to his appointment, in good standing, skilled in the examination of titles and in proceedings under this act. The compensation of such attorneys shall be such as may be agreed upon between them and the registrar subject to the approval of the board of supervisors of the county and shall be paid in the same manner that the salaries of other deputies are paid. Such attorneys, so appointed, shall be competent to act as referees when appointed by the court in proceedings under this act. It shall be the duty of said attorneys to assist the registrar in all matters in and arising out of proceedings under this act.

[Platting and subdivision of registered lands.]

§ 109. The owner of registered land may plat the same and subdivide it into lots and blocks in like manner as in case of unregistered land. All laws with reference to the subdivision and platting of unregistered land shall apply with like force and effect to registered land. Owners of subdivisions transferring lots which are subject to building or other restrictions, may, at their own expense, furnish the registrar with printed forms of certificates of title for use by the registrar. Such printed forms must conform to the adopted size, quality of paper, workmanship and form and must first be submitted to the registrar for his approval; provided, however, the registrar shall have no authority over what restrictions shall be included.

[Permanency of documents relating to registered land.]

§ 110. It shall be the duty of the registrar to require that all documents offered for filing concerning registered land, shall be made out with a view to permanency. The registrar may refuse to accept any document for filing which in his judgment is wholly or partly written, made out or filled in with inferior ink or faded typewriter ribbon and likely to fade rapidly and may require such documents to be redrawn in India or indelible ink to insure permanency. Registrars must in every instance in making out new certificates of title, memorials or entries of any kind in connection with registered land, use India ink for handwriting and indelible ink for typewriter or rubber stamps.

[Nature of offense. Penalty.]

§ 111. Whoever fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificates of title or other instrument, or of entry in the register or other book kept in the registrar's office, or of any erasure or alteration in any entry in any said book, or in any instrument authorized by this act, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered lands, shall be guilty of a felony, and fined not exceeding five thousand dollars, or be imprisoned not exceeding five years nor less than one year, or either or both such fine and imprisonment.

[Nature of offense. Penalty.]

§ 112. Whoever (1) forges, or procures to be forged, or assists in forging the seal of the registrar, or the name, signature, or handwriting of any officer of the registry office in cases where such officer is expressly or impliedly authorized to affix his signature; or (2) fraudulently stamps, or procures to be stamped, or assists in stamping any document with any forged seal of said registrar; or (3) forges, or procures to be forged, or assists in forging the name, signature, or handwriting of any person whomsoever to any instrument which is expressly or impliedly authorized to be signed by such person; or (4) uses any document upon which any impression, or part of the impression, of any seal of said registrar has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, knowing the same to have been

forged; or (5) swears falsely concerning any matter or procedure made and done in pursuance of this act, shall be guilty of a felony and fined not exceeding five thousand dollars or be imprisoned not exceeding ten years nor less than one year, or either or both such fine and imprisonment.

[Conviction not to affect remedy of person aggrieved or injured.]

§ 113. No proceeding or conviction for any act hereby declared to be a felony shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law or in equity, against the person who has committed such act, or against his estate, or against the registrar, or upon his bond.

[Rules and regulations.]

§ 114. Registrars shall not make any rules or regulations that work a hardship or inconvenience upon owners or others desiring to avail themselves of the provisions of this act, who live at a distance from the office of the registrar and shall in writing consent to accept notice of all proceedings, of which notice is required, by mail and in such cases registrars shall assist those who desire to use the mails in connection with registered lands in every way possible. Such documents as are sent by mail shall be entirely at the risk of the owner and if lost, the entire expense of replacing same shall be borne by the owner.

[Construction of act.]

§ 115. This act shall be construed liberally so far as may be necessary for the purpose of effecting its general intent.

1. **Constitutional.—Title broad enough.**—The title of the act is sufficiently broad to cover the certification of any kind of a land title of which jurisdiction is given in the act to ascertain and establish.—*Frances Investment Co. v. Superior Court*, 34 Cal. App. Dec. 670.

2. **Same.—Same.**—All the provisions of the act relative to criminal prosecutions for fraudulently procuring false certificates making the county recorder registrar of titles and forbidding him to practice law, are germane to the subject of the act as expressed in the title.—*Robinson v. Kerrigan*, 151 Cal. 40, 121 Am. St. Rep. 90, 12 Ann. Cas. 829, 90 Pac. 129.

3. **Same.—Not special legislation.**—It is not special legislation because it contains special provisions regarding the statute of limitations and the rights of bona fide purchasers of land registered under the act.—*Robinson v. Kerrigan*, 151 Cal. 40, 121 Am. St. Rep. 90, 12 Ann. Cas. 829, 90 Pac. 129.

4. **Same.—Due process.**—The land title law is not unconstitutional as in violation of the due process clause of the constitution.—*Robinson v. Kerrigan*, 151 Cal. 40, 121 Am. St. Rep. 90, 12 Ann. Cas. 829, 90 Pac. 129.

5. **Same.—Judicial not administrative.**—The proceedings authorized by the act are judicial and not administrative, and not violative of the constitutional provision prohibiting the exercise by one of the three departments of the government of any function of either of the other two.—*Robinson v. Kerrigan*, 151 Cal. 40, 121 Am. St. Rep. 90, 12 Ann. Cas. 829, 90 Pac. 129.

6. **Same.—Same.—Proceeding same as**

that of the McEnerney act.—The proceeding provided by this act is, in all important particulars, of similar character to that provided by the McEnerney act.—*Robinson v. Kerrigan*, 151 Cal. 40, 121 Am. St. Rep. 90, 12 Ann. Cas. 829, 90 Pac. 129.

7. **Jurisdiction.**—The jurisdiction of the superior court extends to the settlement of all matters affecting the ownership of the property, and is not limited merely to the ascertainment and certification of the record title.—*Frances Investment Co. v. Superior Court*, 34 Cal. App. Dec. 670.

See, *In re Scott*, 182 Cal. 83, 187 Pac. 9.

8. **"Register of titles"—Purpose of section 77.**—The purpose of section 77 of the land title law is to provide a folio in the "register of titles" to which a person dealing with the particular piece of land there described as having been brought under the act may look in order to ascertain the exact condition of the title before purchasing, leasing, or loaning money upon the security of a mortgage thereon.—*In re Sieck*, (Cal. App.) 189 Pac. 314.

9. **Same.—Notice of tunnel ordinance.**—The failure to file with the registrar a notice of a tunnel ordinance, as required by the land title law is not jurisdictional.—*Hayes v. Handley*, 182 Cal. 273, 187 Pac. 952.

10. **Tax sale.—Failure to file notice required by section 77.**—Where notice of a tax sale is not filed within five days as required by section 77, the sale is nullified, and the title becomes as though no such sale had ever been made.—*In re Sieck*, (Cal. App.) 189 Pac. 314.

11. **Same.—Rescission of trust deed for fraud.**—The petitioners for the registration

of their land title under the Torrens act are entitled to have a trust deed on the property rescinded on the ground of fraudulent representations.—*Frances Investment Co. v. Superior Court*, 34 Cal. App. Dec. 670.

12. Contract to furnish certificate of title by title company—Torrens title insufficient.—Where a contract for the purchase of land was conditioned upon the furnishing by the seller to the purchaser of a certificate of title made by a specified title company, the purchaser is not bound to accept a Torrens certificate of registration showing title in the seller free and clear of all encumbrances, although the particular title company arbitrarily refused to furnish a certificate on the land in question, on the specious ground that it made a practice of refusing certificates on land registered under the Torrens system.—*Taggart v. Graham*, 39 Cal. App. 621, 179 Pac. 688.

13. Judgment for plaintiff supported.—Where certain defendants in a proceeding under the Torrens act appeared in the lower court, and, in appropriate pleadings, denied petitioners' claim of ownership and alleged title in themselves; and the issues thus raised fully tried and determined against their contention, the court properly adjudged the petitioners entitled to the immediate possession against the defendants, the proceeding being in substance and effect one to quiet title to real property.—*In re Scott*, 182 Cal. 83, 187 Pac. 9.

14. McEnerney act.—The similarity of the proceedings under this act and under the McEnerney act justifies a reference to the annotations of the latter.

15. Recent cases in other jurisdictions.—The following are recent leading cases from other states: *Mills v. Denver, etc., Co.*, 198 Fed. 142; *In re Riley*, 120 Minn. 218, 139 N. W. 364; *Hunt v. Hay*, 214 N. Y. 582, 108 N. E. 852.

16. Torrens acts—Note on.—An exhaustive note on the general subject of the Torrens acts will be found in *Ann. Cas.* 1913c, 871.

Editor's note: "Land Transfers Ancient and Modern," article in 10 Va. Law Reg. 365. See 9 Va. Law Reg. 935.

"The Torrens System."—See articles in 8 American Lawyer 398, 466; 54 Cent. L. J. 282; 1 Mich. Law Rev. 444.

Same—"Its Practical Operation in Massachusetts," article in 51 Cent. L. J. 285.

The Illinois Torrens law for the registration of titles (Ill. Laws 1893, 82), providing for an examination by the recorder of deeds or registrar of titles of the facts in relation to the title to land, and the issuing of a certificate of ownership, held to constitute an unconstitutional delegation of judicial power, even though the effect of such certificate be simply to start the running of a statute of limitations—*People ex rel. Kern v. Chase*, 165 Ill. 527, 46 N. E. 454, 36 L. R. A. 105.

Minnesota Torrens Land Registration Act (Gen. Laws 1901, p. 348, ch. CCXXXVII) has received construction in *Reed v. Suddall*, 89 Minn. 417 (February 10, 1905), 102 N. W. 453, sub nom. *Reed v. Carlson*, 95 N. W. 303 (construing § 28); *Dewey v. Kimball*, 89 Minn. 454, 95 N. W. 317, 895, 96 N. W. 704 (construction of § 20, providing how summons shall be served upon unknown defendants); *National Bond and Security Co. v. Daskam*, 91 Minn. 81, 97 N. W. 458 (construing § 6).

Ohio Torrens Act (April 27, 1896), held to confer judicial authority on the county recorder in violation of the Ohio constitution, article IV, section 1, by giving to him authority to determine the fact that a mortgage has been discharged, or that a lien has become inoperative, and to enter this fact on the records; and also to correct memorials made or issued by mistake, where the rights of bona fide purchasers or lienholders had not intervened.—*State ex rel. Monnett v. Gullbert*, 56 Ohio St. 575, 60 Am. St. Rep. 756, 47 N. E. 551, 38 L. R. A. 519.

"Virginia Torrens System," article in 35 Am. L. Rev. 727.

REGULATION OF LAND TITLES.

ACT 5196—An act providing for the regulation of land titles, and giving the surveyor general certain powers in respect thereto.

History: Approved June 1, 1917. In effect July 31, 1917. *Stats.* 1917, p. 1668.

Surveyor general to investigate land titles.

§ 1. The surveyor general, or a deputy of his department, may not more often than once in two years, visit the various counties of the state and inspect and investigate conditions in respect to land titles. He shall annually report to the governor and shall, prior to each regular session, report to the legislature, making such recommendations as he shall deem proper and necessary. He is hereby authorized to consult with and to advise county registrars of land titles and to make such suggestions and recommendations to the county registrars of land titles as he may deem desirable.

Uniform blank forms.

§ 2. The surveyor general or deputy may prepare and recommend for the use of the county registrars of land titles and applicants for registration of land titles and of the courts hearing such applications, uniform blank forms to be used throughout the state.

SETTLEMENT OF TITLES IN BRANCIFORTE.

ACT 5197—An act to settle the title to lands in the village and town of Branciforte, in the county of Santa Cruz.

History: Approved April 4, 1864, Stats. 1863-64, p. 443.

QUIETING TITLE TO LANDS IN NAPA AND SOLANO COUNTIES.

ACT 5198—An act to quiet title to certain lands in Napa and Solano counties.

History: Approved March 10, 1874, Stats. 1873-74, p. 329.

SETTLEMENT OF TITLES IN BENICIA.

ACT 5199—An act to settle the title to lands in the town and city of Benicia, in the county of Solano.

History: Approved February 20, 1866, Stats. 1865-66, p. 107.

1. Scope of act—Jurisdiction of city trustees.—By this act the city trustees were created a tribunal to hear the proofs of the several claimants to the land granted to Benicia in trust by the act of congress of July 23, 1866 (5 U. S. Stats. at Large, p. 657, § 1), and upon such proofs to judicially determine such claim; and such determination is conclusive until rescinded on appeal.—*Fischer v. Benicia*, 36 Cal. 562.

CHAPTER 391.**TOBACCO.****CONTENTS OF CHAPTER.**

ACT 5200. TOBACCO CULTURE.

TOBACCO CULTURE.

ACT 5200—An act to provide for experimental work in tobacco culture in the state of California, and making an appropriation therefor.

History: Approved March 8, 1907, Stats. 1907, p. 186.

This act provided for investigations and experiments under the supervision and direction of the director of the agricultural station of the University of California. It appropriated one thousand dollars for the purpose indicated.

TORRENS LAND TRANSFER SYSTEM.

See tit. "Titles," Act 5194.

CHAPTER 392.**TOWPATHS.****CONTENTS OF CHAPTER.**

ACT 5206. TOWPATHS ALONG NAVIGABLE RIVERS.

TOWPATHS ALONG NAVIGABLE RIVERS.

ACT 5206—An act to provide for the location of towpaths along the banks of navigable streams.

History: Approved April 1, 1872, Stats. 1871-72, p. 940.

Authority given.

§ 1. The board of supervisors of each county in the state may, when public convenience for the purpose of commerce requires it, cause to be located and opened a

towpath, not exceeding ten feet in width, along the bank or banks of any navigable stream within the county.

Viewers.

§ 2. In order to locate and open such towpath, the same proceedings in regard to petition, viewers, etc., shall be taken as are now by law required to be taken in the respective counties of this state for the purpose of locating and opening public roads and highways.

Water frontage.

§ 3. The owner or owners of any land over which a towpath shall be located and opened shall not be deprived of the water frontage nor of the free use and enjoyment of any land so located, subject only to the right of the public to use the same for the purposes of commerce.

Fences.

§ 4. It shall not be necessary to construct or maintain fences on either side of any towpath so located, but the board of supervisors may make all necessary rules and regulations for the government and management of towpaths, and may provide for the erection of gates thereon and for the full and complete protection of the property through which the same passes.

§ 5. This act shall take effect from and after its passage.

TRACY.

See Act 3094, note.

CHAPTER 393.

TRADEMARKS AND TRADE NAMES.

References: See Kerr's Cyc. Penal Code, § 350; Kerr's Cyc. Political Code, §§ 3196, et seq.; Kerr's Cyc. Civil Code, § 991, and notes.

CONTENTS OF CHAPTER.

ACT 5211. PROTECTION OF OWNERS OF BOTTLES, ETC.

PROTECTION OF OWNERS OF BOTTLES, ETC.

ACT 5211—An act to protect the owners of bottles, boxes, siphons and kegs used in the sale of olives, olive oil, salad oil, soda waters, mineral or aerated water, porter, ale, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, or other beverages, repealing "An act to protect the owners of bottles, boxes, siphons, and kegs used in the sale of soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, beer, white beer, or other beverages," approved March 31, 1891, also repealing "An act to amend an act entitled an act to protect the owners of bottles, boxes, siphons, and kegs, used in the sale of soda waters, mineral and aerated waters, porter, ale, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, beer, white beer, or other beverages (approved March 31, 1891) by adding thereto a new section after section 4 thereof relating to deposits, to be numbered as section 5 of said act, by renumbering section 5 of said act as section 6 thereof, and amending the same relating to assignments, and by renumbering section 6 of said act as section 7 thereof," approved March 5, 1903.

History: Approved March 21, 1911, Stats. 1911, p. 416. Prior act on same subject approved March 31, 1891, Stats. 1891, p. 217. Amended March 5, 1903, Stats. 1903, p. 83, was repealed by this act. For a full discussion of the law of trademarks, and an exhaustive discussion of authorities, see Kerr's Cyc. Civil Code, § 991, and note.

Name or device filed with secretary of state.

§ 1. Any and all persons engaged in manufacturing, bottling, or selling olives, olive oil, salad oil, soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, or other beverages or Worcestershire or other sauce or sauces in bottles, siphons, or kegs, with his, her, its or their name or names, or other marks or devices, branded, stamped, engraved, etched, and blown, impressed, or otherwise produced upon such bottles, siphons, or kegs, or the boxes used by him, her, it, or them, may file in the office of the clerk of the county in which his, her, its, or their principal place of business is situated, and also in the office of the secretary of state, a description of the name or names, marks or devices, so used by him, her, it or them, respectively, and cause such description to be printed once in each week for three weeks successively, in a newspaper published in the county in which said notice may have been filed as aforesaid.

Refilling bottles, etc. Used bottles not to be used for other purposes. Penalty.

§ 2. It is hereby declared to be unlawful for any person or persons, corporation or corporations, to fill with olive oil, salad oil, or any substitution for, or similar to olive oil, ripe or green olives, soda waters, mineral or aerated waters, port, ale, cider, ginger ale, milk, cream, beer, small beer, lager beer, weiss beer, white beer, or other beverages, or Worcestershire or other sauce or sauces or with medicine, compounds, or mixtures, any bottle, box, siphon or keg, so marked or distinguished as aforesaid, with or by any name, mark or device, of which a description shall have been filed and published, as provided in section 1 of this act, or deface, erase, obliterate, cover up, or otherwise remove or conceal any such name, mark or device thereon, or to sell, buy, give, take or otherwise dispose of or traffic in the same, without the written consent of, or unless the same shall have been purchased from the person or persons, corporation or corporations, whose mark or device shall be or shall have been in or upon the bottle, box, siphon, or keg so filled, trafficked in, used, or handled as aforesaid. It is hereby declared to be unlawful for any person, firm, or corporation engaged in the manufacture, preparation or selling of drugs, or food products to use bottles, in bottling or packing their products that have been previously used for other purposes.

Any person or persons or corporation offending against the provisions of this section shall be deemed guilty of a misdemeanor, and shall be punished for the first offense by imprisonment of not less than ten days nor more than six months or by a fine of fifty cents for each and every such bottle, box, siphon or keg so filled, sold, used, disposed of, bought, or trafficked in, or by both such fine and imprisonment; and for each subsequent offense by imprisonment not less than twenty days nor more than one year, or by a fine of not less than one dollar nor more than five dollars for each and every bottle, box, siphon, and keg so filled, sold, used, disposed of, bought or trafficked in, or by both such fine and imprisonment, in the discretion of the magistrate before whom the offense shall be tried.

Use and traffic in such bottles without consent, prohibited.

§ 3. The use by any person other than the person or persons, corporation or corporations, whose device, name or mark shall be or shall have been upon the same, without such written consent or purchase, as aforesaid, or any such mark or distinguished bottle, box, siphon, or keg, a description of the name, mark or device whereon shall have been filed and published, as herein provided, for the sale therein of olives, olive oil, salad oil, soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, beer, small beer, lager beer, weiss beer, white beer, or other beverages, or Worcestershire or other sauce or sauces or any article of merchandise, medicines, compounds, or preparations, or for the furnishing of such or similar beverages to customers, or the buying,

selling, using, disposing of, or trafficking in of any such bottle, boxes, siphons, or kegs, by any person other than said persons or corporations having a name, mark, or device thereon, or such owner, without such written consent, or the having by any junk dealer, or dealer in second-hand articles, possession of any such bottles, boxes, siphons, or kegs, a description of the marks, names, or devices wherein shall have been so filed and published as aforesaid, without such written consent, shall and is hereby declared to be presumptive evidence of the said unlawful use, purchase or traffic in of such bottles, boxes, siphons, or kegs.

Search-warrant to discover bottles, etc.

§ 4. Whenever any person, persons, or corporations, mentioned in section 1 of this act, or his, her, its or their agent, shall make oath before any magistrate that he, she or it has reason to believe, and does believe, that any of his, her, or their bottles, boxes, siphons, or kegs, a description of the names, marks or devices, whereon has been so filed and published, as aforesaid, are being unlawfully used or filled, or had by any person or corporation manufacturing or selling olives, olive oil, salad oil, soda, mineral, or aerated waters, porter, ale, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, and other beverages, or Worcestershire or other sauce or sauces or that any junk dealer, or dealer in second-hand articles, vendor of bottles, or any other person or corporation, has any such bottles, boxes, siphons, or kegs, in his, her, or its possession, or secreted in any place, the said magistrate must thereupon issue a search-warrant to discover and obtain the same and may also cause to be brought before him the person in whose possession such bottles, boxes, siphons, or kegs may be found, and then inquire into the circumstances of such possession, and if said magistrate finds that such person has been guilty of a violation of section 2 of this act, he must impose the punishment therein prescribed, and he shall also award possession of the property taken upon such search-warrant to the owner thereof.

Deposit not deemed sale.

§ 5. The requiring, taking, or accepting of any deposit for any purpose, upon any bottle, box, siphon, or keg, shall not be deemed or constitute a sale of such property, either optional or otherwise, in any proceeding under this act.

One filing sufficient. Transfer of right.

§ 6. Any person or persons, corporation or corporations that has or have heretofore filed in the offices mentioned in section 1 of this act, a description of the name or names, marks, or devices, upon his, her, their or its property therein mentioned, and has caused the same to be published according to the laws existing at the time of such filing and publications, shall not be required to again file and publish such description to be entitled to the benefits of this act; and any person or persons, corporation or corporations, having complied with the provisions of this act, may as a part of the sale, assignment or transfer of all his, her, their, or its said bottles, boxes, siphons, or kegs, used as aforesaid, with his, her, their or its name or names or other marks or devices, branded, stamped, engraved, etched, and blown, impressed or otherwise produced upon such bottles, boxes, siphons, and kegs, to any other person or persons, corporation or corporations, engaged in manufacturing, bottling or selling of olives, olive oil, salad oil, soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, or other beverages, or Worcestershire or other sauce or sauces sell, assign, and transfer the sole and exclusive right of using said name or names, mark or devices in said business. And in the event of such sale, transfer or assignment as aforesaid, or in the event of the transfer by operation of law or by sale under order of any court of the entire business of such person or persons, corporation or corporations, of the entire stock of bottles, boxes, siphons or kegs,

belonging to them, him, her or it, to any person or persons, corporation or corporations, engaged in the manufacturing, bottling, or selling olives, olive oil, salad oil, soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer or other beverages, such person or persons, corporation or corporations, shall not be again required to file and publish a description of said name or names, marks, or devices, hereunder, but shall be entitled to all the benefits of this act immediately upon acquiring such bottles, boxes, siphons or kegs or such business as aforesaid.

Acts repealed.

§ 7. An act entitled "An act to protect the owners of bottles, boxes, siphons, and kegs used in the sale of soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, or other beverages," approved March 31, 1891, also an act entitled "An act to amend an act entitled an act to protect the owners of bottles, boxes, siphons, and kegs used in the sale of soda waters, mineral and aerated waters, porter, ale, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, beer, white beer, or other beverages (approved March 31, 1891) by adding thereto a new section after section 4 thereof relating to deposits, to be numbered as section 5 of said act, by renumbering section 5 of said act as section 6 thereof, and amending the same relating to assignments, and by renumbering section 6 of said act as section 7 thereof," approved March 5, 1903, and all acts or parts of acts, consistent with the provisions of this act, are hereby repealed.

1. Constitutionality — Protection of the public.—The act is constitutional in that feature of it which looks to the protection of the general public from fraud, imposition and deception.—*Bartollotti v. Police Court*, 35 Cal. App. 372, 170 Pac. 161.

2. Same—Same.—The subject matter of the act bears a distinct and appropriate relation to its purpose to protect the public.—*Bartollotti v. Police Court*, 35 Cal. App. 372, 170 Pac. 161.

3. Same—Not unwarranted classification.—The act is not unconstitutional on the ground that it is unreasonable class legis-

lation, the protection given the owners of a particular kind of property being partially for the purpose of giving greater protection to the public.—*Bartollotti v. Police Court*, 35 Cal. App. 372, 170 Pac. 161.

4. Same—Not special legislation.—The act is not unconstitutional as special legislation.—*Bartollotti v. Police Court*, 35 Cal. App. 372, 170 Pac. 162.

For a full discussion of the law of trademarks and a full list of leading authorities, see Kerr's Cyc. Civil Code, § 991, and note.

CHAPTER 394.

TRADING STAMPS.

CONTENTS OF CHAPTER.

ACT 5216. TRADING STAMP ACT.

TRADING STAMP ACT.

ACT 5216—Making it a misdemeanor to sell or exchange property under the representation, advertisement, notice or inducement that an unidentified, unknown, unselected, or chance prize, premium or premium gift, or that a stamp, trading stamp, coupon or other like device entitling the holder to receive such a prize, premium or premium gift, or that the redemption of such a stamp, trading stamp, coupon or other like device so given is to be part of the transaction, or to sell or exchange any trading stamp, stamp, coupon or other like device to aid such sale or exchange, as aforesaid, and providing a penalty therefor.

History: Approved March 7, 1905, Stats. 1905, p. 67.

Editor's note: Unconstitutional. — Ex parte Drexel, 147 Cal. 763, 82 Pac. 429, 3 Ann. Cas. 878, 2 L. R. A. (N. S.) 588.

As constituting gift enterprise, see 65 L. R. A. 167.

Imposing license tax on all merchants using.—47 L. R. A. 205.

Oppressive license for use of by merchants.—47 L. R. A. 205.

Prohibiting seller of article from giving to purchaser.—48 L. R. A. 775.

Validity of business of dealing in; statute prohibiting business of; business not gift enterprise or lottery.—Brief 65 L. R. A. 169.

CHAPTER 395.

TRAINING SHIP.

CONTENTS OF CHAPTER.

ACT 5221. TRAINING SHIP IN SAN FRANCISCO.

TRAINING SHIP IN SAN FRANCISCO.

ACT 5221—An act to establish and maintain a training ship in the city and county of San Francisco.

History: Approved February 15, 1876, Stats. 1875-76, p. 54. Amended March 13, 1878, Stats. 1877-78, p. 233. Prior act of March 16, 1874, Stats. 1873-74, p. 394, repealed by the present act.

The last appropriation made for this purpose appears to have been the \$25,000 appropriated by this act, and a like sum was directed to be paid out of the San Francisco treasury. There is apparently no repeal of the act.

TRAMROAD COMPANIES.

See tit. Shasta County.

CHAPTER 396.

TREASURERS.

Reference: See tit. "Funds."

CONTENTS OF CHAPTER.

ACT 5231. TREASURERS IN CITIES OF 200,000 POPULATION.

TREASURERS IN CITIES OF 200,000 POPULATION.

ACT 5231—An act relating to treasurers, their deputies and clerks, in counties and cities and counties having a population of two hundred thousand inhabitants or over.

History: Approved March 23, 1893, Stats. 1893, p. 282. Superseded as to San Francisco and Los Angeles by their charters.

Treasurer to appoint deputies. Salaries.

§ 1. In all counties, and cities and counties, having a population of two hundred thousand inhabitants or over, the treasurer may appoint deputies and clerks as follows: One chief deputy, who shall receive a salary of two hundred and fifty (\$250) dollars per month; one clerk, who shall receive a salary of one hundred and twenty-five (\$125) dollars per month; and two additional deputies, who shall receive a salary of one hundred and seventy-five dollars (\$175) per month each. Said salaries shall be audited, allowed, and paid out of the general fund.

Conflicting acts repealed.

§ 2. All acts and parts of acts in conflict with this act are hereby repealed.

Act takes effect when.

§ 3. This act shall take effect from and after its passage.

Superseded.—Superseded as to Los Angeles and San Francisco by their charters.

TRESPASS.

See tits. "Fences"; "Hunting on Private Grounds"; Kerr's Cyc. Penal Code, § 602, subd. 8.

CHAPTER 397.

TRESPASSING ANIMALS.

Editor's note.—In view of the extreme difficulty of determining what acts on this subject are in force and what are not, all acts not expressly repealed are inserted, with such comments as are suggested by the facts shown by the statutes themselves, supplemented by notes from available decisions, leaving it to the searcher in the particular instance to solve his own particular problem. No doubt some of these acts continue in force, notwithstanding estray and fence laws; but there is also no doubt some have been superseded or repealed.

References: See tit. "Estrays."

In particular counties, see particular title.

CONTENTS OF CHAPTER.**ACT 5243. DAMAGES FROM TRESPASSING OF ANIMALS.****5244. ANIMALS TRESPASSING ON PRIVATE PROPERTY.****5244a. PROTECTION OF AGRICULTURE FROM TRESPASSING ANIMALS IN CERTAIN COUNTIES.****5245. PROTECTION OF AGRICULTURE FROM TRESPASSING ANIMALS IN CERTAIN COUNTIES.****5245a. PROTECTION OF AGRICULTURE AND DISTRAINING OF TRESPASSING ANIMALS IN CERTAIN COUNTIES.****5246. PROTECTION OF AGRICULTURE FROM TRESPASSING ANIMALS.****5246a. PROTECTION OF AGRICULTURE FROM TRESPASSING ANIMALS IN CERTAIN COUNTIES.****5246b. PROTECTION OF AGRICULTURE FROM TRESPASSING ANIMALS IN CERTAIN COUNTIES.****5246c. TRESPASSING ANIMALS ON PRIVATE LANDS IN CERTAIN COUNTIES.****5246d. TRESPASSING OF LIVESTOCK IN CERTAIN COUNTIES.****5246e. ANIMAL TRESPASSES IN CERTAIN COUNTIES.****DAMAGES FROM TRESPASSING OF ANIMALS.**

ACT 5243—An act concerning trespassing of animals upon private lands, and the recovery of damages resulting therefrom.

History: Approved March 23, 1907, Stats. 1907, p. 999.

Unlawful to suffer trespass of animals upon private lands.

§ 1. It is unlawful for any person, firm or corporation owning, or having possession of, any animal, to suffer or permit such animal to break into and enter upon any land owned by, or lawfully in the possession of any person, firm or corporation, other than the owner of such animal, in all cases where such land is planted to growing crops, vines, fruit trees or vegetables, and is at the time entirely inclosed by a substantial fence or other inclosure.

Action for damages.

§ 2. The owner of, or person who is in the lawful possession of, any land trespassed upon, in violation of this act, is entitled to recover, by action in a court of competent jurisdiction, from the owner of, or person in possession of, or person chargeable with the care of, the trespassing animal or animals, all actual damages sustained by reason of such trespass, together with costs of suit.

Security for payment of judgment. Provisions of Code of Civil Procedure applying.

§ 3. For the purpose of allowing the plaintiff a better security for the payment of any judgment he may recover in actions brought under the first two sections of this act, all the provisions of the Code of Civil Procedure of this state relating to attachment process shall apply to such actions, subject only to the following modifications, to wit: Instead of filing the affidavit on attachment, required by sections five hundred and thirty-eight and eight hundred and sixty-six of said code, the plaintiff is entitled to the issuance of a writ of attachment against the property of defendant, upon filing his complaint stating a cause of action under this act, verified according to the law concerning the verification of pleadings.

No animal exempt from execution.

§ 4. No animal is exempt from attachment or execution, levy and sale, to satisfy a judgment that may be rendered against the owner of such animal for trespass committed by such animal.

Course of procedure.

§ 5. In all other matters than those in which a different rule is herein prescribed the course of procedure prescribed in the Code of Civil Procedure of this state shall prevail in suits brought under this act.

Repeal of conflicting act. Estray laws not affected.

§ 6. All acts and parts of acts in conflict with this act are hereby repealed; provided, nothing in this act shall be deemed or construed to repeal an act of the legislature of this state relating to estrays, approved March 23d, 1901.

§ 7. This act shall take effect and be in force from and after its passage.

1. Act not repealed.—This act did not repeal the act of March 7, 1878 (Stats. 1877-78, p. 176, Act 5246c).—*Hicks v. Butterworth*, 30 Cal. App. 562, 159 Pac. 224; *Blevens v. Mullally*, 22 Cal. App. 519, 135 Pac. 307.

2. Same.—This act did not repeal the act of 1874 (Stats. 1873-74, p. 50, Act 5246b).—*Davis v. Blasingame*, 40 Cal. App. 458, 181 Pac. 104.

3. Effect on act of estray law of 1915.—As to the effect of the estray law of 1915 on this act (see Act 1401, estray law of 1901) on this act.—*Montezuma, etc., Co. v. Simmerly*, 181 Cal. 722, 189 Pac. 100.

4. Act not repugnant to common-law rule—Section 4468, Political Code.—The act which adopts the common law as to trespassing animals, but limits its application by certain conditions is not so repugnant

to the common-law rule as to call for the application of the provisions of section 4468, Political Code.—*Blevens v. Mullally*, 22 Cal. App. 519, 135 Pac. 307.

5. Jurisdiction of justice—Title and right of possession not involved.—The action authorized for injuries to growing crops by trespassing animals does not involve either the title or the right to the possession of the land, as affecting the jurisdiction of a justice of the peace.—*Fisch v. Nice*, 12 Cal. App. 60, 106 Pac. 598.

6. "Lawful possession" defined.—The words "lawful possession" as used in the act mean only peaceable and quiet possession as contradistinguished from a possession not merely constructively tortious but actually so.—*Fisch v. Nice*, 12 Cal. App. 60, 106 Pac. 598.

ANIMALS TRESPASSING ON PRIVATE PROPERTY.

ACT 5244—An act to prevent the trespassing of animals upon private property.

History: Approved March 31, 1855, Stats. 1855, p. 70. Supplemented May 17, 1861, Stats. 1861, p. 474. The supplementary act was amended (1) May 2, 1862, Stats. 1862, p. 480; (2) April 25, 1863, Stats. 1863, p. 570; (3) April 4, 1864, Stats. 1863-64, p. 459; (4) February 28, 1866, Stats. 1865-66, p. 126. This act was continued in force by the Political Code. See *Kerr's Cyc. Political Code*, § 19, subd. 23.

The code commissioners say that this act was repealed by the general estray laws, but see editor's note to chapter on "Estrays."

Editor's note: The act was probably superseded by the act of 1907 (Act 5243).

As to the effect on this and other acts of like character of the estray law of 1915 (see Act 1401, estray law of 1901). See *Montezuma, etc., Co. v. Simmerly*, 181 Cal. 722, 189 Pac. 100.

PROTECTION OF AGRICULTURE FROM TRESPASSING ANIMALS IN CERTAIN COUNTIES.

ACT 5244a—An act to protect agriculture, and to prevent the trespassing of animals on private property.

History: Approved March 26, 1866, Stats. 1865-66, p. 440. Amended March 26, 1870, Stats. 1869-70, p. 410; March 16, 1872, Stats. 1871-72, p. 412; March 30, 1874, Stats. 1873-74, p. 845; January 7, 1876, Stats. 1875-76, p. 5. Supplemented and amended March 28, 1868, Stats. 1867-68, p. 456; April 1, 1872, Stats. 1871-72, p. 940. The supplementary and amendatory acts were repealed March 16, 1874, Stats. 1873-74, p. 391. This act applied originally to the counties of Marin and Yolo and portions of Mono, Sacramento, and Solano. The amendment of 1870 extended it to the counties of Stanislaus and San Joaquin, and portions of Los Angeles, Merced, San Diego, and Santa Barbara. The amendment of 1872 extended to a further portion of the county of Merced. The amendment of 1876 restricted the application of the act to the counties of Marin, Solano, and Sacramento, and a portion of Mono. The supplementary acts dealt exclusively with the portion of the territory in Sacramento county to which the act was applicable. This act appears to have been overlooked entirely by the code commissioners.

PROTECTION OF AGRICULTURE FROM TRESPASSING ANIMALS IN CERTAIN COUNTIES.

ACT 5245—An act to protect agriculture, and prevent the trespassing of animals upon private property in the county of Los Angeles, and in the county of San Diego, and in parts of Monterey county.

History: Approved February 14, 1872, Stats. 1871-72, p. 99. Amended March 5, 1872, Stats. 1871-72, p. 241. Repealed as to Monterey County March 21, 1872, Stats. 1871-72, p. 556. Extended to Inyo county, March 28, 1872, Stats. 1871-72, p. 668. This act was continued in force by the Political Code. See Kerr's Cyc. Political Code, § 19, subd. 23.

The code commissioners say of this act that it was repealed by the general estray law of 1897; but see editor's note to chapter on "Estrays."

PROTECTION OF AGRICULTURE AND DISTRAINING OF TRESPASSING ANIMALS IN CERTAIN COUNTIES.

ACT 5245a—An act to protect agriculture and provide for the distraining of trespassing animals in the counties of Los Angeles and Stanislaus.

History: Approved March 4, 1878, Stats. 1877-78, p. 164.

The code commissioners say of this act that it was modified if not repealed by the general estray law of 1897; but see editor's note on "Estrays."

PROTECTION OF AGRICULTURE FROM TRESPASSING ANIMALS.

ACT 5246—An act to protect agriculture and to prevent the trespassing of animals upon private property.

History: Approved March 27, 1872, Stats. 1871-72, p. 563. The code commissioners say with reference to this act: "Probably superseded by 1897: 198; 1901: 603, chap. 197, relating to estrays," but see editor's note to chapter on "Estrays."

The code commissioners say of this act: "Probably superseded by 1897: 198; 1901: 603, chap. 197, relating to estrays"; but see editor's note to chapter on "Estrays."

1. Sale void for want of notice.—A distrainer who purchases and claims title to horses taken damage feasant under a sale void for want of the required notice loses his statutory lien.—Chase v. Putnam, 117 Cal. 364, 49 Pac. 204.

PROTECTION OF AGRICULTURE FROM TRESPASSING ANIMALS IN CERTAIN COUNTIES.

ACT 5246a—An act to protect agriculture and to prevent the trespassing of animals upon private property in the counties of Fresno, Tulare, Kern, Ventura, Santa Barbara, San Luis Obispo, and Monterey.

History: Approved February 4, 1874, Stats. 1873-74, p. 50. Amended March 30, 1874, Stats. 1873-74, p. 824. Supplemented and amended February 27, 1874, Stats. 1873-74, p. 179. Supplemented March 27, 1874 Stats. 1873-74, p. 705. Extended March 18, 1874, Stats. 1873-74, p. 474. The act applied originally to the counties of Fresno, Tulare, Kern, Ventura, Santa Barbara, San Luis Obispo, and Monterey. The amendment of March 30, 1874, extended it to Inyo county. The act of February 27, 1874, restricted its application in Fresno county. The act of March 27, 1874, extended it to Napa county, and the act of March 18, 1874, extended it to San Benito county.

Code commissioners' notes: "Unconstitutional in so far as it authorizes justices to enforce a lien (*Young v. Wright*, 52 Cal. 407; *Sutherland v. Sweem*, 53 Cal. 48)."

"Repealed 1877-78, p. 176 (Hanley v. Sixteen Horses, 97 Cal. 182, 32 Pac. 10)."

Editor's note: The act of 1877-78 did not repeal this act, except in so far as it applied to Santa Barbara and San Luis Obispo counties. The decision of the court went no further than to hold that the two acts

were in conflict so far as the county of Santa Barbara was concerned.

1. Remedy of act does not take away right to ordinary action in trespass.—The remedy by action in rem given by this act does not take away the right of an owner of land to an ordinary action in trespass against the owner of cattle wrongfully entering his premises.—*Trescony v. Brandenstein*, 66 Cal. 514, 6 Pac. 384.

Citation: *Gonzales v. Watson*, 51 Cal. 295.

PROTECTION OF AGRICULTURE FROM TRESPASSING ANIMALS IN CERTAIN COUNTIES.

ACT 5246b—An act to protect agriculture and to prevent the trespassing of animals upon private property in the counties of Stanislaus, Fresno, and Sutter.

History: Approved March 20, 1876, Stats. 1875-76, p. 373.

The code commissioners say this act was repealed by the general estray law of 1897; but see editor's note to chapter on "Estrays."

1. Not repealed by act of 1907.—This act was not repealed by the act of 1907 (Act 5243).—*Davis v. Blasingame*, 40 Cal. App. 458, 181 Pac. 104.

2. Statute of limitations.—Under this act the time to commence the action for damages provided for therein is not limited to sixty days after the trespass.—*Davis v. Blasingame*, 40 Cal. App. 458, 181 Pac. 104.

TRESPASSING ANIMALS ON PRIVATE LANDS IN CERTAIN COUNTIES.

ACT 5246c—An act concerning trespassing of animals upon private lands in certain counties in the state of California.

History: Approved March 7, 1878, Stats. 1877-78, p. 176. Amended March 30, 1878, Stats. 1877-78, p. 878; March 15, 1907, Stats. 1907, p. 300. This act applied originally to the counties of Alpine, Colusa, Humboldt, Merced, Solano, Santa Barbara, San Joaquin, San Luis Obispo, and Sacramento, and to parts of San Bernardino, El Dorado, and Tehama. By the amendment of March 30, 1878, it was extended to Los Angeles county, and by the amendment of 1907, to Sutter county.

1. Constitutionality—Not a special law.—The act was held to be constitutional, and not a special law merely because it applied to certain counties.—*Wigmore v. Buell*, 122 Cal. 144, 54 Pac. 600.

2. Same—Uniformity of operation.—The act was not unconstitutional because of lack of uniformity of operation, in allowing attachment without affidavit, thus introducing a remedy different from that provided by the code.—*Wigmore v. Buell*, 122 Cal. 144, 54 Pac. 600.

3. Same—Allowance of exemptions.—Not

unconstitutional because denying the exemptions given by the general law in attachments.—*Wigmore v. Buell*, 122 Cal. 144, 54 Pac. 600.

4. Act of 1878 not repealed by act of 1907.—It was not the intention of the legislature by the act of 1907 (999), partially restoring the common-law rule as to trespassing animals, to repeal the act of 1878, which restored the rule in its entirety to certain counties.—*Blevens v. Mullally*, 22 Cal. App. 519, 135 Pac. 307.

5. Not repealed by act of 1907.—This act

was not repealed by the general act of 1907 (Act 5243).—*Hicks v. Butterworth*, 30 Cal. App. 562, 159 Pac. 224.

6. **Lessee may sue for damages.**—One who occupies land under a lease calling

for one-half of certain crops as rental, holding title to the crop, may sue under the act for damages from trespassing animals.—*Hicks v. Butterworth*, 30 Cal. App. 562, 159 Pac. 224.

TRESPASSING OF LIVE STOCK IN CERTAIN COUNTIES.

ACT 5246d—An act to prevent trespass upon real estate by live stock.

History: Approved May 11, 1919. In effect July 22, 1919. Stats. 1919, p. 464.

Trespass by live stock.

§ 1. It shall be unlawful for any person or persons to herd or graze any live stock upon the lands of another in the counties of Plumas, Lassen and Modoc without having first obtained the consent of the owner or owners of the land so to do; provided, that the person claiming to be the owner of said lands has the legal title thereto, or an application to possess the same, with first payment made thereon.

Damages.

§ 2. The live stock which is herded or grazed upon the lands of another, contrary to the provisions of the first section of this act, shall be liable for all damages done by said live stock while being unlawfully herded or grazed on the lands of another, as aforesaid, together with costs of suit, and said live stock may be seized and held by a writ of attachment issued in the same manner provided by the general laws of the state of California, as security for the payment of any judgment which may be recovered by the owner or owners of said lands for damages incurred by reason of a violation of any of the provisions of this act, and the claim and lien of a judgment or attachment in such case shall be superior to any claim or demand which arose subsequent to the commencement of this action.

Exception.

§ 3. This act shall not apply to any live stock running at large on the ranges or commons.

ANIMAL TRESPASSES IN CERTAIN COUNTIES.

ACT 5246e—An act concerning trespasses on lands in the counties of Santa Barbara and San Luis Obispo.

History: Approved March 30, 1872, Stats. 1871-72, p. 749. The code commission says of this act that it was repealed by the general estray laws; but see editor's note to chapter on "Estrays."

The code commissioners say this act was repealed by the general estray law of 1897; but see editor's note to chapter on "Estrays."

CHAPTER 398.

TRINITY COUNTY.

References: Boundaries, see Kerr's Cyc. Political Code, § 3961.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

Public school teachers, see Kerr's Cyc. Political Code, § 1696.

CONTENTS OF CHAPTER.

ACT 5247. FREE BRIDGES—ACT OF 1872.

5248. FREE BRIDGES—ACT OF 1874.

5250. TRANSCRIBING RECORDS.

FREE BRIDGES.

ACT 5247—An act to provide for the construction and maintenance of free bridges in the county of Trinity and to set apart a fund therefor.

History: Approved March 16, 1872, Stats. 1871-72, p. 414.

This act required the supervisors to set aside the property road tax as a special free bridge fund.

FREE BRIDGES, ACT OF 1874.

ACT 5248—An act to provide for the construction and maintenance of free bridges in the county of Trinity, and to set apart a fund therefor.

History: Approved February 6, 1874, Stats. 1873-74, p. 62.

This act required the supervisors to set apart all moneys collected for ferry or toll-bridge licenses as a special free bridge fund.

TRANSCRIBING RECORDS.

ACT 5250—An act concerning the county records in the county of Trinity.

History: Approved April 10, 1862, Stats. 1862, p. 164. Amended February 21, 1863, Stats. 1863, p. 22.

CHAPTER 399.

TRUSTS.

CONTENTS OF CHAPTER.

- ACT 5259.** EXECUTION OF TRUSTS IN CASE OF DEATH OF LAST SURVIVING TRUSTEE.
- 5260. TRUSTS FOR PUBLIC LIBRARIES, ETC.
- 5261. TRUSTS FOR UNIVERSITIES, ETC.
- 5262. TRUSTS FOR UNIVERSITIES, ETC., SUPPLEMENTAL ACT.
- 5263. DETERMINATION OF CHARACTER AND EFFECT OF TRUSTS.
- 5264. "CARTWRIGHT ACT."

EXECUTION OF EXPRESS TRUSTS IN CASE OF DEATH OF LAST SURVIVING TRUSTEE.

ACT 5259—An act to provide for the more certain execution of express trusts in case of the death of the last surviving trustee.

History: Approved March 14, 1868, Stats. 1867-68, p. 170.

Probably superseded by the Civil Code, see Kerr's Cyc. Civil Code, section 2287-2289. If not so superseded, it is probably obsolete by reason of the abolition of the district courts by the present constitution.

TRUSTS FOR PUBLIC LIBRARIES, ETC.

ACT 5260—An act to encourage and provide for the dissemination of a knowledge of the arts, sciences, and general literature, and the founding, maintaining and perpetuating public libraries, museums, and galleries of art, and the receipt of donations and contributions thereto when established; for the conveyance, holding, and protection of real property within this state suitable for the purposes herein designated, and the erection thereon of buildings appropriate to such purposes, and for the creation of trusts necessary or proper for the better preservation of such institutions, and the control and management thereof.

History: Approved March 5, 1887, Stats. 1887, p. 26. Other acts of similar character: See post, Acts 5261, 5262, 5263.

Manner of conveying gifts for dissemination of knowledge of arts, etc.

§ 1. Any person intending in his lifetime or by will or trust deed, to operate after his death, to found, maintain, and perpetuate in this state a public library, museum, gallery of art, or any or all thereof, for the diffusion of mechanical, scientific, artistic,

and general knowledge, may to that end and for such purpose, and for any purpose within the purview of the title of this act, convey in writing by words denoting a gift or grant to one or more trustees named in such gift or grant, and to their successors, any library or collection of books and works, for such public library, or any museum, or gallery of art in this state, and such gift or grant may also express and shall be construed to be a conveyance of the future additions and accretions thereof; and he may also in like manner, to that end, and for such purpose, convey by grant to such trustee or trustees any real property within this state belonging to him, which may be necessary or proper for the erection and maintenance of buildings suitable to such institution, and the buildings erected thereon, with grounds, conveniently adjacent thereto, and other lands, tenements, and hereditaments for the purpose of producing an income for the support and maintenance of such institutions, or any of them, and any collateral burdens which may be imposed by the terms of such foundation as part and parcel of the regulations for its conduct, and also personal property of all descriptions, which may subserve the purposes of the institution and maintenance of any such library, museum, or gallery of art.

Gifts by other than founder.

§ 2. Any contributions or gifts by any other person than the founder, of any property suitable to the general plan or support of any institution mentioned in the title of this act, shall immediately vest in the trustees, and become incorporated into and subject to the trust, and to all its terms and conditions, and be managed under the rules and regulations prescribed therefor.

Powers of donor over.

§ 3. The person making such gift, grant, or conveyance, as founder, may therein designate,—

1. The name by which the institution so founded and maintained shall be known.
2. Its nature, object, and purposes.
3. The powers and duties of the trustees, which shall not be exclusive of other powers and duties that, in their judgment, may be necessary more effectually to carry out the purposes of such institution.
4. The mode and manner and by whom the successors to the trustees named in the gift or grant shall be appointed.
5. Such rules and regulations for the management of such institution, and the furtherance of its purposes, as the grantor may elect to prescribe; but such rules and regulations shall, unless the grant shall otherwise prescribe, be deemed advisory only, and shall not preclude such trustees or their successors from making such changes as new conditions may, from time to time, require.
6. The place or places where the necessary buildings shall be erected, and the general character thereof. The person making such grant may therein provide for all other things necessary or proper to carry out the purposes thereof, or otherwise, by his last will or testament.

Powers of trustees.

§ 4. The trustees named in such gift or grant, and their successors, may, in the name of such institution designated in the gift or grant, sue and defend in relation to the trust property, and to all matters affecting the institution so founded and established.

Privileges granted to founder.

§ 5. By a provision in such gift or grant, the founder may elect, in respect to the personal and real property conveyed, and the additions and increase thereof, and in

respect to the erection, maintenance, and management of any buildings auxiliary thereto, and in respect to any property connected with such institution, to reserve to himself a veto and right of annulment or modification of any act of such trustees, in case he shall, within thirty days after notice of the performance of such act, file in the office of said trustees, or deliver to their president or principal officer, a notice in writing, of such veto, annulment, or modification, and upon a like notice, in conformity with a provision in such gift or grant, he may elect to perform during his life all the powers which, by the terms thereof, are vested in or enjoined upon the trustees therein named, and their successors; provided, that upon the death or disability to act of the founder and grantor, such powers and duties shall be devolved upon, and be exercised by, the trustees named in the gift or grant, and their successors. Such person may also reserve the right to alter, amend, or modify, at any time during his life, or by his last will and testament, the terms and conditions thereof, and the trust therein created in respect to such institution, its buildings, and the property conveyed therefor.

Election of officers and compensation.

§ 6. The founder shall have power in said deed of trust to name and describe the character and personality of any one or more of the immediate or future trustees, the librarian, and other officers, and to name and impose any particular duty to be performed by any one or more trustees or other officers so described and characterized, and to declare and limit any compensation, and fix the character and method of such compensation he may choose to provide for any such trustee or other officer whom the terms of his foundation may characterize, and upon whom specific or general duties shall be imposed.

Gift, how recorded.

§ 7. Any such gift or grant may be executed, acknowledged, and recorded in the manner now or hereafter provided by law for the execution, acknowledgment, and recording of grants of real property.

Time of commencing suit.

§ 8. No suit, action, or proceeding shall be commenced or maintained by any person to set aside, annul, or affect said gift, grant or conveyance, or to affect the title to the property conveyed, or the right to the possession or to the rents, issues, and profits thereof, unless the same be commenced within two years after the date of the filing of such grant for record.

Founder may bequeath to state of California.

§ 9. Any person, being the founder, making a gift or grant for any of the purposes mentioned in this act, may, at any time thereafter, by last will or testament, devise or bequeath to the state of California all or any of the property, real, and personal, mentioned in such gift or grant, or in any such supplemental thereto, and such devise or bequest shall take effect in case, from any cause whatever, the gift or grant shall be annulled or set aside, or the trusts therein declared shall for any reason fail. Such devise or bequest is hereby suffered to be made by way of assurance that the intentions of the grantor shall be carried out, and in the faith that the state, in case it shall succeed to the property, or any part thereof, will, to the extent and value of such property carry out, in respect to the objects and purposes of any such grant, all the wishes and intentions of the grantor.

Liberal construction of provisions.

§ 10. The provisions of this act shall be liberally construed, with a view to effect its objects and purposes, and the singular number in the construction thereof shall be deemed to include the plural, and the plural number shall be deemed to include the singular.

Universities, colleges, schools, etc.

§ 11. Nothing in this act shall repeal, modify, change, or have any effect upon any of the provisions of an act of the legislature of the state of California entitled "An act to advance learning, the arts and sciences, and to promote the public welfare by providing for the conveyance, holding, and protection of property, and the creation of trusts for the founding, endowment, erection, and maintenance, within this state, of universities, colleges, schools, seminaries of learning, mechanical institutes, museums, and galleries of art," approved March ninth, eighteen hundred and eighty-five.

§ 12. This act shall take effect immediately.

TRUSTS FOR UNIVERSITIES, ETC.

ACT 5261—An act to advance learning, the arts and sciences, and to promote the public welfare, by providing for the conveyance, holding, and protection of property, and the creation of trusts for the founding, endowment, erection, and maintenance within this state of universities, colleges, schools, seminaries of learning, mechanical institutes, museums, and galleries of art.

History: Approved March 9, 1885, Stats. 1885, p. 49. Amended March 31, 1891, Stats. 1891, p. 454. Supplemented March 13, 1903, Stats. 1903, p. 140 (Act 5262). Other acts of similar character: See ante, Act 5260; post, Acts 5262, 5263.

Construction of act.

§ 1. The provisions of this act shall be liberally construed with a view to effect its objects and promote its purposes; and in the construction thereof the singular number shall be deemed to include the plural, and the plural shall be deemed to include the singular number, and the masculine gender shall be deemed to include the feminine.

Grant.

§ 2. Any person desiring in his lifetime to promote the public welfare by founding, endowing, and maintain[ing] within this state a university, college, school, seminary of learning, mechanical institute, museum, botanic garden, public park, or gallery of art, or any or all thereof, may, to the end and for such purpose, by grant in writing convey to a trustee, or any number of trustees, named in such grant (and to their successors), any property, real or personal, belonging to such person and situated or being within this state; provided, that if such person be married and the property be community property, then both husband and wife must join in such grant. [Amendment approved March 31, 1891, Stats. 1891, p. 454.]

Requisites.

§ 3. The person making such grant may therein designate:

1. The nature, object, and purposes of the institution or institutions to be founded, endowed, and maintained;

2. The name by which it or they shall be known;

3. The powers and duties of the trustees, and the manner in which they shall account, and to whom, if accounting be required; but such powers and duties shall not be held to be exclusive of other powers and duties which may be necessary to enable such trustees to fully carry out the objects of such grant;

4. The mode and manner, and by whom, the successors to the trustee or trustees named in the grant are to be appointed;

5. Such rules and regulations for the management of the property conveyed as the grantor may elect to prescribe; but such rules shall, unless the grantor otherwise prescribe, be deemed advisory only, and shall not preclude such trustees from making such changes as new conditions may from time to time require;

6. The place or places where and the time when the buildings necessary and proper for the institution or institutions shall be erected, and the character and extent thereof. The person making such grant may therein provide for all other things necessary and proper to carry out the purposes thereof, and especially may such person provide for the trades and professions which shall be taught in such institutions, and the terms upon which deserving scholars of the public and private schools of the various counties of this state may be admitted to all the privileges of such institutions, as a reward for meritorious conduct and good scholarship; and also for maintaining free scholarships for children of persons who have rendered service to or who have died in the service of this state; and also for maintaining free scholarships for children of mechanics, tradesmen, and laborers, who have died without leaving means sufficient to give such children a practical education, fitting them for the useful trades or arts; and also the terms and conditions upon which students in the public and private schools, and other deserving persons, may, without cost to themselves, attend the lectures of any university established; and also the terms and conditions upon which the museums, and art galleries, and conservatories of music, connected with any such institution, shall be open to all deserving persons without charge, and without their becoming students of the institution.

Actions by trustees.

§ 4. The trustee or trustees named in such grant, and their successors, may, in the name of the institution or institutions, as designated in such grant, sue and defend, in relation to the trust property, and in relation to all matters affecting the institution or institutions endowed and established by such grant.

Grantor as trustee.

§ 5. The person making such grant, by a provision therein, may elect, in relation to the property conveyed, and in relation to the erection, maintenance, and management of such institution or institutions, to perform, during his life, all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees named. If the person making such grant, and making the election aforesaid, be a married person, such person may further provide that if the wife of such person survive him, then such wife, during her life, may, in relation to the property conveyed, and in relation to the erection, maintenance, and management of such institution or institutions, perform all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the trustee and trustees therein named, and in all such cases the powers and duties conferred and imposed by such grant upon the trustee or trustees therein named shall be exercised and performed by the person making such grant, or by his wife, during his or her life, as the case may be; provided, however, that upon the death of such person, or his surviving wife, as the case may be, such powers and duties shall devolve upon and shall be exercised by the trustees named in the grant, and their successors.

Amending grant.

§ 6. The person making such grant may therein reserve the right to alter, amend, or modify the terms and conditions thereof, and the trusts therein created, in respect to any of the matters mentioned or referred to in subdivisions 1 to 6, inclusive, of section 3 hereof; and may also therein reserve the right, during the life of such person or persons, of absolute dominion over the personal property conveyed, and also over the rents, issues, and profits of the real property conveyed, without liability to account therefor in any manner whatever, and without any liability over against the estate of such person; and if any such person be married, such person may, in said grant, further provide that if his wife survive him, then such wife, during her life, may have the same

absolute dominion over such personal property, and such rents, issues, and profits, without liability to account therefor in any manner whatever, and without liability over against the estate of either of the spouses.

Custody of minors.

§ 7. The person making such grant may therein provide that the trustees named in the grant, and their successors, may, in the name of the institution or institutions, become the custodian of the person of minors, and when any such provision is made in a grant, the trustees and their successors may take such custody and control in the manner and for the time and in accordance with the provisions of sections 264 to 276, inclusive, of the Civil Code of the state of California.

Execution of grant.

§ 8. Any such grant may be executed, acknowledged, and recorded in the same manner as is now provided by law for the execution, acknowledgment, and recording of grants of real property.

Annulling suit.

§ 9. No suit, action, or proceeding shall be commenced or maintained by any person to set aside, annul, or affect said conveyance, or to affect the title to the property conveyed, or the right to the possession, or to the rents, issues, and profits thereof, unless the same be commenced within two years after the date of filing such grant for record; nor shall any defense be made to any suit, action, or proceedings commenced by the trustee or trustees named in said grant, or their successors, privies, or persons holding under them, which defense involves the legality of said grant, or affects the title to the property thereby conveyed, or the right to the possession, or the rents, issues, and profits thereof, unless such defense is made in a suit, action, or proceeding commenced within two years after such grant shall have been filed for record.

Exemption from execution.

§ 10. The property conveyed by such grant shall not, after a lapse of two years from the date of the filing for record of the grant, be subject to forced sale, under execution, or judicial proceedings of any kind, against the grantor or his privies, unless the action under which the execution shall be issued, or the proceedings under which the sale shall be ordered, shall have been commenced within two years after such grant shall have been filed for record. Nor shall such property be subject to execution or forced sale under any judgment obtained in any proceedings instituted within said two years, if there be other property of the grantor, subject to execution or forced sale sufficient to satisfy such judgment; provided, nothing in this section contained shall be construed to affect mechanics' or laborers' liens.

Bequest to state.

§ 11. Any person or persons making any such grant may, at any time thereafter, by last will or testament, devise and bequeath to the state of California all or any of the property, real and personal, mentioned in such grant, or in any supplemental grant, and such devise or bequest shall only take effect in case, from any cause whatever, the grant shall be annulled or set aside, or the trusts therein declared shall for any reason fail. Such devise and bequest is hereby permitted to be made by way of assurance that the wishes of the grantor or grantors shall be carried out, and in the faith that the state, in case it succeeds to the property, or any part thereof, will, to the extent and value of such property, carry out, in respect to the objects and purposes of any such grant, all the wishes and intentions of the grantor or grantors; provided, that no wish, direction, act, or condition expressed, made, or given by any grantor or grantors, under or by virtue of this act, as to religious instruction to be given in such school, college,

seminary, mechanical institute, museum, or gallery of art, or in respect to the exercise of religious belief, on the part of any pupil or pupils of such school or institution of learning, shall be binding upon the state; nor shall the state enforce, or permit to be enforced or carried out, any such wish, direction, act, or condition.

§ 12. This act shall be in force from and after its passage.

1. State may enforce trust.—The state may maintain an action to enforce or to prevent the mismanagement of a trust formed under the authority of this act.—People ex rel. Ellert v. Cogswell, 113 Cal. 129, 35 L. R. A. 269, 45 Pac. 270.

2. Founder should avoid uncertainty.—The founder of a charitable trust should describe the general nature of the trust, and leave the details of the administration to be settled by trustees under the superintendence of the court of chancery.—People ex rel. Ellert v. Cogswell, 113 Cal. 129, 35 L. R. A. 269, 45 Pac. 270.

3. "Eleemosynary" — Perpetuities. — A trust is none the less eleemosynary within the meaning of the constitutional provision against perpetuities because it is for the boys and girls of California, and not alone for those who are poor.—People ex rel. Ellert v. Cogswell, 113 Cal. 129, 35 L. R. A. 269, 45 Pac. 270.

4. Same — "Charitable" interchangeable. —The word "charitable" is interchangeable with "eleemosynary."—People ex rel. Ellert v. Cogswell, 113 Cal. 129, 35 L. R. A. 269, 45 Pac. 270.

TRUSTS FOR UNIVERSITIES, ETC. SUPPLEMENTAL ACT.

ACT 5262—An act supplemental to an act entitled "An act to advance learning, the arts and sciences, and to promote the public welfare, by providing for the conveyance, holding, and protection of property, and the creation of trusts for the founding, endowment, erection, and maintenance within this state of universities, colleges, schools, seminaries of learning, mechanical institutes, museums, and galleries of art," approved March 9, 1885, concerning the resignation, relinquishment or surrender of rights, powers, privileges and duties reserved to or vesting in the founder or founders, surviving founder, or wife or widow of any founder, of any institution created or founded under or pursuant to said act, and concerning the assumption and exercise of powers and duties by the trustee or trustees of such institution.

History: Approved March 13, 1903, Stats. 1903, p. 140. See ante, Act 5261.

Founder of a school may surrender reserved rights.

§ 1. The founder or founders, surviving founder, or wife or widow of any founder, of a university, college, school, seminary of learning, mechanical institute, museum, gallery of art, library or any other institution, or any or all thereof, founded under or pursuant to an act entitled "An act to advance learning, the arts and sciences, and to promote the public welfare, by providing for the conveyance, holding, and protection of property, and the creation of trusts for the founding, endowment, erection, and maintenance within this state of universities, colleges, schools, seminaries of learning, mechanical institutes, museums, and galleries of art," approved March 9, 1885, may, by an instrument in writing, resign, relinquish and surrender all the rights, powers, privileges and duties reserved to or vesting in such founder or founders, surviving founder, or wife or widow of such founder, over, in, or concerning any of the property granted or given to such institution or institutions, or over or concerning any such institution or institutions so founded, and thereupon all estates, rights, powers, privileges, trusts and duties which would otherwise vest in or devolve upon the trustee or trustees of the trusts and estates created for the founding, endowment and maintenance of any such institution or institutions upon the death of the person or persons so resigning, relinquishing and surrendering, by the terms of the grant founding the institution or institutions, and amendments thereof, and by the terms of any grants, gifts, bequests, and devises supplementary thereto, or of any confirmatory grants, shall immediately vest in and devolve upon such trustee or trustees. Nothing herein contained shall prevent

such person or persons so resigning, relinquishing and surrendering such rights, powers, privileges, or duties from thereafter becoming and serving as one of such trustees, or from becoming and serving as an officer of any board of such trustees.

§ 2. This act shall take effect and be in force from and after its passage.

DETERMINATION OF CHARACTER AND EFFECT OF TRUSTS.

ACT 5263—An act to provide for proceedings for the ascertainment of the existence and terms of, and for the determination of the validity and legal effect of grants or other instruments creating, changing or affecting trusts and estates for the founding, endowment and maintenance of a university, college, school, seminary of learning, mechanical institute, museum, gallery of art, or library, or any other institution, or any or all thereof, under or pursuant to an act entitled “An act to advance learning, the arts and sciences, and to promote the public welfare, by providing for the conveyance, holding, and protection of property, and the creation of trusts for the founding, endowment, erection, and maintenance within this state of universities, colleges, schools, seminaries of learning, mechanical institutes, museums, and galleries of art,” approved March 9, 1885, or under or pursuant to an act entitled “An act to encourage and provide for the dissemination of a knowledge of the arts, sciences, and general literature, and the founding, maintaining, and perpetuating public libraries, museums, and galleries of art, and the receipt of donations and contributions thereto when established; for the conveyance, holding and protection of real property within this state suitable for the purposes herein designated, and the erection thereon of buildings appropriate to such purposes, and for the creation of trusts necessary or proper for the better preservation of such institutions, and the control and management thereof,” approved March 5, 1887.

History: Approved February 10, 1903, Stats. 1903, p. 9. See prior acts, ante, Acts 5260, 5261, 5262.

Special proceeding to determine validity of gifts. Passing of title to trustees. Where proceedings shall be instituted.

§ 1. The trustee or trustees of any trust or trusts heretofore or hereafter created for the founding, endowment and maintenance of a university, college, school, seminary of learning, mechanical institute, museum, gallery of art, library or other institution, or any or all thereof, under or pursuant to an act entitled “An act to advance learning, the arts and sciences, and to promote the public welfare, by providing for the conveyance, holding, and protection of property, and the creation of trusts for the founding, endowment, erection, and maintenance within this state of universities, colleges, schools, seminaries of learning, mechanical institutes, museums, and galleries of art,” approved March 9, 1885, or under or pursuant to an act entitled “An act to encourage and provide for the dissemination of a knowledge of the arts, sciences, and general literature, and the founding, maintaining, and perpetuating public libraries, museums, and galleries of art, and the receipt of donations and contributions thereto when established; for the conveyance, holding and protection of real property within this state suitable for the purposes herein designated, and the erection thereon of buildings appropriate to such purposes, and for the creation of trusts necessary or proper for the better preservation of such institutions, and the control and management thereof,” approved March 5, 1887, may commence a special proceeding affecting the existence of, and the due and voluntary execution and delivery, and the terms, validity and legal effect of the grant or grants founding the same, and of all amendments or attempted amendments thereof, and of any supplemental grants or gifts, and of any confirmatory conveyances, of the founder or founders, or surviving founder, or wife or widow of any such founder; and in and by which may be determined all questions of law and fact affecting the due and voluntary execution and delivery, and the validity and legal effect, of any gift or grant

made in general terms for the benefit of the institution or institutions, or of any department thereof, or of any gift or grant made in general terms for the benefit of the institution or institutions, or of any department thereof, upon the trusts provided for in the grant founding the institution or institutions, and amendments thereof and grants, bequests and devises supplementary thereto; and in and by which may be determined all questions bearing upon the passing to the trustee or trustees of the legal title to the properties, real and personal, conveyed or attempted to be conveyed, so far as such property or the proceeds thereof, or any property acquired in exchange therefor or with proceeds thereof, may be described in the petition herein provided for, and the interest or title of the trustee or trustees in or to any such property described in such petition; and in and by which may be determined all questions of law and fact affecting the due and voluntary execution and delivery, and the validity and legal effect, of any grant or surrender by any such founder or founders, surviving founder, or wife or widow of any founder, to, or in favor of, such trustee or trustees, of any rights, powers, privileges or duties reserved to or vesting in any such person or persons over or concerning any property described in the petition herein provided for, or over or concerning any such institution or institutions so founded, which would otherwise vest in or devolve upon such trustee or trustees upon the death of the person or persons so granting or surrendering the same, and of any relinquishment or release by the founder or founders, surviving founder, or wife or widow of any founder, of any other such rights, powers, privileges, or duties so reserved to or vesting in any such person or persons. To this end the trustee or trustees of any trust hereinbefore referred to, in the name of the institution or institutions so founded, or in the name of the trustee or trustees of such institution or institutions, or in the name of the board of trustees of such institution or institutions, may file, in the superior court of the county in which the lands described in the founding grant or grants, or some lands described in the founding grant or grants, or some portion thereof, are situated, or, if no real estate has been granted as herein provided to such trustees, then in the county where the main part of any such institution or institutions is situated, a petition in writing, signed by counsel for such trustee or trustees, or by counsel for a majority thereof, which petition shall contain copies of all such grants, amendments, attempted amendments, supplemental grants, instruments of gift, confirmatory conveyances, and grants and instruments of surrender, relinquishment or release, hereinbefore mentioned or referred to, so far as known to such trustee or trustees; and the petition shall allege in general terms the due and voluntary execution and delivery, and the validity, of any and all of such instruments, copies of which are set out in the petition, and shall describe all property, real and personal, the legal title to which is held or claimed to be held by said trustee or trustees under or by virtue of any or all of such instruments, whether or not the same be the original property conveyed, the proceeds thereof, or re-invested proceeds; and the petition shall allege in general terms the estate or interest which the trustee or trustees have or claim in or to the property described; and the petition shall pray, in effect, that the court examine and determine all questions of law and fact affecting the due and voluntary execution and delivery, and the terms, validity and legal effect of all such instruments, copies of which are so set out in the petition; and that the court examine and determine all questions bearing upon the passing to the trustee or trustees, of the legal title to all the properties, real and personal, so conveyed or attempted to be conveyed, so far as the same or the proceeds thereof, or any property acquired in exchange therefor or with the proceeds thereof, may be described in said petition; and that the court examine and determine the interest or title of the trustee or trustees in or to any such property; and that it be established and determined that the trustee or trustees are rightfully vested with the legal title thereto.

Fixing time for hearing. Form of notice and petition. Notice, what shall state.

Waiver of notice.

§ 2. The court or judge shall fix the time for the hearing of said petition, and shall order the clerk of the court to post in at least three public places in the county a notice of the filing of said petition, attached to a copy of said petition, and order a copy of such notice together with a copy of the petition to be personally served upon the founder or founders, if living, and upon the surviving wife or widow of any founder, and upon any living grantor or donor of any other grant or gift set out in the petition, and may order such other or further notice to be given as the judge or court may deem proper. Such notice shall be posted and served at least ten days before the hearing. If the court or judge finds upon the hearing that due and proper notice has not been given as herein provided, it shall reset the hearing and cause such due and proper notice to be given. The notice and petition shall be entitled substantially in the following form:

In the superior court of the county of, state of California.

In the matter of the petition of (giving the name or names in which the petition is brought) for the ascertainment of the existence and terms of, and for the determination of the validity and legal effect of grants or other instruments creating, changing or affecting trusts and estates for the founding, endowment and maintenance of (naming the institution or institutions founded).

The notice shall state the time and place fixed for the hearing of the petition and shall be addressed to the founder or founders, living, and to the surviving wife or widow of any founder, and the living grantor or donor of any other grant or gift set out in the petition, and in general terms to all other persons having or claiming any interest in, or rights, powers, or duties over or concerning the property described in the petition; and shall direct that they and each of such persons appear and answer said petition on or before the time set for said hearing; and shall state that unless said persons so appear and demur or answer, the petitioners will apply to the court to grant the prayer of the petition, and that each person failing to so appear and answer, shall be deemed to admit as true all the material allegations of the petition.

Any of the persons so required to be served, or any other person so interested may waive notice by written waiver filed with the clerk of the court.

Parties interested may demur. Defendants. Failure to answer.

§ 3. Any person interested in the determination of any of the questions presented by the petition may demur to or answer said petition and may set up any new matter affecting the determination of any such questions. Any allegation of the petition or answer may be made upon information and belief. The provisions of the Code of Civil Procedure respecting the demurrer and the answer to a verified complaint, shall be applicable to a demurrer or answer to said petition. The persons so demurring to or answering said petition shall be the defendants to said special proceeding and the petitioners shall be the plaintiffs. Every material statement of the petition not specifically controverted by the answer must, for the purposes of said special proceeding, be taken as true; and each person failing to answer the petition shall be deemed to admit as true all the material allegations of the petition. The rules of pleading and practice provided for by the Code of Civil Procedure, which are not inconsistent with the provisions of this act, are applicable to the special proceeding herein provided for.

Jurisdiction of court. Findings. Costs.

§ 4. Upon the hearing of such special proceeding, the court shall have power and jurisdiction to examine into and determine all questions of law and fact within the scope of the proceeding herein provided for, whether presented by the petition or answer, or by the proofs upon the hearing.

The court shall find and determine whether the notice of the filing of said petition has been duly given for the time and in the manner in this act prescribed.

The costs of the special proceeding may be allowed and apportioned between all parties, in the discretion of the court.

Judgment to be recorded.

§ 5. A certified copy of the judgment of the court in such special proceeding shall be recorded in the office of the recorder of the county in which the action is brought and in the office of the recorder of every county in which any of the real property affected is situated.

Judgment to be determinative.

§ 6. The judgment of the court in such special proceeding shall be determinative of the terms and trusts upon which any property thereafter given for the benefit of such institution or institutions, or any department thereof, shall be held by such trustee or trustees, unless otherwise provided by the grantor or donor of such property.

§ 7. This act shall take effect and be in force from and after its passage.

"CARTWRIGHT ACT."

ACT 5264—An act to define trust and to provide for criminal penalties and civil damages, and punishment of corporations, persons, firms, and associations, or persons connected with them, and to promote free competition in commerce and all classes of business in this state.

History: Approved March 23, 1907, Stats. 1907, p. 984. Amended March 20, 1909, Stats. 1909, p. 593.

A trust defined. Exception.

§ 1. A trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce.
2. To limit or reduce the production, or increase the price of merchandise or of any commodity.
3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.
4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state.
5. To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void, provided that no agreement, combination

or association shall be deemed to be unlawful or within the provisions of this act, the object and business of which are to conduct its operations at a reasonable profit or to market at a reasonable profit those products which can not otherwise be so marketed, provided further, that it shall not be deemed to be unlawful, or within the provisions of this act, for persons, firms, or corporations, engaged in the business of selling or manufacturing commodities of a similar or like character, to employ, form, organize or own any interest in any association, firm or corporation, having as its object or purpose the transportation, marketing or delivery of such commodities. [Amendment approved March 20, 1909, Stats. 1909, p. 593. In effect immediately.]

Violation of act.

§ 2. For a violation of any of the provisions of this act by any corporation or association mentioned herein, it shall be the duty of the attorney general or the district attorney of the proper county, to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

Agreements permitted.

§ 2½. It shall be lawful to enter into agreements or form associations or combinations, the purpose and effect of which shall be to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade. [New section approved March 20, 1909, Stats. 1909, p. 594. In effect immediately.]

Foreign corporations amenable. Duty of secretary of state.

§ 3. Every foreign corporation, as well as every foreign association, exercising any of the powers, franchises or functions of a corporation in this state, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this state, and it shall be the duty of the attorney general to enforce this provision by bringing proper proceedings by injunction or otherwise. The secretary of state shall be authorized to revoke the license of any such corporation or association heretofore authorized by him to do business in this state.

Penalty for violation of act.

§ 4. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall as principal, manager, director, agent, servant or employee, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty (\$50) dollars nor more than five thousand (\$5,000) dollars, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

What indictment must set out.

§ 5. In any indictment, information or complaint for any offense named in this act, it is sufficient to state the purpose or effects of the trust or combination, and that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

Prosecutions, what to prove. Books and papers must be produced when ordered.

§ 6. In prosecutions under this act, it shall be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it, or acted

for or in connection with it, without proving all the members belonged to it, or proving or producing any article of agreement, or any written instrument on which it may have been based; or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such. In case any court of record, or in vacation any judge of said court in which is pending any civil, criminal or other action or proceeding brought or prosecuted by the attorney general or any district attorney for the violation of any of the provisions of this act or in any action or proceeding for the violation of the law of this state, against conspiracy or combination in restraint of trade so orders, no person so ordered shall be excused from attending, testifying or producing books, papers, schedules, contracts, agreements or any other document in obedience to the subpoena or under the order of such court or any commissioner or referee appointed by said court to take testimony or any notary public or other person or officer authorized by the laws of this state to take depositions when the order made by such court or judge thereof includes a witness whose deposition is being taken before such notary public or other officer on the ground or for the reason that the testimony or evidence required of him may tend to criminate him or subject him to any penalty; but no individual shall be prosecuted or subjected to any penalty for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, before any such court, person or officer.

Penalty, after notice by attorney general.

§ 7. Each and every firm, person, partnership, corporation, or association of persons, who shall in any manner violate any of the provisions of this act, shall be for each and every day that such violations shall be committed or continued, after due notice given by the attorney general or any district attorney, forfeit and pay the sum of fifty (\$50) dollars, which may be recovered in the name of the people of the state of California, in any county where the offense is committed, or where either of the offenders resides; and it shall be the duty of the attorney general, or the district attorney of any county on the order of the attorney general to prosecute for the recovery of the same. When the action is prosecuted by the attorney general against a corporation or association of persons, he may begin the action in the supreme court of the county in which defendant resides or does business.

Contracts in violation of act void.

§ 8. That any contract or agreement in violation of the provisions of this act, shall be absolutely void and shall not be enforceable either in law or equity.

Provisions cumulative.

§ 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

Trust certificates not lawful.

§ 10. It shall not be lawful for any person, partnership, association or corporation, or any agent thereof, to issue or to own trust certificates, or for any person, partnership, association or corporation, agent, officer, or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation, or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article, and any person, partnership, association or corporation that shall enter

into any such combination, contract or agreement for the purpose aforesaid shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars, nor more than five thousand dollars.

Persons injured in business by trust may sue.

§ 11. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of any thing forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover twofold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not.

“Person” defined.

§ 12. The word “person” or “persons” whenever used in this act, shall be deemed to include corporations, partnerships and associations existing under or authorized by the laws of this state or any other state, or any foreign country.

Labor not a commodity.

§ 13. Labor whether skilled or unskilled is not a commodity within the meaning of this act. [New section approved March 20, 1909, Stats. 1909, p. 594. In effect immediately.]

1. Constitutionality — Upheld.—The act is not unconstitutional.—*People v. Sacramento, etc., Ass'n*, 12 Cal. App. 471, 107 Pac. 712.

2. Violation of act is a misdemeanor.—The crime denounced as a violation of the Cartwright act is a misdemeanor.—*Union Ice Co. v. Rose*, 11 Cal. App. 357, 104 Pac. 1006.

3. Information held sufficient.—The information in the present case was held to state all the elements of the offense of violating the provisions of the law, and not to be defective for failure to disclose the names of unknown persons alleged to have participated in the conspiracy charged.—*People v. Sacramento, etc., Ass'n*, 12 Cal. App. 471, 107 Pac. 712.

4. Same—Defendant charged as agent and not independently.—The information in the present case charging conspiracy in restraint of trade under the provisions of the act held to have sufficiently charged defendant O'Keefe in his representative capacity as agent of the meat company, and not independently.—*People v. Sacramento, etc., Ass'n*, 12 Cal. App. 471, 107 Pac. 712.

5. Indictment—Not within exceptions of act.—An indictment charging a combination in restraint of trade need not allege negatively that the combination does not come within the exceptions of the act.—*People v. H. Jevne Co.*, 179 Cal. 621, 178 Pac. 517.

6. Dates of acts committed need not be alleged.—An information for conspiracy under the act need not allege the dates of commission of the acts charged.—*People v.*

Sacramento, etc., Ass'n, 12 Cal. App. 471, 107 Pac. 712.

7. Acts of accomplishment are probative and need not be alleged.—Acts constituting the actual accomplishment of the object or purpose of a combination in restraint of trade are merely probative need not be alleged.—*People v. Sacramento, etc., Ass'n*, 12 Cal. App. 471, 107 Pac. 712.

8. Defense—Agent acting without or in excess of authority.—An agent who joins a conspiracy in restraint of trade acts as agent and his act is that of his principal, and if he acted without or in excess of his authority it was matter of defense.—*People v. Sacramento, etc., Ass'n*, 12 Cal. App. 471, 107 Pac. 712.

9. No explicit or formal agreement need be proved.—In a charge of conspiracy under the act no explicit or formal agreement need be proved.—*People v. Sacramento, etc., Ass'n*, 12 Cal. App. 471, 107 Pac. 712.

10. The prohibitions of the act are violated by an agreement among wholesale bakers, whereby they fix the retail price of bread to be sold by them to retailers, and agree that they will not sell bread to any retailer who does not retain such price.—*People v. H. Jevne Co.*, 179 Cal. 621, 178 Pac. 517.

11. Conviction sustained.—The evidence in the present case held to sustain the conviction.—*People v. Sacramento, etc., Ass'n*, 12 Cal. App. 471, 107 Pac. 712.

12. Price fixing not violative of act, when.—Where the sole purpose of a combination to resell at a minimum price is a

reasonable profit and the commodity is not manufactured in sufficient quantity to control the market, such condition is not in violation of the Cartwright act (1907-984) as amended (1909-593).—*D. Ghiradelli Co. v. Hunsicker*, 164 Cal. 355, 362, 128 Pac. 1041.

13. Double damages—Injuries must be direct result.—The act in allowing the recovery of double damages for injuries resulting from the acts denounced in the Cartwright act refers to direct injuries, and a real estate broker has no cause of action thereunder because of a loss of a commission as a result of the acts of persons constituting a trust.—*Krigbaum v. Sbarbaro*, 23 Cal. App. 427, 138 Pac. 364.

To same effect: *Munter v. Eastman Kodak Co.*, 28 Cal. App. 660, 153 Pac. 737.

14. Same—Same—Necessary allegations.—A manufacturer or wholesaler not only has a right to fix his own prices, but also the price at which his goods are to be sold by retail dealers, so long as those acts are not the direct effect or result of a combination formed and maintained by him and others to create restrictions in trade and commerce, in other words, to create a monopoly of the trade, and if a complaint fails to declare directly that such was the fact, no cause of action is shown.—*Munter v. Eastman Kodak Co.*, 28 Cal. App. 660, 153 Pac. 737.

TULARE CITY.

See Act 3094, note.

CHAPTER 400.

TULARE COUNTY.

References: Boundary, see *Kerr's Cyc. Political Code*, § 3962.

County government, etc., see *Kerr's Cyc. Political Code*, §§ 4000, et seq.

Water ditches and water privileges, see tit. "Water Commission."

CONTENTS OF CHAPTER.

ACT 5279. INCREASE NUMBER OF JUDGES.

INCREASE NUMBER OF JUDGES.

ACT 5279—An act to increase the number of judges of the superior court of the county of Tulare, and to provide for the appointment of an additional judge.

History: Approved March 1, 1911, Stats. 1911, p. 259. Prior act of March 10, 1891, Stats. 1891, p. 61, increased the number of judges from one to two, and the act of March 26, 1895, Stats. 1895, p. 128, decreased the number from two to one.

Additional judge for Tulare county.

§ 1. The number of judges of the superior court of the county of Tulare is hereby increased from one to two.

Time of appointment.

§ 2. Within thirty days after the taking effect of this act, the governor shall appoint one additional judge of the superior court of the county of Tulare, state of California, who shall hold office until the first Monday after the first day of January, A. D. nineteen hundred and thirteen. At the general election to be held in November, 1912, a judge of the superior court of said county shall be elected in said county, who shall be the successor of the judge appointed hereunder, to hold office for the term prescribed by the constitution and by law.

Salary.

§ 3. The salary of said additional judge shall be the same in amount, and shall be paid at the same time and in the same manner, as the salary of the other judge of the superior court of said county now authorized by law.

CHAPTER 401.

TUOLUMNE COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3963.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

ACT 5287. LAWFUL FENCES.

LAWFUL FENCES.

ACT 5287—An act concerning fences in Tuolumne county.

History: Approved April 4, 1864, Stats. 1863-64, p. 475.

CHAPTER 402.

TUOLUMNE RIVER.

Reference: Head of navigation, see Kerr's Cyc. Political Code, § 2349.

CONTENTS OF CHAPTER.

ACT 5297. BRIDGE AT MODESTO.

BRIDGE AT MODESTO.

ACT 5297—An act authorizing the construction of a bridge across the Tuolumne river at Modesto.

History: Approved March 23, 1878, Stats. 1877-78, p. 455.

This act granted to Thomas W. Harp, John W. McCarthy, their heirs and assigns, for fifty years, the right to construct and maintain a toll bridge and charge and collect tolls thereon.

TURLOCK.

See Act 3094, note.

CHAPTER 403.

TURNPIKE ROADS.

Reference: Wagon road corporations, see Kerr's Cyc. Political Code, §§ 512, et seq.

CONTENTS OF CHAPTER.

ACT 5304. AUTHORIZING JOHN LAWLEY TO CONSTRUCT A TURNPIKE.

AUTHORIZING JOHN LAWLEY TO CONSTRUCT A TURNPIKE.

ACT 5304—An act authorizing John Lawley and others to construct and maintain a turnpike road in Napa and Lake counties.

History: Approved March 16, 1866, Stats. 1865-66, p. 277.

The franchise granted by this act was considered in quo warranto, in the case of People ex rel. Spiers v. Lawley, 17 Cal. App. 331, 334, 335, 119 Pac. 1089.

The railroad commission is not the proper forum to seek relief under this act.—Home, etc., Co. v. Pacific, etc., Co., 6 R. C. D. 124.

UKIAH.

See Act 3094, note.

CHAPTER 404.

UNFAIR COMPETITION.

CONTENTS OF CHAPTER.

ACT 5314. UNFAIR COMPETITION ACT OF 1913.

UNFAIR COMPETITION ACT OF 1913.

ACT 5314—An act relating to unfair competition and discrimination, making certain unfair and discriminatory practices unlawful, defining the duties of the attorney general in regard thereto, declaring certain contracts illegal and forbidding recovery thereon, providing for actions to enjoin unfair competition and discrimination and to recover damages therefor, making the violation of the provisions of this act a misdemeanor and providing penalties.

History: Approved June 10, 1913. In effect August 10, 1913. Stats. 1913, p. 508.

Unlawful to discriminate between different sections in sale of commodities. Act does not prevent competitive rate. Officers responsible.

§ 1. It shall be unlawful for any person, firm or corporation, doing business in the state of California and engaged in the production, manufacture, distribution or sale of any commodity of general use or consumption, or the product or service of any public utility, with the intent to destroy the competition of any regular established dealer in such commodity, product or service, or to prevent the competition of any person, firm, private corporation, or municipal or other public corporation, who or which, in good faith, intends and attempts to become such dealer, to discriminate between different sections, communities or cities or portions thereof of this state, by selling or furnishing such commodity, product or service at a lower rate in one section, community or city, or any portion thereof, than in another, after making allowance for difference, if any, in the grade, quality or quantity, and for cost differences between such places due to distance from the point of production, manufacture or distribution and expense of distribution and operation. This act is not intended to prohibit the meeting in good faith of a competitive rate, or to prevent a reasonable classification of service by public utilities for the purpose of establishing rates. The inhibition hereof against locality discrimination shall embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this act.

Any person, who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions hereof, assists or aids, directly or indirectly, in such violation shall be responsible therefor equally with the person, firm or corporation for whom or which he acts. In the prosecution of any person as officer, director or agent it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts.

Duty of attorney general to prosecute.

§ 2. If complaint shall be made to the attorney general that any corporation is violating section one of this act, he shall investigate such complaint and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the people of the state of California in the proper court to annul the charter or revoke the license of such corporation to do business in this state, as the case may be, and to permanently enjoin such corporation from doing business in this state; and if in such action the court shall find that such corporation is violating this act, it may enjoin said corporation from doing business in this state for such time as the court shall order, or may annul the charter, or revoke the license of such corporation, and permanently enjoin it from transacting business in the state.

Illegal contract defined.

§ 3. Any contract, express or implied, made by any person, firm or corporation in violation of the provisions of section one of this act for the sale or furnishing of any commodity, product or service at a rate greater than the lowest rate charged therefor by such person, firm or corporation in any other section, community or city in this state, after making allowance for the cost differences between such place and the place where under the contract such commodity, product or service is delivered or furnished and for difference, if any, in grade, quality or quantity, is declared to be an illegal contract, and no recovery thereon shall be had.

Person injured may maintain action.

§ 4. Any person, firm, private corporation or municipal or other public corporation, may maintain an action to enjoin a continuance of any act or acts in violation of section one of this act and, if injured thereby, for the recovery of damages. If, in such action, the court shall find that the defendant is violating section one of this act, it shall enjoin the defendant from a continuance thereof; it shall not be necessary that actual damage to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant three times the amount of the actual damages, if any, sustained.

Penalty.

§ 5. Any person, whether as principal, agent, officer or director, for himself or for another person, or for any firm or corporation, or any corporation, who or which shall violate section one of this act, is guilty of a misdemeanor and upon conviction thereof, shall, if a person, be punished by a fine of not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment, and, if a corporation, by a fine of not more than five thousand dollars.

Constitutionality of act.

§ 6. If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. The legislature hereby declares that it would have passed this act, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases be declared unconstitutional. The remedies herein prescribed are cumulative and in addition to the remedies prescribed by the public utilities act for discriminations by public utilities. If any conflict shall arise between this act and the public utilities act, the latter shall prevail.

Purpose of act.

§ 7. The legislature declares that the purpose of this act is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. The act shall be liberally construed that its beneficial purposes may be subserved.

CHAPTER 405.**UNINCORPORATED ASSOCIATIONS.**

References: See tits. "Benefit Societies"; "Board of Trade"; "Chambers of Commerce"; "Co-operative Associations"; "Mechanics' Institutes."

See Kerr's Cyc. Civil Code, same titles.

CONTENTS OF CHAPTER.

ACT 5319. AUTHORIZED TO HOLD REAL ESTATE.

AUTHORIZED TO HOLD REAL ESTATE.

ACT 5319—An act authorizing and empowering unincorporated, benevolent or fraternal societies to purchase, receive, manage and sell real estate without incorporating.

History: Approved April 24, 1911, Stats. 1911, p. 1093.

§ 1. All unincorporated benevolent or fraternal societies or associations are and every lodge or branch of such society or association is hereby authorized and empowered, without incorporation, to purchase, receive, own, hold, mortgage, manage and sell all such real estate and other property as may be necessary for the business purposes and objects of the said society or association or lodge or branch, subject to the laws and regulations of said society or association or lodge or branch and of the grand lodge thereof; and also to take and receive by will or deed all property not so necessary, and to hold the same until disposed of within a period of ten years from the acquisition thereof, provided, that all conveyances transferring or in any manner affecting the title to real estate owned or held by said society or association shall be executed by its presiding officer and recording secretary under its seal after resolution duly adopted by said society or association authorizing such conveyance.

UNION.

See tit. "Arcata," Act 3094, note.

CHAPTER 406.

UNITED STATES.

References: See tits. "Public Parks"; "Public Lands"; "Yosemite Valley."

Purchase of land by the United States for public purposes, see Kerr's Cyc. Political Code, § 34.

CONTENTS OF CHAPTER.

- ACT 5325.** GRANT OF RIGHT OF WAY FOR RAILROAD FROM ATLANTIC TO PACIFIC.
- 5326. RELINQUISHMENT OF LAND FOR LIGHTHOUSES, ETC.
- 5327. CEDING JURISDICTION OF LANDS AT LIME POINT.
- 5328. RELINQUISHING TITLE TO CERTAIN TIDELANDS.
- 5329. SOBODA INDIAN LAND GRANT.
- 5330. QUITCLAIM DEED TO LANDS ERRONEOUSLY CONVEYED TO STATE.
- 5331. ACCEPTING JURISDICTION OVER PORTION OF PRESIDIO.
- 5331a. CONSENT OF STATE TO RESERVATION OF CERTAIN LANDS.
- 5331b. CEDING JURISDICTION OVER CERTAIN LANDS.
- 5332. RELEASE OF CLAIM OF STATE TO CERTAIN LANDS.
- 5332a. CEDING JURISDICTION OVER ALL LANDS IN THE STATE ACQUIRED FOR MILITARY PURPOSES.
- 5332b. RIGHTS OF WAY OVER STATE LANDS TO UNITED STATES.
- 5332c. RECONVEYANCE OF PART OF AGRICULTURE COLLEGE LAND GRANT.
- 5333. SETTLEMENT OF CONTROVERSY BETWEEN THE STATE AND THE UNITED STATES.
- 5333a. SETTLEMENT OF CONTROVERSY AS TO DISPUTED SCHOOL LAND CLAIMS.
- 5333b. RIGHT OF WAY FOR MORMON CHANNEL CANAL.

GRANT OF RIGHT OF WAY FOR A RAILROAD FROM ATLANTIC TO THE PACIFIC.

ACT 5325—An act to grant the right of way to the United States for railroad purposes.

History: Passed May 1, 1852, Stats. 1852, p. 150.

RELINQUISHMENT OF LAND FOR LIGHTHOUSES, ETC.

ACT 5326—An act to provide for the relinquishment to the United States, in certain cases, to title in lands for sites of lighthouses, and for other purposes, on the coasts and waters of this state.

History: Approved February 14, 1859, Stats. 1859, p. 26.

1. Constitutionality — Upheld.—The act provides for the taking of private property for public uses, and is constitutional.—*Gilmer v. Lime Point*, 18 Cal. 229.

2. Statute subject to rule of strict construction.—The act is in derogation of common right and must be strictly construed.—*Gilmer v. Lime Point*, 19 Cal. 47.

3. Provisions of act must be pursued.—To acquire title to land under this act the United States must pursue the provisions of the act.—*Gilmer v. Lime Point*, 19 Cal. 47.

4. Proceedings are special, not governed by rules of court of general jurisdiction.—The proceedings under the act are regarded as those of a special inquisition, and are not to be construed by the rules applicable to courts of general jurisdiction, but as the acts of a court which sits in the matter

under a special statutory authority.—*Gilmer v. Lime Point*, 19 Cal. 47.

5. Right to condemn not unqualified.—Exists only in case of disagreement as to price.—The act does not give to the United States the unqualified right to condemn, but only to condemn in case of disagreement as to price, and where there is no such disagreement the right to condemnation fails.—*Gilmer v. Lime Point*, 19 Cal. 47.

6. "Fort" is a public purpose.—A "fort" is a public use, and the state may condemn land for that purpose, or may authorize the federal government to do so.—*Gilmer v. Lime Point*, 18 Cal. 229.

7. Duties of district judge judicial.—The duties of the district judge under the act are judicial, and he may be legally required to perform them.—*Gilmer v. Lime Point*, 18 Cal. 229.

CEDING JURISDICTION OF LANDS AT LIME POINT.

ACT 5327—An act ceding jurisdiction to the United States over certain lands.

History: Approved April 16, 1859, Stats. 1859, p. 334.

RELINQUISHING TITLE TO CERTAIN TIDE LANDS.

ACT 5328—An act relinquishing to the United States of America the title of this state to certain lands.

History: Approved March 9, 1897, Stats. 1897, p. 74.

Relinquishing title to certain state lands to the United States. Right to serve civil process.

§ 1. All the right and title of the state of California in and to the parcels of land extending from high-water mark out to three hundred yards beyond low-water mark, lying adjacent and contiguous to such lands of the United States in this state as lie upon tidal waters and are held, occupied, or reserved for military purposes or defense, lying adjacent and contiguous to any island, the title to which is in the United States, or which island is reserved by the United States for any military or naval purposes or for defense, are hereby granted, released, and ceded to the United States of America; the boundaries of each parcel of land hereby granted, released, and ceded to the United States to be a line along high-water mark, a line three hundred yards out beyond low-water mark, and lines at right angles to high-water mark at the points where the boundaries of the adjacent lands of the United States touch high-water mark; provided, that the title to each parcel of land hereby granted, released, and ceded to the United States shall be, and remain in the United States only so long as the United States shall continue to hold and own the adjacent lands now belonging to the United States; and provided further, that this state reserves the right to serve and execute on said lands all civil process, not incompatible with this cession, and such criminal process as may lawfully issue under the authority of this state against any person or persons charged with crimes committed without said lands.

§ 2. This act shall take effect immediately.

SOBODA INDIAN LAND GRANT.

ACT 5329—An act to cede to the United States of America upon certain conditions and reservations certain lands in possession of the United States to which the state of California holds a tax title.

History: Approved May 1, 1911, Stats. 1911, p. 1304.

Grant of land for Soboda Indians.

§ 1. The state of California hereby grants and cedes to the United States of America, for the use of the Soboda Indians, all the right, title and interest of the state of California, in and to that certain tract of land situated in Riverside county, state of California, and described as Tract No. 8, Rancho San Jacinto Viejo in said Riverside county, otherwise described as fractional section 31 and fractional section 32, in township 4 south of range 1 east, San Bernardino base and meridian, and fractional section 4, fractional section 5, fractional section 6 in township 5 south of range 1 east, San Bernardino base and meridian, in California; provided, that the sum of seven hundred and seventy-five dollars due for taxes thereon be paid to the state controller before letters patent issue as hereinafter provided; and provided, further, that this state reserves the right to serve and execute in said lands, all civil process not incompatible with this section, and such criminal process as may lawfully issue under the authority of this state against any person or persons charged with crimes.

Issuance of letters patent.

§ 2. Letters patent to the United States of America for the land above designated shall be issued in the manner prescribed by the constitution and laws.

§ 3. This act shall take effect and be in force from and after its passage.

QUIT-CLAIM DEED TO LANDS ERRONEOUSLY CONVEYED TO STATE.

ACT 5330—An act providing for the conveyance by quit-claim deed, from the state of California to the government of the United States, of certain lands erroneously conveyed or patented to said state by said government.

History: Approved May 1, 1911, Stats. 1911, p. 1415. Amended April 21, 1913. In effect August 10, 1913. Stats. 1913, p. 47.

Quit-claim deed to lands erroneously conveyed to state.

§ 1. In all cases where it appears to the register of the state land office that the government of the United States has, through error or misdescription, conveyed to the state of California any lands, the said register of the state land office shall certify said facts to the governor, and it shall be the duty of the governor of this state to cause to be executed and delivered to the government of the United States, a conveyance by quit-claim deed, of all such land so erroneously conveyed or patented. Such deed shall be executed on behalf of the state of California by the hands of the governor and of the secretary of state, and shall be attested by the great seal of the state, and recorded in the office of the register of the state land office. [Amendment approved April 21, 1913, Stats. 1913, p. 47. In effect August 10, 1913.]

§ 2. This act shall take effect immediately from and after its passage.

ACCEPTING JURISDICTION OVER PORTION OF PRESIDIO.

ACT 5331—An act to accept from the United States government the cession of jurisdiction over a portion of the Presidio of the San Francisco military reservation.

History: Approved May 17, 1917. In effect July 17, 1917. Stats. 1917, p. 626.

Cession of jurisdiction accepted.

§ 1. The state of California hereby accepts from the United States government the cession of jurisdiction over that portion of the Presidio of the San Francisco military reservation designated by the secretary of war for the use of the Panama-Pacific International Exposition Company and its successors in interest, pursuant to the act of congress making appropriations for the support of the army for the fiscal year one thousand nine hundred seventeen, approved August 29, 1916, subject to the conditions, reservations and stipulations contained in said act.

CONSENT OF STATE TO RESERVATION OF CERTAIN LANDS.

ACT 5331a—An act giving the consent of the state of California to the reservation of certain lands by congress.

History: Approved March 14, 1891, Stats. 1891, p. 107.

This act gave the consent of the state to the reservation of a certain tract by congress for a public park.

CEDING JURISDICTION OVER CERTAIN LANDS.

ACT 5331b—An act ceding to the United States jurisdiction over certain lands ceded to the United States.

History: Approved March 31, 1891, Stats. 1891, p. 262.

This was an act ceding jurisdiction, except in criminal matters, over all lands ceded to the United States for every purpose while the same remained in its possession.

RELEASE OF CLAIMS OF STATE TO CERTAIN LANDS.

ACT 5332—An act to release the claim of the state of California to certain lands in township eleven north, range four east, Mount Diablo base and meridian.

History: Approved April 1, 1872, Stats. 1871-72, p. 948.

This act provided for the release of certain lands to the United States.

CEDING JURISDICTION OVER ALL LANDS IN THE STATE ACQUIRED FOR MILITARY PURPOSES.

ACT 5332a—An act ceding to the United States of America jurisdiction over all lands within this state which have been or may hereafter be acquired by the United States for military purposes.

History: Approved March 2, 1897, Stats. 1897, p. 51.

RIGHTS OF WAY OVER STATE LANDS TO UNITED STATES.

ACT 5332b—An act granting rights of way for lines, roads, structures, levees, canals and excavations to the United States, over the public lands of this state.

History: Approved March 21, 1907, Stats. 1907, p. 848.

Rights of way over state lands granted to United States.

§ 1. A right of way is hereby granted over the public lands of the state, and over any public land which may hereafter become the property of this state, to the United States, for all telegraph, telephone, power or light lines, roads, railroads, tramways, dikes, levees, dams, mounds, embankments, tunnels, ditches or canals, or other works, structures or excavations requiring rights of way built, erected, excavated or constructed under the provisions of the act of congress, approved June 17, 1902, relating to irrigation and reclamation.

Patents subject to.

§ 2. All patents or conveyances of such lands which may hereafter be located or filed on shall be issued subject to the rights of way herein provided for.

RECONVEYANCE OF PART OF AGRICULTURAL COLLEGE LAND GRANT.

ACT 5332c—An act to authorize the governor to reconvey part of the lands to the United States, conveyed to the state and listed under the agricultural college grant of 150,000 acres.

History: Approved March 13, 1883, Stats. 1883, p. 287.

This act provided for a conveyance by the governor after a report by the regents of the University of California.

SETTLEMENT OF CONTROVERSY BETWEEN THE STATE AND THE UNITED STATES.

ACT 5333—An act to authorize the settlement of an existing controversy between the United States of America and state of California, and making an appropriation to carry out the provisions of said act.

History: Approved March 21, 1907, Stats. 1907, p. 840.

This was the controversy arising from the claim of the federal government to 40,000 acres, as the excess received by the state on account of sixteenth and thirty-sixth section lands.

SETTLEMENT OF CONTROVERSY AS TO DISPUTED SCHOOL LAND CLAIMS.

ACT 5333a—An act to authorize the adjustment and settlement of a controversy existing between the United States and the state of California, in relation to the grants made by congress to the state of California for the benefit of the public schools, and internal improvements, authorizing the conveyance of land by officers of the state for the purpose of making such adjustment and settlement, and making an appropriation to carry out the provisions thereof.

History: Approved December 24, 1911, Stats. 1911 (ex. sess.), p. 108.

Lands granted to the state for school purposes. Disputed claims in relation thereto. Lands withheld from certification.

Whereas, Under the terms and provisions of certain acts of congress of the United States 500,000 acres of land were granted to the state for internal improvement and the sixteenth and thirty-sixth sections in each township, and lands in lieu thereof, were granted to the state of California for school purposes; and,

Whereas, It is claimed by the United States that prior to March 1, 1877, there were listed to the state of California approximately 16,000 acres of land, in excess of the amount of land to which the state was justly entitled; also that the state has received indemnity for certain sixteenth and thirty-sixth sections of land assumed to be within the exterior boundaries of Mexican grants, which sixteenth and thirty-sixth sections were subsequently either wholly or partially excluded from such grants and subsequently sold by the state, the total area being approximately 10,151 acres; also that the state has received indemnity for certain sixteenth and thirty-sixth sections alleged to be mineral in character which said school sections the state sold in place, either before or after receiving indemnity therefor, the total area being approximately 8,175 acres; also that the state received approximately 2,028 acres in excess of the 500,000 acre grant; and,

Whereas, The department of the interior has for many years withheld from certification the greater part of the lieu lands selected by the state, pending a settlement of said mattres, and there remains to be listed to the state upward of 450,000 acres, which, if listed, would be subject to taxation; now, therefore,

The people of the state of California do enact as follows:

Payments to be made to federal government.

§ 1. There shall be paid to the federal government by the state of California, acting through the officers hereinafter mentioned and in the manner and upon the terms and conditions hereinafter set forth, the sum of one and twenty-five one-hundredths dollars per acre for all excess certifications of indemnity school lands, which occurred prior to March 1, 1877, and for which said lands no payment has as yet been made to the United States.

Conveyance of land to be made to federal government.

§ 2. The officers of the state of California mentioned in sections 3519 and 3520 of the Political Code of this state, are hereby authorized, empowered and directed, in the manner in said sections provided, to convey to the United States by patent, or

otherwise, such an amount of land in sections sixteen and thirty-six, situated in national forests or other reservations, as will equal in area all selections that have been heretofore listed or certified by the government to the state of California, made in lieu of sections sixteen and thirty-six claimed or reported to be mineral in character or embraced in forest or other reservations and wherein such base tracts have been or may be sold or encumbered by the state; provided, however, that no lands shall be patented in any case wherein it shall be found that the United States has disposed, by patent or otherwise, of the tract in lieu of which indemnity was claimed and granted.

Additional conveyances. Surveyor general to make indemnity selections.

§ 3. The officers of the state referred to in section two hereof are hereby authorized and directed to convey by patent or otherwise to the United States, in addition to the 12,000 acres heretofore granted, an amount of land equal in area to any addition excess in certifications occurring since March 1, 1877.

The surveyor general of the state of California is hereby authorized and empowered to locate and select in the United States land offices, for the benefit of persons having certificates of purchase or patents from the state, lands in sections sixteen and thirty-six, which, under the provisions of the act of congress, approved March 1, 1877, and commonly known as the "Booth Act" are claimed to be property of the United States, but which said lands have been heretofore sold or encumbered by the state. The said lands hereby authorized to be selected are lands which have been heretofore used or designated by the state of California, as bases for indemnity selections, and for which the state of California received indemnity, but which said lands in said sections sixteen and thirty-six the said state, also sold or encumbered. For the purpose of making the selections hereby authorized to be made the said surveyor general is hereby authorized and empowered to use and designate any bases or lands mentioned in section 3406a of the Political Code of the state of California, or any other bases, which may be proper or valid in making indemnity selections.

Determination of acreage. Settlement of claims.

§ 4. For the purpose of carrying into effect the terms and provisions of this act, the surveyor general of the state of California is authorized and directed to ascertain and determine from the records of his office and the records of the department of the interior the amount of lands which should be conveyed to the United States and likewise the number of acres of land as in this act provided for which the state has by the terms of this act authorized and directed payment to be made, and after said facts have been ascertained and determined, the said officers of said state, referred to in sections two and three hereof, are hereby authorized and directed to make, execute and deliver for said state, in its name and as its act and deed, any and all written agreements, deeds, patents or conveyances necessary to carry out and consummate the terms of this act.

Appropriation.

§ 5. The sum of twenty-five thousand (25,000) dollars is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, for the purpose of carrying out the provisions of this act and paying all necessary expenses of the surveyor general and attorney general in connection herewith and the state controller is hereby authorized and directed to draw his warrant or warrants in favor of the United States, or the proper officers thereof, for such amount as may be payable to said United States under the terms hereof, and also to draw his warrant or warrants for the necessary expenses of the surveyor general and attorney general in carrying out the provisions of this act, and the state treasurer is hereby directed to pay the same.

RIGHT OF WAY FOR MORMON CHANNEL CANAL.

ACT 5333b—An act to furnish, grant, convey and relinquish to the United States of America the right of way in San Joaquin county now (or hereafter) obtained by the commissioner of public works under an act of the legislature, approved March 25, 1903, entitled "An act authorizing the commissioner of public works to obtain a right of way for a canal to divert the waters of Mormon Channel into the Calaveras river, to maintain condemnation suits therefor, and making an appropriation to pay for said right of way, and the costs and expenses of obtaining the same," and under the laws of the state of California relating to such matters, for the purpose of the construction and completion of such right of way by the United States of America of a diverting canal east of the city of Stockton from Mormon Channel to the Calaveras river and along the channel of the Calaveras river to the San Joaquin river, pursuant to an act of Congress of June 13, 1902, and to subsequent acts of congress relating thereto, and to authorize the commissioner of public works and the governor of the state to execute conveyances thereof, and to authorize and direct the secretary of state to countersign and make delivery of the same to the United States of America.

History: Approved June 6, 1906, Stats. 1906, p. 13.

UNITED STATES COAST SURVEY.

See tit. "Coast Survey."

UNITED STATES FLAG.

See Kerr's Cyc. Penal Code, § 310.

UNITED STATES SENATORS.

See tit. "Elections."

CHAPTER 407.

UNIVERSITY OF CALIFORNIA.

References: See tits. "Bonds"; "Funds"; "Public Lands"; "Schools"; "Taxation."
See Kerr's Cyc. Political Code, §§ 1385, et seq.

CONTENTS OF CHAPTER.

ACT 5351.	CREATION AND ORGANIZATION ACT.	3445
5352.	ENDOWMENT ACT OF 1870.	3450
5353.	ENDOWMENT ACT OF 1878.	3451
5356.	ENDOWMENT ACT OF 1911.	3452
5358.	CONTINUOUS APPROPRIATION ACT OF 1913.	3453
5359.	GRANT OF LAND.	3454
5360.	PAYMENT OF INTEREST ON OUTSTANDING BONDS.	3454
5364.	RESTORATION OF INCOME LOST BY DISASTER AND FIRE.	3455
5365.	REPLACEMENT AND REPAIRS AT LICK OBSERVATORY.	3455
5367.	MANAGEMENT OF FUNDS.	3455
5368.	INSURANCE OF PROPERTY.	3455
5369.	SELECTION AND SALE OF UNIVERSITY LANDS.	3456
5370.	FARMERS' INSTITUTES.	3456
5371.	SANTA MONICA FORESTRY STATION.	3456
5375.	"TOLAND" MEDICAL DEPARTMENT.	3456
5376.	DEPARTMENT OF MUSIC.	3456
5377.	LOS ANGELES DEPARTMENT, COLLEGE OF MEDICINE.	3457
5378.	PATHOLOGICAL LABORATORY OF PLANT DISEASES.	3459
5380.	HYGIENIC LABORATORY.	3459
5381.	UNIVERSITY FARM.	3460
5382.	DORMITORY AT UNIVERSITY FARM.	3462
5383.	CLASSROOM AND LIBRARY BUILDING AT UNIVERSITY FARM.	3462
5384.	PURCHASE OF LAND AND WATER RIGHTS FOR THE AGRICULTURAL DEPARTMENT.	3462
5385.	IMPERIAL COUNTY BRANCH AGRICULTURAL AND EXPERIMENT STATION.	3463
5387.	BRANCH AGRICULTURAL EXPERIMENT STATION AT RIVERSIDE.	3463
5388.	BRANCH AGRICULTURAL EXPERIMENT STATION.	3463
5390.	CO-OPERATIVE AGRICULTURAL EXTENSION WORK.	3464
5391.	"UNIVERSITY OF CALIFORNIA BUILDING BOND ACT."	3464
5393.	UNIVERSITY FARM IN RIVERSIDE COUNTY.	3465

CREATION AND ORGANIZATION ACT.

ACT 5351—An act to create and organize the University of California.

History: Approved March 23, 1868, Stats. 1867-68, p. 248. Amended March 28, 1872, Stats. 1871-72, p. 655; March 3, 1897, Stats. 1897, p. 57. Of this act the code commissioners say: "Probably repealed by the code, but if so, revived and made irrevocable by sec. 9, art. IX of the constitution of 1879."

University created. Design. Colleges.

§ 1. A state university is hereby created, pursuant to the requirements of section four, article nine, of the constitution of the state of California, and in order to devote to the largest purposes of education, the benefaction made to the state of California under and by the provisions of an act of congress passed July second, eighteen hundred and sixty-two, entitled an act donating land to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts. The said university shall be called the University of California, and shall be located upon the grounds heretofore donated to the state of California by the president and board of trustees of the College of California. The said university shall be under the charge and control of a board of directors, to be known and styled "The Regents of the University of California." The university shall have for its design, to provide instruction and complete education in all the departments of science, literature, art, industrial and professional pursuits, and general education, and also special courses of instruction

for the professions of agriculture, the mechanic arts, mining, military science, civil engineering, law, medicine and commerce, and shall consist of various colleges, namely:

First—College of arts.

Second—A college of letters.

Third—Such professional and other colleges as may be added thereto or connected therewith.

Course of instruction. Colleges to be organized.

§ 2. Each full course of instruction shall consist of its appropriate studies, and shall continue for at least four years, and the faculty, instructors and body of students in each course shall constitute a college, to be designated by its appropriate name. For this purpose there shall be organized as soon as the means appropriated therefor shall permit:

First—The following colleges of arts; a state college of agriculture; a state college of mechanic arts; a state college of mines; a state college of civil engineering; and such other colleges of arts as the board of regents may be able and find it expedient to establish.

Second—A state college of letters.

Third—Colleges of medicine, law and other like professional colleges.

Degrees. Students.

§ 3. A proper degree of each college shall be conferred at the end of the course upon such students as, having completed the same, shall, at the annual examination, be found proficient therein; but each college shall also have a partial course for those who may not desire to pursue a full course therein; and any resident of California, of the age of fourteen years or upwards, of approved moral character, shall have the right to enter himself in the university as a student at large, and receive tuition in any branch or branches of instruction at the time when the same are given in their regular course, on such terms as the board of regents may prescribe. The said board of regents shall endeavor so to arrange the several courses of instruction that the students of the different colleges and the students at large may be largely brought into social contact and intercourse with each other by attending the same lectures and branches of instruction.

College of agriculture.

§ 4. The college of agriculture shall be first established; but in selecting the professors and instructors for the said college of agriculture, the regents shall, so far as in their power, select persons possessing such acquirements in their several vocations as will enable them to discharge the duties of professors in the several colleges of mechanic arts, of mines and of civil engineering, and in such other colleges as may be hereafter established. As soon as practicable a system of moderate and manual labor shall be established in connection with the agricultural college, and upon its agricultural and ornamental grounds, having for its object practical education in agriculture, landscape gardening, the health of the students, and to afford them an opportunity by their earnings of defraying a portion of the expenses of their education. These advantages shall be open in the first instance to students in the college of agriculture, who shall be entitled to a preference in that behalf.

College of mechanic arts.

§ 5. The college of mechanic arts shall be next established; and in organizing this, or any other college, the same regard hereinbefore indicated shall be had for the general acquirements of each professor and instructor, so that he may be able to give general and special instruction in as many classes and sources of instruction as

possible; and inasmuch as the original donation, out of which the plan of a state university has had its rise, was made to the state by virtue of the aforesaid act of congress entitled an act donating land to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts, approved July second, eighteen hundred and sixty-two, the said board of regents shall always bear in mind that the college of agriculture and the college of mechanic arts are an especial object of their care and superintendence, and that they shall be considered and treated as entitled primarily to the use of the funds donated for their establishment and maintenance by the said act of congress.

College of mines, civil engineering, etc.

§ 6. The college of mines and the college of civil engineering shall be next established, and such other colleges of arts as the board of regents may be able to establish with the means in their possession or under their control; and in order to fulfil the requirements of said act of congress, all able-bodied male students of the university whether pursuing full or partial courses in any college, or as students at large, shall receive instruction and discipline in military tactics in such manner and to such extent as the regents shall prescribe, the requisite arms for which will be furnished by the state.

College of letters. Order of organization.

§ 7. The board of regents, having in regard the said donation already made to the state by the president and board of trustees of the College of California, and their proposition to surrender all their property to the state for the benefit of the state university, and to become disincorporate and go out of existence as soon as the state shall organize the university, by adding a classical college to the college of arts, shall, as soon as they deem it practicable, establish a college of letters. The college of letters shall be coexistent with the aforesaid colleges of arts, and shall embrace a liberal course of instruction in language, literature and philosophy, together with such courses or parts of courses in the aforesaid colleges of arts as the authorities of the university shall prescribe. The degree of bachelor of arts, upon due examination, and afterwards the degree of master of arts, in usual course, shall be conferred upon the graduates of this college. But the provisions herein and hereinbefore contained regarding the order in which the said colleges shall be organized shall not be construed as directing or permitting the organization of any of the specified colleges to be unnecessarily delayed, but only as indicating the order in which said colleges shall be organized, beginning with the college of agriculture and adding in succession to the body of instructors in that and the other colleges such other instructors as may be necessary to organize the other colleges successively in the order above indicated. Only the first year's course of instruction shall be provided for in each college at first, the other successive years' courses being added in each year as the students advance to the same, until the full course in each college is established; provided, however, that the board of regents may organize at once the full course of the college of letters, if in their judgment it is expedient so to do in order to allow the College of California to immediately convey the residue of its property to the state for the benefit of the university, and to become disincorporate and go out of existence, pursuant to its proposition to that effect.

Any incorporated college may be affiliated with university.

§ 8. The board of regents may affiliate with the university, and make an integral part of the same, and incorporate therewith, any incorporated college of medicine or of law, or other special course of instruction now existing, or which may hereafter be created, upon such terms as to the respective corporations may be deemed expedient;

and such college or colleges so affiliated shall retain the control of their own property, with their own boards of trustees, and their own faculties and presidents of the same, respectively, and the students of those colleges, recommended by the respective faculties thereof, shall receive from the university the degrees of those colleges; provided, however, that the president of the university shall be, *ex officio*, a member of the faculty, of each and every college of the university, and president of such faculty.

Annual examinations. College of California.

§ 9. The examinations for degrees shall be annual, and the board of regents shall take measures to make such examinations thorough and complete. Students who shall have passed not less than a full year as resident students in any college, academy or school in this state, and, after examination by the respective faculty of such college, academy, or school, are recommended by such faculty as proficient candidates for any degree in any regular course of the university, shall be entitled to be examined therefor at the annual examination; and, on passing such examination, shall receive such degree for that course, and the diploma of the university therefor, and shall rank and be considered in all respects as graduates of the university. All students of the university who have been resident students thereof for not less than one year, and all graduates of the university in any course, may present themselves for examination in any other course, or courses, at the annual examinations, and on passing such examination shall receive the degree and diploma of that course. Upon such examinations each professor and instructor of that course shall cast one vote upon each application for recommendation to the board of regents for a degree, and the votes shall be by ballot. In case the College of California shall surrender its property to the university, and said donation shall be accepted by the board of regents, and said College of California shall thereafter become disincorporate in pursuance of its proposition heretofore made to that effect, the graduates and those who shall have received the degrees of that college, shall receive the degrees from the university, and be considered in all respects graduates of the same. And the last above expressed provision shall apply to the previous graduates of any incorporated college of medicine, law, or other professional college which shall become affiliated with the university, as herein otherwise provided. The board of regents shall also confer certificates of proficiency in any branch of study upon such students of the university as, upon examination, shall be found entitled to the same. The style of diplomas and degrees shall be: "University of California, College of Agriculture"; or, with the name of the other respective college; but honorary degrees for the higher degrees, not lower than that of master of arts, may be conferred, with the designation of the university alone, upon persons distinguished in literature, science and art.

Scholarships.

§ 10. Scholarships may be established in the university by the state, associations or individuals, for the purpose of affording tuition in any course of the university, free from the ordinary charges, to any scholar in the public schools of the state, who shall distinguish himself in study, according to the recommendation of his teachers, and shall pass the previous examination required for the grade at which he wishes to enter the university, or for the purpose of private benefaction; provided, that the said scholarships shall be approved and accepted by the board of regents.

Board of regents. Members ex officio. Appointed. Honorary. Vacancies.

§ 11. The general government and superintendence of the university shall vest in a board of regents, to be denominated the "Regents of the University of California," who shall become incorporated under the general laws of the state of California by that corporate name and style. The said board shall consist of twenty-two members, all

of whom shall be citizens and permanent residents of the state of California, as follows:

First—Of the following ex officio members, namely: His excellency the governor; the lieutenant governor, or the person acting as such; the speaker, for the time being of the assembly; the state superintendent of public instruction; the president, for the time being, of the state agricultural society; and the president, for the time being of the Mechanics' Institute of the city and county of San Francisco;

Secondly—Of eight other appointed members, to be nominated by the governor, by and with the advice and consent of the senate, who shall hold their office for the term of sixteen years; provided, that such members first so appointed shall be classified by lot at the first meeting of the board of regents, so that one of the numbers so appointed shall go out of office at the end of every successive two years, and after that the full term to be sixteen years; and the record of such classification shall be transmitted by said board of regents to the secretary of state and filed in his office;

Thirdly—Of eight additional honorary members, to be chosen from the body of the state by the official and appointed members, who shall hold their office for the term of sixteen years; provided, that such honorary members first so chosen shall be classified by lot, when so appointed, by the board of regents so appointing them, so that one of the members so chosen shall go out of office at the end of each successive two years, and after that the full term to be sixteen years; and the record of such classification shall be transmitted by said board of regents to the secretary of state and filed in his office. Each member of the said board, whether official, appointed or honorary, shall, if present, be entitled to one vote at all the meetings of said board. The first official year from which the terms of office shall be computed to run, shall be the first day of March, in the year eighteen hundred and sixty-eight. Vacancies in the office of appointed members of the board, occurring in the recess of the legislature, shall be filled for the rest of the term by appointment of the governor. Vacancies in the office of honorary members occurring from any cause other than expiration of the term by limitation shall be filled for the rest of the term by appointment of the board of regents. In case the senate shall adjourn before the governor shall have nominated the first appointed members of the board of regents under this act, or before it shall have confirmed his nomination in their behalf, the governor shall appoint the same by his sole act. No member of the board of regents, or of the university, shall be deemed a public officer by virtue of such membership, or required to take any oath of office, but his employment as such shall be held and deemed to be exclusively a private trust, and no person who at the time holds any executive office or appointment under the state shall be a member of said board, except the executive officers above mentioned. The governor shall be president of the board of regents, and in his absence the board shall appoint the board a president pro tempore.

Custody of property. Title. Regents to have power over. Property of affiliated colleges.

§ 12. The said board of regents, when so incorporated, shall have the custody of the books, records, buildings, and all other property of the university. The lands and other property heretofore donated to the state by the president and trustees of the College of California, and which are situated in the township of Oakland, in the county of Alameda, for the purpose of erecting thereon an agricultural college, and for other purposes mentioned in the deed of conveyance by which the same were so conveyed, shall be and forever remain vested in the state of California; as shall also be so vested in the said state all property which shall be purchased by the funds of the state, or from the proceeds of donations made to the state for the purpose of the university, or of any of the colleges or professorships thereof; and the said board of regents shall have no power to alienate or encumber, by mortgage, hypothecation, lien, or otherwise, any portion of said property except on terms such as the legislature

shall have previously approved; any act of the said regents, or of any other person, which shall purport to have that effect shall be wholly null and void. All lands, moneys, bonds, securities or other property which shall be donated, conveyed or transferred to the said board of regents by gift, devise, or otherwise, including such property as may hereafter be donated and conveyed by the president and board of trustees of the College of California, in trust, or otherwise, for the use of said university, or of any college thereof, or of any professorship, chair, or scholarship therein, or for the library, observatory, or any other purpose appropriate thereto, shall be taken, received, held, managed, invested, reinvested, sold, transferred, and in all respects managed, and the proceeds thereof used, bestowed, invested and reinvested, by the said board of regents, in their corporate name and capacity, for the purpose and under the terms, provisions and conditions respectively prescribed by the act of gift, devise, or other act in the respective case. In case any incorporated college of law, medicine, or the like, shall be brought into the said university by affiliation, as herein otherwise provided, such college so affiliated may retain its own property, then possessed by it or thereafter to be acquired, to be vested in, and held and managed by its own corporation, and the said board of regents shall have no right of property in, or power or control over the same, nor shall be liable for any acts or contracts of such affiliated corporation.

Further powers of regents. Tests prohibited.

§ 13. The regents and their successors in office, when so incorporated, shall have power, and it shall be their duty, to enact laws for the government of the university, to elect a president of the university and the requisite number of professors, instructors, officers and employees, and to fix their salaries, also the term of office of each, and to determine the moral and educational qualification of applicants for admission to the various courses of instruction. They shall also consider and determine whether the interests of the university and of the students, as well as those of the state, and of the great body of scientific men in the state whose purpose is to devote themselves to public instruction, will not be greatly promoted by committing those courses of instruction which are brief and special to professors employed for short terms, and for only a portion of each year in their special departments, and to be termed non-resident professors; and their decision in that regard may be reconsidered by them as often as they deem it expedient. And it is expressly provided that no sectarian, political or partizan test shall ever be allowed or exercised in the appointment of regents, or in the election of professors, teachers, or other officers of the university, or in the admission of students thereto, or for any purpose whatsoever; nor at any time shall the majority of the board of regents be of any one religious sect, or of no religious sect; and the persons of every religious denomination, or of no religious denomination, shall be equally eligible to all offices, appointments and scholarships.

Rates of tuition.

§ 14. For the time being, an admission fee and rate of tuition, such as the board of regents shall deem expedient, may be required of each pupil, except as herein otherwise provided; and as soon as the income of the university shall permit, admission and tuition shall be free to all residents of the state; and it shall be the duty of the regents, according to population, to so apportion the representation of students, when necessary, that all portions of the state shall enjoy equal privilege therein.

President of university. Secretary of board. Treasurer.

§ 15. The president of the university shall be president of the several faculties and the executive head of the institution in all its departments, except as herein otherwise provided. He shall have authority, subject to the board of regents, to give

general direction to the practical affairs of the several colleges, and, in the recess of the board of regents, to remove any employee or subordinate officer not a member of any faculty and to supply for the time being any vacancies thus created; and, so long as the interests of the institution require it, he shall be charged with the duties of one of the professorships. A competent person, who is a practical agriculturist by profession, competent to superintend the workings of the agricultural farm, and of sufficient scientific acquirements to discharge the duties of secretary of the board of regents as prescribed in this act, shall be chosen by said board as their secretary, and, in addition to his special duties as such, as prescribed in this act, he shall perform such other duties as they shall impose. He shall receive for his services such reasonable salary as the board of regents shall prescribe. The board of regents may also appoint a treasurer of the university, and prescribe the form and sureties of his bond as such, which shall be executed, approved by them and filed with the secretary, before any such treasurer shall go into office. The secretary and treasurer shall be subject to summary removal by the board of regents.

Duties of secretary.

§ 16. The secretary of the board of regents shall reside and keep his office at the seat of the university. It shall be his duty to keep a record of the transactions of the board of regents, which shall be open at all times to the inspection of any citizen of this state. He shall also have the custody of all books, papers, documents, and other property which may be deposited in his office; also keep and file all reports and communications which may be made to the university from time to time by county, state and district agricultural societies, horticulture, viniculture, mechanical and mining societies; and of all correspondence from other persons and societies appertaining to the business of education, science, art, husbandry, mechanics and mining; address circulars to societies, and to the best practical farmers, mechanics and miners in this state and elsewhere, with a view of eliciting information upon the latest and best modes of culture of the products, vegetables, trees, et cetera, adapted to the soil and climate of the state, and also on all subjects connected with field culture, horticulture, stock raising and the dairy; he shall also correspond with established schools of mining and metallurgy in Europe, and obtain such information respecting the improvements of mining machinery adapted to California, and publish from time to time such information, as will be of practical benefit to the mining interests and the working of all ores and metals; receive and distribute such rare and valuable seeds, plants, shrubbery and trees as may be in his power to procure from the general government and other sources, as may be adapted to our climate and soils, or purposes of experiment therein. To effect these objects he shall correspond with the patent office at Washington, and with the representatives of our national government abroad, and, if possible, procure valuable contributions to agriculture from these sources. He shall aid, as far as possible, in obtaining contributions to the museums and the library of the said college, and thus aid in the promotion of agriculture, science and literature. He shall keep a correct account of all the executive acts of the president of the university and an accurate account of all moneys received into the treasury as well as those paid out.

Distribution of seeds, etc.

§ 17. The seeds, plants, trees and shrubbery received by the secretary and not needed by the university shall be, so far as possible, distributed without charge equally throughout the state, and placed in the hands of those farmers and others who will agree to cultivate them properly and return to the secretary's office a reasonable proportion of the products thereof, with a full statement of the mode of cultivation, and such other information as may be necessary to ascertain their value for general

cultivation in the state. Information in regard to agriculture, the mechanic arts, mining and metallurgy may be published by him from time to time in the newspapers of the state as matter of public information, provided it does not involve any expense to the state.

Government and discipline of colleges. Academic senate. Regents to supervise. Degrees.

§ 18. The immediate government and discipline of the several colleges shall be intrusted to their respective faculties, to consist of a president and the resident professors of the same, each of which shall have its own organization, regulate the affairs of its own college, recommending the course of study and the text-books to be used, for the approval of the board of regents, and, in connection with the president as its executive officer, have the government of its students. All the faculties and instructors of the university shall be combined into a body which shall be known as the academic senate, which shall have stated meetings at regular intervals and be presided over by the president, or a president pro tempore, and which is created for the purpose of conducting the general administration of the university and memorializing the board of regents; regulating, in the first instance, the general and special courses of instruction, and to receive and determine all appeals couched in respectful terms from acts of discipline enforced by the faculty of any college. Its proceedings shall be conducted according to rules of order; and every person engaged in instruction in the university, whether resident professors, non-resident professors, lecturers, or instructors, shall have permission to participate in its discussions; but the right to vote shall be confined to the president and the resident and non-resident professors. But the regents shall have power to supervise the general courses of instruction, and on the recommendation of the several faculties prescribe the authorities and text-books to be used in the several courses and colleges, and also to confer such degrees and grant such diplomas as are usual in universities, or as they shall deem appropriate; provided, no honorary degree of any college or course shall be granted by the regents, nor shall any degree, certificate, or diploma, for any course or branch of instruction, be granted by the regents, unless upon examination therefor as prescribed in this act, except the substituted degrees and diplomas provisionally provided or those having received degrees from the College of California, in case the said college becomes extinct and disincorporates, and for the graduates of affiliated professional colleges as herein otherwise provided.

Annual report.

§ 19. At the close of each fiscal year the regents, through their president, shall make a report in detail to the governor, exhibiting the progress, condition and wants of each of the colleges embraced in the university, the course of study in each, the number of professors and students, the amount of receipts and disbursements, together with the nature, cost and results of all important investigations and experiments, and such other information as they may deem important; one printed copy of which shall be transmitted, free, by their secretary, to all colleges endowed under the provisions of the congressional act of July second, eighteen hundred and sixty-two, hereinbefore referred to; also one printed copy to the secretary of the interior, as provided in said act.

Appropriation for endowment and support. Special endowments.

§ 20. For the endowment and support of the university and its buildings and improvements, there are hereby appropriated:

First—The capital, income, proceeds, securities, avails and interest that have accrued or may hereafter accrue from the sale of the seventy-two sections of land granted to the state for a seminary of learning by an act of congress entitled an act to

provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes, approved March third, eighteen hundred and fifty-three, and from the sale of the ten sections of land granted to the state for public buildings, by said act of congress, which shall be forthwith, so far as the same have been received, and hereafter as fast as the same shall be received by any of the officers of the state, shall be paid over to the said board of regents upon their order therefor.

Secondly—The income, revenue and avails which shall be derived or received from the investment of the proceeds of the sale of the lands, or of the scrip therefor, or of any part thereof, granted to this state by an act of congress entitled an act donating public lands to the several states and territories of the United States for the benefit of agriculture and the mechanic arts, approved July second, eighteen hundred and sixty-two, which are hereby appropriated to, and, from time to time, as the same shall be received, shall be paid into the state treasury, carried to the credit of the said board of regents, and paid over to the treasurer of the university, for the use and behoof of the said university, and expended by said board as elsewhere prescribed in this act; and said lands shall be located and sold under the direction of the board of regents, and for such price and on such terms only as they shall prescribe.

Thirdly—All such contributions to the endowment, or other funds, as may be derived from appropriations by the state, from the United States, or from public or private bounty. The entire income of said funds shall be placed at the disposition of the board of regents for the support of the university, and of the several colleges and schools thereof, as herein otherwise provided, with the exception of such affiliated incorporated colleges as shall preserve their own property and the income thereof, as herein otherwise provided; and provided, moreover, that all means derivable from either public or private bounty shall be exclusively devoted to the specific objects for which they shall have been designed by the grantor. The board of regents may appoint competent persons to solicit and collect private contributions for the endowment of the university, and pay them for their services in that behalf, out of the funds so obtained by them, such reasonable compensation as the said board may prescribe.

Fourthly—All such appropriations as may be made for that purpose by the legislature.

Receipts and expenditures.

§ 21. For the current expenditures of the university, specific sums of money shall be set aside out of the funds at their disposal, by the board of regents, which shall be liable to disbursement for that purpose, and shall be subject to the warrants of the president of the board drawn upon the treasurer of the university in pursuance of the orders of the board of regents. All moneys received from labor and incidental sources shall be paid into the treasury and expended in the same manner as other moneys. All moneys which may at any time be in the state treasury, and subject to the use of the said board of regents, may be drawn therefrom by the president of the board, upon the order of said board, in favor of the treasurer of the university.

Meetings of regents.

§ 22. Meetings of the board of regents may be called in such manner as the regents shall determine, seven of whom shall constitute a quorum for the transaction of business; but a less number may adjourn from time to time. No member of the board shall receive any compensation for his services as such member, nor be entitled to reimbursement for his traveling or other expenses while employed on the business of the board.

Regents to organize colleges.

§ 23. The regents shall, when they shall be in possession of funds for that purpose, organize and put into operation the first year's course of instruction in as many of the

said colleges as possible. If the buildings of the university are not sufficiently completed at that time to be occupied for that purpose, the regents are authorized to make temporary arrangements for sufficient buildings, the use of apparatus and for other needful purposes, in the city of Oakland, if the same shall be practicable.

Collections of geological survey. Library.

§ 24. The collections by the state geological survey shall belong to the university, and the regents shall, in their plans, have in view the early and secure arrangement of the same for the use of the students of the university, and of giving access to the same to the public at large and to visitors from abroad; and shall in every respect, by acts of courtesy and accommodation, encourage the visits of persons of scientific tastes and acquirements from other portions of the United States and of other countries, to California. The said collections shall be arranged by the resident professors of the university in a separate building, which shall be denominated the "Museum of the University." To this museum shall also be added, as fast as the means of the university shall permit, collections of agricultural implements, and objects illustrative of the mechanic arts, science, architecture and the fine arts. The collection of a library shall be commenced at once, and increased and expanded as fast as the board of regents are placed in possession of funds for that purpose. But the board of regents may allow duplicates to be taken from said collections of the state geological survey and made a part of some other museum under the care of an incorporated academy of science, which shall become responsible for the custody and return of the same.

Construction of buildings for University of California.

§ 25. The regents shall devise, and cause to be constructed, such buildings as shall be needed for the use of the University of California. Such a plan shall be adopted that separate buildings may be constructed and set aside for separate uses, yet such buildings shall be grouped upon a general plan so that such buildings may harmonize therewith, and be a part of one design. The construction and equipment of the buildings shall in every instance be let upon specifications and advertisement of not less than ten days in at least two daily newspapers of the city and county of San Francisco, to the lowest responsible bidder upon sealed proposals. The regents may require adequate security from all bidders, and shall have power to reject any and all bids and advertise anew. They shall take measures for the immediate and permanent improvement of the grounds of the university, and may make such contracts therefor, or for any part thereof, as they may deem advisable. The provisions of all acts for the erection of state buildings, or the improvement of state grounds, in conflict with this act, shall not apply to the grounds and buildings of the University of California. [Amendment of March 3, 1897, Stats. 1897, p. 57.]

This section was also amended March 28, 1872, Stats. 1871-72, p. 665.

Acts repealed. Property to be transferred.

§ 26. An act entitled an act to establish an agricultural, mining and mechanical arts college, approved March thirty-first, eighteen hundred and sixty-six, and all acts or parts of acts inconsistent with this act, are hereby repealed, so far as they conflict with the provisions of this act. But the board of directors of the agricultural, mining and mechanic arts college of this state are authorized and directed to transfer and convey all its property real and personal, and all its effects, rights and interests of property, to the regents of the University of California; and said regents may accept and take possession of said property, and may, if they approve the same, ratify and confirm any contracts, executed or unexecuted, made by said directors; and for the purpose of carrying out the purposes of this section said directors are continued in office until the powers herein conferred shall be duly executed.

§ 27. This act shall take effect immediately from and after its passage.

Editor's note: By section 9 of article IX of the constitution of 1879, it is declared that the university shall constitute a public trust, and that its organization and government shall be perpetually continued in the form and character prescribed by the organic act creating the same (see, ante, p. 66), and the several acts amendatory thereof, subject only to such legislative control as may be necessary to insure compliance with its endowments, and the proper investment and security of its funds, etc.

The university forms the subject of chapter I of title III of Political Code (§§ 1385-1477, inclusive), which was adopted subsequent to the creative act of 1867-8, and the "endowment" act of 1869-70. Owing to the above language of the constitution, those acts have been here inserted.

For aid, appropriations, and endowment, see next following several statutes.

1. Regents of the university constitute a corporation.—The regents of the University of California, having organized as a corporation under the authority of this act, and having incorporated thereunder and having exercised the corporate powers given by the act, constitute a corporation.—Lundy v. Delmas, 104 Cal. 655, 26 L. R. A. 651, 38 Pac. 445.

2. Power of regents to require vaccination of students on entering.—The regents, in the absence of a general law limiting such power, were authorized to make and enforce a rule requiring students entering the university to be vaccinated.—Williams v. Wheeler, 23 Cal. App. 619, 138 Pac. 937.

3. Regents not individually liable for injuries from fallen wire maintained by the university.—The members of the board of regents of the university are not individually liable for the injury of one caused by a wire from a telegraph line maintained along a highway by the university.—Lundy v. Delmas, 104 Cal. 655, 26 L. R. A. 651, 38 Pac. 445.

4. University not exempt from provisions of section 1313, Civil Code, limiting charitable bequests.—The university is a state institution but is not clothed with

any of the state's sovereignty, and is not exempt from the provisions of section 1313, Civil Code, limiting the amount of charitable bequests.—In re Royer's Estate, 123 Cal. 614, 44 L. R. A. 364, 56 Pac. 461.

5. Street assessments.—Unimproved property not exempt.—The constitution did not exempt unimproved vacant property in which university funds were invested from liability for special assessments for street improvements.—City, etc., Co. v. Regents, 153 Cal. 776, 18 L. R. A. (N. S.) 451, 96 Pac. 801.

6. Hastings Law College—Change of form of government.—Having been made a part of the university by its act of creation, subject to its government, the form of government of Hastings Law College could not be changed, as the legislature attempted to do by the acts of 1883 and 1885, amending code provisions.—People v. Kewen, 69 Cal. 215, 10 Pac. 393.

7. Hastings Law College—Admission of female student.—It was the intention of the act of creation to make Hastings Law College a part of the university, and that it should affiliate with and be governed by the laws applicable to the university, and a female student can not lawfully be refused admission therein on the sole ground of sex.—Foltz v. Hage, 54 Cal. 28.

8. Money disbursed on resolution of regents, approved by the governor, without controller's warrant.—The state treasurer is required by the constitution to disburse the funds of the university on a resolution of the regents, approved by the governor, without requiring a warrant of the controller, or the deposit of an equivalent security, and without regard to the use the regents propose to make of the same.—Regents v. January, 66 Cal. 507, 6 Pac. 376.

9. Mortgage held by university.—Property of state—Exempt from taxation.—A mortgage held by the university is "property belonging to the state" within the meaning of the constitution, and is exempt from taxation.—Webster v. Regents, 163 Cal. 705, 126 Pac. 974.

ENDOWMENT ACT OF 1870.

ACT 5352—An act for the endowment of the University of California.

History: Approved April 2, 1870, Stats. 1869-70, p. 668. Other acts of a similar character and purpose: (1) Act of February 14, 1887, Stats. 1887, p. 2; repealed March 20, 1909, Stats. 1909, p. 544; (2) act of February 27, 1897, Stats. 1897, p. 44; repealed March 20, 1909, Stats. 1909, p. 544; (3) act of March 20, 1909, Stats. 1909, p. 543; repealed April 25, 1911, Stats. 1911, p. 1104. See also, Acts 5353 and 5356.

Proceeds of sale of salt marsh and tide lands.

§ 1. The treasurer of state shall place to the credit of the university fund so much of any moneys that may be received by him from the net proceeds of sale of any salt marsh and tide lands lying in and around the bay of San Francisco, belonging to the state of California, as, being invested in the bonds of said state, or of the United States, shall yield an annual income of fifty thousand dollars (\$50,000).

Moneys to constitute a fund. Excess, disposition of.

§ 2. Said moneys shall be a fund, the capital of which shall remain undiminished, and the interest of which shall be inviolably applied to the support of the University of California; provided, that if, at any time, the income accruing to the university from the fund created by this act, and the net income derived from all other sources, shall together exceed an average for the preceding years, reckoning from the date of the passage of this act, of fifty thousand dollars per annum, then the excess above said average of fifty thousand dollars per annum shall be paid into the common school fund of the state.

Purchase of bonds.

§ 3. Whenever the sum paid into the university fund, from the proceeds of the sale of salt marsh and tide lands, as directed in section one, shall amount to fifty thousand dollars, net proceeds, it shall be the duty of the treasurer to advertise, in two daily newspapers published in English, in each of the cities of San Francisco and Sacramento, for sealed proposals for the surrender of any of the civil bonds of the state of California, or of any gold-bearing bonds of the United States. He shall state in such advertisement the amount of money on hand applicable to the purchase of bonds, and he shall accept such proposals as will yield the greatest amount of annual interest in gold coin of the United States.

Interest, how applied.

§ 4. All bonds thus purchased shall be indorsed "University Fund," and shall be held by the treasurer of state, who shall collect the interest thereon, which interest, when collected, shall be paid into the university fund to the extent provided for in section two of this act, and paid out therefrom, semi-annually, to the regents of the university, upon their order, to be by them expended for university purposes; provided, no portion of said interest so received shall be used for the erection or purchase of buildings nor for the purchase of lands.

Reinvestment of funds.

§ 5. Whenever the principal of any of the bonds indorsed "University Funds," in the hands of the treasurer, shall be paid, the amount so paid shall be reinvested in like manner as is provided for in section three.

Citation: Estate of Royer, 123 Cal. 614, 619, 44 L. R. A. 364, 56 Pac. 461.

ENDOWMENT ACT OF 1878.

ACT 5353—To consolidate certain funds and to create therefrom a permanent endowment for the University of California, of which the interest only shall be used by the board of regents to meet current expenses.

History: Approved March 19, 1878, Stats. 1877-78, p. 337.

Consolidation of funds into one fund.

§ 1. That the entire principal sums which have been or may be hereafter realized from the several sources of income and endowment funds of University of California, to wit, the principal sum derived from the sale of lands granted to the state of California by act of congress, approved July second, eighteen hundred and seventy-two, and amendments thereto, and the principal sum derived from the sale of the seventy-two (72) sections of land granted to the state of California for the use of a seminary of learning by act of congress, approved March third, eighteen hundred and fifty-three, and the principal sum derived from the sale of ten (10) sections of land granted to the state of California for public buildings, by said act of congress, approved March third, eighteen hundred and fifty-three, and the principal sum which the treasurer of the state of California was directed, by act of the legislature, approved April second,

eighteen hundred and seventy, to place to the credit of the university fund, and which, being invested in the bonds of the state, or of the United States, should yield an annual income of fifty thousand dollars, and the principal sum now remaining on hand derived from the sale of the real estate in Oakland, Alameda county, and state of California, known as the "Brayton property," shall be from time to time as the same is realized, invested in stocks of the United States or of the state, or other safe stocks or bonds, yielding not less than five (5) per centum upon the par value of said stocks or bonds, and the money so invested shall constitute a perpetual fund, to be known and designated as the "Consolidated Perpetual Endowment Fund of the University of California," the capital of which shall remain forever undiminished; provided, that any moneys realized from said sources of income or endowment funds, or either of them, which have been heretofore invested according to law, may remain so invested; and it is further provided, that all such stocks and bonds as aforesaid shall be deposited in the state treasury to the credit of said fund, and shall be kept separate and apart from all other funds by the state treasurer, who shall pay over from time to time all interests, profits, income, or revenue arising from such stocks or bonds, to the treasurer of said university upon the demand or order of the regents of the university.

Income placed in general fund of university.

§ 2. That all interests, profits, or revenue arising from or growing out of the said "Consolidated Permanent Endowment Fund of the University of California" shall be placed in the general fund of the university, and subject to disbursement to meet the current annual expenses of the University of California.

§ 3. That all acts or parts of acts in conflict herewith are hereby repealed.

In re Estate Royer, 123 Cal. 614, 619, 44 L. R. A. 364, 56 Pac. 461.

ENDOWMENT ACT OF 1911.

ACT 5356—An act to carry into effect the provisions of subdivision (e) of section fourteen of article thirteen of the constitution of the state of California as the said article was amended on the eighth day of November in the year one thousand nine hundred and ten, in so far as the same relates to the state university; and also to provide for the permanent support and improvement of the University of California; and to that end making a continuing appropriation and creating an annual fund therefor; and repealing an act entitled: "An act to provide for the permanent support and improvement of the University of California by the levy of a rate of taxation and the creation of a fund therefor, and to repeal an act approved February 14, 1887, entitled: 'An act to provide for the permanent support and improvement of the University of California by the levy of a rate of taxation and the creation of a fund therefor,' and also to repeal an act approved February 27, 1897, entitled 'An act to provide additional support and maintenance, and for the acquisition of necessary property and improvements of the University of California, by the levy of a rate of taxation, and the creation of a fund therefor.' " Approved March 20, 1909.

History: Approved April 25, 1911, Stats. 1911, p. 1104. Amended May 17, 1915, in effect August 8, 1915, Stats. 1915, p. 448; May 15, 1917, in effect July 27, 1917, Stats. 1917, p. 534. Prior act of February 14, 1887, Stats. 1887, p. 2, and act of February 27, 1897, Stats. 1897, p. 44, were repealed by the act of March 20, 1909, Stats. 1909, p. 543, which was in turn repealed by the present act.

State university fund created.

§ 1. In order to carry into effect the provisions of subdivision (e) of section fourteen of article thirteen of the constitution of the state of California as the said article was amended on the eighth day of November in the year one thousand nine hundred

ten, in so far as the same relates to the state university, and to provide for the permanent support and improvement of the University of California, there is hereby created an annual fund to be called "the state university fund"; said fund for the sixty-third fiscal year shall be equal to, but not more than, seven per cent in excess of the amount received by the university under the provisions of chapter three hundred twenty-nine of the statutes of one thousand nine hundred nine for the fiscal year ending June thirtieth in the year one thousand nine hundred eleven; and provided, further, that such fund for each of the sixty-fourth, sixty-fifth, sixty-sixth, sixty-seventh, sixty-eighth, sixty-ninth, seventieth, seventy-first and seventy-second fiscal years shall be equal to but not more than, seven per cent in excess of the amount received by the university under this act for the immediately preceding respective fiscal year. [Amendment of May 15, 1917. In effect July 27, 1917, Stats. 1917, p. 535.]

This section was also amended May 17, 1915, Stats. 1915, p. 448.

Treasurer to transfer funds.

§ 2. The state treasurer shall each year transfer from the revenues from the taxes provided for in section fourteen of article thirteen of the constitution of this state as said article was amended on the eighth day of November in the year one thousand nine hundred and ten, together with all other state revenues, to the separate fund created by section one of this act, to be called the "state university fund," the amount of money provided for under the provisions of this act.

Fund appropriated without reference to fiscal years.

§ 3. The money paid into the said "state university fund," is hereby appropriated, without reference to fiscal years, for the use and support of the University of California, and is exempted from the provisions of part three, title one, article eighteen, of an act entitled "An act to establish a Political Code," approved March twelfth, eighteen hundred and seventy-two, relating to the board of examiners. When there is any money in the said fund, the same may be drawn out upon the order of the board of regents of the University of California, or such officers of the board as may be duly authorized thereto. Upon the receipt of the order, the controller must draw his warrant upon the state treasurer, payable to the order of the treasurer of the University of California, out of the said "state university fund."

Applied only to support and permanent improvement.

§ 4. The money derived from said fund must be applied only to the support and permanent improvement of the university. The board of regents must include in its biennial report to the governor a statement of the manner in and the purposes for which all of the moneys referred to and raised under this act were expended during the two fiscal years immediately preceding such report. [Amendment of May 17, 1915. In effect August 8, 1915, Stats. 1915, p. 449.]

Repealed.

§ 5. An act entitled: "An act to provide for the permanent support and improvement of the University of California by the levy of a rate of taxation and the creation of a fund therefor, and to repeal an act approved February 14, 1887, entitled: 'An act to provide for the permanent support and improvement of the University of California by the levy of a rate of taxation and the creation of a fund therefor,' and also to repeal an act approved February 27, 1887, entitled 'An act to provide additional support and maintenance, and for the acquisition of necessary property and improvements of the University of California, by the levy of a rate of taxation, and the creation of a fund therefor.' " Approved March 20, 1909, is hereby repealed. This act

shall not be construed as in any way repealing or amending any other existing law which provides for the support, maintenance or improvement of the state university.

§ 6. This act shall take effect immediately.

CONTINUOUS APPROPRIATION ACT OF 1913.

ACT 5358—An act providing a continuous appropriation for the support and maintenance of the University of California to be an item of the general appropriation bill and repealing the act entitled “An act to provide a continuous appropriation for the support and maintenance of the University of California to be an item of the general appropriation bill,” approved March 15, 1901.

Amended title.

“An act providing a continuous appropriation for the support and maintenance of the University of California, and repealing the act entitled ‘An act to provide a continuous appropriation for the support and maintenance of the University of California to be an item of the general appropriation bill,’ approved March 15, 1901.” [Amendment of May 22, 1919. In effect July 22, 1919, Stats. 1919, p. 829.]

History: Approved June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 905. Amended May 22, 1919. In effect July 22, 1919. Stats. 1919, p. 829. Prior act repealed, act of March 15, 1901, Stats. 1901, p. 307.

Permanent increase of funds.

§ 1. It is hereby declared that it is necessary and expedient for the state of California to provide a permanent increase of the funds of the University of California.

Appropriation: Maintenance University of California.

§ 2. In addition to all other sums of money or funds provided for the support and maintenance of the University of California, and commencing with the seventy-first fiscal year, there is hereby appropriated for such support and maintenance for each biennial period the sum of four hundred thousand dollars. [Amendment of May 22, 1919. In effect July 22, 1919, Stats. 1919, p. 829.]

Repealed.

§ 3. An act entitled “An act to provide a continuous appropriation for the support and maintenance of the University of California, to be an item of the general appropriation bill,” approved March 15, 1901, is hereby repealed.

GRANT OF LAND.

ACT 5359—To grant to the regents of the University of California the north one-half of section sixteen, township seven south, of range three east, Mount Diablo meridian, and authorize the exchange thereof.

History: Approved March 16, 1889, Stats. 1889, p. 229.

PAYMENT OF INTEREST ON OUTSTANDING BONDS.

ACT 5360—An act to provide for the payment of interest on outstanding bonds of the State of California, held in trust for the university fund, and state school fund.

History: Approved March 3, 1893, Stats. 1893, p. 75. Amended March 11, 1899, Stats. 1899, p. 93. Prior act repealed: Act of March 4, 1881, Stats. 1881, p. 51, for the reimbursement of the state university for money originally appropriated to its endowment fund, and afterward, by mistake, appropriated to other state purposes.

RESTORATION OF INCOME LOST BY DISASTER AND FIRE.

ACT 5364—An act appropriating the sum of sixty-two thousand dollars for the use and benefit of the University of California, and specifying the duties of the controller and treasurer of the state in relation thereto.

History: Approved June 7, 1913. In effect August 8, 1913. Stats. 1913, p. 876. Prior appropriations of the same character and for the same purpose were made by (1) the act of June 14, 1906, Stats. 1906, p. 31; (2) April 14, 1909, Stats. 1909, p. 862; (3) April 21, 1911, Stats. 1911, p. 1053.

Appropriation: Restore income, University of California.

§ 1. The sum of sixty-two thousand dollars is hereby appropriated for the use and benefit of the University of California out of any moneys in the state treasury not otherwise appropriated, to replace and restore income of said university lost through disaster and fire.

§ 2. The state controller is hereby authorized and directed to draw his warrants in favor of the regents of the University of California for the moneys herein appropriated and the state treasurer is hereby directed to pay said warrants.

REPLACEMENT AND REPAIRS AT LICK OBSERVATORY.

ACT 5365—An act to reimburse the regents of the University of California for moneys expended by them in the construction of buildings, and providing for the completion and equipment thereof, for the Lick Observatory at Mt. Hamilton, to replace property destroyed by earthquake July first, 1911, and making an appropriation therefor.

History: Approved June 6, 1913. In effect August 10, 1913. Stats. 1913, p. 895.

Appropriation: Replace destroyed property, Lick Observatory.

§ 1. The sum of fifty thousand dollars (\$50,000) is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be paid to the regents of the University of California to reimburse them for moneys already expended by them in the construction of buildings for the Lick Observatory on Mt. Hamilton, to replace property destroyed by the earthquake of July 1st, 1911, and with which to complete the said buildings and the purchase of equipment therefor.

§ 2. The state controller is hereby authorized and directed to draw his warrants in favor of the regents of the University of California for the moneys herein appropriated, and the state treasurer is hereby directed to pay said warrants.

MANAGEMENT OF FUNDS.

ACT 5367—An act to provide for the better control of the funds of, and for the investment and security of the same.

History: Approved March 7, 1883, Stats. 1883, p. 54.

This act gave the regents control and management of the funds of the university.

Citations: Regents v. January, 66 Cal. 507, 6 Pac. 376; People v. Kewen, 69 Cal. 215, 10 Pac. 393. Also, Act 5351, notes.

INSURANCE OF PROPERTY.

ACT 5368—An act to authorize the insurance of all property of the University of California held for purposes of income against damages or loss.

History: Approved March 20, 1899, Stats. 1899, p. 152.

SELECTION AND SALE OF UNIVERSITY LANDS.

ACT 5369—An act concerning the selection and sale of university lands.

History: Approved March 13, 1874, Stats. 1873-74, p. 356. Amended April 9, 1880, Stats. 1880, p. 36.

Citations: *Cushing v. Keslar*, 68 Cal. 473, 475, 9 Pac. 659; *White v. Douglass*, 71 Cal. 115, 121, 11 Pac. 860; *In re Estate Royer*, 123 Cal. 614, 619, 56 Pac. 461, 44 L. R. A. 364. Also, Act 5351, notes.

This act related to the determination of land contests.

FARMERS' INSTITUTES.

ACT 5370—An act authorizing the regents of the University of California to hold farmers' institutes, and making an appropriation therefor.

History: Approved March 23, 1911, Stats. 1911, p. 438. Prior acts of similar character and objects: (1) Act of March 18, 1903, Stats. 1903, p. 205; (2) act of March 18, 1905, Stats. 1905, p. 225; (3) act of March 8, 1907, Stats. 1907, p. 176; (4) act of April 14, 1909, Stats. 1909, p. 868.

Farmers' institutes.

§ 1. The board of regents of the University of California is hereby authorized to hold institutes for the instruction of citizens of this state in the various branches of agriculture. Such institutes shall be held at such times and at such places in this state as said board may direct. The said board shall make such rules and regulation as it may deem proper for organizing and conducting such institutes, and may employ an agent or agents to perform such work in connection therewith as they may deem best. The course of instruction at such institutes shall be so arranged as to present to those in attendance the results of the most recent investigations in theoretical and practical agriculture.

Appropriation.

§ 2. The sum of thirty thousand dollars is hereby appropriated out of any money in the state treasury, not otherwise appropriated, for the use of the regents of the University of California as herein provided, and for the purposes of this act, during the two fiscal years following the passage of this act. Fifteen thousand dollars shall be paid on the first day of July, nineteen hundred and eleven, and fifteen thousand dollars on the first day of July nineteen hundred and twelve.

§ 3. The controller shall draw his warrants for said sums in favor of the treasurer of said board of regents, and the state treasurer shall pay the same.

§ 4. This act is hereby exempted from the provisions of section 672 of the Political Code.

§ 5. This act shall take effect immediately.

SANTA MONICA FORESTRY STATION.

ACT 5371—An act authorizing the board of regents of the University of California to exchange the tract of land now constituting the Santa Monica Forestry Station.

History: Approved March 20, 1905, Stats. 1905, p. 369.

This act authorized the regents to exchange the tract of twenty acres constituting the Santa Monica forestry station for another and more advantageously situated tract.

"TOLAND" MEDICAL DEPARTMENT.

ACT 5375—An act concerning the medical department of the University of California.

History: Approved March 3, 1881, Stats. 1881, p. 24.

Medical department to be known as the "Toland" medical department.

§ 1. The medical department of the University of California shall hereafter be known and designated as the "Toland" medical department of the University of California, and all degrees, diplomas, scholarships, and records of the said department shall be made out and all proceedings in connection therewith shall be conducted in and by such name and designation.

§ 2. This act shall take effect from and after its passage.

DEPARTMENT OF MUSIC.

ACT 5376—An act to create a department of music in the university of the state of California; to provide a professorship of music and to appropriate money therefor.

History: Approved March 22, 1905, Stats. 1905, p. 801.

Creation of department of music authorized. Management of.

§ 1. The board of regents of the University of California is hereby authorized to organize, establish and create in the University of California, a department of music with the object of providing instruction in music to the students of the university. Said department of music shall be under the direction of a professor of music to be chosen and appointed by the board of regents, and a professorship of music in the University of California with a salary fixed in the sum of three thousand dollars per annum is hereby created. Said board of regents shall make such other and further rules and regulations as it may deem proper for the organizing and conducting of said department of music.

Appropriation for.

§ 2. The sum of six thousand dollars is hereby appropriated out of any money in the state treasury, not otherwise appropriated for the use of the regents of the University of California in carrying out the purposes as prescribed in section 1. One-half of said sum, viz., three thousand dollars shall be paid on the first day of July, nineteen hundred and five, and the remaining one-half (three thousand dollars) shall be paid on the first day of July, nineteen hundred and six.

Duty of controller in relation to appropriation.

§ 3. The controller is authorized and directed to draw his warrants for the above sums, payable to the order of the treasurer of the University of California, and the treasurer of state is directed to pay the same.

§ 4. This act shall be in effect from and after its passage.

LOS ANGELES DEPARTMENT, COLLEGE OF MEDICINE.

ACT 5377—An act providing for the completion of construction, and for moving, changing and improving the buildings of, and for the purchase of equipment, apparatus, furnishings and supplies for, the Los Angeles department of the college of medicine of the University of California, and making an appropriation therefor.

History: Approved June 7, 1913. In effect August 10, 1913, Stats. 1913, p. 872.

Appropriation: Los Angeles department of college of medicine, University of California.

§ 1. The sum of twenty-five thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be paid to the regents of the University of California, to be by them expended as follows: For the completion of the hospital buildings for the Los Angeles department of the college of medicine of

the University of California on the property held by the regents of the University of California and situated on North Broadway and Castelar streets, between Ord and Alpine streets, in the city of Los Angeles, county of Los Angeles, state of California; and for the expense incurred in the moving, changing and improving of the buildings at present located on said property; and for the purchase of such equipment, apparatus, furnishings and supplies as are necessary for the use and operation of the aforementioned buildings.

§ 2. The state controller is hereby authorized and directed to draw his warrants in favor of the said the regents of the University of California for the moneys herein appropriated, at such time and in such manner as the expenditure of the same shall be required, and the state treasurer is hereby directed to pay said warrants.

PATHOLOGICAL LABORATORY OF PLANT DISEASES.

ACT 5378—An act providing for the establishment and maintenance of a pathological laboratory, for the investigation of tree and plant diseases and pests, and branch agricultural experiment station, and making an appropriation therefor.

History: Approved March 18, 1905, Stats. 1905, p. 249.

Pathological laboratory, establishment of for the investigation of tree and plant diseases and pests.

§ 1. There shall be established at a point and by means hereinafter provided a scientific station or laboratory with the necessary grounds and buildings; this laboratory shall be equipped with the material and appliances necessary for the study and determination of the cause of diseases and conditions of orchard trees, fruits and vegetables and shall provide the means for a thorough examination of fungus, bacterial, and other maladies, insects, pests, and diseases, and their remedy or prevention, the condition of the soil, cultivation and location that may tend to the imperfect nutrition and all physiological and other defects that may affect the economic production and marketing of horticultural products.

Location of.

§ 2. The location of such pathological laboratory shall be in one of the seven southern counties of the state of California, to be selected by a board of three commissioners hereby created, consisting of the governor of the state, the president of the University of California, and the professor of agricultural practice of the University of California, and said board of commissioners is hereby authorized and empowered to select such location, perfect the title thereof in the name of the board of regents of the University of California and do such other acts as may be necessary to make legal the expenditure of the funds required by the purpose of this act; provided that said location may, at the option of the board of commissioners, be on lands already belonging to the state of California at Whittier or Patton.

Construction of buildings by regents. Regents may receive, hold and manage gifts and bequests.

§ 3. When the title to the necessary lands has been perfected by the commission named in section two the regents of the University of California shall proceed to the construction of a building suitable for the protection and use of the laboratory, shall equip the laboratory and maintain it for the purposes designated in the title of this act, and may receive, manage, use and hold gifts, leases, and bequests for promoting the purposes of this act.

Experts in plant pathology, appointment and duties. Assistants.

§ 4. The board of regents or the president of the University of California, if the regents so authorize, shall select not less than two experts in plant pathology, and such

assistants as may be needed, who shall have active charge of the laboratory and the investigations and field experiments, and who shall reside at or near the said laboratory and give their entire time to the investigations required by the board of regents or their representative, and may from time to time publish the results of their inquiries and discoveries; the said board of regents shall fix the salaries of employees and provide for contingent expenses.

Branch agricultural experiment stations. Gifts. Land owned by state. Extent if at Whittier or Patton.

§ 5. Said commissioners shall also establish and maintain a branch agricultural experiment station or stations under the provisions of this act within the territory described in section two of this act for the purpose of carrying on experimental and investigational work in connection with the agricultural experiment work of the University of California in ascertaining the best methods of horticultural management; for the investigation of fertilization; for the investigation of irrigation; for improving the methods of handling fruits for market; for the introduction of new varieties of fruits and for such other investigations as may be deemed advisable to promote the horticultural interests of said district. Said commissioners may lease or accept gifts of lands for said purpose and may select for the location of said station or stations any lands owned by the state in said district provided that should such station or stations be located upon lands owned by the state at Whittier reform school at Whittier or the Southern California state hospital at Patton they shall not embrace in the aggregate more than fifty acres. Said land shall be supplied with sufficient water for the proper irrigation of the same in any case.

Regents to prescribe plans for investigation.

§ 6. The regents of the University of California are required to adopt a general plan and schedule before the beginning of each fiscal year which shall describe the investigations and experiments to be pursued during such fiscal year, and it shall be the duty of the board of regents to receive and consider written statements from individuals and associations interested in said branches of horticulture, conveying plans or suggestions for investigations which they may approve or desire.

Appropriation.

§ 7. The sum of thirty thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated to be expended by the regents of the University of California in carrying out the purposes of this act, and the state controller is hereby authorized and directed to draw his warrant for the same payable to the regents of the University of California and the treasurer of the state is hereby directed to pay such warrant.

HYGIENE LABORATORY.

ACT 5380—An act to establish and maintain a state hygienic laboratory for bacteriological and chemical analysis for the use of the state board of health, providing for the appointment of a director thereof, and assistants; making an appropriation therefor and prescribing the duties of the state controller and state treasurer in relation thereto.

History: Approved March 18, 1905, Stats. 1905, p. 209. Amended, entire act, March 9, 1911, Stats. 1911, p. 320.

State hygienic laboratory established.

§ 1. There shall be established and maintained at the University of California, at Berkeley, for the use of the state board of health, a state hygienic laboratory for bacteriological and chemical analysis, which shall be under the management and control

of the state board of health; and branches of said laboratory may be established and maintained by said board from time to time, at such other places within the state of California as the said board may determine to be necessary for the protection of the public health. [Amendment approved March 9, 1911, Stats. 1911, p. 320.]

Director. Assistant. Salaries.

§ 2. The state board of health shall appoint a director of said state laboratory who shall be a skilled bacteriologist and chemist, and, subject to the control of said board, shall have general supervision of said laboratory and any branch laboratories that may be established hereunder. Said board shall also appoint an assistant director for each branch laboratory establish, who shall likewise be a skilled bacteriologist and chemist, and shall also appoint such other assistants as may from time to time be necessary to carry on the work of said laboratory and the branches thereof. The salaries of the director, assistant directors, and other assistants shall be fixed by the state board of health and they shall hold office at the pleasure of said board; provided, however, that all such salaries and all expenses incurred for equipment, rent, materials, traveling expenses, and other things incidental to the maintenance and operation of such laboratories, shall be paid out of the money appropriated for bacteriological laboratory support by the terms of the general appropriation act. [Amendment approved March 9, 1911, Stats. 1911, p. 320.]

Controller authorized to draw warrants.

§ 3. The state controller is hereby authorized to draw his warrants for the sums so appropriated in favor of the secretary of the state board of health and the state treasurer is hereby directed to pay the same. [Amendment approved March 9, 1911, Stats. 1911, p. 320.]

UNIVERSITY FARM.

ACT 5381—An act providing for the purchase of a university farm for the use of the college of agriculture of the University of California; providing for the appointment of a commission to select and purchase said farm, providing for a school of agriculture and a system of instruction on said farm and appropriating money therefor.

History: Approved March 18, 1905, Stats. 1905, p. 131. Act of February 26, 1907, Stats. 1907, p. 58, appropriated \$132,000 for buildings, improvements, etc., for the University farm.

Commission for the selection and purchase of. Term of office. Compensation.

§ 1. A commission is hereby appointed to consist of five persons who shall be known as the "Commissioners for the Selection and Purchase of a University Farm." Said commission shall consist of the following persons, each of whom shall be, and is hereby appointed as a member of said commission: The governor of the state of California, who shall be the president of said commission; the president of the University of California; the lieutenant-governor of the state of California; the president of the state board of agriculture; and the state commissioner of horticulture of California. Said commission[ers] shall hold office until they have performed the duties hereinafter provided for. They shall receive no compensation, but the expenses of their qualification and necessary traveling expenses shall be paid out of the moneys hereinafter appropriated.

Duties of commissioners. Size of farm and character of soil. Must be susceptible of irrigation. Gift of farm.

§ 2. Immediately after the appointment of said commissioners they shall organize and proceed to select and purchase a farm or tract of land to be known as the university farm, and to be used as an agricultural college farm, and for the site or location of buildings, and such other structures as may be necessary for use in connection there-

with and for the purposes herein set forth. Said farm or tract of land shall be of such size and acreage as in the judgment of the commission, may be necessary for the purposes desired—provided, however, there shall be not less than three hundred and twenty acres of first-class tillable land, located at such place as said commission may deem proper, having consideration for the purposes for which it is to be used. It must be first-class tillable land, and in its soil, location, climate and general environment be typical and representative of the best general agricultural conditions in California, and be capable of successfully producing the general crops of the state, and as many as may be of all of the crops and products successfully grown in California. Provided, that no site or tract shall be chosen, one-half of which at least is not susceptible of irrigation, and for the irrigation of which some system is not already provided, or for which a water right is not purchased or procured at the time the land is selected. For the purposes of securing or purchasing said farm, said commission shall have the power to take and secure options, or bonds, for deeds, and may accept a gift of the whole or any part of said farm. They may also receive gifts of water rights, canals, ditch, flume or other rights, easements or appurtenances to any farm which they may select, and may also purchase any such water or other rights, or acquire the same by the exercise of the right of eminent domain.

Deed to be made to regents. Payment for farm.

§ 3. The deed for said farm or tract of land, or other property purchased, shall, when the same shall have been purchased by said commission, be taken in the name of, and the deed shall be made to the regents of the University of California. When said commission shall have selected and purchased the said tract or farm or other property herein provided for, they shall present their claim for the amount or sum agreed to be paid therefor to the state board of examiners, and upon the allowance of said bill or claim the controller shall draw his warrant for the amount thereof, payable out of the sum hereby appropriated in favor of the owner or owners of the properties selected and purchased as hereinabove provided for. Said warrant or warrants when so drawn shall be delivered to said commission, which shall use the same to pay the purchase price of said farm or tract or other property, taking a deed therefor as aforesaid, the same to be delivered and filed with the regents of the University of California.

Management of. Construction of buildings. Supplies, implements, etc. Instructors and instruction. Experimental and investigational work.

§ 4. The said university farm when purchased as aforesaid shall be immediately given into the possession of, and shall be under the management, direction and control of the board of regents of the University of California. Immediately upon obtaining possession of said university farm said regents shall proceed to have constructed thereon buildings and such other structures as shall be necessary for an agricultural school, and for the use thereof for purposes of education in agriculture. They shall provide for the purchase of supplies, implements, machines, and apparatus, the planting of trees and vines, and forage and agricultural crops, for the purchase of domestic livestock, and for the employment of laborers. They shall appoint the necessary instructors and inaugurate and provide for the conduct of instruction in agriculture, and in such other branches of learning as are allied thereto, and as are calculated to better qualify and inform the students attending in the theory and practice of agriculture. This instruction shall be conducted in connection with, and as a part of, the college of agriculture of the University of California, provisions being made by the regents for such attendance on the farm of the college students as may be deemed best and necessary to the completion of their college courses. The university farm, and the instruction given thereon shall be so conducted as to meet the needs of persons who

desire instruction in agriculture, horticulture, viticulture, animal industry, dairying, irrigation and poultry raising, and to prepare them for the pursuit thereof; and shall also be used for experimental and investigational work in connection with the agricultural experiment station of the University of California. Short courses of instruction shall also be arranged for in each of the leading branches of agricultural industry, so regulated as to provide for popular attendance and general instruction in agricultural practice.

Appropriation.

§ 5. The sum of one hundred and fifty thousand dollars is hereby appropriated out of any moneys in the general fund of the state treasury, for the purposes of this act; provided, that fifty thousand dollars of said sum shall be payable immediately, fifty thousand dollars on the first day of July, nineteen hundred and five, and the remaining fifty thousand dollars thereof on the first day of January, nineteen hundred and six. The commission hereinabove provided for shall draw against said appropriation as hereinabove authorized. After such sums have been paid therefrom, the remaining portion of said appropriation shall be subject to the order of, and shall be paid to the said board of regents to be used by them exclusively for the construction of the buildings and the other purposes herein provided for.

§ 6. This act shall take effect immediately.

DORMITORY AT UNIVERSITY FARM.

ACT 5382—An act providing for the construction and equipment of one dormitory at the university farm and agricultural school at Davis, and making an appropriation therefor.

History: Approved June 7, 1913. In effect August 10, 1913. Stats. 1913, p. 873.

Appropriation: Dormitory, university farm, Davis.

§ 1. The sum of forty thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be paid to the regents of the University of California, to be used by them in the construction and equipment of one dormitory at the university farm and agricultural school at Davis.

§ 2. The state controller is hereby authorized and directed to draw his warrants in favor of the regents of the University of California for the moneys herein appropriated, and the state treasurer is hereby directed to pay said warrants.

CLASSROOM AND LIBRARY AT UNIVERSITY FARM.

ACT 5383—An act providing for the construction and equipment of a classroom and library building at the university farm and agricultural school at Davis and making an appropriation therefor.

History: Approved June 7, 1913. In effect August 10, 1913. Stats. 1913, p. 873.

Appropriation: classroom and library building, university farm, Davis.

§ 1. The sum of sixty-five thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be paid to the regents of the University of California, to be used by them for the construction and equipment of a classroom and library building at the university farm and agricultural school at Davis.

§ 2. The state controller is hereby authorized and directed to draw his warrants in favor of the regents of the University of California for the moneys herein appropriated and the state treasurer is hereby directed to pay said warrants.

PURCHASE OF LAND AND WATER RIGHTS FOR THE DEPARTMENT OF AGRICULTURE.

ACT 5384—An act providing for the purchase, for the use of the department of agriculture of the University of California, of land and water rights in any of the counties of Los Angeles, Riverside, Orange, San Bernardino, San Diego, Imperial, Ventura, or Santa Barbara, and for the planting of said lands and making an appropriation therefor.

History: Approved June 9, 1913. In effect August 10, 1913. Stats. 1913, p. 875.

This act appropriated \$60,000 for the purpose indicated.

IMPERIAL COUNTY BRANCH AGRICULTURAL AND EXPERIMENT STATION.

ACT 5385—An act making an appropriation for the investigation of agricultural and horticultural problems and conditions in Imperial county, and providing for the establishment in said county of a branch agricultural and experiment station for the purpose of prosecuting said work.

History: Approved April 14, 1909, Stats. 1909, p. 865.

This act appropriated \$6000 for the purpose indicated; and the subsequent act of May 1, 1911, Stats. 1911, p. 1390, made an additional appropriation of \$15,000.

BRANCH AGRICULTURAL EXPERIMENT STATION AT RIVERSIDE.

ACT 5387—An act appropriating money for the erection of buildings on, and acquiring title to the land of, the state branch agricultural experiment station, located at Riverside, California, and for general improvements thereon.

History: Approved May 1, 1911, Stats. 1911, p. 1394

This act appropriated \$25,000 for the purpose indicated.

BRANCH AGRICULTURAL EXPERIMENT STATION.

ACT 5388—An act providing for the construction and equipment of a laboratory building for the use of the department of agriculture of the University of California in any or either of the counties of Los Angeles, Riverside, Orange, San Bernardino, San Diego, Imperial, Ventura, or Santa Barbara and making an appropriation therefor.

History: Approved June 7, 1913. In effect August 10, 1913. Stats. 1913, p. 856.

Appropriation: laboratory University of California department of agriculture. In southern county.

§ 1. The sum of one hundred thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be paid to the regents of the University of California, and to be used by them in the construction of a laboratory building for the department of agriculture of the University of California, and in the equipment thereof. Said laboratory building shall be constructed upon lands donated or purchased for the use of the said department of agriculture in any or either of the counties of Los Angeles, Riverside; Orange, San Bernardino, San Diego, Imperial, Ventura, or Santa Barbara.

Controller authorized to draw warrant.

§ 2. The state controller is hereby authorized and directed to draw his warrants in favor of said the regents of the University of California for the moneys herein appropriated at such time and in such manner as the expenditure of the same shall be required, and the state treasurer is hereby directed to pay said warrants.

An appropriation for the construction and equipment of a residence, barns, etc., was made the same day (Stats. 1913, p. 861).

CO-OPERATIVE AGRICULTURAL EXTENSION WORK.

ACT 5390—An act assenting to the provisions and requirements of the act of the congress of the United States entitled "An act to provide for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act of congress approved July 2, 1862, and of acts supplementary thereto, and the United States department of agriculture," approved by the president of the United States, May 8, 1914, and authorizing and empowering the regents of the University of California to receive the grants of money appropriated under said act, and to organize and conduct agricultural extension work in accordance with the terms and conditions expressed in said act.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 457. An appropriation was made May 22, 1919, in effect July 22, 1919, Stats. 1919, p. 828, to carry on the work.

Assent—Agricultural extension work.

§ 1. The assent of the State of California is hereby given to the provisions and requirements of the act of the congress of the United States entitled "An act to provide for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act of congress approved July 2, 1862, and of acts supplementary thereto, and the United States department of agriculture," and approved by the president of the United States May 8, 1914.

University of California authorized to receive grants of money.

§ 2. The regents of the University of California are hereby authorized and empowered to receive the grants of money appropriated under said act of congress and to organize and conduct agricultural extension work in accordance with the terms and conditions expressed in said act.

University authorized to appropriate money for agricultural work.

§ 3. The regents of the University of California are hereby authorized and directed to appropriate, expend and use for the support and maintenance of the work of organizing and conducting said agricultural work the sum of thirty-one thousand two hundred and seventy-five dollars out of the amount appropriated for the support and maintenance of the college of agriculture of the University of California by the general appropriation bill passed at this legislative session. Said amount of thirty-one thousand two hundred and seventy-five dollars may be so expended by the regents of the University of California in one or more fiscal years.

The act of May 22, 1919, Stats. 1919, p. 828, made an appropriation to carry on the work.

"UNIVERSITY OF CALIFORNIA BUILDING BOND ACT."**ACT 5391—"University of California Building Bond Act."**

History: An initiative measure filed with the secretary of state under provisions of section 1, article IV, of the state constitution, submitted to the electors at the general election held November 3, 1914, and adopted. In effect December 19, 1914, Stats. 1915, p. 1923. Amended March 26, 1915, in effect August 8, 1915, Stats. 1915, p. 15; March 23, 1917, in effect July 27, 1917, Stats. 1917, p. 21.

§ 1. The regents of the University of California are hereby authorized to complete the construction of the library building of the University of California, and also to construct a building for general use by said university as a recitation building, a building for the use of the college of agriculture of said university, and a building for the use of the college of natural sciences of said university as a chemistry building, all on the grounds of said university in the city of Berkeley. For the purpose of meeting the cost of such construction, the state of California is hereby authorized to, and shall, incur an indebtedness in the manner provided by this act, in the sum of one million eight hundred thousand dollars (\$1,800,000).

Immediately upon the taking effect of this act the treasurer of the state shall prepare eighteen hundred (1800) suitable bonds of the state of California, negotiable in form and payable to bearer, and expressing on their face the obligation of the state of California to pay, in gold coin of the United States, the principal amount thereof at the respective dates of maturity hereinafter specified, together with interest, as hereinafter specified, in the denomination of one thousand dollars (\$1,000) each. Said bonds shall be numbered consecutively from one (1) to eighteen hundred (1800) inclusive, and shall bear date the fifth day of January, 1915. The total issue of such bonds shall not exceed the principal sum of one million eight hundred thousand dollars (\$1,800,000), and such bonds shall bear interest at the rate of four and one-half per cent ($4\frac{1}{2}\%$) per annum upon the principal from the date thereof. The said bonds and the interest thereon shall be payable in gold coin of the United States at the office of the treasurer of the state, at the times and in the manner following, to wit: The first forty (40) of said bonds shall be due and payable on the fifth day of January, 1921, and forty (40) of said bonds in consecutive numerical order shall be due and payable on the fifth day of January in each and every year thereafter, until and including the fifty day of January, 1965. The interest accruing on all of said bonds that shall be sold shall be payable at the office of the treasurer of the state on the fifth day of January and on the fifth day of July of each and every year after the sale of the same. The interest on all bonds issued and sold shall cease on the day of their maturity, and the said bonds so issued and sold shall on the day of their maturity be paid, as herein provided, and canceled by the state treasurer. All bonds remaining unsold shall, at the date of the maturity thereof, be canceled and destroyed by the treasurer of the state. All bonds issued pursuant to the provisions of this act shall be signed by the governor of the state, countersigned by the state controller, and endorsed by the state treasurer, and each of said bonds shall have the great seal of the state of California impressed thereon. The said bonds signed, countersigned, endorsed and sealed, as herein provided, when sold, shall be and constitute a valid and binding obligation upon the state of California, though the sale thereof be made at a date or dates after the persons so signing, countersigning and endorsing, or any of them, shall have ceased to be the incumbents of said office or offices.

§ 2. Attached to each of said bonds there shall be an interest coupon for each semi-annual payment of interest thereon, negotiable in form, and payable to bearer, and expressing the obligation of the state of California to pay the amount of such semi-annual payment of interest, in gold coin of the United States, at the time of maturity thereof. Said interest coupons shall be so attached that each may be detached without injury to or mutilation of said bond, or injury to, mutilation of, or detachment from said bond of, the remainder of such coupons the time of payment of which has not yet been reached. Said coupons shall be consecutively numbered in the chronological order of their time of payment, and shall bear the lithographed signature of the state treasurer. No interest shall be paid on any of said bonds for such time as may intervene between the date of said bond and the day of sale thereof, except to the extent to which accrued interest shall have been paid to the state at the time of such sale by the purchaser of said bond.

Opening bids. Purchase price payable in ten days. Matured interest coupons to be detached. Sale may be continued. Publication of notice. Sale of bonds on direction of governor. Bids. Deposit of cash or check.

§ 3. When the bonds authorized by this act to be issued shall have been signed, countersigned, endorsed and sealed, as in section one provided, the state treasurer shall, from time to time, sell such number thereof as the governor of the state may direct to the highest bidder for cash. The governor of the state shall, from time to time, issue to the state treasurer such direction immediately after being requested so to do

through and by a resolution duly adopted and passed by a majority vote of the regents of the University of California. Such resolution shall specify the amount of money which, in the judgment of said the regents of the University of California, shall be required at such time, and the governor of the state shall direct the state treasurer to sell such number of bonds as will, at the par value thereof, equal said amount of money so required according to such resolution of the regents of the University of California. Said bonds shall be sold in consecutive numerical order, save and except that the state treasurer may sell two or more bonds at the same time in one lot, which lot, however, shall be made up of bonds consecutively numbered, the first of which in number shall be the first bond in number yet unsold. The state treasurer shall not accept any bid which is less than the par value of the bond or bonds bid for, and to the amount of the accepted bid there shall be added in each case, as a part of the purchase price to be paid by the bidder, the amount of interest which shall have accrued on the bonds bid for between the date of the payment for said bonds and the last preceding interest maturity date. Each bid shall be in writing and signed by the bidder and sealed, and shall be deposited with the state treasurer not later than the last business day preceding the date of sale. Each bid shall be accompanied by the deposit with the state treasurer, either in cash or by certified check on a reputable bank within the state of California, to the order of the state of California, of one-tenth of the amount of the par value of the bond or lot of bonds bid for. Such deposit of each unsuccessful bidder shall be returned to him immediately upon the nonacceptance of his bid, and such deposit of the successful bidder shall immediately upon the acceptance of his bid become and be the property of the state of California and be placed in the state treasury to the credit of the "University of California building fund" hereinafter mentioned, and shall be credited to the successful bidder upon the purchase price of the bonds bid for in case such price is paid in full by him within the time hereinafter prescribed. At the time of sale the state treasurer shall open said bids and accept the bid of the highest bidder for cash, save and except that no bid shall be accepted which is lower in amount than the par value of the bonds bid for, and that the state treasurer may, in his discretion, reject all bids. The purchase price of the bonds sold shall be payable within ten days after the acceptance of the bid therefor, and if not so paid the successful bidder shall have no right in or to said bonds or by reason of said bid, or to the recovery of said deposit accompanying said bid, or to any allowance or credit by reason of such deposit. In case the purchase price is not so paid, the bonds so sold but not paid for shall be resold by the state treasurer upon notice as hereinafter provided in case of original sale. Bonds sold shall be deliverable to the purchaser immediately upon, and not before, the payment of the purchase price therefor. Before delivering any of said bonds, the state treasurer shall detach therefrom all interest coupons which have matured before the date of the payment of the purchase price therefor. The state treasurer may, by public announcement at the time and place fixed by him for said sale, continue such sale to such time and place as he may at the time of said continuance designate. When a sale is so continued no notice thereof need be given, other than the public announcement of such continuance by the state treasurer as just hereinbefore provided. The state treasurer shall give notice of the time and place of sale by publication in two newspapers published in the city and county of San Francisco, in one newspaper published in the city of Los Angeles, in one newspaper published in the city of Oakland, and in one newspaper published in the city of Sacramento, once a week for four weeks next preceding the date fixed for such sale. In addition to the notice last above provided for, the state treasurer may give such further notice as he may deem advisable, but the expense and cost of such additional notice shall not exceed the sum of five hundred dollars for each sale so advertised.

This section was also amended March 26, 1915, Stats. 1915, p. 15.

"University of California building fund" created.

There is hereby created in and for the state treasury a fund to be known and designated as the "University of California building fund," and immediately after such sale of bonds the treasurer of the state shall pay into the state treasury and cause to be placed in said "University of California building fund" the total amount received from the sale of said bonds, except such amount as may have been paid as accrued interest thereon. The amount that shall have been paid at such sale as accrued interest on the bonds sold shall be by the treasurer of the state, immediately after such sale, paid into the treasury of the state and placed in a fund to be known as the "interest and sinking fund of the University of California building bonds."

Use of moneys.

The moneys placed in the "University of California building fund," pursuant to the provisions of this section, shall be used under the direction of the regents of the University of California exclusively for the completion of the construction of said library building and the construction of the other buildings hereinbefore mentioned, the furnishing and equipping of said buildings, the construction and equipment of a power plant, and tunnels and subways for steam and electric lines in connection with said buildings and neighboring buildings of the University of California, the doing of necessary landscaping immediately surrounding said buildings, and for meeting the expenses of the sale of said bonds.

Moneys shall be drawn from said "University of California building fund" for the purposes of this act, upon warrants duly drawn by the controller of the state, upon claims made by the regents of the University of California and approved by the state board of control. [Amendment of March 23, 1917. In effect July 27, 1917. Stats. 1917, p. 21.]

§ 4. There is hereby appropriated from the general fund in the state treasury such sum annually as will be necessary to pay the principal of, and interest on, the bonds issued and sold pursuant to the provisions of this act as said principal and interest become due and payable. There shall be collected each year, and in the same manner and at the same time as other state revenue is collected, such sum in addition to the ordinary revenues of the state as shall be required to pay the principal and interest on said bonds maturing in said year, and it is hereby made the duty of all officers charged by law with any duty in regard to the levy and collection of said revenue to do and perform each and every act which shall be necessary to collect such additional sum.

There is hereby created in the state treasury a fund to be known and designated as the "interest and sinking fund of the University of California building bonds." The state treasurer shall, on the first day of July, 1915, and on the first day of each January and the first day of each July thereafter, transfer from the general fund of the state treasury to said "interest and sinking fund of the University of California building bonds" such an amount of money as shall be required to pay the interest maturing at the next interest payment date on the amount of said bonds sold and outstanding; and shall likewise, on the first day of January of the year 1921, and the first day of January of each year thereafter in which any of said bonds sold and outstanding mature, transfer from the general fund of the state treasury to said "interest and sinking fund of the University of California building bonds" such an amount of money as may be required to pay the principal of such of said bonds sold and outstanding as mature in such year.

§ 5. The principal and interest of all of said bonds which may be sold shall be paid at the time the same become due from said "interest and sinking fund of the University of California building bonds," and the faith of the state of California is hereby pledged for the payment in full of the principal and interest of said bonds so sold as

the same mature. Both principal and interest shall be so paid upon presentation to the state treasurer on or after the day of the maturity of the same of the bond or coupon so maturing, and the state treasurer is hereby authorized and required to make such payment. Warrants for such payment shall be duly drawn by the state controller upon the request of the state treasurer.

§ 6. There shall be provided in the general appropriation bill to be passed at the next regular session of the legislature sufficient money to defray all expenses that shall be incurred by the state treasurer in the preparation of said bonds and in the advertising of the sale thereof as in this act provided.

§ 7. The state controller and state treasurer shall keep full and particular account and record of all their proceedings under this act, and they shall transmit to the governor, in triplicate, an abstract of all such proceedings thereunder, with an annual report, in triplicate, one copy of each to be by the governor laid before each house of the legislature bi-annually. The books and papers pertaining to the matters provided for in this act shall at all times be open to the inspection of any parties interested, or of the governor, the attorney general, or the legislature, or of any citizen of the state.

§ 8. This act shall be known and may be cited as the "University of California building bond act," and, after any of the bonds herein provided for have been sold, shall be irrevocable until the principal and interest of all bonds sold shall have been paid and discharged in full, but the legislature may amend this act at any time in furtherance of its purpose, and may also repeal this act at any time after its adoption, provided that there are at the time no bonds which have been sold thereunder outstanding and unpaid in full as to both principal and interest.

UNIVERSITY FARM IN RIVERSIDE COUNTY.

ACT 5393—An act to establish a university farm in Riverside county and making an appropriation to carry out the purposes hereof.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1231.

Appropriation: establishment of university farm in Riverside county.

§ 1. The sum of thirty thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated, to be expended by the regents of the University of California toward the purchase of land and water rights for a university farm to be located within Riverside county, state of California, and to consist of not less than three hundred acres of tillable land, with due consideration for the purposes for which it is to be used. The land purchased must be susceptible to irrigation from some adequate water supply of reasonable cost for maintenance and distribution. The said regents may receive gifts of water or water rights, or equipment, or any easements or appurtenances to any such university farm which they may select. The purpose of this act is to authorize the regents to enter into a contract of sale for said land, final payments to be made by later appropriations of the legislature.

Payment of claims.

§ 2. The state controller is directed to draw his warrant at such times and in such amounts, not exceeding in the aggregate the amount hereby appropriated, as the regents of the state university shall present claims for and the state treasurer is directed to pay the same.

Under control of regents. Courses of instruction.

§ 3. Upon completion of payments the said university farm shall be purchased in the name of the regents of the University of California and shall be under their con-

trol and direction in connection with and as a part of the college of agriculture of the University of California; provision being made by the said regents for such attendance on the farm of the college students as may be deemed best and necessary to the completion of their college courses. The university farm and the instruction given thereon shall be conducted to meet the needs of persons who desire practical instruction and experience in general agriculture, horticulture, viticulture, animal industry, dairying and irrigation; and to prepare them for the pursuit thereof; and shall also be used for experimental and investigational work in connection with the agricultural experiment station of the University of California. Short courses of instruction shall also be arranged in each of the leading branches of agricultural industry, so regulated as to provide for popular attendance and general instruction in agricultural practice; and all work so undertaken shall be of the most practical kind.

Buildings and equipment.

§ 4. From time to time the regents shall proceed to construct on this farm such reasonable buildings and other structures as are necessary to good and efficient work, keeping away from unnecessarily expensive buildings out of harmony with reasonable and sanitary farm necessity, and they shall provide for the purpose of supplies, implements, machines, apparatus, domestic live stock, and for the planting of such trees and vines and crops as seem best and to employ the necessary labor thereof; but the labor of the students shall be at all times utilized so far as possible, to the end that the students may and shall actually do and perform the several kinds and classes of work in a practical manner that pertain to the conduct of an average farm.

UPLAND.

See Act 3094, note.

CHAPTER 408.

USURY LAW.

CONTENTS OF CHAPTER.

ACT 5394. USURY LAW.

USURY LAW.

ACT 5394—An act, to be known as the usury law, relating to the rate of interest which may be charged for the loan or forbearance of money, goods or things in action, or on accounts after demand, or on judgments, providing penalties for the violation of the provisions hereof, and repealing sections one thousand nine hundred seventeen, one thousand nine hundred eighteen, one thousand nine hundred nineteen, and one thousand nine hundred twenty of the Civil Code and all acts and parts of acts in conflict with this act.

History: Initiative measure, filed with the secretary of state and submitted to and approved by the electors at the general election of November 5, 1918, in effect December 10, 1918, Stats. 1919, p. LXXXVII.

[Legal rate of interest.]

§ 1. The rate of interest upon the loan or forbearance of any money, goods or things in action or on accounts after demand or judgments rendered in any court of this state, shall be seven dollars upon the one hundred dollars for one year and at that rate for a greater or less sum or for a longer or a shorter time; but it shall be competent for parties to contract for the payment and receipt of a rate of interest not exceeding twelve dollars on the one hundred dollars for one year and not exceeding that rate for a

greater or less sum or for a longer or shorter time, in which case such rate exceeding seven dollars on one hundred dollars shall be clearly expressed in writing.

[Interest greater than legal rate prohibited. Contracts for greater than legal rate null and void.]

§ 2. No person, company, association or corporation shall directly or indirectly take or receive in money, goods or things in action, or in any other manner whatsoever, any greater sum or any greater value for the loan or forbearance of money, goods or things in action than at the rate of twelve dollars upon one hundred dollars for one year; and in the computation of interest upon any bond, note, or other instrument or agreement, interest shall not be compounded, nor shall the interest thereon be construed to bear interest unless an agreement to that effect is clearly expressed in writing and signed by the party to be charged therewith. Any agreement or contract of any nature in conflict with the provisions of this section shall be null and void as to any agreement or stipulation therein contained to pay interest, and no action at law to recover interest in any sum shall be maintained and the debt can not be declared due until the full period of time it was contracted for has elapsed.

[Excess interest may be recovered. Bonus or commission. Penalty for violation.]

§ 3. Every person, company, association or corporation, who for any loan or forbearance of money, goods or things in action shall have paid or delivered any greater sum or value than is allowed to be received under the preceding sections, one and two, may either in person or his or its personal representative, recover in an action at law against the person, company, association or corporation who shall have taken or received the same, or his or its personal representative, treble the amount of the money so paid or value delivered in violation of said sections, providing such action shall be brought within one year after such payment or delivery. And any person, company, association or corporation, who shall ask, demand, receive, take, accept or charge more than twelve per centum per annum upon the sum of money actually loaned for the forbearance, use or loan thereof, when the repayment of the money loaned shall be secured by a mortgage, trust deed, bill of sale, assignment, pledge, receipt or other evidence of debt, except corporation bonds, and municipal and other public bonds, upon property, real or personal or by assignment of wages, or ask, demand, receive, take, accept or charge more than an amount equal to five per cent so actually loaned and secured in all sums of one thousand dollars or less, and three per cent on all sums over one thousand dollars in full for all examinations, views, fees, appraisals, commissions, renewals made within one year from date of loan and charges of any kind or description whatsoever, except abstracts or certificates of title charges made under the Torrens land law or otherwise, in the procuring, making and transacting of the business connected with such loans, or who shall ask, demand, receive, take, accept or charge any fee, bonus or commission whatsoever for the use or loan or the procuring of such loan of any sum of money for a shorter period than six months when said loan is not secured by a mortgage or pledge upon real estate, or shall violate the provisions of sections one and two of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment not more than six months, or by both such fine and imprisonment, and for each subsequent offense and conviction shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars and by imprisonment not less than six months nor more than one year. The penalties herein provided for the violation of this section and said sections one and two shall apply to and be imposed upon each member of any unincorporated company, association, or of any co-partnership and upon each officer and director of a corporation who shall violate either of said sections.

[Sections of Civil Code repealed. Conflicting acts repealed.]

§ 4. Sections one thousand nine hundred seventeen, one thousand nine hundred eighteen, one thousand nine hundred nineteen and one thousand nine hundred twenty of the Civil Code and all acts and parts of acts in conflict with this act are hereby repealed.

[Title of act.]

§ 5. This act whenever cited, referred to, or amended may be designated simply as the "usury law."

VACAVILLE.

See Act 3094, note.

VAGRANCY.

See Kerr's Cyc. Penal Code, § 647.

CHAPTER 409.

VALLEJO.

CONTENTS OF CHAPTER.

ACT 5399. FREEHOLDERS' CHARTER.
5401. TIDE LAND GRANT.

FREEHOLDERS' CHARTER.

ACT 5399—Freeholders' charter of the city of Vallejo.

History: Voted for and ratified at a special election held for that purpose February 21, 1911; filed with the secretary of state March 11, 1911, Stats. 1911, p. 1958. Amended (1) April 15, 1913, filed with the secretary of state June 2, 1913, Stats. 1913, p. 1693; (2) November 5, 1918, filed with the secretary of state January 25, 1919, Stats. 1919, p. 1443. Originally incorporated as a town by the act of March 26, 1866, Stats. 1865-66, p. 431. This act was repealed and the town reincorporated as a city by the act of March 30, 1868, Stats. 1867-68, p. 618. This act was superseded by the reincorporation act of March 27, 1872, Stats. 1871-72, p. 566. The latter act was amended (1) March 30, 1872, Stats. 1871-72, p. 757; (2) March 13, 1874, Stats. 1873-74, p. 360; (3) March 16, 1874, Stats. 1873-74, p. 381; (4) February 5, 1876, Stats. 1875-76, p. 25; (5) March 22, 1878, Stats. 1877-78, p. 398. The act and amendments were superseded by the freeholders' charter voted for and ratified at a special election held for that purpose March 21, 1898; resolution of approval adopted January 26, 1899, Stats. 1899, p. 370. This charter was amended February 5, 1897; adopted March 6, 1907, Stats. 1907, p. 1245, and was superseded by the present charter.

1. Constitutional law—Date of charter.—The constitution does not prevent the freeholder charter itself from stating its effective date.—Williams v. Vallejo, 36 Cal. App. 133, 171 Pac. 834.

2. Same—Legislature can not amend charter.—The legislature has no power to amend a freeholders' charter, and can only approve or reject it.—Williams v. Vallejo, 36 Cal. App. 133, 171 Pac. 834.

3. Same—"Municipal affair"—Construction of reservoir for public water service.—The construction of a reservoir for public water service is a "municipal affair."—Williams v. Vallejo, 36 Cal. App. 133, 171 Pac. 834.

4. Recall elections.—Under the provisions of the Vallejo charter and of the Political Code, it was permissible to hold elections at the same time to recall two commissioners; but where the offices were of different terms, they were separate offices, requiring separate designation upon the ballot, as required by the state law.—Wilson v. Blake, 169 Cal. 449, 451, 147 Pac. 129, Ann. Cas. 1916D, 205.

5. City contract to build a reservoir—Governed by charter of 1899 under which it was made.—A contract under the charter of 1899 to build a reservoir was governed by that charter and not by the charter of 1911.—Williams v. Vallejo, 36 Cal. App. 133, 171 Pac. 834.

TIDE LAND GRANT.

ACT 5401—An act conveying to the city of Vallejo certain tide lands and lands of the state of California lying under inland navigable waters within the boundaries of the said city, situate in the Napa creek, the Mare Island straits and the Straits of Carquinez, including the right to wharf out therefrom to the city of Vallejo, in furtherance of navigation and commerce and the fisheries, and providing for the government, management and control thereof.

History: Approved June 11, 1913. In effect August 10, 1913. Stats. 1913, p. 575.

Tide lands held in trust.

Whereas, Since the admission of California into the Union, all tide lands along navigable waters of this state and all lands lying beneath the navigable waters of the state have been and now are held in trust by the state for the benefit of all the inhabitants thereof for the purposes of navigation, commerce and fishing; and

Whereas, It is the duty of the state to govern, administer and control such lands and to improve and develop navigation, commerce and fishing thereon and thereover; and

State may not alienate.

Whereas, The state has not the general power of alienation of such lands but may, when the interests of commerce, navigation and fishing require it, convey to municipalities limited and defined areas of such lands with the power to govern, control, improve and develop the same in the interests of all the inhabitants of the state; and

Conveyance to city of Vallejo.

Whereas, The conveyance to the city of Vallejo of the lands hereinafter described, together with the right to govern, control, improve and develop the same will result in great advantage and benefit to all the inhabitants of the state, it is provided:

Tide lands conveyed to Vallejo. Purposes for which used. Franchises for public uses.

Reservation for belt line railroad, etc. Persons in possession may lease. Profits to city. No discrimination in rates. Right to fish reserved.

§ 1. There is hereby granted and conveyed to the city of Vallejo, a municipal corporation, in the county of Solano, state of California, and to its successors, all the right, title and interest of the state of California held by said state by virtue of its sovereignty in and to all the tide lands and lands lying under inland navigable waters within the boundaries of the present city of Vallejo, situate in the Napa creek, the Mare Island Straits and the Straits of Carquinez, lying and being between the line of mean high tide and the pier head line in said straits, as the same has been or may hereafter be established by the federal government, and the right to wharf out therefrom to the city of Vallejo, to be forever held by said city and by its successors in trust for the uses and purposes and upon the expressed conditions following to wit: That said lands shall be used by said city and its successors, only for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purposes whatever; provided, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the state of California, and with the

requirements of commerce and navigation at said harbor, for a term not exceeding twenty-five years, and on such other terms and conditions as said city may determine, including a right to renew such lease or leases for a further term not exceeding twenty-five years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases, and said lease or leases may be for any and all purposes which shall not interfere with navigation or commerce, with revision to the said city on the termination of said lease or leases of any and all improvements thereon, and on such other terms and conditions as the said city may determine, but for no purpose which will interfere with navigation or commerce; subject also to a reservation in all such leases or such wharfing out privileges of a street, or of such other reservation as the said city may determine for a belt line railroad or other railroad where the same may be deemed necessary by the said city; and such other reservations as the city may require, and for sewer outlets, and for gas and oil mains and water mains, and for hydrants, and for electric cables and wires, and for such other conduits for municipal purposes, and for such public and municipal purposes and uses as may be deemed necessary by the said city; provided, however, that each person, firm or corporation or their heirs, successors or assigns now in possession of land or lands within the boundaries of the said city of Vallejo as hereinbefore firstly described, situate in the Napa creek, the Mare Island Straits and the Straits of Carquinez, and lying and being between the line of mean high tide and the pier head line in said straits, as the same has been or may hereafter be established by the federal government, shall have a right to obtain a lease for a term of twenty-five years from said city of said land and wharfing out privileges therefrom with a right of renewal for a further term of twenty-five years pursuant to the provisions of this act and on such terms and conditions as said city may determine and specify, and said renewed lease may be terminated at any time by mutual agreement of the city and the lessee, on such just and reasonable terms for compensation for improvements as may be mutually agreed upon. Upon obtaining such lease and wharfing out privileges such person, firm or corporation, their heirs or assigns, shall quitclaim to said city any right they or any of them may claim or have to the said lands hereby granted. This grant shall carry the right to such city of the rents, issues and profits in any manner hereafter arising from the lands or wharfing out privileges hereby granted. The state of California shall have at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands or any part thereof, for any vessel or other watercraft, or railroad, owned or operated by the state of California. No discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors in the management, conduct or operation of any of the utilities, structures or appliances mentioned in this section. There is hereby reserved in the people of the state of California the right to fish in the waters on which said lands may front with the right of convenient access to said waters over said lands for said purpose.

Conveyance made on condition that harbor be improved.

§ 2. The foregoing conveyance is made upon the condition that the city of Vallejo shall, within five years from the approval of this act, exclusive of such time as said city may be restrained from so doing by injunction issued out of any court of this state or of the United States, and exclusive of such further delay as may be caused by unavoidable misfortune or great public or municipal calamity, cause to be expended for harbor improvement purposes an amount not less than twenty-five thousand dollars (\$25,000). If said harbor improvement work be not done and if said amount be not expended for harbor improvement as herein provided, then the lands by this act conveyed to the city of Vallejo shall revert to the state of California.

CHAPTER 410.

VENICE.

CONTENTS OF CHAPTER.

ACT 5403. TIDELAND GRANT.

TIDELAND GRANT.

ACT 5403—An act granting to the city of Venice the tidelands and submerged lands of the state of California within the boundaries of the said city.

History: Approved June 10, 1917. In effect July 27, 1917. Stats. 1917, p. 89.

Tidelands granted to Venice.

§ 1. There is hereby granted to the city of Venice, a municipal corporation of the state of California, and to its successors, all the right, title and interest of the state of California, held by said state by virtue of its sovereignty, in and to all the tidelands and submerged lands, whether filled or unfilled; provided, that nothing contained herein shall in any way affect any property held or claimed under, through or from a Mexican grant or patent therefor within the present boundaries and jurisdiction of said city, and situated below the line of mean high tide of the Pacific ocean, or of any harbor, estuary, bay or inlet within said boundaries, to be forever held by said city, and by its successors, in trust for the uses and purposes and upon the express conditions following, to wit:

Purposes for which land may be used. Term of franchises and leases.

(a) That said lands shall be used by said city and by its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands or any part thereof to any individual, firm or corporation for any purpose whatsoever; provided, that said city, or its successors, may grant franchises thereon, for a period not exceeding twenty-five years, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for a period not exceeding twenty-five years, for purposes consistent with the trusts upon which said lands are held by the state of California and with the requirements of commerce or navigation at said harbor;

Harbor improved without expense to state.

(b) That said harbor shall be improved by said city without expense to the state, and shall always remain a public harbor for all purposes of commerce and navigation, and the state of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the state of California;

No discrimination in rates.

(c) That in the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph (a), no discrimination in rates, tolls, or charges, or in facilities, for any use or service in connection therewith shall ever be made, authorized or permitted by said city or by its successors;

Right to fish reserved to people.

Reserving, however, in the people of the state of California the absolute right to fish in the waters of said harbor, with the right of convenient access to said waters over said lands for said purpose.

CHAPTER 411.

VENTURA COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3964.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

VERNON.

See Act 3094, note.

CHAPTER 412.

VETERANS' HOME.

Reference: See tits. "Mexican War Veterans"; "Soldiers and Sailors."

CONTENTS OF CHAPTER.

- ACT 5418. HOSPITAL AT YOUNTVILLE HOME.
- 5419. VETERANS' HOME AT YOUNTVILLE RECOGNIZED AS STATE HOME.
- 5420. CONVEYANCE OF VETERANS' HOME TO STATE.
- 5422. EXCHANGE OF LANDS BY VETERANS' HOME ASSOCIATION AUTHORIZED.
- 5426. TRANSFER OF VETERANS' HOME TO THE UNITED STATES.

HOSPITAL AT YOUNTVILLE HOME.

ACT 5418—An act to provide for the erection of a modern hospital for the Veterans' home located at Yountville.

History: Approved March 28, 1901, Stats. 1901, p. 823.

VETERANS' HOME AT YOUNTVILLE RECOGNIZED AS STATE HOME.

ACT 5419—An act to recognize the Veterans' home at Yountville as a state home for the maintenance of disabled soldiers and sailors of the United States and to designate an officer to receive money appropriated by the United States on account of said home.

History: Approved March 19, 1889, Stats. 1889, p. 418.

Citations: Board of Directors Woman's Relief, etc., Ass'n v. Nye, 8 Cal. App. 527, 532, 534, 97 Pac. 208; People v. Royce, 106 Cal. 173, 185, 37 Pac. 630, 39 Pac. 524.

CONVEYANCE OF VETERANS' HOME TO STATE.

ACT 5420—An act to accept from the Veterans' home association the conveyance of, and to vest the title in the state of California, to the tract of land in Napa county known as the Veterans' home, with the improvements and furnishings thereon, to make the same a state home for United States soldiers, sailors, and marines, and to provide for the government thereof by the state.

History: Approved March 11, 1897, Stats. 1897, p. 106. Amended March 20, 1903, Stats. 1903, p. 321; March 20, 1905, Stats. 1905, p. 471; February 28, 1907, Stats. 1907, p. 59; March 16, 1907, Stats. 1907, p. 331; May 1, 1911, Stats. 1911, p. 1447.

Citation: Treadway v. Directors of Veterans' Home, 14 Cal. App. 75, 77, 78, 80, 81, 82, 83, 84, 85, 111 Pac. 111; Brownlee v. Directors of Veterans' Home, 22 Cal. App. 207, 133 Pac. 1158.

EXCHANGE OF LANDS BY VETERANS' HOME ASSOCIATION AUTHORIZED.

ACT 5422—An act to authorize directors of the Veterans' home association to exchange certain lands in San Francisco for certain other property belonging to said city and county or for a lease of said property.

History: Approved March 20, 1891, Stats. 1891, p. 184.

TRANSFER OF VETERANS' HOME TO THE UNITED STATES.

ACT 5426—An act to authorize and provide for the transfer of the Veterans' home of California, its property, management, control and support to the government of the United States, its officers and authorities, to be conducted as a national home under such laws as now exist or which may hereafter be enacted by congress, and for the conveying of the property of said home, both real and personal, belonging to the state of California, situate in Napa county, to the government of the United States, for such purpose.

History: Approved March 20, 1905, Stats. 1905, p. 495.

This act no doubt rendered obsolete all existing laws relating to the subject.

CHAPTER 413.

VETERINARY SURGERY.

CONTENTS OF CHAPTER.

- ACT 5433.** VETERINARY ACT OF 1907.
 5434. STATE VETERINARIAN.
 5435. EMPLOYMENT OF SHEEP DIPPING INSPECTORS.

VETERINARY ACT OF 1907.

ACT 5433—An act to insure the better education of practitioners of veterinary medicine, and to regulate the practice of veterinary medicine in the state of California, to provide for the creation of a board of five members who shall act under and in accordance with the provisions of this act; to provide for their appointment, and define their powers, duties and compensation; to define offenses committed by acts done contrary to the provisions of this act, and providing penalties for the violation thereof; providing for the revocation or suspension, in certain cases, of licenses issued hereunder, and to repeal an act entitled "An act to regulate the practice of veterinary medicine and surgery in the state of California," approved March 23, 1893, amended and approved March 20, 1903, and all other laws in conflict herewith.

History: Approved March 23, 1907, Stats. 1907, p. 919. Amended June 11, 1913, in effect August 19, 1913, Stats. 1913, p. 572. Prior act of March 23, 1893, Stats. 1893, p. 286, amended March 20, 1903, Stats. 1903, p. 238, superseded, if not repealed, by the present act. The title of the present act recites the repeal of the act of 1893, but no mention of that fact is made in the body of the act.

Board of examiners in veterinary medicine. Term of office. Removals.

§ 1. That there be, and is hereby, created a board of examiners in veterinary medicine, to be appointed by the governor of the state of California, which shall consist of five reputable practitioners of veterinary medicine who shall have graduated from some college authorized by law to confer degrees, each of whom shall have been a bona fide resident of said state for three years last past before appointment, and each, during said period, shall have been actually engaged in the practice of his profession in said state. The appointments first made shall be one for one year, one for two years, one for three years, and two for four years, and thereafter appointments shall be made for a period of four years, except appointments to fill vacancies, in which case the appointments shall be made for the remainder of the unexpired terms; provided, that the governor may, in his judgment, remove any member of said board for neglect of duty or other sufficient cause, after due notice and hearing.

Organization of board. Official records. Bonds of officers.

§ 2. That the said board of examiners in veterinary medicine shall elect a president, vice president, secretary, and such other officers as shall be necessary. The secretary

of said board shall have power to administer oaths or affirmations upon such matters as pertain to the business of said board, and any person willfully making any false oath or affirmation shall be deemed guilty of perjury; and said board shall make, alter, or amend, subject to the approval of the governor, such rules and regulations as may be necessary to carry into effect the provisions of this act, and shall hold such meetings as shall be necessary for the transaction of business, and shall issue all licenses to practice veterinary medicine in the state of California. Said board shall keep an official record of its meetings, and also an official register of all applicants for licenses, which register shall show the name, age, place, and duration of residence of each applicant, the time spent in the study of veterinary medicine in and out of medical schools, and the names and locations of all medical schools which have granted said applicant any degree or certificate of attendance upon lectures, and it shall also show whether said applicant was rejected or licensed under this act, and said register shall be prima facie evidence of all matters contained therein. The board shall have the power to require any or all officers of said board to give a bond to the state of California in such form and penalty as it may deem proper. The said board shall in the month of July in each year submit to the governor a full report of its transactions during the twelve months immediately preceding.

Applications for license to practice. Application fee. Examinations.

§ 3. That from and after the passage of this act all persons desiring to practice veterinary medicine or any branch thereof in the state of California, or who shall desire to hold themselves out to the public as practicing veterinary medicine or any branch thereof in the state of California, shall make application to said board of examiners in veterinary medicine for a license so to do. Application for this purpose shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of good moral character, and by a diploma from some veterinary college authorized by law to confer the same, which college shall require at least two sessions of study of veterinary medicine of not less than six months each prior to the issue of such diploma, and graduates of two-year colleges shall accompany their diplomas by satisfactory evidence that they have practiced veterinary medicine for five years last past subsequent to the issue of such diplomas. Every person applying to the board of examiners in veterinary medicine for a license to practice veterinary medicine shall pay to the board a fee of ten dollars, which fee in no case shall be refunded, and from the fund thus created the board shall pay such necessary expenses as it may incur. Such expenses shall not exceed in any one fiscal year the amount of fees collected during that period, but if any balance remain after paying all such expenses it shall be paid into the state school fund, except as hereinabove provided. Said board shall, by means of examinations, ascertain the professional qualifications of all applicants for license to practice veterinary medicine in said state, and shall issue such licenses to all who are found by such examination to be, in the judgment of said board, competent to so practice; and no such license shall be issued to any person who has not so demonstrated his competence, except as hereinafter otherwise provided. Such examinations shall be held in January, April, July, and October of each year, and shall include all such subjects as are ordinarily included in the curricula of veterinary colleges in good standing, but examinations may be held at such other times and include such other subjects as said board shall authorize and direct. Said board shall number consecutively all applications received, note upon each the disposition made of it, and preserve the same for reference, and shall number consecutively all licenses issued.

Arrangements with boards of other states.

§ 4. That said board of examiners, so far as may be possible, shall make arrangements with analogous boards of the several states and territories whereby due credit

for state and territorial licenses will be allowed in the state of California to such licentiates of said boards as desire to secure licenses to practice veterinary medicine in this state, and whereby licentiates of the board of examiners in veterinary medicine in the state of California will secure due credit for licenses issued by said board whenever such licentiates desire to secure licenses to practice veterinary medicine in any state or territory; but no arrangements shall be made under the provisions of this section which will be liable to lower the standard of practice of veterinary medicine in the state of California, and no arrangement for the mutual recognition of licenses shall be valid until it has been approved by the governor of the state of California.

Appeal of applicant when license has been refused. Board of review.

§ 5. That any person having been examined by said board of examiners in veterinary medicine and having been refused a license as the result of such examination may, within thirty days after formal notification of such refusal, appeal from the decision of said board. Such appeal must be in writing, addressed to the governor of the state of California, setting forth the ground upon which it is based, and accompanied by a deposit of thirty dollars. If, after examination of said appeal, the governor deem it proper, he shall appoint a board of review, consisting of three practitioners of veterinary medicine having qualifications similar to those required of members of the regular board of examiners in veterinary medicine, which board shall review the examination of appellant, and if they deem necessary re-examine him and report their finding to the governor; and such finding shall be final and binding upon all parties concerned, and if favorable to the appellant the board of examiners in veterinary medicine shall issue to him a license to practice veterinary medicine in said state. Each member of said board of review shall be paid a fee of not more than ten dollars for each candidate examined, payment to be made from the deposit of the appellant if the finding is adverse to him, but otherwise from the funds of the board of examiners. If favorable, the amount deposited shall be returned to the appellant.

License must be displayed

§ 6. That every person practicing veterinary medicine in the state of California, or representing himself or permitting himself to be represented as so practicing, shall display or cause to be displayed conspicuously in his usual place of business his license to practice in said state. Said place of business shall, during all reasonable hours, be open to inspection by any representative of the police department or of the board of examiners in veterinary medicine of said state, so far as may be necessary to examine such licenses, and it shall be unlawful for any person to interfere with any inspection made or intended to be made for this purpose.

Practicing veterinarian defined.

§ 7. That from and after the passage of this act any person shall be regarded as practicing veterinary medicine in the state of California who shall, in said state, append or cause to be appended to his name the letters V. S., D. V. M., V. M. D., M. D. V., M. D. C., D. V. S., or M. R. C. V. S., or the words "veterinary," "veterinarian," "veterinary surgeon," or "veterinary dentist," "veterinary farrier," "veterinary horseshoer," "horse dentist," or "horse doctor," or who shall prescribe, advise, or apply any drug or medicine or other agency, or who shall perform any operation for the treatment, relief, or cure of any sick, diseased, or injured lower animal, or for commercial purposes, or who shall publicly profess to do any of these things, and shall charge or receive therefor money or other compensation, directly or indirectly; provided, nothing in this act shall be construed to prohibit members of the medical profession from prescribing for domestic animals in cases of emergency, and collecting a

fee therefor, nor to prohibit gratuitous services in an emergency, nor to prevent any person from practicing veterinary medicine on any animal belonging to himself or herself.

Present rights not affected.

§ 8. That this act shall not affect the rights under the laws of the state of California of veterinarians to practice veterinary medicine who have lawful rights to practice veterinary medicine at the time of the passage of this act; and provided further, that this act shall not apply to veterinary surgeons in the employ of the United States army, nor to regularly licensed veterinarians in actual consultation from other states, nor to regularly licensed veterinarians actually called from other states to attend cases in the state of California, but who do not open an office or appoint a place to do business within said state, nor to employees of licensed veterinarians legally qualified to practice as such under the provisions of this act.

License may be suspended or revoked, when.

§ 9. That the board of examiners in veterinary medicine hereby created may, by a vote of four members, revoke or suspend for a certain time the license of any person to practice veterinary medicine or any branch thereof in the state of California after notice and hearing, for any of the following causes, namely: The employment of fraud or deception in passing the examinations or in obtaining a license, chronic inebriety, or conviction of crime involving moral turpitude. The form of complaint, the form and length of notice, and the time and procedure of hearing charges against any licensee for any of the above causes shall be as near as possible according to the provisions of title XI of the Code of Civil Procedure and the president of the board shall sign all papers, writs and process.

Violation of act a misdemeanor.

§ 10. That any person who shall violate or aid or abet in violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two hundred dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Quorum of board.

§ 11. That three members of the board of examiners in veterinary medicine in the state of California shall constitute a quorum for the transaction of business at any meeting of the board, except as provided in section 9 of this act.

Time of taking effect of act.

§ 12. That this act shall take effect immediately, and all laws in conflict with this act are hereby repealed.

Fees paid into state treasury each month.

§ 13. All fees collected under section three of this act and all other fees, collections and receipts of all kinds coming into the possession of the board of examiners in veterinary medicine shall be reported, at the beginning of each month, for the preceding month, to the controller of state, and at the same time the entire amount of such collections shall be paid into the state treasury and shall be credited to a fund to be known as the contingent fund of the board of examiners in veterinary medicine. All salaries and expenses of every kind incurred by the board of examiners in veterinary medicine shall be paid out of said contingent fund upon claims to be presented and audited in the usual manner. [New section approved June 11, 1913, Stats. 1913, p. 573. In effect August 10, 1913.]

STATE VETERINARIAN.

ACT 5434—An act to protect domestic live stock from contagious and infectious diseases, to provide for the appointment and duties of officials to carry into effect the provisions of this act, and to provide an appropriation therefor.

History: Became a law under constitutional provision without governor's approval, March 18, 1899, Stats. 1899, p. 129. Amended March 20, 1905, Stats. 1905, p. 423; March 23, 1907, Stats. 1907, p. 932; March 19, 1909, Stats. 1909, p. 431; May 18, 1915, in effect August 8, 1915, Stats. 1915, p. 564.

State veterinarian, creation of office. Qualifications. Term of office. Salary. Expenses. Appointment, duty of governor.

§ 1. The office of state veterinarian of the state of California is hereby created. It shall be the duty of the governor, within sixty days after the passage of this act, to appoint a skilled veterinary surgeon for the state of California to fill said office of state veterinarian, who at the date of such appointment shall be a graduate in good standing of a recognized college of veterinary surgery legally qualified to practice as such in this state, and who shall hold office for a period of four years from and after the date of qualification. The salary of said state veterinarian shall be three thousand six hundred dollars per annum, payable at the same time and in the same manner as are the salaries of other state officers. Said state veterinarian shall also be allowed his necessary expenses incurred in the discharge of his duties as hereinafter provided. In making said appointment it shall be the duty of the governor to disregard political affiliations, and to be guided in his selection merely by the professional and moral qualifications of said veterinarian for the performance of his duties. [Amendment of March 19, 1909, Stats. and Amdts. 1909, p. 431. In effect from and after passage and approval.]

This section was also amended March 23, 1907, Stats. 1907, p. 932.

Assistant state veterinarian. Salary.

§ 2. The governor is hereby authorized and empowered to appoint an assistant state veterinarian, who shall at the time of such appointment be a graduate in good standing of a recognized college of veterinary medicine and be legally qualified to practice veterinary medicine in this state, and who shall hold office for a period of four years from and after the date of qualification. The salary of such assistant state veterinarian shall be three thousand dollars per annum, payable at the same time and in the same manner as are the salaries of other state officers. Said assistant state veterinarian shall also be allowed his necessary expenses incurred in the discharge of his duties. [Amendment of May 18, 1915. In effect August 10, 1915, Stats. 1915, p. 565.]

This section was also amended March 20, 1905, Stats. 1905, p. 423; March 23, 1907, Stats. 1907, p. 932; March 19, 1909, Stats. 1909, p. 431.

Quarantine.

§ 3. Upon information by him received of the existence of any contagious or infectious disease affecting domestic animals within this state, the state veterinarian shall proceed to thoroughly investigate the same, and he is hereby authorized to establish such quarantine, sanitary and police regulations as may be necessary to circumscribe and exterminate such disease and prevent the extension thereof, and he is further authorized and empowered to enter upon any grounds or premises and inspect any animal necessary to carry out the provisions of this act; provided, that nothing in this act shall be construed as authorizing the state veterinarian or any of his deputies to impose quarantine restrictions upon any animal in this state affected with bovine tuberculosis. [Amendment of May 18, 1915. In effect August 8, 1915, Stats. 1915, p. 565.]

Unlawful to break quarantine.

§ 4. Upon the discovery of any case of contagious or infectious disease affecting any domestic animal or animals in the state of California, the state veterinarian shall have the power and it shall be his duty to quarantine such diseased animal or animals, and when necessary other animals which have been in contact with such diseased animal or animals, upon the land or premises where such animal or animals are located, and thereafter it shall be unlawful for the owner or owners of the animal or animals quarantined, their agents or employees, to break such quarantine or to move or allow to be moved any of such animals from without the premises or across the quarantine line so established without first obtaining a permit from said state veterinarian who shall, before such permit is issued, inspect, and if necessary, cause such animals, premises and vehicles of transportation to be properly cleaned and disinfected. [Amendment of May 18, 1915. In effect August 8, 1915, Stats. 1915, p. 565.]

This section was also amended March 19, 1909, Stats. 1909, p. 431.

Quarantine boundaries proclaimed.

§ 5. Whenever it shall become necessary to restrict the movements of domestic animals from any county or counties or portion thereof within this state on account of the fact that such animals are liable to transmit an infectious disease to animals not so affected, it shall be the duty of the state veterinarian, by and with the approval of the governor, to quarantine the animals in such county or counties or portion thereof in order to prevent the spread of such disease, and the governor, if he approve, shall issue his proclamation proclaiming the boundaries of such quarantine, and thereafter, while said proclamation is in force and effect, no person, firm, company or corporation, their agents and servants, shall move or allow to be moved any of said animals from without the boundaries of said quarantine unless said animals shall have first been inspected, and if necessary, disinfected by the state veterinarian, or his duly authorized deputy. [Amendment of May 18, 1915. In effect August 8, 1915, Stats. 1915, p. 565.]

This section was also amended March 19, 1909, Stats. 1909, p. 431.

Quarantine against other states.

§ 6. Whenever the state veterinarian shall have determined that an infectious disease exists among domestic animals in any other state or territory in the United States of America, or in any foreign country, and the importation of domestic animals from said state, territory or foreign country might spread such disease among domestic animals within the state of California, said state veterinarian shall notify the governor thereof, and the governor, if he deem it expedient, shall issue his proclamation proclaiming the facts as set forth by said state veterinarian, and said proclamation shall prescribe quarantine restrictions against said state, territory or foreign country, which restrictions shall prescribe that under no conditions shall said animals be brought into the state of California from said state, territory or foreign country, or if circumstances shall warrant, said proclamation shall prescribe the conditions under which such animals may be brought into the state of California. [Amendment of May 18, 1915. In effect August 8, 1915, Stats. 1915, p. 566.]

This section was also amended March 19, 1909, Stats. 1909, p. 431.

Powers of state veterinarian conferred on assistants.

§ 6½. The assistant state veterinarian and the deputy state veterinarians, as provided for in this act, are hereby given all the powers and authority herein conferred upon said state veterinarian for the purpose of enforcing all the provisions of this act, but the said assistant state veterinarian and deputy state veterinarians shall act under the directions and control of the state veterinarian. [New section added May 18, 1915. In effect August 8, 1915, Stats. 1915, p. 566.]

Quarantine regulations.

§ 7. [Repealed May 18, 1915. In effect August 8, 1915, Stats. 1915, p. 566.]

Deputy and clerk. Expenses.

§ 7½. The state veterinarian of the state of California is hereby authorized and empowered to appoint a deputy state veterinarian and a clerk. The salary of the deputy state veterinarian shall be twenty-four hundred dollars per annum; the salary of the clerk shall be sixteen hundred dollars per annum. Said salaries shall be paid at the same time and in the same manner as the salaries of other state officers. The deputy state veterinarian shall be allowed such necessary expenses as may be incurred in the discharge of his duties. The state veterinarian is further authorized and empowered to appoint such additional deputies whenever it becomes necessary to carry out and give effect to the provisions of this act. The salaries of any such deputies shall in no instance exceed the sum of two hundred (200) dollars per month, and each of said deputies shall be allowed such necessary expenses as may be incurred in the discharge of his official duties. [Amendment of May 18, 1915. In effect August 8, 1915, Stats. 1915, p. 566.]

This was a new section added March 19, 1909, Stats. 1909, p. 431.

Penalty for violation.

§ 8. Any person, firm or corporation who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, or by imprisonment in the county jail for a term not exceeding one hundred and eighty days, or by both such fine and imprisonment. [Amendment of May 18, 1915. In effect August 8, 1915, Stats. 1915, p. 567.]

This section was also amended March 19, 1909, Stats. 1909, p. 431.

Appropriation.

§ 9. For the purpose of carrying out the provisions of this act there shall be appropriated the sum of eight thousand dollars, not more than one thousand dollars payable out of the revenues for the current fiscal year, out of the general fund of this state.

§ 10. This act shall be in force and effect from and after its passage.

Editor's note: Importation of diseased animals, validity of state laws regulating.—See 97 Am. St. Rep. 262, 269.

Quarantine of diseased animals.—See 47 Am. St. Rep. 533, 552; also 27 Am. St. Rep. 567.

Transporting infected cattle.—See 26 L. R. A. 638.

Same—Communicating Texas fever during.—See 48 L. R. A. 175.

Same—Same—Scienter as a condition of liability for spreading of contagious disease.—See 6 L. R. A. (N. S.) 977.

EMPLOYMENT OF SHEEP DIPPING INSPECTORS.

ACT 5436—An act authorizing the state veterinarian to employ throughout the seventy-first and seventy-second fiscal years such inspectors as he may deem necessary to inspect and supervise the dipping of sheep infected and exposed to the disease known as scabies; providing for the compensation and expenses of such inspectors, and making an appropriation therefor.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1231. Prior acts: (1) Act of March 10, 1909, Stats. 1909, p. 278; (2) April 21, 1911, Stats. 1911, p. 1077.

Inspectors of dipping of sheep.

§ 1. The state veterinarian of the state of California is hereby authorized to temporarily employ such inspectors, from time to time, throughout the seventy-first and seventy-second fiscal years, as he may deem necessary for the purpose of inspecting

and supervising the dipping of sheep exposed to and infected with the disease known as scabies. The said state veterinarian shall fix the compensation of such inspectors which compensation shall not exceed the sum of five dollars per day, exclusive of their necessary and actual expenses. Such compensation and necessary expenses shall be allowed and paid out of the appropriation herein made.

Appropriation.

§ 2. There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of nine thousand dollars, or so much thereof as may be necessary, to be used according to law in paying the wages and necessary actual expenses of the inspectors herein provided for, four thousand five hundred dollars of which shall be available during the seventy-first fiscal year, and four thousand five hundred dollars of which shall be available during the seventy-second fiscal year; and the state controller is directed to draw his warrants in favor of the person or persons entitled to the same, and the state treasurer is directed to pay the same.

CHAPTER 414.

VISALIA.

Reference: Incorporation, see Act 3094, note.

CONTENTS OF CHAPTER.

ACT 5441. QUIETING TITLE TO CERTAIN LOTS.

QUIETING TITLE TO CERTAIN LOTS.

ACT 5441—An act to quiet title to town lots in the city of Visalia.

History: Approved March 20, 1878, Stats. 1877-78, p. 363.

This act quieted the title to town lots sold at auction by the county clerk under an order of the supervisors made in 1858.

CHAPTER 415.

VITAL STATISTICS.

References: See tits. "Cemeteries"; "Public Health."

CONTENTS OF CHAPTER.

ACT 5446. VITAL STATISTICS ACT OF 1915.

VITAL STATISTICS ACT OF 1915.

ACT 5446—An act to provide a central bureau for the preservation of records of marriages, births and deaths, and to provide for the registration of all births and deaths, the establishment of registration districts under the superintendence of the state bureau of vital statistics; the issuance and registration of burial and disinterment permits and certificates of births and deaths; the appointment of state and local registrars of vital statistics; to prescribe the powers and duties of registrars, coroners, physicians, undertakers, sextons and other persons in relation to such registration and to fix penalties for violation of this act; to create the offices of state and local registrars of vital statistics, to provide for the salary and fees of same; to repeal all acts and parts of acts in conflict herewith.

History: Approved May 19, 1915. In effect August 8, 1915. Stats. 1915, p. 575. Amended: May 18, 1917, in effect July 27, 1917, Stats. 1917, p. 717; May 13, 1919, and May 18, 1919, in effect July 22, 1919, Stats. 1919, pp. 445, 758. This act probably supersedes, but does not in terms, repeal the act of March 18, 1905, Stats. 1905, p. 115, with its amendments of March 15, 1907, Stats. 1907, p. 296, and March 7, 1911, Stats. 1911, p. 287.

Bureau of vital statistics. State registrar. Salary. Deputy. Other assistants.

§ 1. The state board of health shall maintain a bureau of vital statistics which shall have charge of such matters and shall have such powers as may from time to time be referred and delegated to it by the state board of health. The board shall appoint a state registrar who, by virtue of his office, shall be director of the bureau of vital statistics. His salary shall be two thousand four hundred dollars per annum. The state registrar shall be a competent vital statistician. He shall have general supervision and control over the bureau of vital statistics. He shall devote his entire time to the duties of his office and shall not engage in any other occupation or business. The board shall appoint also a deputy statistician, whose salary shall be one thousand six hundred dollars per annum, and two copyists, each of whom shall receive a salary of nine hundred dollars per annum. All such salaries shall be paid in the same manner and at the same time as the salaries of state officers. The state board of health may appoint and fix the compensation of such other additional professional and clerical assistants as may be necessary for the purposes of this act, but such compensation shall be paid from its fund for contingent expenses, as provided in the general appropriation act. As soon as practicable the custodian of the capitol shall provide for the bureau of vital statistics in the state capitol at Sacramento, suitable offices, which shall be properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under this act. [Amendment of May 18, 1917. In effect July 27, 1917, Stats. 1917, p. 718.]

Duties of state registrar.

§ 2. The state registrar shall under the direction of the state board of health have charge of the registration of births, deaths, and marriages, shall prepare forms and blanks with instructions for obtaining and preserving such records and shall procure the faithful registration of the same in each primary registration district as constituted in section three of this act, and in the bureau of vital statistics of the state board of health at the capitol of the state. The said board shall be charged with the uniform and thorough enforcement of the law throughout the state, and shall promulgate any additional regulations. [Amendment of May 18, 1917. In effect July 27, 1917, Stats. 1917, p. 718.]

Registration districts.

§ 3. For the purposes of this act the state shall be divided into registration districts as follows: Each city and county, or city and incorporated town having at least five thousand inhabitants at the last federal census, shall constitute a primary registration district; and each county, exclusive of the cities and incorporated towns therein having at least five thousand inhabitants at the last federal census may be subdivided by the state registrar into a sufficient number of primary rural registration districts, the boundaries of which he shall define and which he may alter, combine, or subdivide from time to time as may be necessary to promote efficient and convenient registration of all births and deaths. [Amendment of May 13, 1919. In effect July 22, 1919, Stats. 1919, p. 446.]

This section was also amended May 18, 1917, Stats. 1917, p. 718.

Local registrars. Local registrars for primary rural district. Registrar for marriages. Deputy. Subregistrars.

§ 4. The clerk of each city and incorporated town having at least five thousand inhabitants at the last federal census, shall be the local registrar in and for such primary registration district and shall perform all such duties of local registrar as hereinafter provided; provided, however, that in cities and counties and cities having a freeholders' charter, the health officer shall act as local registrar and perform all

the duties thereof. The state registrar, subject to the approval of the state board of health or its secretary, shall appoint a local registrar for each primary rural district whose term of office shall be four years, and whom the state registrar may remove forthwith for failure or neglect to perform his duty as prescribed by this act. Each local registrar, besides transmitting to the state registrar each original birth and death certificate registered by him and besides retaining a complete and accurate copy of each such birth and death certificate for the local record of his district as required by section nineteen of this act, shall also transmit to the recorder of the county for a special county record a complete and accurate copy of each original birth and death certificate transmitted by said local registrar to the state registrar; provided, that the health officer of a city and county when acting as local registrar shall not be required to transmit copies of birth or death certificates to the county recorder thereof; and provided, further, that in accordance with sections three thousand seventy-six, three thousand seventy-eight, and three thousand seventy-nine of the Political Code, the county recorder shall be the sole local registrar for marriages performed anywhere in the county. Each local registrar shall immediately appoint a deputy in writing whose duty it shall be to act in his stead in case of his absence or disability; and such deputy shall in writing accept such appointment, and be subject to all rules and regulations governing local registrars. And when it appears necessary for the convenience of the people in any registration district, the local registrar is hereby authorized, with the approval of the state registrar, to appoint one or more suitable persons to act as sub-registrars, who shall be authorized to receive certificates and to issue burial or removal permits in and for such portions of the district as may be designated; and each sub-registrar shall note, on each certificate, over his signature, the date of filing, and shall forthwith forward all certificates to the local registrar of the district, and in all cases before the third day of the following month; provided, that each subregistrar shall be subject to the supervision and control of the state registrar, and may be by him removed for neglect or failure to perform his duty in accordance with the provisions of this act or the rules and regulations of the state registrar, and shall be subject to the same penalties for neglect of duty as the local registrar. [Amendment of May 13, 1919. In effect July 22, 1919, Stats. 1919, p. 446.]

This section was also amended May 18, 1917, Stats. 1917, p. 719.

Burial permits. Removal permit. Body brought into state for burial.

§ 5. The body of any person whose death occurs in this state, or which shall be found dead therein or which shall be brought in from outside the state, shall not be interred, deposited in a vault or tomb, cremated, disinterred or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than five days after death, unless a permit for burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found, or by the county recorder of the county where said district is located, and it shall be the duty of said county recorder to mail within twenty-four hours the original death certificate to said local registrar; provided, that nothing in this act shall be construed to prevent an undertaker from removing a body from the registration district where the death occurred or the body was found to another registration district in the same or an adjoining county in an undertaker's conveyance for the purpose of preparing said body for burial or shipment. A removal permit must be secured within forty-eight hours and before embalming the body. No body where death occurred from any disease held by the state board of health to be infectious, contagious or communicable and dangerous to the public health shall be removed without first securing a removal permit in the manner provided in section nineteen of this act. And no such burial or removal permit shall be issued by any registrar until, wherever practicable, a complete and satisfactory

certificate of death has been filed with him as hereinafter provided; provided, that when a dead body is transported from outside the state into a registration district in California for burial, the transit or removal permit, issued in accordance with the law and health regulations of the place where the death occurred, shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he may issue a local burial permit, noting upon the face of the burial permit the fact that it was a body shipped in for interment, and giving the actual place of death; and no local registrar shall receive any fee for the issuance of burial or removal permits under this act other than the compensation provided in section twenty. [Amendment of May 13, 1919. In effect July 22, 1919, Stats. 1919, p. 447.]

This section was also amended May 18, 1917, Stats. 1917, p. 720.

Stillborn children.

§ 6. A stillborn child shall be registered as a birth and also as a death, and separate certificates of both the birth and the death shall be filed with the local registrar, in the usual form and manner, the certificate of birth to contain in place of the name of the child, the word "stillbirth"; provided, that a certificate of birth and a certificate of death shall not be required for a child that has not advanced to the fifth month of uterogestation. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known; and a burial or removal permit of the prescribed form shall be required. Midwives shall not sign certificates of death for stillborn children; but such cases, and stillbirths, occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance, as provided for in section eight of this act.

Certificate of death.

§ 7. The certificate of death shall contain the following items, which are hereby declared to be necessary for the legal, social, and sanitary purposes subserved by registration records:

(1) Place of death, including state, county, township, village or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given instead of the street and house number. If in an industrial camp, the name of the camp to be given.

(2) Full name of decedent. If an unnamed child, the surname preceded by "unnamed."

(3) Sex.

(4) Color or race—as white, black, mulatto (or other negro descent), Indian, Chinese, Japanese, or other.

(5) Conjugal condition—as single, married, widowed or divorced.

(5a) Husband of

(5b) Wife of

(6) Date of birth, including the year, month, and day.

(7) Age, in years, months and days. If less than one day, the hours and minutes.

(8) Occupation. The occupation to be reported of any person, male or female, who had any remunerative employment with the statement of (a) trade, profession or particular kind of work; (b) general nature of industry, business or establishment in which employed (or employer).

(9) Birthplace; at least state or foreign country, if known.

(10) Name of father.

- (11) Birthplace of father; at least state or foreign country, if known.
- (12) Maiden name of mother.
- (13) Birthplace of mother; at least state or foreign country, if known.
- (14) Signature and address of informant.
- (15) Official signature of registrar, with the date when certificate was filed, and registered number.
- (16) Date of death, year, month, and day.
- (17) Certification as to medical attendance, on decedent, fact and time of death, time last seen alive, and the cause of death, with contributory (secondary) cause of complication, if any, and duration of each, and whether attributed to dangerous or insanitary conditions of employment; signature and address of physician or official making the medical certificate.
- (18) Length of residence (for inmates of hospitals and other institutions, transients or recent residents) at place of death and in California, together with the place where disease was contracted if not at the place of death, and former or usual place of residence (giving city and state of residence).
- (19) Place of burial or removal; date of burial.
- (20) Signature and address of undertaker or person acting as such and license number of embalmer.

The personal and statistical particulars (items one to thirteen) shall be authenticated by the signature of the informant who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

Medical certificate.

The medical certificate shall be made and signed by the physician, if any, last in attendance on the deceased, and said physician shall, within fifteen hours after the death deposit the certificate at the place of death, or deliver it to the attending undertaker at his place of business or at the office of said physician. Said physician shall specify in the certificate the time in attendance, the time he last saw the deceased alive and the hour of the day at which death occurred. And he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in the death, giving first the name of the disease causing death (primary cause) and the contributory (secondary) cause, if any, and the duration of each. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial or removal permit; and any certificate containing only such terms, as defined by the state registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. Causes of death which may be the result of either disease or violence shall be carefully defined; and if from violence, the means of injury shall be stated, and whether (probably) accidental, suicidal, or homicidal. And for deaths of non-residents, transients or recent residents in hospitals or institutions, the physician shall supply the information required under this head (item eighteen), if he is able to do so, and shall state where, in his opinion, the disease was contracted. [Amendment of May 18, 1917. In effect July 27, 1917, Stats. 1917, p. 720.]

Death without medical attendance.

§ 8. In case of any death occurring without medical attendance, or continued absence of the attending physician it shall be the duty of the undertaker to notify the coroner or other proper official of such death for investigation and certification.

And the coroner or other proper officer whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death required for a burial permit, shall state in his certificate the name of the disease causing death, or if from external causes (1) the means of death; and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the state registrar in order properly to classify the death. In every case the certificate must contain as many facts required by this act as can be ascertained.

Duties of undertaker.

§ 9. The undertaker, or person acting as undertaker, shall file the certificate of death with the local registrar of the district in which the death occurred and obtain a burial or removal permit prior to any disposition of the body. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, or to the coroner or other proper official either directly or as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in sections seven and eight. And he shall then state the facts required relative to the date and place of burial or removal, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a permit for burial, removal or other disposition of the body. The undertaker shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company; said permit to accompany the corpse to its destination, where, if within the state of California, it shall be delivered to the person in charge of the place of burial.

Casket sellers' records.

Every person, firm, or corporation selling a casket shall keep a record showing the name of the purchaser, purchaser's post-office address, name of deceased, date of death, and place of death of deceased, which record shall be open to inspection of the state registrar at all times. On the first day of each month the person, firm, or corporation, selling caskets shall report to the state registrar each sale for the preceding month, on a blank provided for that purpose; provided, however, that no person, firm or corporation selling caskets to dealers or undertakers only shall be required to keep such record, nor shall such report be required from undertakers when they have direct charge of the disposition of a dead body.

Every person, firm, or corporation selling a casket at retail, and not having charge of the disposition of the body, shall inclose within the casket a notice furnished by the state registrar calling attention to the requirements of the law, a blank certificate of death, and the rules and regulations of the state board of health concerning the burial or other disposition of a dead body.

Removal of body from one district to another.

§ 10. The removal of a dead body from one registration district to another must be accompanied by a yellow transit paster prepared according to a form prescribed by the state board of embalmers and approved by the state board of health. [Amendment of May 18, 1919. In effect July 22, 1919, Stats. 1919, p. 759.]

This section was also amended May 18, 1917, Stats. 1917, p. 722.

No burial without permit. Record of bodies interred.

§ 11. No person in charge of any premises on which interments are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, removal or transit permit, as herein provided. And such person shall

indorse upon the permit the date of interment, over his signature, and shall return all permits so indorsed to the local registrar of his district within ten days from the date of interment. He shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection; provided, that the undertaker or person acting as such, when burying a body in a cemetery or burial ground having no person in charge, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial or removal permit within ten days with the registrar of the district in which the cemetery is located.

Birth registration.

§ 12. The birth of each and every child born in this state shall be registered as hereinafter provided.

Certificate of birth.

§ 13. Within thirty-six hours after the date of each birth, there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the state board of health with a view to procuring a full and accurate report with respect to each item of information enumerated in section fourteen of this act.

In sparsely-settled districts or where there is no direct mail communication with the county seat a reasonable time shall be fixed by the local registrar.

In each case where a physician, or midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such physician to file in accordance herewith the certificate herein contemplated.

In case no physician was in attendance it shall be the duty of the midwife or person acting as midwife to file such certificate.

Duty of father, mother, etc.

In every case it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within ten days after the date of such birth, to report to the local registrar the fact of such birth. In such case and in case the physician, midwife, or person acting as midwife, in attendance upon the birth is unable, by diligent inquiry, to obtain any item or items of information contemplated in section fourteen of this act, it shall then be the duty of the local registrar to secure from the person so reporting, or from any other person having the required knowledge, such information as will enable him to prepare the certificate of birth herein contemplated, and it shall be the duty of the person reporting the birth or who may be interrogated in relation thereto to answer correctly and to the best of his knowledge all questions put to him by the local registrar which may be calculated to elicit any information needed to make a complete record of the birth as contemplated by said section fourteen, and it shall be the duty of the informant as to any statement made in accordance herewith to verify such statement by his signature, when requested so to do by the local registrar. [Amendment of May 18, 1917. In effect July 27, 1917, Stats. 1917, p. 722.]

Items in certificate of birth. Certificate of physician or midwife.

§ 14. The certificate of birth shall contain the following items, which are hereby declared necessary for the legal, social, and sanitary purposes subserved by registration records:

- (1) Place of birth, including state, county, township or town, village or city. If

in a city, the ward, street and house number; if in a hospital or other institution, the name of the same to be given, instead of the street and house number.

(2) Full name of child. If the child dies without a name, before the certificate is filed, enter the words "died unnamed." If the living child has not yet been named at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

(3) Sex of child.

(4) Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in case of plural births.

(5) For plural births, number of each child in order of birth.

(6) Date of birth, including the year, month, and day.

(7) Full name of father.

(8) Residence of father (giving city and state of residence).

(9) Color or race of father.

(10) Age of father at last birthday, in years.

(11) Birthplace of father; at least state or foreign country, if known.

(12) Occupation of father. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business or establishment in which employed (or employer).

(13) Maiden name of mother.

(14) Residence of mother (giving city and state of residence).

(15) Color or race of mother.

(16) Age of mother at last birthday, in years.

(17) Birthplace of mother; at least state or foreign country, if known.

(18) Occupation of mother. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business or establishment in which employed (or employer).

(19) Number of children born to this mother, including present birth.

(20) Number of children of this mother living.

(21) The certification of attending physician or midwife as to attendance at birth, including statement of year, month, day (as given in item seven), and hour of birth, and whether the child was born alive or stillborn. This certification shall be signed by the attending physician or midwife, with date of signature and address; if there is no physician or midwife in attendance, then by the father or mother of the child, householder, owner of the premises, or manager or superintendent of public or private institution where the birth occurred, or other competent person, whose duty it shall be to notify the local registrar of such birth, as required by section thirteen of this act.

(22) Exact date of filing in office of local registrar, attested by his official signature, and registered number of birth, as hereinafter provided [Amendment of May 18, 1917. In effect July 27, 1917, Stats. 1917, p. 723.]

Child's given name report.

§ 15. When any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named.

Registration of physicians, etc.

§ 16. That every physician, midwife, and undertaker shall, without delay, register his or her name, address and occupation with the local registrar of the district in which he or she resides, or may hereafter establish a residence; and shall thereupon be supplied by the local registrar with a copy of this act, together with such rules and regulations as may be prepared by the state registrar relative to its enforcement. Within thirty days after the close of each calendar year each local registrar shall make a return to the state registrar of all physicians, midwives, or undertakers who have been registered in his district during the whole or any part of the preceding calendar year; provided, that no fee or other compensation shall be charged by local registrars to physicians, midwives, or undertakers for registering their names under this section or making returns thereof to the state registrar.

Record of hospitals, etc.

§ 17. All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions at the date of approval of this act, which are required in the forms of the certificates provided for by this act, as directed by the state registrar; and thereafter such record shall be, by them, made for all future inmates at the time of their admittance. And in case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they can not be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.

Forms and blanks. Records not to be changed.

§ 18. The state registrar shall prepare and distribute all forms and blanks for use in registering, recording and preserving the returns, or in otherwise carrying out the purposes of this act; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other forms or blanks shall be used than those prepared by the state registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. Whenever a certificate is returned by a local registrar other than the registrar of the district in which the deceased resided, in the case of a death, or in which the father and mother of a child reside, in the case of a birth certificate, if the place of residence is a city within this state and having at least two thousand five hundred inhabitants at the last federal census, the state registrar shall mail to the local registrar of such city of residence, a complete copy of the certificate. And all physicians, midwives, informants, undertakers, clergymen, or judges, and all other persons having knowledge of the facts, are hereby required to supply, upon the forms provided or upon the original certificate, such information as they may possess regarding any birth or death or marriage upon demand of the state registrar, in person, by mail, or through the local registrar; provided, that no certificate of birth or death or marriage, after its acceptance for registration by the local registrar, and no other record made in pursuance of this act, shall be altered or changed in any respect, except where supplemental information required for statistical purposes is furnished.

When facts not correctly stated.

(a) Whenever it may be alleged that the facts are not correctly stated in any certificate of birth, death, or marriage, already registered, the local registrar shall require an affidavit under oath to be made by the person asserting the fact, setting forth the changes necessary to make the record correct, and supported by the affidavit of one other credible person having knowledge of the facts. Having received such affidavits, the local registrar shall file them together with an amended certificate and he shall note the fact of the amendment with its date on the margin of the otherwise unaltered original certificate. He shall transmit the original certificate with the affidavits and amended certificate attached when making his regular monthly returns to the state registrar. He shall also retain copies for his files. If the correction relates to a certificate previously returned to the state registrar the local registrar shall forthwith transmit the affidavits to the state registrar. If the correction is first made in the state bureau of vital statistics the state registrar shall transmit a certified copy of the amended certificate to the local registrar.

Preservation of certificates. Infectious diseases. Records of church associations, etc.

The state registrar shall further arrange, bind and permanently preserve the certificates in a systematic manner and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers and maiden names of mothers, and in the case of marriages by the names of both grooms and brides. He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the state board of health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread. If any cemetery company or association, or any church or historical society or association or any other company, society or association, or any individual, is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of his state, such company, society, association, or individual, may file such record or a duly authenticated transcript thereof with the state registrar, and it shall be the duty of the state registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to inspection by the public, subject to such reasonable conditions as the state registrar may prescribe. If any person desires a transcript of any record filed in accordance herewith, the state registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office. [Amendment of May 18, 1917. In effect July 27, 1917, Stats. 1917, p. 724.]

Examination of certificates by registrars. Certificate incomplete. Registrar's monthly report.

§ 19. Each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the burial or removal permit until such defects are corrected. All certificates, either of birth or of death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a permit for removal, burial or

other disposition of the body to the undertaker; provided, that in case the death occurred from some disease which is held by the state board of health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the state and local boards of health. If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number 1 for the first birth and the first death occurring in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book containing forms identical with the original certificates and to be preserved permanently in his office as the local record. And he shall, on the fifth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month, he shall, on the fifth day of the following month report that fact to the state registrar on a blank provided for such purpose.

Local registrar's fees.

§ 20. Each local registrar shall be paid the sum of twenty-five cents for each birth certificate and each death certificate properly and completely made out and registered with him, and correctly recorded and promptly returned by him to the state registrar, as required by this act, out of which fees he shall pay the sub-registrar the sum of fifteen cents in cases where the certificate is registered with the sub-registrar. And in case no births or no deaths were registered during any month, the local registrar shall be entitled to be paid the sum of twenty-five cents for each report to that effect, but only if such report be made promptly as required by this act. All amounts payable to a local registrar under the provisions of this section shall be paid by the treasurer of the county in which the registration district is located, upon certification by the state registrar. And the state registrar shall quarterly certify to the treasurers of the several counties the number of births and deaths properly registered, with the names of the local registrars and the amounts due each at the rates fixed herein.

Certified copies of records. Fee for searching files.

§ 21. The state or local registrar shall forthwith upon request supply to any applicant a certified copy of the record of any birth or death or marriage registered under provisions of this act, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant. And any such copy of the record of a birth or death or marriage when properly certified by the state or local registrar to have been so registered within a period of one year from the date of the event, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made the state registrar or local registrar shall be entitled to a fee of fifty cents for each hour or fractional hour of time of search, such fee to be paid by the applicant. The state registrar shall keep a true and correct account of all fees by him received under these provisions, and such moneys so received by the state registrar shall be deposited with the state treasurer, who shall credit the amount to the fund provided and to be used for the payment of the traveling and contingent expenses of the state board of health, and the money so collected by the local registrar shall be paid by him into the county or city treasury, as the case may be; provided, that the local registrar shall, upon request of any parents or guardian, supply, without fee, a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment; and provided, further, that the

United States census bureau may obtain, without expense to the state, transcripts of births and deaths without payment of the fees herein prescribed.

Petition to court to establish record.

(b) If, upon such search it shall develop that for any cause any birth or death, or marriage, occurring in this state was not registered in conformity with the provisions of law in effect at the time when such birth or death or marriage occurred by the filing of the certificate therefor with the local registrar within a period of one year from the date of the event, any person beneficially interested in establishing of record the fact of such birth or death or marriage may petition the superior court of the county in which such birth or death or marriage is alleged to have occurred for an order judicially establishing the fact of such birth or death or marriage. Such petition shall be verified and shall contain all the data necessary to enable the court, upon hearing the same, to determine the fact of such birth or death or marriage upon the proofs adduced in behalf of the petitioner at the hearing thereof. A copy of such petition shall be served upon the local registrar of vital statistics, and also upon the district attorney of the county in which such birth or death or marriage is alleged to have occurred, and either of said officials shall have the right in his discretion to appear at such hearing and oppose the making of such order. Such hearing shall be had at such time as the court may appoint, not less than ten days subsequent to the date of filing such petition, and notice thereof must be given by publication for the same time and in the same manner required by law to be given prior to the hearing of the petition for the admission to probate of any will, or the issuance of letters testamentary or of administration thereon.

Order of court.

If, upon such hearing, the proofs of the allegation of the petition are established, to the satisfaction of the court, the court may make an order determining that such birth, death or marriage did in fact occur in such county and at the time shown by the proofs adduced upon such hearing.

Form.

Such order must be made in the form and upon the blank prescribed and furnished by the state registrar and but one birth, death or marriage may be included therein. And said order shall become effective upon the filing of a certified copy thereof with local registrar of vital statistics, and the delivery therewith for transmittal to the state registrar of a standard certificate containing such facts and signatures as are obtainable, and upon the filing of a certified copy of said order with the state registrar. [Amendment of May 13, 1919. In effect July 22, 1919, Stats. 1919, p. 448.]

This section was also amended May 18, 1917, Stats. 1917, p. 726.

Penalty for violation of act.

§ 22. Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, (a) shall inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the body was found, except as provided in section 5 of this act without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found; or (b) shall refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this act; or (c) shall willfully alter, otherwise than is provided by section eighteen of this act, or shall falsify any certificate of birth or death, or any record established by this act; or (d) being

required by this act to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect, or refuse to perform such duty in the manner required by this act; or (e) being a local registrar, deputy registrar, or sub-registrar, shall fail, neglect, or refuse to perform his duty as required by this act and by the instructions and direction of the state registrar thereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not less than five dollars nor more than fifty dollars and for each subsequent offense not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not more than sixty days, or be both fined and imprisoned in the discretion of the court.

Local registrars to enforce act.

§ 23. Under the supervision and direction of the state registrar, each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this act in his registration district. He shall make an immediate report to the state registrar of any violation of this law coming to his knowledge, by observation or upon complaint of any person, or otherwise.

Duty of state registrar.

The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and is hereby granted supervisory power over local registrars, deputy local registrars, and sub-registrars, to the end that all of its requirements shall be uniformly complied with. The state registrar, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law. When the state board of health or its secretary shall deem it necessary, it or he shall report cases of violation of any of the provisions of this act to the prosecuting attorney of the county, with a statement of the facts and circumstances; and when any such case is reported to him by the state board of health or its secretary, the prosecuting attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. And upon request of the state board of health or its secretary, the attorney general shall assist in the enforcement of the provisions of this act. [Amendment of May 18, 1917. In effect July 27, 1917, Stats. 1917, p. 727.]

Conflicting acts repealed.

§ 24. All acts and parts of acts in conflict with this act are hereby repealed.

Duties of certain local officials, see Kerr's Cyc. Political Code, §§ 2979a, 2984, 3061, 3064, as amended in 1917.

1. Constitutionality—Payment of local registrar's fees out of county treasury.—The act is not unconstitutional in providing for the payment of the local registrar's fees out of the county, in violation of sections 12, 13, of article XI, nor of section 14, article XIII, of the constitution.—Boss v. Lewis, 33 Cal. App. 792, 166 Pac. 843.

2. State board of health—Official body.—The state board of health is an official body

authorized by section 14, article XX, of the constitution, and established in accordance with sections 2978-2984, of the Political Code.—Boss v. Lewis, 33 Cal. App. 792, 166 Pac. 843.

3. County ordinance not violative of act.—County ordinance making it unlawful to disinter, exhume or remove dead bodies without a permit from the health officer, is held not violative of the vital statistics act of 1905.—Ex parte Lee John, 17 Cal. App. 58, 118 Pac. 722.

CHAPTER 416.

VITICULTURE.

CONTENTS OF CHAPTER.

- ACT 5453. VITICULTURAL ACT OF 1880.
5454. VITICULTURAL DISTRICT ACT.
5456. VITICULTURAL RESEARCH ACT OF 1911.
5457. PHYLLOXERA ACT.

VITICULTURAL ACT OF 1880.

ACT 5453—An act for the promotion of the viticultural industries of the state.

History: Approved April 15, 1880, Stats. 1880, p. 52. Enlarged: March 4, 1881, Stats. 1881, p. 51; February 26, 1885, Stats. 1885, p. 9. The enlarging acts and all of the original acts but §§ 8 and 9, were repealed March 27, 1895, Stats. 1895, p. 236.

§ 8. And for the further promotion of viticultural interests, it shall be the duty of the board of regents of the University of California to provide for special instruction to be given by the agricultural department of the university in the arts and sciences pertaining to viticulture, the theory and practice of fermentation, distillation, rectification, and the management of cellars, to be illustrated by practical experiments with appropriate apparatus; also, to direct the professor of agriculture, or his assistant, to make personal examinations and reports upon the different sections of the state adapted to viticulture; to examine and report upon the woods of the state procurable for cooperage, and the best methods of treating the same; and to make analysis of soils, wines, brandies, and grapes, at the proper request of citizens of the state; also, to prepare a comprehensive analysis of the various wines and spirits produced from grapes, showing their alcoholic strength and other properties, and especially any deleterious adulterations that may be discovered. The regents shall also cause to be prepared, printed, and distributed to the public quarterly reports of the professor in charge of this work relating to experiments undertaken, scientific discoveries, the progress and treatment of the phylloxera and other diseases of the vine, and such other useful information as may be given for the better instruction of viticulturists.

§ 9. The board of regents of the university shall be authorized to receive and accept donations of lands suitable for experimental vineyards and stations, and shall submit in their next annual report an economical plan for conducting such vineyards, and for the propagation and distribution of specimens of all known and valuable varieties of grapevines.

Editor's note: This act provided for the creation of viticultural districts and the appointment of viticultural commissioners, nine in number, to be appointed by the governor. It also made it the duty of the regents of the university to provide special instruction in the agricultural department in the arts and science pertaining to viticulture, and to make inspections and reports upon the different sections of the state adapted to viticulture, and upon woods suitable for cooperage, making analyses, etc., of wines, brandies, etc.

VITICULTURAL DISTRICT ACT.

ACT 5454—An act for the promotion of the viticultural industries of the state; dividing the state into viticultural districts; appointing a state board of viticultural commissioners; providing for the selection of its officers; defining its powers and duties; and making an appropriation therefor.

History: Approved May 28, 1913. In effect August 10, 1913. Stats. 1913, p. 340.

Viticultural commissioners. Six districts.

§ 1. There shall be appointed by the governor a state board of viticultural commissioners to consist of nine members, three to be appointed from the state at large, and one to be appointed from each of the six viticultural districts, which shall be designated and constituted as follows:

First—The Sonoma district, which shall include the counties of Sonoma, Marin, Lake, Mendocino, Humboldt, Del Norte, Trinity, and Siskiyou.

Second—The Napa district, which shall include the counties of Napa, Solano and Contra Costa.

Third—The San Francisco district, which shall include the city and county of San Francisco, and the counties of San Mateo, Alameda, Santa Clara, Santa Cruz, San Benito, and Monterey.

Fourth—The Los Angeles district, which shall include the counties of Los Angeles, Riverside, Orange, Ventura, Santa Barbara, San Luis Obispo, San Bernardino, San Diego, and Imperial.

Fifth—The Sacramento district, which shall include the counties of Sacramento, Yolo, Sutter, Colusa, Butte, Tehama, Shasta, El Dorado, Amador, Calaveras, Tuolumne, Mariposa, Placer, Nevada, Yuba, Sierra, Plumas, Lassen, Modoc, Alpine, Mono, and Inyo.

Sixth—The San Joaquin district, which shall include the counties of San Joaquin, Stanislaus, Merced, Fresno, Kings, Tulare, and Kern.

Residence and qualifications of commissioners. Term.

§ 2. The nine commissioners, excepting the three appointed by the state at large, shall be residents of the district from which they are appointed, and shall be specially qualified by practical experience and study in connection with the industries dependent upon the culture of the grapevine in this state. They shall each hold office for the term of four years, excepting four, to be determined by lot, of the first nine appointed, who at the end of two years shall retire when their successors shall be appointed by the governor.

Officers.

§ 3. The state board of viticultural commissioners shall elect from among their own number, a president, a vice president, and a treasurer and they shall have a secretary, who shall not be one of their number, and whose salary shall not exceed two hundred dollars per month. And the board shall determine and fix the amount of bonds that shall be given by the treasurer and secretary for the faithful performance of their duties.

Meetings. Duties. Reports.

§ 4. It shall be the duty of the board to meet not less often than semi-annually to consult and to adopt such measures as may best promote the progress of the viticultural industries of the state. It shall be their duty to collect and disseminate useful information relating to viticulture, including the best methods of growing grapes and handling the grape and its products. It shall be its duty to select and appoint competent and qualified persons to deliver at least one lecture each year in each of the viticultural districts as named and designated in section 1 of this act; to give especial attention to the diseases and pests of the vineyards and methods of control; to collect viticultural statistics of the state; to study and foster methods of co-operation among grape growers and manufacturers of grape products; to arrange for meetings, shows and conventions, where those interested in the viticultural industries of the state may meet to further their mutual interests. The board shall issue semi-annual reports of

its various activities and make such recommendations as in its judgment it may deem best for the protection and for furthering the interests of the table, raisin and wine grape vineyards.

Compensation.

§ 5. The commissioners constituting the board shall serve without compensation and shall be allowed only their actual traveling expenses to and from their places of residence when attending the meetings of the board. In no event, however, shall allowance be made to them for more than seven meetings during a year. If the board finds it necessary to hold meetings to a greater number than seven during a year, no allowance will be made for any meetings in excess of seven.

Office.

§ 6. The office of the board shall be in the city of Sacramento, and shall be kept open to the public, subject to the rules of the board, every day, excepting legal holidays and shall be in charge of the secretary during the absence of the board.

Duties of secretary.

§ 7. It shall be the duty of the secretary to attend all meetings of the board, and to preserve records of proceedings and correspondence, to collect books, pamphlets, periodicals, and other documents containing valuable information relating to viticulture, and to preserve the same; to collect statistics and other information showing the actual condition and progress of viticulture in this state and elsewhere; to collect information concerning lands suitable for viticulture, and to impart to the public, upon proper demand being made, information concerning localities of such lands, prices, cost of cultivation, and means of transportation; provided, that he shall receive no fees for such services; to correspond with agricultural and viticultural societies, colleges, schools of agriculture and particularly the University of California and the university farms, and to disseminate information, printed or otherwise, as he may be directed by the board of viticultural commissioners; and to prepare as required by the board, semi-annual reports for publication.

University to co-operate.

§ 8. And for the further promotion of the viticultural interests, it shall be the duty of the board of regents of the University of California to co-operate in every way possible with the state board of viticultural commissioners; to continue and extend the work of instruction and investigation which they are now carrying out, and to aid the state board of viticultural commissioners by making such needful analyses and laboratory researches as their laboratories and experiment stations render possible.

Appropriation.

§ 9. There is hereby appropriated for the purpose mentioned in this act the sum of seven thousand five hundred dollars annually and the state controller shall draw his warrants upon the state treasurer in favor of the treasurer of the said state board of viticultural commissioners, upon proper demand being made for same.

VITICULTURAL RESEARCH ACT OF 1911.

ACT 5456—An act to provide for experiment and research work in viticulture, directing publication of the results of experiments and investigations, making an appropriation therefor and prescribing the duties of the controller and treasurer in relation thereto.

History: Approved April 21, 1911, Stats. 1911, p. 1050. Prior acts of the same character and purpose: (1) Act of March 26, 1903, Stats. 1903, p. 522; (2) Act of April 14, 1909, Stats. 1909, p. 866.

University to do experiment work in viticulture. Handling, etc. Publishing results. Assistants. Equipments.

§ 1. The regents of the University of California are hereby directed to cause to be prosecuted with all possible diligence, in connection with and in addition to the work heretofore carried on by the agricultural experiment station, experiment and research work in viticulture, including both cultural and industrial processes. They are directed to ascertain the adaptations of the various kinds of vines to the several climatic and soil conditions of the state, with the special reference to stocks resistant to the phylloxera and to further their utility as grafting stocks for wine, raisin and table grape. They are directed to ascertain the best methods of grafting and propagating said stocks and vines, together with the most important methods of vinification and of the preparation, manufacture and application of yeasts in vinification and distillation. They are further directed to report upon the handling, packing and transportation of table grapes, the preparation and curing of raisins, the utilization of the by-products of the vineyard and winery, the study and treatment of vine diseases, and all matters appertaining to the viticultural industry pertinent to the successful conduct of the business that may be of general public interest, use and profit.

They are further directed to publish the result of said experiments and investigations in form of bulletins from time to time, as may seem advisable and not less than two bulletins showing the progress and result of the work shall be issued in any fiscal year.

The director of the agricultural experiment station shall obtain and establish such assistants, equipment, materials, appliances, apparatus and other incidentals as may be necessary to the successful prosecution of the work, within the appropriation specified.

Appropriation.

§ 2. There is hereby appropriated for the use of said experiment station, for the purpose set forth in this act for the sixty-third and sixty-fourth fiscal years, the sum of fifteen thousand dollars (\$15,000), and the said appropriation shall thereafter be carried in the general appropriation bill for each succeeding biennial period, and the state controller is hereby authorized and directed to draw his warrant for the same, and the treasurer of the state is hereby directed to pay such warrant.

§ 3. All money appropriated under this act shall be paid to the regents of the University of California, and expended under the direction of the director of the agricultural experiment station of said university for the specific purpose herein named.

§ 4. This act is hereby exempted from the provisions of section 672 of the Political Code.

PHYLLOXERA ACT.

ACT 5457—An act providing for the protection of the vineyards of the state against phylloxera by regulating the transportation within the state of grape vines or parts thereof for use as fuel.

History: Approved May 11, 1919. In effect July 22, 1919. Stats. 1919, p. 460.

Transportation of grape vines regulated.

§ 1. Any person, firm or organization desiring or planning to transport, move or cause to be moved any grape vines or parts thereof from premises or localities within the state of California known to contain grapes phylloxera (*Phylloxera vastatrix*) shall notify the county horticultural commissioner of the county wherein such premises or localities are situated of such intention at least ten days in advance. Such county

horticultural commissioner shall within ten days of the receipt of such notice make an inspection of such premises or grape vines to determine whether the grape phylloxera exists thereon. If, after such inspection, it is found by the county horticultural commissioner that such premises or grape vines are infested with the grape phylloxera, or if in his judgment such premises or grape vines are liable to be so infested and that there is danger of the said grape phylloxera being disseminated to other premises or localities by the movement of such grape vines, the said county horticultural commissioner shall prescribe such treatment as he shall deem necessary to destroy such grape phylloxera so infesting said grape vines. It shall be unlawful to transport, move or cause to be moved any such grape vines or parts thereof from the premises whereon the same are growing until said county horticultural commissioner shall certify in writing after inspection that such grape vines have been thoroughly disinfected under his direction and to his satisfaction; provided, however, that nothing in this act shall be construed to apply to grape vines or roots which are for planting or propagation.

Expenses.

§ 2. Any expenses incurred by such disinfection as may be prescribed by the county horticultural commissioner under section one hereof, shall be at the expense of the owner or owners, or agent or agents, or person having charge or possession of such grape vines or the premises whereon the same are growing.

Penalty.

§ 3. Any person, firm or organization who shall knowingly violate any of the provisions of this act shall be guilty of a misdemeanor.

WAGON ROAD CORPORATIONS.

See Kerr's Cyc. Civil Code, §§ 512, et seq.

WALNUT CREEK.

See Act 3094, note.

CHAPTER 417.

WAR.

References: See tit. "National Guard."

CONTENTS OF CHAPTER.

- ACT 5462. COUNCIL OF DEFENSE.
- 5463. MOBILIZATION CAMPS.
- 5464. PUBLIC DEFENSE SITES.
- 5465. SPANISH-AMERICAN WAR OF 1898 ACCOUNT.
- 5465a. WORLD WAR MEMORIAL.

COUNCIL OF DEFENSE.

ACT 5462—An act to create a state council of defense to make investigations into the effect of the occurrence of war upon the civil and economical life of the people of the state of California; to recommend to the governor measures to provide for the public security, the better protection of public health, a fuller development of the economic resources of the state and the encouragement of military training; to impose upon public officers certain duties in connection herewith; and to make appropriation for the purposes of this act.

History: Approved March 29, 1917. In effect immediately. Stats. 1917, p. 24.

State council of defense created.

§ 1. There is hereby created a council, known as the state council of defense to consist of not more than thirty-three members who shall be appointed by the governor, to serve at his pleasure, from among those holding public office under the state of California, from among the personnel of the army and navy of the United States and other branches of the national administration with the consent of federal authority, from members of the staff of the University of California and from qualified citizens of the state and nation.

Duties.

§ 2. It shall be the duty of the state council of defense at once to take under consideration the effects of the occurrence of war upon the people of the state of California; to consider measures for public defense and security, for the protection of routes of communication, for the betterment and protection of public health, for the public care and assistance of individuals and classes upon whom the hardships occasioned by war would fall most heavily, for the fuller development of the resources of the state, particularly those from which are derived the supplies of food and other commodities upon which the conduct of war makes especial drain; to encourage the military training of the citizens of the state; to examine into measures to increase the public revenue to meet war demands and to effect the elimination of waste and extravagance; and to consider measures to be taken to meet the exigencies of all situations occasioned by war.

Officers.

§ 3. The governor shall be ex officio chairman of the state council of defense. He shall designate the vice chairman, and shall appoint an executive committee and such subcommittees as he shall deem advisable. He shall have power to employ such assistance and to make such expenditures as he may deem necessary to carry out the purposes of this act. He may, when he deems it expedient, dissolve the state council of defense or cause its activities to be suspended or terminated.

Compensation.

§ 4. Members of the state council of defense shall serve without pay, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties hereunder; provided, however, that the vice chairman shall devote his entire time to the work of the state council of defense and shall receive such compensation as the governor may determine.

Headquarters.

§ 5. The headquarters of said council shall be in the state capitol, but the governor may establish branch offices elsewhere and may call meetings to be held at such times and places as he may deem expedient. It shall be the duty of every public officer, board, or commission of the state of California to render to the governor and to the state council of defense, at the request of the governor, all possible assistance and to make such investigations and supply such data as the governor may at any time require.

Appropriation.

§ 6. The sum of one hundred thousand dollars is hereby appropriated out of any money in the state treasury not otherwise appropriated, to carry out the purposes of this act. The state controller is hereby authorized and directed to draw his warrants in favor of the governor from time to time in such sums as the governor may designate, and the state treasurer is hereby authorized and directed to pay the same.

This appropriation is hereby exempted from the operation of the provisions of section six hundred seventy-two of the Political Code; provided, however, that no liability in excess of one hundred dollars shall be incurred without the approval of the governor; and provided, further, that the state council of defense shall submit to the legislature, through the governor, a report including as full a statement of the activities of the council as is consistent with the public interest, together with an account of the expenditures made by the council, or authorized by it, in as full detail as the public interest will permit.

Urgency measure.

§ 7. Inasmuch as the president of the United States has called the congress to meet in special session to consider measures for the national defense and has summoned the national guard of the state of California, it is hereby declared that this act is necessary for the immediate preservation of the public peace and safety, and that under the provisions of section one of article IV of the constitution an urgency exists, and this act shall take effect immediately.

MOBILIZATION CAMPS.

ACT 5463—An act authorizing any county now or hereafter organized to incur indebtedness, issue negotiable bonds, levy taxes to pay the principal and interest thereof, acquire by condemnation or otherwise land within the county, and, in consideration of the benefits to be derived therefrom by such county, to convey the same to the United States, for a permanent mobilization, training and supply station for any or all such military purposes, including supply stations, the mobilization, disciplining and training of the United States army, state militia and other military organizations, as are now or may at any time be authorized or provided for under any law or laws of the United States; conferring on such counties the power of eminent domain for the purposes of this act and providing the procedure therefor; granting the consent of the state to such conveyance and ceding exclusive jurisdiction to the United States over the land so conveyed.

History: Approved May 25, 1917. In effect July 27, 1917. Stats. 1917, p. 933.

Boards of supervisors may incur indebtedness to purchase land for United States mobilization stations. Not to exceed five per cent of taxable property.

§ 1. Whenever the secretary of war of the United States shall agree, on behalf of the government of the United States, to establish in any county now or hereafter organized in this state, a permanent mobilization, training and supply station for any or all such military purposes as are now or may be then or thereafter authorized or provided by or under any law of the United States, on condition that land in such county aggregating approximately a designated number of acres at such location or locations within any such county as may have been or may thereafter be from time to time selected or approved by such secretary of war be conveyed to the United States with the consent of the state of California, for the consideration of the benefits to be derived by such county from the use of such lands by the United States for such purpose and the board of supervisors shall determine that it is desirable and for the general welfare and benefit of the people of such county and for the interest of the county to incur an indebtedness in an amount sufficient to acquire land in such county aggregating approximately the number of acres so designated, at such location or locations as may have been theretofore or may be thereafter selected or approved by such secretary of war, and, in consideration of the benefits to be derived therefrom by such county, to convey all such lands to the United States to be used by the United States for any or all such military purposes, as are now, or may be then or thereafter

authorized or provided by or under any law of the United States, including permanent mobilization, training and supply stations, such county is hereby authorized and empowered by and through its board of supervisors to incur an indebtedness evidenced by negotiable bonds of such county for such purposes in any amount not exceeding, together with all existing bonded indebtedness of such county, five per cent of the taxable property of the county, as shown by the last equalized assessment book thereof, whenever two-thirds of the qualified electors of the county voting thereon shall assent thereto, at any election, either general or special, at which the proposal to incur such bonded indebtedness may be submitted to such electors in the manner provided by law.

Manner of incurring indebtedness. Election notice.

§ 2. Such indebtedness shall be incurred in the following manner, to wit: the board of supervisors of any such county shall by order specify (a) the purpose for which the indebtedness is to be incurred, which shall in general be, for acquiring land in such county aggregating approximately the number of acres designated in such agreement by such secretary of war to be conveyed for the consideration of the benefits to be derived by such county from the use of such lands by the United States for such purposes, to the United States for the purposes of a permanent mobilization, training and supply station, (b) the amount of bonds proposed to be issued, provided that such amount, together with all then existing bonded indebtedness of such county shall not exceed five per cent of the taxable property of the county as shown by the last equalized assessment book thereof, exclusive of the taxable value of the land so proposed to be acquired and conveyed to the United States, (c) the rate of interest it is proposed such bonds shall bear, (d) the number of years, not exceeding forty, the whole or any part of said bonds are to run, and (e) such order shall further provide for submitting the question of the issuance of such bonds to the qualified electors of such county at the next general election, or at a special election to be called by the board for that purpose. The words to appear on the ballot shall be "bonds—yes" and "bonds—no" or words of similar import, together with a general statement of the amount and purpose of the bonds to be issued, and which general statement shall include a statement that the purpose is to acquire and convey to the United States, for the consideration of the benefits to be derived by such county from the use of such lands by the United States, the amount of land set out in said order of the board of supervisors for the purpose of a permanent mobilization, training and supply station. If the question is submitted at a special election, notice thereof shall be given and the question submitted as provided in section four thousand eighty-eight of the Political Code of the state of California.

Procedure.

§ 3. If two-thirds of the qualified electors of the county voting thereon shall vote in favor of the issuing such bonds, the board must proceed to issue the amount of bonds specified. The board of supervisors in issuing and selling said bonds shall follow the procedure provided in said section four thousand eighty-eight of said Political Code as to other bonds of the county, and said bonds shall be in the form, of the denominations and specify the rate of interest as provided in said section and shall in all respects conform to the provisions of said section, and the payment thereof, both principal and interest, shall be provided for by a tax levy in the same manner as is provided in said section for the payment of the principal and interest of other bonds issued by any county, and said section, except as herein modified, is hereby specifically made applicable to all bonds at any time issued under the provisions of this act.

Declared a public use. Right of eminent domain granted.

§ 4. The acquisition of land for the establishment of a permanent mobilization, training and supply station for any and all such military purposes as are now or may be then or thereafter authorized or provided by or under any law of the United States is hereby declared to be a public use, and the right of eminent domain is hereby granted and extended to every county availing itself of the provisions of this act for every purpose of condemnation, appropriation or disposition intended by this act and such county is hereby authorized and empowered to condemn and appropriate all lands and rights whatsoever necessary or convenient for carrying out the provisions of this act. Such right of eminent domain may be exercised on behalf of such public use in accordance with the provisions of title seven, part three of the Code of Civil Procedure of the state of California.

Consent to acquisition by the United States. Consent to exercise exclusive jurisdiction.

§ 5. Pursuant to the constitution and laws of the United States and especially to paragraph seventeen of section eight of article I of such constitution, the consent of the legislature of the state of California is hereby given to the United States to acquire, upon the conditions and for the purposes herein set forth, from any county acting under the provisions of this act, title to all lands herein intended to be referred to; such title to be evidenced by a deed or deeds of such county, signed by the chairman of its board of supervisors and attested by the clerk of such county, under seal and the consent of the state of California is hereby given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever over such tracts or parcels of land so conveyed to it; subject, however, to the right of the state to have concurrent jurisdiction so far that all process, civil or criminal, issued under authority of the state may be executed by the proper officers thereof within such tract, upon any person or persons amenable to the same in like manner and with like effect as if such conveyance had not been made. The board of supervisors shall have the power to insert in every conveyance made under the authority of this act, such conditions subsequent as such board shall deem necessary to insure the use of such lands by the United States government for the purposes herein mentioned and to carry out the provisions of this act.

PUBLIC DEFENSE SITES.

ACT 5464—An act to make available for the use of the United States' war department suitable places in this state for the public defense, and for that purpose authorizing any county or municipal corporation now or hereafter organized to incur indebtedness, issue negotiable bonds, levy taxes to pay the principal and interest thereof, acquire by condemnation or otherwise land within the county or municipal corporation, and in consideration of the benefits to be derived therefrom by such county or municipal corporation to convey the same to the United States for the use of the war department thereof; conferring on such counties and municipal corporations the power of eminent domain for the purposes of this act and providing the procedure therefor; granting the consent of the state to such conveyance and ceding exclusive jurisdiction to the United States over the land so conveyed.

History: Approved April 21, 1919. In effect July 22, 1919. Stats. 1919, p. 125.

Indebtedness to secure land for United States war department authorized.

§ 1. Whenever the board of supervisors of any county or the legislative body of any municipal corporation now or hereafter organized in this state shall consider it desirable or expedient to tender to the United States for the use of the war depart-

ment thereof, a designated number of acres at such location or locations within any such county or municipal corporation as may be determined upon by the said board of supervisors or legislative body, and such board of supervisors or legislative body shall also determine that it is desirable for the general welfare and benefit of the people of such county or municipal corporation and for the interests of the county or municipal corporation to incur an indebtedness in an amount sufficient to acquire land in such county or municipal corporation aggregating approximately the number of acres so designated at such location or locations as may have been selected and designated by the said board of supervisors or legislative body and in consideration of the benefits to be derived therefrom by such county or municipal corporation, to convey all such lands to the United States to be used by the war department of the United States for its use, such county or municipal corporation is hereby authorized and empowered by and through its said board of supervisors or legislative body to incur an indebtedness evidenced by negotiable bonds of such county or municipal corporation for such purposes, in any amount not exceeding, together with all existing bonded indebtedness of such county or municipal corporation, five per cent of the taxable property of the county or municipal corporation, as shown by the last equalized assessment book thereof, whenever two-thirds of the qualified electors of the county or municipal corporation voting thereon shall assent thereto, at any election, either general or special, at which the proposal to incur such bonded indebtedness may be submitted to such electors in the manner provided by law.

Bonds.

§ 2. The bonds authorized to be issued under the provisions of this act in the case of a county shall be issued in the manner provided for in section four thousand eighty-eight of the Political Code, and payment thereof, both principal and interest, shall be provided for by a tax levy in the same manner as is provided in said section for the payment of principal and interest of other bonds issued by any county, and said section, except as herein modified, is hereby specifically made applicable to all bonds at any time issued under the provisions of this act. The bonds authorized to be issued under the provisions of this act in the case of municipal corporations shall be issued in the manner provided for in an act entitled "An act authorizing the incurring of indebtedness by cities, townships and municipal corporations for municipal improvements, regulating the acquisition, construction and completion thereof," which became a law on February 25, 1901, without the approval of the governor, and the amendments thereto, and the payment thereof, both principal and interest, shall be provided for by a tax levy in the same manner as is provided in said act for the payment of the principal and interest of other bonds issued by any such municipal corporation, and said act, except as herein modified is specifically made applicable to all bonds at any time issued under the provisions of this act.

Public use. Right of eminent domain granted.

§ 3. The acquisition of land for the use thereof by the war department of the United States and all such military purposes as are now or may be then or thereafter authorized or provided by or under any law of the United States is hereby declared to be a public use, and the right of eminent domain is hereby granted and extended to every county and municipal corporation availing itself of the provisions of this act for every purpose of condemnation, appropriation or disposition intended by this act and such county or municipal corporation is hereby authorized and empowered to condemn and appropriate all lands and rights whatsoever necessary or convenient for carrying out the provisions of this act. Such right of eminent domain may be exercised on behalf of such public use in accordance with the provisions of title seven, part three of the Code of Civil Procedure of the state of California.

Consent to acquisition by United States. Consent to exclusive jurisdiction.

§ 4. Pursuant to the constitution and laws of the United States and especially to paragraph seventeen of section eight of article one of such constitution, the consent of the legislature of the state of California is hereby given to the United States to acquire, upon the conditions and for the purposes herein set forth, from any county or municipal corporation acting under the provisions of this act, title to all lands herein intended to be referred to; such title to be evidenced by a deed or deeds of such county or municipal corporation, signed by the chairman of said board of supervisors or the chairman of said legislative body and attested by the clerk of such county or municipal corporation under seal, and consent of the state of California is hereby given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever over such tracts or parcels of land so conveyed by it; subject, however, to the right of the state to have concurrent jurisdiction so far that all process, civil or criminal, issued under authority of the state may be executed by the proper officers thereof within such tract, upon any person or persons amenable to the same in like manner and with like effect as if such conveyance had not been made. The said board of supervisors or legislative body shall have the power to insert in every conveyance made under the authority of this act, such conditions subsequent as such board or legislative body shall deem necessary to insure the use of such lands by the United States government for the purposes herein mentioned and to carry out the provisions of this act.

SPANISH-AMERICAN WAR OF 1898 ACCOUNT.

ACT 5465—An act to provide for depositing moneys of the Spanish-American war of 1898 account in the state treasury and their method of disbursement.

History: Approved May 9, 1919. In effect July 22, 1919. Stats. 1919, p. 514.

§ 1. The state treasurer is authorized to deposit in the state treasury any and all moneys belonging to the Spanish-American War of 1898 account.

§ 2. The state controller shall draw warrants against said fund and the state treasurer shall pay said warrants, on vouchers presented and approved by the adjutant general and the governor of the state.

WORLD WAR MEMORIAL.

ACT 5465a—An act to provide for a suitable memorial in the capitol extension buildings in Sacramento for the part taken by residents of California in the world war.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1139.

§ 1. The state building commission as established by the provisions of chapter two hundred thirty-five of the statutes of 1913 is hereby authorized and directed, in completing plans for the capitol extension buildings in the city of Sacramento, to cause to be incorporated in such plans a room, apartment or such other structure or feature as may be deemed an appropriate memorial of the part taken by residents of California in the army and navy of the United States during the great world war, and the victory for world liberty in battles on land and sea and in the air; to perpetuate the memory of those who gave up their lives in the cause of their country, and the services and sacrifices of those who gave of their time and their means in the auxiliary activities of war services, and the noble record made by the people of this state in the moral and material support rendered the state and national government in every way during the war period.

CHAPTER 418.

WAREHOUSES.

References: See tits. "Cold Storage"; "Public Utilities."

Warehouse receipts, see Kerr's Cyc. Political Code, §§ 1858, et seq.

CONTENTS OF CHAPTER.

ACT 5466. SALE OF GOODS FOR STORAGE CHARGES.

5468. WAREHOUSE RECEIPTS AND SALE OF GOODS STORED IN OTHER STATES.

5469. UNIFORM LAW OF WAREHOUSE RECEIPTS.

SALE OF GOODS FOR STORAGE CHARGES.

ACT 5466—An act to authorize the keepers of warehouses to sell goods on storage after a certain period.

History: Passed May 1, 1851, Stats. 1851, p. 170. This act is probably superseded by the provisions of the code relating to storage. In the absence of positive legislation it is difficult to determine what, if any, part of it is in force.

WAREHOUSE RECEIPTS AND SALE OF GOODS STORED IN OTHER STATES.

ACT 5468—An act concerning warehouse receipts, and the issuing, sale and transfer thereof, and the sale of goods, wares and merchandise stored in public or private warehouses in other states.

History: Approved March 20, 1905, Stats. 1905, p. 322.

Sale of fraudulent warehouse receipts unlawful.

§ 1. That it shall be unlawful for any corporation, firm or person, their agents or employees, to issue, sell, pledge, assign or transfer in this state, any receipt, certificate or other written instrument purporting to be a warehouse receipt, or in the similitude of a warehouse receipt, or designed to be understood as a warehouse receipt, for goods, wares or merchandise stored or deposited, or claimed to be stored or deposited, in any warehouse, public or private, in any state, unless such receipt, certificate or other written instrument, shall have been issued by the warehouseman operating such warehouse.

Same.

§ 2. It shall be unlawful for any corporation, firm or person, their agents or employees, to issue, sell, pledge, assign or transfer in this state, any receipt, certificate or other written instrument for goods, wares or merchandise claimed to be stored or deposited, in any warehouse, public or private, in any other state, knowing that there is no such warehouse located at the place named in such receipt, certificate or other written instrument, or if there be a warehouse at such place, knowing that there are no goods, wares or merchandise stored or deposited therein as specified in such report, certificate or other written instrument.

Same.

§ 3. It shall be unlawful for any corporation, firm or person, their agents or employees, to issue, sign, sell, pledge, assign or transfer, in this state, any receipt, certificate or other written instrument evidencing, or purporting to evidence, the sale, pledge, mortgage or bailment of any goods, wares or merchandise stored or deposited, or claimed to be stored or deposited, in any warehouse, public or private, in any other state, unless such receipt, certificate or other written instrument shall plainly designate the number and location of such warehouse, and shall also set forth therein a full, true and complete copy of the receipt issued by the warehouseman operating such

warehouse wherein such goods, wares or merchandise are stored or deposited, or are claimed to be stored or deposited. Provided, that the provisions of this section shall not apply to the issue, signing, sale, pledge, assignment or transfer of bona fide warehouse receipts issued by the warehouseman operating public or bonded warehouses in other states, according to the laws of the state wherein such warehouses may be located.

Penalty for violation of statute.

§ 1. Every corporation, firm or person, or agent, or employee, who shall knowingly violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty nor more than one thousand dollars, to which may be added imprisonment in the county jail for any period not exceeding six months.

See KOTTA'S CIVIL Code, §§ 1844-1847.

As to the regulation of warehouse receipts, see Act 5462.

UNIFORM LAW OF WAREHOUSE RECEIPTS.

ACT 5469—An act to make uniform the law of warehouse receipts.

History: Approved March 19, 1909, Stats. 1909, p. 437. Amended May 11, 1919, in effect July 22, 1919, Stats. 1919, p. 228. Warehouse Receipts Act of 1878 (Stats. 1877-78, p. 949) probably superseded by this act.

Receipts, who may issue.

§ 1. Warehouse receipts may be issued by any warehouseman.

What receipt must embody. Liability for omission.

§ 2. Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

- (a) The location of the warehouse where the goods are stored,
- (b) The date of the issue of the receipt,
- (c) The consecutive number of the receipt,
- (d) A statement whether the goods received will be delivered to the bearer, or to a specified person, or to a specified person or his order,
- (e) The rate of storage charges,
- (f) A description of the goods or of the packages containing them,
- (g) The signature of the warehouseman, which may be made by his authorized agent,
- (h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and
- (i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

Insertion of other conditions.

§ 3. A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

- (a) Be contrary to the provisions of this act.
- (b) In anywise impair his obligation to exercise that degree of care in the safe-keeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

Non-negotiable receipt.

§ 4. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

Negotiable receipt.

§ 5. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt. No provision shall be inserted in a negotiable receipt that is non-negotiable. Such provision, if inserted, shall be void.

Duplicates shall be so marked.

§ 6. When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do [to] any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

Non-negotiable shall be marked.

§ 7. A non negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it, "non negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

Rights of holder of receipt.

§ 8. A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

- (a) An offer to satisfy the warehouseman's lien,
- (b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt, and
- (c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

When warehouseman justified in delivering goods.

§ 9. A warehouseman is justified in delivering the goods subject to the provisions of the three following sections, to one who is—

- (a) The person lawfully entitled to the possession of the goods, or his agent,
- (b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper, or
- (c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

When warehouseman liable.

§ 10. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivision he shall be so liable, if prior to such delivery he had either

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

Same.

§ 11. Except as provided in section 36, where warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

Same.

§ 12. Except as provided in section 36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

Alteration of receipt, no excuse from liability. Fraudulent alteration.

§ 13. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

(a) Immaterial,

(b) Authorized, or

(c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

Delivery when receipt is lost, how.

§ 14. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any

person by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section, shall not relieve the warehouseman from liabilities to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

Word "duplicate" is warranty.

§ 15. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

Title of warehouseman.

§ 16. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

Claimants may interplead.

§ 17. If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

Refusal to deliver, excuse from liability.

§ 18. If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. If such adverse claimant shall not bring suit and serve summons on the warehouseman within forty-eight hours after the service of notice of his adverse claim, such failure shall act as a complete abandonment of such adverse claim.

Rights of third persons.

§ 19. Except as provided in the two preceding sections and in sections 9 and 36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

Goods must correspond with description.

§ 20. A warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

Injury to goods.

§ 21. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

Goods must be kept separate.

§ 22. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited.

Certain may be mingled.

§ 23. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

Care of mingled goods.

§ 24. The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

Attachments, surrender of receipt.

§ 25. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

Creditors' right to injunction.

§ 26. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process.

Lien on goods for lawful charges.

§ 27. Subject to the provisions of section thirty, a warehouseman shall have a lien on goods deposited by the owner or by the legal possessor of the property or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien. [Amendment of May 11, 1919. In effect July 22, 1919, Stats. 1919, p. 398.]

Enforcement of lien.

§ 28. Subject to the provisions of section thirty, a warehouseman's lien may be enforced:

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person was in legal possession of the goods when they were deposited. [Amendment of May 11, 1919. In effect July 22, 1919, Stats. 1919, p. 398.]

Loss of lien, when.

§ 29. A warehouseman loses his lien upon goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

Charges for storage, lien for.

§ 30. If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 27, although the amount of the charges so enumerated is not stated in the receipt.

Goods may be held.

§ 31. A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

Warehouseman entitled to remedy.

§ 32. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

How lien may be satisfied. Sale of goods at auction.

§ 33. A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due,

(b) A brief description of the goods against which the lien exists,

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue shall be paid on or before the day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

Perishable goods.

§ 34. If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

Other remedies.

§ 35. The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

Warehouseman's liability ceases, when.

§ 36. After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

How negotiable receipt may be negotiated.

§ 37. A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

Same.

§ 38. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiations may be made in like manner.

Same.

§ 39. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt can not be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

By whom may be negotiated.

§ 40. A negotiable receipt may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been intrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been intrusted, or if at the time of such intrusting the receipt is in such form that it may be negotiated by delivery.

What is acquired by negotiation.

§ 41. A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

What is acquired by transfer of receipt.

§ 42. A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferrer, the title to the goods, subject to the terms of any agreement with the transferrer.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferrer or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the warehouseman by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer.

Transferee acquires, what.

§ 43. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

Transferrer warrants, what.

§ 44. A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

- (a) That the receipt is genuine,
- (b) That he has a legal right to negotiate or transfer it,
- (c) That he has knowledge of no fact which would impair the validity or worth of the receipt, and
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

Liability of indorser.

§ 45. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

Mortgagee's warrant.

§ 46. A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

Validity of negotiation, when not impaired.

§ 47. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

Subsequent negotiation.

§ 48. Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith,

for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

Seller's lien shall not defeat rights of purchasers.

§ 49. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

Fraudulent issue of receipt, penalty for.

§ 50. A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

False statements.

§ 51. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Fraudulent issue of duplicates, penalty for.

§ 52. A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 14, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

When warehouseman is owner.

§ 53. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction, shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Penal clause.

§ 54. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 14 and 36, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Same.

§ 55. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

What rules of law, to govern.

§ 56. In any case not provided for in this act, the rules of law and equity, including the law-merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

Interpretation of act.

§ 57. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Definition of certain terms.

§ 58. (1) In this act, unless the context or subject matter otherwise requires—

“Action” includes counterclaim, setoff, and suit in equity.

“Delivery” means voluntary transfer of possession from one person to another.

“Fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

“Goods” means chattels or merchandise in storage, or which has been or is about to be stored.

“Holder” of a receipt means a person who has both actual possession of such receipt and a right of property therein.

“Order” means an order by indorsement on the receipt.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Receipt” means a warehouse receipt.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

“Warehouseman” means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done “in good faith” within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

Prior acts.

§ 59. The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

Same.

§ 60. All acts or parts of acts inconsistent with this act are hereby repealed.

Name of act.

§ 61. This act may be cited as the warehouse receipts act.

1. Construction of act—No change of former rulings as to the validity of written order of depositor under statute of frauds.—There is nowhere expressed in the act an intention to require a departure from the rule laid down in the earlier cases and remaining unchanged up to the time of its passage making the written order of a depositor of goods in a warehouse, upon which there has been issued a non-negotiable receipt, sufficient to pass, by its delivery, receipt, and acceptance, the title and symbolical possession of personal property not capable of manual delivery so as to satisfy the statute of frauds, and entitled the seller to recover from the buyer its purchase price.—*Lewis-Simas-Jones Co. v. C. Kee & Co.*, 27 Cal. App. 135, 148 Pac. 973.

2. Deposit at owner's risk—Warehouse-

man not relieved from duty to exercise ordinary care.—A clause in a warehouse receipt accepting goods at depositor's risk does not relieve a warehouseman of liability for loss of goods resulting from want of ordinary care and diligence on his part.—*Morse v. Imperial, etc., Co.*, 40 Cal. App. 574, 181 Pac. 815.

3. Same—Otherwise if loss not due to lack of care.—But the warehouseman is not responsible in such case if the loss resulted from no lack of ordinary care or diligence on his part.—*Morse v. Imperial, etc., Co.*, 40 Cal. App. 574, 181 Pac. 815.

4. Warehouseman as insurer—Special contract.—A warehouseman may make himself an insurer of goods deposited, by special contract.—*Morse v. Imperial, etc., Co.*, 40 Cal. App. 574, 181 Pac. 815.

WARM SPRINGS CREEK.

See *Kerr's Cyc. Political Code*, § 2349.

WARRANTS.

See tit. "Lost Warrants."

CHAPTER 419.

WATER COMMISSION.

References: See, generally, tits. "Conservation"; "Irrigation and Irrigation Districts"; "Water Companies"; "Water Districts"; "Waters."

CONTENTS OF CHAPTER.

ACT 5489. "WATER COMMISSION ACT."

"WATER COMMISSION ACT."

ACT 5489—An act to regulate the use of water which is subject to such control by the state of California, and in that behalf creating a state water commission; specifying and providing for the appointment of the members of said commission; fixing the terms of office and compensation of the members of said commission; fixing the powers, duties and authority of said commission and its members; providing for the filling of vacancies in the membership of said commission; providing for the removal from office of the appointed members of said commission; providing for the co-operation of courts with said commission; providing that certain courts shall take judicial notice of certain acts of the state water commission; specifying the duties of all persons summoned as witnesses before said commission or any of its members; appropriating money for carrying out the provisions of this act; providing for the payment of the indebtedness and expenses of said commission, its members and employees; declaring what water is unappropriated; providing for the utilization of water and the works necessary to such utilization to the full capacity of streams or of such portion or portions of such capacity as the public good may require; declaring what water may be appropriated; declaring that the non-application for ten consecutive years of any portion of the waters of any stream to lands riparian to such stream shall be conclusive presumption that the use of such non-applied water is not needed on said riparian lands for a useful or beneficial purpose; declaring that such non-applied water shall be deemed to be in the use of the state and subject to appropriation; declaring the duties of those who desire to appropriate water; declaring the periods for which water may be appropriated and the conditions under which water may be appropriated; providing for the payment of fees and charges by the applicants for permission to appropriate water and by the appropriators of water; providing for the ascertainment and adjudication of water rights; providing for the bringing of actions by certain persons, or, upon the direction of the state water commission, by the attorney general, for the quieting of title to water rights; specifying certain duties of the claimants, possessors or users of water or water rights; declaring water rights forfeited under certain conditions; regulating the appropriation of water; excepting cities, cities and counties, municipal water districts, irrigation districts and lighting districts, from certain provisions of this act; defining certain words and terms used in this act; repealing all acts or parts of acts in conflict with this act; declaring how this act shall be known; making legislative declaration concerning those parts of this act which may not be declared unconstitutional.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1012. Amended (1) April 25, 1917, in effect July 27, 1917, Stats. 1917, p. 194; (2) April 25, 1917, in effect July 27, 1917, Stats. 1917, p. 195; (3) May 5, 1917, in effect July 27, 1917, Stats. 1917, p. 231; (4) May 7, 1917, in effect July 27, 1917, Stats. 1917, p. 284; (5) May 19, 1917, in effect July 27, 1917, Stats. 1917, p. 746; (6) May 11, 1919, in effect July 22, 1919, Stats. 1919, p. 511; (7) May 27, 1919, in effect July 27, 1919, Stats. 1919, p. 1193.

Water commission created. Qualifications. Salaries. Pro tempore commissioners. Duty of executive member. Appeal from order of commission.

§ 1. For the purpose of carrying out the provisions of this act a state water commission consisting of five persons is hereby created and established. Two members of said commission shall be, ex officio, the governor of the state and the state engineer, respectively. Three members of said commission, one of whom shall be the executive member and the other two shall be associate members, shall be appointed by the governor for the term of four years; provided, however, that the members first appointed shall be appointed to hold office for the unexpired term of the members in office at the time this amendatory act takes effect. Each appointive commissioners shall be men of practical knowledge or experience in the application and use of waters for irrigation, mining and municipal purposes, and shall be so appointed that at least one thereof shall have had practical knowledge and experience in the use of water for agricultural purposes, and one thereof shall have had practical knowledge and experience in the use of water for mining purposes, and one thereof shall have had practical knowledge and experience in the use of water for municipal purposes. The executive member shall be president of the commission. The executive member of said commission shall receive as compensation for his services the sum of five thousand dollars per annum. Each of the associate members of said commission shall receive as compensation for his services fifteen dollars per day while actually engaged in the duties of his office. All members of the commission shall receive their actual and necessary traveling expenses. No commissioner who is directly or indirectly interested in any matter before the commission shall sit with the commission during the hearing of such matter; nor shall he be detailed by the commission to investigate or report on any such matter; nor shall he take part in any determination of any such matter. But the governor shall have the power and authority, upon request of the commission, to appoint pro tempore some disinterested person to sit and act in the place and stead of such interested commissioner. Such pro tempore commissioner shall have compensation for the time of service equal to the compensation of a commissioner during such service and shall have the power and authority of the same, only in the matter for the investigation and determination of which he shall have been appointed and his connection with the commission shall cease and determine upon the completion of the investigation and determination for which he was appointed. But the commissioner in whose place and stead he sits shall have power, compensation and authority in all other cases. It shall be the duty of the executive member of said commission to consider and act upon all applications for permits to appropriate water under the provisions of the water commission act and to do all things required or proper relating to such applications and his acts and orders in such matters shall be deemed the acts and orders of said commission; provided, however, that any person, firm, association, or corporation interested in any such application may appeal from any order of said executive member granting or refusing to grant a permit or a license to appropriate by filing with said commission a notice of appeal within thirty days after notice of such order is given as provided in the water commission act. Such notice of appeal shall be sufficient if it sets forth or refers to with reasonable certainty the order appealed from and the grounds of dissatisfaction therewith. Upon the filing of notice of appeal the said water commission shall review all papers and proceedings in the matter in which the order appealed from was made, take such additional evidence as it may deem proper, and enter its order in such matter affirming, reversing, or modifying in any way the order of said executive member. [Amendment of May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1193.]

Vacancies. Seal.

§ 2. Whenever a vacancy in the state water commission shall occur, the governor shall forthwith appoint a qualified person to fill the same for the unexpired term. The legislature, by a two-thirds vote of all members elected to each house, or the governor, may remove any one or more of the appointed commissioners from office. The commission shall have a seal bearing the following inscription: State water commission of California. The seal shall be affixed to all authentications of copies of records and to such other instruments as the commission may direct. All courts shall take judicial notice of said seal.

Quorum.

§ 3. A majority of the appointed commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of a majority of the commissioners present, when in session as a board, shall be deemed to be the act of the commission; but any investigations, inquiry or hearing which the commission has power to undertake or hold may be undertaken or held by or before any commissioners or commissioner designated for the purpose by the commission; and every finding, order, ascertainment or decision made by the commissioners or the commissioner so designated pursuant to such investigation, inquiry or hearing, when approved by the commission and ordered filed in its office, shall be and be deemed to be the finding, order, ascertainment or decision of the commission.

Powers. Witness' fees.

§ 4. (a) Each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, maps, accounts, documents and testimony in any inquiry, investigation, hearing, ascertainment or proceeding ordered or undertaken by the commission in any part of the state. Each witness who shall appear by order of the commission or any commissioners or a commissioner shall receive for his attendance the same fees and mileage allowed by law to witnesses in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party shall be subpoenaed by the commission his fees and mileage shall be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear and one day's attendance. If such witness demand such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission or commissioners as directed in the subpoena. All fees and mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable. But no witness shall be compelled to attend as a witness before the water commission or any water commissioner or water commissioners out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of hearing.

Superior court may compel attendance of witnesses, etc.

(b) The superior court of the county or city and county in which any inquiry, investigation, hearing or proceedings may be held by the commission or any commissioner or commissioners shall have the power to compel the attendance of witnesses and the production of papers, maps, books, accounts, documents and testimony as required by

any subpoena issued by the commission or any commissioner or commissioners. The commission, commissioners or commissioner before whom the testimony is to be given or produced may, in case of the refusal of any witness to attend or testify or produce any papers, maps, books, accounts or documents required by such subpoena, report to the superior court in and for the county or city and county in which the proceeding is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or for the production of said papers, maps, books, accounts or documents and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers, maps, books, accounts or documents required by the subpoena before the commission, commissioners, or commissioner in the cause or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such cause or proceeding, and ask an order of said court, compelling the witness to attend, testify, and produce said papers, maps, books, accounts or documents before the commission, or commissioners, or commissioner. The court, upon the petition of the commission or commissioners or commissioner, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause, if any he have, why he refused to obey said subpoena, or refused to answer questions propounded to him by said commission, or any commissioners or any commissioner, or neglected, failed or refused to produce before said commission, or any commissioners or any commissioner the books, papers, maps, accounts or documents called for in said subpoena. A copy of said order and the petition therefor shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission or any commissioners or a commissioner, the court shall thereupon enter an order that said witness appear before the commission or commissioners or commissioner at the time and place fixed in said order, and testify or produce the required papers, maps, books, accounts or documents, or both testify and produce; and upon failure to obey said order said witness shall be dealt with as for contempt of court.

Depositions.

(c) The state water commission or any commissioners or commissioner, or any party to a proceeding before the commission or any commissioners or any commissioner, may in any investigation or hearing before the commission or any commissioners or any commissioner cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state.

Witness may not refuse to testify.

(d) No person shall be excused from testifying or from producing any book, map, document, paper or account in any investigation or inquiry by or hearing before the commission or any commissioners or commissioner upon the ground that the testimony or evidence, book, map, document, paper or account required of him may tend to incriminate him or subject him to penalty or forfeiture. But no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing material to the matter under investigation by said commission, or any commissioners, or any commissioner concerning which he shall have been compelled to testify or to produce documentary evidence; provided, that no person so testifying or producing shall be exempt from prosecution and punishment for any perjury committed by him in his testimony.

Record of business.

§ 5. A full and accurate record of business or acts performed or of testimony taken by the commission or any member or members thereof in pursuance of the provisions of this act shall be kept and be placed on file in the office of said water commission.

Fees.

§ 6. The state water commission shall take, charge and collect the following fees: for copies and records not required to be certified or otherwise authenticated by the commission, ten cents for each folio; for certified copies of official documents and orders filed in its office, fifteen cents for each folio, and one dollar for every certificate under seal affixed thereto; for certified copies of evidence and proceedings before the commission fifteen cents for each folio. The commission may fix reasonable charges for publications issued under its authority. All fees charged and collected under this section shall be paid, at least once each week, accompanied by a detailed statement thereof, into the treasury of the state.

Rules. Secretary.

§ 7. For the purpose of carrying out the provisions of this act the state water commission is authorized to pass such necessary rules and regulations as it may from time to time deem advisable, and to appoint and remove at its pleasure a secretary who shall have charge of its books and records and perform such other duties as from time to time may be prescribed and whose salary shall be fixed by the water commission; and the state water commission may also employ such expert, technical and clerical assistance, and upon such terms, as it may deem proper.

Appropriation.

§ 8. For the purpose of carrying out the provisions of this act the sum of fifty thousand dollars is hereby appropriated for the fiscal years 1913-1914 and 1914-1915 out of any money in the state treasury not otherwise appropriated; and the state controller is hereby authorized and directed to draw warrants upon such sum from time to time upon the requisition of the state water commission approved by the state board of control, and the state treasurer is hereby authorized and directed to pay such warrants.

Payments from fund.

§ 9. All indebtedness incurred for salaries, and all necessary costs in traveling and other expenses of said commission, and each of its members and persons employed by it, while actually engaged in the business of said commission, shall be paid by the state out of the funds hereby appropriated, upon the sworn statement of the person or persons incurring such indebtedness, and upon the requisition of the state water commission, approved by the state board of control, and the state controller is hereby authorized to draw warrants upon the state treasurer for said indebtedness, salaries, costs and expenses, as provided by law for the payment of similar costs and expenses and the drawing of similar warrants.

To investigate streams, etc.

§ 10. The state water commission is hereby authorized and empowered to investigate for the purpose of this act all streams, stream systems, portions of stream systems, lakes, or other bodies of water, and to take testimony in regard to the rights to water or the use of water thereon or therein, and to ascertain whether or not such water, or any portion thereof, or the use of said water or any portion thereof, heretofore filed upon or attempted to be appropriated by any person, firm, association, or corporation, is appropriated under the laws of this state.

Water declared unappropriated. Public waters. When action for condemnation is pending. Reservoirs may constitute single system.

§ 11. All water or the use of water which has never been appropriated, or which has been heretofore appropriated and which has not been in process, from the date of the initial act of appropriation, of being put, with due diligence in proportion to the magnitude of the work necessary properly to utilize for the purpose of such appropriation such water or the use of water, or which has not been put, or which has ceased to be put to some useful or beneficial purpose, or which may hereafter be appropriated and ceased to be put, to the useful or beneficial purpose for which it was appropriated, or which in the future may be appropriated and not be, in the process of being put, from the date of the initial act of appropriation, to the useful or beneficial purpose for which it was appropriated, with due diligence in proportion to the magnitude of the work necessary properly to utilize for the purpose of such appropriation such water or the use of water, is hereby declared to be unappropriated. And all waters flowing in any river, stream, canyon, ravine or other natural channel, excepting so far as such waters have been or are being applied to useful and beneficial purposes upon, or in so far as such waters are or may be reasonably needed for useful, and beneficial purposes upon lands riparian thereto, or otherwise appropriated, is and are hereby declared to be public waters of the state of California and subject to appropriation in accordance with the provisions of this act. If any portion of the waters of any stream shall not be put to a useful or beneficial purpose to or upon lands riparian to such stream for any continuous period of ten consecutive years after the passage of this act, such nonapplication shall be deemed to be conclusive presumption that the use of such portions of the waters of such stream is not needed upon said riparian lands for any useful or beneficial purpose; and such portion of the waters of any stream so nonapplied, unless otherwise appropriated for a useful and beneficial purpose is hereby declared to be in the use of the state and subject to appropriation in accordance with the provisions of this act; provided, however, that where there is pending any action or proceeding to condemn any lands riparian to any stream or any rights, powers or privileges to use the waters of any stream upon lands riparian to such stream or to condemn rights essential to use the waters of any stream which action or proceeding was commenced prior to the sixteenth day of June, 1913, said period of ten consecutive years shall be exclusive of the period of time during which such action or proceeding is pending. In any case where a reservoir or reservoirs have been or shall hereafter under the provisions of this act be constructed or surveyed, laid out and proposed to be constructed for the storage of water for a system, which water is to be used at one or more points under appropriations of water heretofore or hereafter made, which appropriations and rights thereunder are now, or shall hereafter be held and owned by the person or corporation owning such reservoir site or sites and constructing such reservoir or reservoirs, such reservoir or reservoirs and appropriations and rights shall, in the discretion of the state water commission, constitute a single enterprise and unit, and work of constructing such reservoir or reservoirs, or any of them, or work on any one of such appropriations shall, in the discretion of said commission, be sufficient to maintain and preserve all such applications for appropriations and rights thereunder. [Amendment of May 11, 1919. In effect July 22, 1919, Stats. 1919, p. 513.]

Time within which water must be applied. Joint use of water when original user is unable to develop full capacity. Pro rata proportion of cost and maintenance. Use of dams, etc., by others.

§ 12. The state water commission shall have authority to, and may, for good cause shown, upon the application of any appropriator or user of water under an appropriation made and maintained according to law prior to the passage of this act, prescribe

the time within which the full amount of the water appropriated shall be applied to a useful or beneficial purpose; provided, that said appropriator or user shall have proceeded, with due diligence in proportion to the magnitude of the project, to carry on the work necessary to put the water to a beneficial use; and in determining said time said commission shall grant a reasonable time after the construction of the works or canal or ditch or conduits or storage system used for the diversion, conveyance or storage of water; and in doing so said commission shall also take into consideration the cost of the application of such water to the useful or beneficial purpose, the good faith of the appropriator, the market for water or power to be supplied, the present demand therefor, and the income or use that may be required to provide fair and reasonable returns upon the investment and any other facts or matters pertinent to the inquiry. Upon prescribing such time the state water commission shall issue a certificate showing its determination of the matter. For good cause shown, the state water commission may extend the time by granting further certificates. And, for the time so prescribed or extended, the said appropriator or user shall be deemed to be putting said water to a beneficial use.

And if at any time it shall appear to the state water commission, after a hearing of the parties interested and an investigation, that the full capacity of the works built or constructed, or being built or constructed, under an appropriation of water or the use thereof made under the provisions of this act has not developed or can not develop the full capacity of the stream at the point where said works have been or are being built or constructed, and that the holder of the said appropriation will not or can not, within a period deemed to be reasonable by the commission, develop the said stream at said point to such a capacity as the commission deems to be required by the public good, then and in that case the said commission, in its discretion, may permit the joint occupancy and use, with the holder of the appropriation, to the extent necessary to develop the stream to its full capacity or to such portion of said capacity as may appear to the state water commission to be advisable, by any and all persons, firms, associations, or corporations applying therefor, of any dam, tunnel, diversion works, ditch, or other works or constructions already built or constructed or in process of being built or constructed under this act; provided, that said commission shall take into consideration the reasonable cost of the original and new work, the good faith of the applicant, the market for water or power to be supplied by the original and the new work, and the income or use that may be required to provide fair and reasonable returns upon such cost; provided, further, that the applicant or applicants shall be required to pay to the party or parties owning said dam, tunnel, diversion works, ditch, or other works or constructions a pro rata portion of the total cost of the old and the new works, said pro rata portion to be based upon the proportion of the water used by the original and the subsequent users of said dam, tunnel, diversion works, ditch, or other works or constructions, if the water is used or to be used for irrigation or domestic purposes; or, if the water is used or to be used for the generation of electricity, or electrical or other power, the said pro rata portion shall be based upon the relative amount of electricity or electrical or other power capable of being developed by the original and the new works; or, if a portion of the water utilized under a joint occupancy of any dam, tunnel, diversion works, ditch, or other works or construction, shall be used for the purpose of irrigation and another portion of said water shall be used for the generation of electricity or electrical or other power, then and in that case the applicant or applicants for joint occupancy shall be required to pay to the party or parties owning said dam, tunnel, diversion works, ditch, or other works or constructions a pro rata portion of the total cost of the old and new works, said pro rata portion to be based upon the proportion of the relative amount of water used by each joint occupant and the income derived by each said joint occupant from said joint occupancy; or, if any

of the waters used under such joint occupancy shall be utilized for purposes other than those specified above, then and in that case the applicant or applicants for such joint occupancy shall be required to pay to the party or parties owning said dam, tunnel, diversion works, ditch, or other works or constructions, such a pro rata portion of the total cost of the old and new works as shall appear to the state water commission to be just and equitable. Said applicant or applicants shall also be required to pay a proper pro rata share, based as above, of the cost of maintaining said dam, tunnel, diversion work, ditch or other works or constructions, on and after beginning the occupancy and use thereof. Furthermore, the state water commission if it appears to the said commission that the full capacity of the works built or constructed, or being built or constructed, under an appropriation of water or the use thereof under this act, will not develop the full capacity of the stream at that point, and it appears to the commission that the public good requires it, and the commission specifically so finds after investigation and hearing of the parties interested, may permit any person, firm, association or corporation to repair, improve, add to, supplement, or enlarge, at his or its proper cost, charge and expense, any dam, tunnel, diversion works, ditch, or other works or constructions already built or constructed or in process of being built or constructed under the provisions of this act, and to use the same jointly with the owners thereof; provided, that the said repairing, improving, adding to, supplementing, or enlarging, shall not materially interfere with the proper use thereof by the owner of said dam, tunnel, diversion works, ditch, or other works or constructions or shall not materially injure said dam, tunnel, diversion works, ditch or other works or constructions. And the state water commission shall determine the pro rata and other costs provided for in this section.

Adjudication of rights.

§ 13. All rights granted or declared by this act shall be ascertained, adjudicated and determined in the manner and by the tribunals as provided in this act.

Rights bestowed.

§ 14. This act shall not be held to bestow, except as expressly provided in this act, upon any person, firm, association or corporation, any right where no such right existed prior to the time this act takes effect.

Use of unappropriated water.

§ 15. The state water commission shall allow, under the provisions of this act, the appropriation for beneficial purposes of unappropriated water unless, in the opinion of the said commission, such appropriation would be detrimental to the public welfare. [Amendment of April 25, 1917. In effect July 27, 1917, Stats. 1917, p. 194.]

Appropriation of water for use in another state.

§ 15a. The state water commission shall allow the appropriation of water in this state for beneficial use in another state only when, under the laws of the latter, water may be lawfully diverted therein for beneficial use in the state of California. Upon any stream flowing across the state boundary a right of appropriation having the point of diversion and the place of use in another state and recognized by the laws of that state, shall have the same force and effect as if the point of diversion and the place of use were in this state; provided, that the laws of that state give like force and effect to similar rights acquired in this state; provided, that nothing in this act be so construed as to apply to interstate lakes, or streams flowing in or out of such lakes. [New section added May 7, 1917. In effect July 27, 1917, Stats. 1917, p. 284.]

Application for permit. Maps. Change of point of diversion.

§ 16. Every application for a permit to appropriate water shall set forth the name and postoffice address of the applicant, the source of water supply, the nature and

amount of the proposed use, the location and description of the proposed headworks, ditch, canal and other works; the proposed place of diversion and the place where it is intended to use the water; the time within which it is proposed to begin construction, the time required for completion of the construction, and the time for the complete application of the water to the proposed use. If for agricultural purposes, the application shall, besides the above general requirements, give the legal subdivisions of the land and the acreage to be irrigated, as near as may be; if for power purposes, it shall give, besides the general requirements prescribed above, the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the use to which the power is to be applied; if for storage in a reservoir, it shall give, in addition to the general requirements prescribed above, the height of dam, the capacity of the reservoir, and the use to be made of the impounded waters; if for municipal water supply, it shall give, besides the general requirements specified above, the present population to be served, and, as near as may be, the future requirements of the city; if for mining purposes, it shall give, in addition to the general requirements prescribed above, the nature and location of the mines to be served and the methods of supplying and utilizing the water. All applications shall be accompanied by as many copies of such maps, drawings, and other data as may be prescribed or required by the state water commission, and such maps, drawings, and other data shall be considered as part of the application. If any committee or licensee, or the heirs, successors, or assigns of any permittee or licensee, desire to change the point of diversion from the point of diversion specified in the original application, or after the granting of any permit or license, such change or changes may be made only upon the permission of the state water commission; provided, that, before granting such permission, such applicant must establish, to the satisfaction of the state water commission, and such commission must so find, that such change in the place of diversion will not operate to the injury of any other appropriator or legal user of such waters before permitting such change in the place of the diversion. Upon receipt of application for permission to make such change in the place of diversion, the commission shall, by order, fix a time within which any person interested may appear in opposition to such application, and such applicant shall, if the commission so require, cause to be published at least once a week for four consecutive weeks, in a newspaper or newspapers of general circulation in the county in which it is situated both the old and new points of diversion, a copy of said order. Proof of such publication shall be by affidavit of the publisher of such newspaper. Should any objection be made to the change in point of diversion so applied for, the state water commission shall fix a time for the hearing of said application and of the objections thereto, which time shall be not less than thirty days nor more than sixty days after the period of said publication, and upon such hearing the said commission shall grant or refuse, as the facts shall warrant, such permission to change place of diversion.

Permit. Priority of right. Amended application.

§ 17. Any person, firm, association or corporation may apply for and secure from the state water commission, in conformity with this act and in conformity with reasonable rules and regulations adopted from time to time by the state water commission, a permit for any unappropriated water or for water which having been appropriated or used flows back into a stream, lake or other body of water within this state. And any application so made shall give to the applicant a priority of right as of the date of said application to such water or the use thereof until such application shall have been approved or rejected by said commission; provided, that such priority shall continue only so long as the provisions of law and the rules and regulations of the water commission shall be followed by the applicant. Upon the approval of any application by the commission, said approval shall give priority of right as of the date of said appli-

cation, and shall give the right to take and use the amount of water specified in said approval until the issuance by the state water commission of a license for the use of said amount of water, or until the said commission refuses to issue said license. But the approval of any application shall give the right to take and use water only to the extent and for the purpose allowed in said approval; provided, that any defective application made in a bona fide attempt to conform to the rules and regulations of the state water commission and to the law shall secure to the applicant a priority of right as of the date of said application until he shall have been notified by said commission in what respect his application is defective. And said applicant shall be allowed sixty days after notice of said defect in which to file an amended and perfected application. If, within said sixty days, said applicant shall not file an amended and perfected application, said priority of right shall cease and determine, unless for good cause shown the state water commission shall allow said applicant to file a further amended and perfected application; provided, also, that any priority of right secured under this section shall not be effective for more than thirty days after service of notice of such approval, personally or by registered mail, on the applicant, unless within said period of thirty days a true copy of said approval upon which such priority is based shall have been filed in the office of the recorder of the county or city and county in which the water is to be diverted, and, within ten days thereafter, a certificate of such filing by the county recorder is also filed with the state water commission.

Beginning of construction work. Revocation of permit. Review of order.

§ 18. Actual construction work upon any project shall begin within such time after the date of the approval of the application as shall be specified in said approval, which time shall not be less than sixty days from date of said approval, and the construction of the work thereafter shall be prosecuted with due diligence in accordance with this act, the terms of the approved application, and the rules and regulations of said commission; and said work shall be completed in accordance with law, the rules and regulations of the state water commission, and the terms of the approved application and within a period specified in the permit; but the period of completion specified in the permit may, for good cause shown, be extended by the state water commission. And if such work be not so commenced, prosecuted and completed, the water commission shall, after notice in writing and mailed in a sealed, postage-prepaid and registered letter addressed to the applicant at the address given in his application for a permit to appropriate water, and a hearing before the commission, revoke its approval of the application. But any applicant, the approval of whose application shall have been thus revoked, shall have the right to bring an action in the superior court of the county in which is situated the point of proposed diversion of the water for a review of the order of the commission revoking said approval of the application. And thirty days after the revocation of said permit all rights of the said permittee under said permit shall cease and lapse, unless said permittee shall within said thirty days after said revocation bring an action in the superior court for a review of the order of revocation. The priority of right of any permittee so bringing an action shall continue under said permit until a final judgment is rendered as to the reasonableness of the revocation of said permit. But until and unless the revocation of the permit shall be finally decreed by such court, the permittee shall not take or use any of the water the right to take and use which is granted by said permit.

Report on completion of works. License to take water. May refuse license.

§ 19. Immediately upon completion, in accordance with law, the rules and regulations of the state water commission, and the terms of the permit, of the project under such application, the holder of a permit for the right to appropriate water shall report said completion to the state water commission. The said commission shall immediately

thereafter cause to be made a full inspection and examination of the works constructed and shall determine whether the construction of said works is in conformity with law, the terms of the approved application, the rules and regulations of the state water commission, and the permit. The said water commission shall, if said determination is favorable to the applicant, issue a license which shall give the right to the diversion of such an amount of water and to the use thereof as may be necessary to fulfill the purpose of the approved application. Said license shall be in such form as may be prescribed by the state water commission under the provisions of this act. But if the said commission shall find, upon inspection and examination of the works constructed, that the construction and condition of said works are not in conformity with the law, the rules and regulations of the state water commission, the terms of the approved application and the terms of the permit, then and in that case the said commission may, after due notice in writing and in the manner provided in sections one thousand and eleven, one thousand and twelve, and one thousand and thirteen of the Code of Civil Procedure to the applicant or the holder of the permit, and a public hearing thereon, refuse to issue said license. And thirty days after the refusal of said commission to issue said license all rights of the applicant and the holder of the permit under said application and permit shall lapse and cease. But the holder of any permit to whom the said water commission may have refused to issue said license, shall have the right to bring an action within thirty days after the said refusal, in the superior court to review said order and to obtain a decree requiring the issuance of such license. And the rights of the holder of any permit so bringing an action shall continue under said permit until the decree in such action has been entered and become final. But until the refusal of the commission to issue said license shall be finally determined by the courts, the permittee shall not take or use any of the water, the taking and using of which is granted to him by said permit. And if the holder of any permit which has been revoked by the state water commission shall not bring an action within said thirty days in the superior court to determine the validity of said revocation, then and in that case all rights of the applicant and of the holder of said permit shall lapse and cease.

Terms and conditions of permits and licenses. City, etc., may purchase works. Determination of price. Grounds for revoking license. Findings of commission prima facie correct. Conditions of accepting permit. Cities first in right. City may become public utility.

§ 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful and beneficial purpose for which said water was appropriated, but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued, shall take the same subject to such conditions as therein expressed; provided, that at any time after the expiration of twenty years after the granting of a license, the state or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have the right to purchase the works and property occupied and used under said license and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county, municipal water district, irrigation district, lighting district or political subdivision of the state so desiring to purchase and the said owner of said works and property can not agree upon said purchase price, said price shall be determined in such manner as is now or may hereafter be determined in eminent domain proceedings. If it shall appear to the state water commission at any time after a permit or license is issued as in this act provided that the permittee, or

licensee, or the heirs, successors, or assigns, of said permittee or licensee, has not put the water granted under said permit or license to the useful or beneficial purpose for which the permit or license was granted, or that the permittee or licensee, or the heirs, successors, or assigns of said permittee or licensee, has ceased to put said water to such useful or beneficial purpose, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, licensee, or the heirs, successors or assigns of such permittee or licensee, and a hearing thereon, may revoke said permit or license and declare the water to be unappropriated and open to further appropriation in accordance with the terms of this act. The findings and declaration of said commission shall be deemed to be prima facie correct until modified or set aside by a court of competent jurisdiction; provided, that any action brought so to modify or set aside such finding or declaration must be commenced within thirty days after the service of notice of said revocation on said permittee or licensee, his heirs, successors or assigns. And every licensee or permittee under the provisions of this act if he accepts such permit or license shall accept the same under the conditions precedent that no value whatsoever in excess of the actual amount paid to the state therefor shall at any time be assigned to or claimed for any permit or license granted or issued under the provisions of this act, or for any rights granted or acquired under the provisions of this act, in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or licensee, his heirs, successors or assigns or by the holder of any rights granted or acquired under the provisions of this act, or in respect to any valuation for purposes of sale or to purchase, whether through condemnation proceedings or otherwise, by the state or any city, city and county, municipal water district, irrigation district, lighting district or any political subdivision of the state, of the rights and property of any permittee or licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this act. The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time; provided, however, that such application for a permit or the granting thereafter of permission to any municipality to appropriate waters, shall not authorize the appropriation of any water for other than municipal purposes; and providing, further, that where permission to appropriate is granted by the state water commission to any municipality for any quantity of water in excess of the existing municipal needs therefor, that pending the application of the entire appropriation permitted, the state water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality; and providing, further, that in lieu of the granting of such temporary permits for appropriation, the state water commission may authorize such municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the railroad commission of the state of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted; and provided, further, that when such municipality shall desire to use the additional water granted in its said application it may do so upon making just compensation for the facilities for taking, conveying and storing such additional water rendered valueless for said purposes, to the person, firm or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings. [Amendment of May 19, 1917. In effect July 27, 1917, Stats. 1917, p. 746.]

Water not used for three years.

§ 20a. When the party entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of three years, such unused water shall revert to the public and shall be regarded as unappropriated public water. [New section added May 19, 1917. In effect July 27, 1917, Stats. 1917, p. 748.]

Right to acquire by eminent domain proceedings.

§ 21. Nothing herein contained shall be construed to deprive the state or any city, city and county, municipal water district, irrigation district, lighting district or political subdivision of the state, or any person, company or corporation of any rights which, under the law of this state they may have, to acquire property by or through eminent domain proceedings.

Right to impose fees.

§ 22. Licenses hereafter granted for water or use of water shall be subject to the right of the state to impose the fees and charges provided in this act.

Fee. For electrical power. For agricultural purposes.

§ 23. Every person, firm, association or corporation making application for a permit to appropriate water or the use of water under this act shall pay to the state water commission, at the time of filing said application, a filing fee in the sum of five dollars, and, upon the issue of a permit, the additional fee, if the purpose or use is for the generation of electricity or electrical or other power, of ten cents for each theoretical horsepower capable of being developed by the works up to and including one hundred theoretical horsepower, of five cents for each horsepower in excess of one hundred theoretical horsepower up to and including one thousand theoretical horsepower, and of one cent for each theoretical horsepower in excess of one thousand theoretical horsepower; also, if for agricultural purposes, of five cents for each acre of land to be irrigated by means of said appropriation to and including one hundred acres, of three cents per acre for each acre in excess of one hundred acres up to and including one thousand acres, and of two cents for each acre over one thousand acres. All fees shall forthwith be paid into the state treasury by the state water commission. No fee shall be required from any person, firm, association, or corporation exempt by any law of the state of California from the payment of such fee. [Amendment of April 25, 1917. In effect July 27, 1917, Stats. 1917, p. 195.]

Water commission may act as referee.

§ 24. In case suit is brought in the superior court for determination of rights to water or the use of water, the case may, in the discretion of the court, be transferred to the state water commission for investigation, as referee. [Amendment of May 5, 1917. In effect July 27, 1917, p. 231.]

Determination of water rights by commission.

§ 25. Upon its own initiative or upon petition signed by one or more claimants to water or the use of water upon any stream, stream system, lake, or other body of water, all of which sources of supply are hereinafter referred to as "stream system," requesting the determination of rights, based upon prior appropriation, of the various claimants to the water of that stream system, it shall be the duty of the state water commission, if, upon investigation, it finds the facts and conditions are such as to justify, to enter an order granting said petition and to make proper arrangements to proceed with such determination. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 231.]

Notice of order. Publication.

§ 26. As soon as practicable after the state water commission shall make and enter the order granting the said petition or selecting the stream system upon which the determination of water rights by appropriation is to begin, it shall prepare a notice setting forth the fact of the entry of said order and of the pendency of the said proceedings, the date when the state water commission shall begin said examination, and that all claimants to rights by appropriation of the waters of said stream system are required, as in this act provided, to make proof of their claims. The notice shall be published for a period of four consecutive weeks in one or more newspapers of general circulation published in each county in which any part of said stream system is situated. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 231.]

Investigation of flow of stream system, etc. Surveys and maps.

§ 27. At the time set in said notice, the state water commission shall begin an investigation of the flow of the stream system and of the conduits diverting water, and of the lands irrigated or irrigable therefrom, and shall gather such other data and information as may be essential to the proper determination of the water rights by appropriation. It shall reduce its observations, data, information and measurements to writing. It shall execute surveys and shall prepare maps from the observations of such surveys in accordance with such uniform rules and regulations as it may adopt; which surveys and maps shall show with substantial accuracy the course of the stream or streams; the location of each conduit diverting water therefrom, land irrigated and capable of being irrigated by each conduit, and the kind of culture upon the irrigated land. The maps shall be prepared as the surveys and observations progress, and, when completed, it shall be filed and made of record in the office of the state water commission. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 232.]

Notice of time for filing proofs. Publication.

§ 28. Upon the completion of such measurements and maps, and the filing of said observations, data, information and measurements, the state water commission shall prepare a notice setting forth the date, prior to which the proofs, to be furnished by claimants upon forms supplied by the state water commission and more specifically referred to in the next section hereof, as to the rights by appropriation of the waters of said stream system, shall be filed; provided, however, that the date set, prior to which said proofs must be filed, shall not be less than sixty days from the date of the last publication of said notice as hereinafter provided. The notice shall be deemed to be an order of the state water commission as to its contents, and it shall be published by the state water commission for a period of four consecutive weeks in one or more newspapers of general circulation published in each county in which any part of said stream system is situated. At or near the time of the first publication of said notice it shall be the duty of the state water commission to send by registered mail to each claimant to rights by appropriation of the waters of said stream system, in so far as such claimant can be reasonably ascertained at his last known place of address, a notice equivalent in terms to the said published notice. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 232.]

Forms to be sent claimant.

§ 29. The state water commission shall, in addition, enclose with the notice to be mailed as aforesaid, blank forms, proofs of appropriation, upon which said claimant shall proceed in writing all particulars necessary for the determination of his right by appropriation of the waters of said stream system, the said statement to include the following:

- (a) The name and postoffice address of the claimant.

- (b) The nature of the right or use on which the claim for appropriation is based.
- (c) The date of the initiation of such right and a description of works of diversion and distribution.
- (d) The date of beginning of construction.
- (e) The date when completed.
- (f) The dates of beginning and completion of enlargements.
- (g) The dimensions of the ditch as originally constructed and enlarged.
- (h) The date when water was first used for irrigation or other beneficial purposes, and if used for irrigation, the amount of land irrigated the first year, the amount in subsequent years, with the dates of irrigation and the area and the location of the lands which are intended to be irrigated.
- (i) The character of the soil and the kind of crops cultivated, and such other facts as will show the extent and nature of the right and a compliance with the law in acquiring the same, as may be required by the state water commission. Each claimant shall be required to certify to his statements, under oath. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 232.]

Determination of right on failure to make proof.

§ 30. After the date fixed for the filing of proofs, no proofs shall be received or filed with the state water commission; provided, however, that the state water commission may, for cause shown, in its discretion, extend the time in which proofs may be filed. Upon neglect or refusal of any person to make proof of his claim to rights by appropriation of the waters of such stream system, as required by this act, prior to the expiration of the period fixed by the state water commission, during which proofs may be filed, the state water commission shall determine the right by appropriation of such person on such evidence as it may obtain or may have on file in its office in the way of maps, plats, surveys and transcripts; and exceptions to such determination may be filed in court as hereinafter provided. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 233.]

Petition to intervene in proceedings.

§ 31. Any claimant of a right by appropriation of the water of any stream system upon whom no service of notice shall have been had of the pendency of proceedings for the determination of the rights by appropriation of the waters of said stream system, and who shall have had no actual knowledge or notice of the pendency of said proceedings, may at any time prior to the expiration of three months after the entry of the determination of the state water commission, as provided in section thirteen of this act, file a petition to intervene in said proceedings. Such petition shall be under oath and shall contain, among other things, all matters required by this act of claimants, who have been duly served with notice of said proceedings, and also a statement that the intervener had no actual knowledge or notice of the pendency of said proceedings. Upon the filing of said petition in intervention, the petitioner shall be allowed to intervene and thereafter shall have all the rights and be subject to all the duties of the claimants who have been duly served. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 233.]

Fees collected from claimants.

§ 32. At the time of submission of proof of appropriation, the state water commission shall collect from such claimants, on the basis of the statements in the proofs, a fee of fifteen cents for each acre of irrigated or irrigable lands up to and including one hundred acres, ten cents for each acre in excess of one hundred acres and up to and including one thousand acres, and five cents per acre for each acre in excess of one thousand acres; also twenty-five cents for each theoretical horsepower up to and includ-

ing one hundred horsepower, fifteen cents for each theoretical horsepower in excess of one hundred horsepower and up to and including one thousand horsepower, and five cents for each theoretical horsepower in excess of one thousand horsepower; also five (5) dollars for each cubic foot per second, or fraction thereof, claimed for any purpose other than irrigation or power; the minimum fee however, for any claimant to be five (5) dollars. All fees charged and collected under this section shall be paid, at least once each month, accompanied by a detailed statement thereof, into the treasury of the state. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 234.]

Printed abstract of proofs. Inspection.

§ 33. As soon as practicable after the expiration of the period fixed in which proofs may be filed, the state water commission shall assemble all proofs which have been filed, and prepare and certify an abstract of all of the said proofs, which shall be printed in the state printing office. As soon as practicable the state water commission shall prepare a notice fixing and setting a time and place, reasonably convenient to the claimants, when and where the evidence taken by or filed with it shall be open to the inspection of all interested persons, said period of inspection to be not less than ten (10) days, which notice shall be deemed to be an order of the state water commission as to the matters contained therein. A copy of said notice, together with a printed copy of the said abstract of proofs, shall be sent by registered mail, at least fifteen (15) days prior to the first day of such period of inspection, to each claimant who has appeared and filed proof as herein provided. A representative of the state water commission shall be present at the time and place designated in said notice, and allow, during said period, any person interested to inspect such evidence and proofs as have been filed in accordance with this act. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 234.]

Contest of statements and proofs of claims.

§ 34. Should any claimant desire to contest any of the statements and proofs of claims filed with the state water commission by any other claimant to the waters of the stream system, he shall, within fifteen (15) days after said evidence and proofs shall have been opened to public inspection, or within such further time as for good cause shown may be allowed by the state water commission upon application made prior to the expiration of said fifteen (15) days, in writing, notify the state water commission, stating with reasonable certainty the grounds of the proposed contest, which statement shall be verified by the affidavit of the contestant, his agent or attorney. The statements or proofs of the person whose rights are contested and the verified statement of the contestant shall be deemed sufficient to constitute a proper cause for such contest. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 234.]

Hearing of contest. Costs.

§ 35. Within ten (10) days after the receipt of the notice of contest the state water commission shall notify by registered mail the contestant and the claimant whose rights are contested to appear before it at a time and place specified in said notice, and that at said time and place said contest will be heard; provided, that said time shall not be less than fifteen (15) days nor more than sixty (60) days from the date of the mailing of the notice of the commission. The state water commission shall have power to adjourn hearings of contests from time to time upon reasonable notice to all parties in interest, and to issue subpoenas for and compel the attendance of witnesses to testify before it and to produce papers, books, maps, and other documents. The costs of taking testimony at a hearing shall be borne by the parties thereto as follows: each party shall pay for the direct examination of his own witness and the cross-examination of opponent's witness and shall share equally for that part of the examination directed by

the representative of the commission. One copy of the transcript of testimony taken at the hearing shall be furnished to the commission and the cost thereof borne equally by the parties. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 235.]

Order of determination.

§ 36. As soon as practicable after the hearing of contests, it shall be the duty of the state water commission to make, and cause to be entered of record in its office, an order determining and establishing the several rights by appropriation of the waters of said stream; provided, however, that within sixty (60) days after the entry of an order establishing water rights, the state water commission may, for good cause shown, reopen the proceedings and grant a rehearing. Such order and determination shall be prepared, and after certification by the state water commission, printed in the state printing office. A copy of said order of determination shall be sent by registered mail to each person who has filed proof of claim, and to each person who has become interested through intervention or as a contestant under the provisions of section eight or section eleven of this act. [Amendment of May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 235.]

Filing of order, etc., with clerk of superior court. Order setting time for hearing.

§ 36a. As soon as practicable, after the entry of the order of determination, a certified copy thereof, together with the original evidence and transcript of testimony filed with, or taken before the state water commission, as aforesaid, duly certified by it, shall be filed with the clerk of the superior court of the county in which said stream system, or any part thereof, is situated. Upon the filing of the certified copy of said order, evidence, and transcript with the clerk of the court in which the proceedings are to be had, the state water commission shall procure an order from said court setting a time for hearing. The clerk of such court shall immediately furnish the state water commission with a certified copy of said order. It shall be the duty of the state water commission immediately thereupon to mail a copy of such certified order of the court, by registered mail, addressed to each known party in interest at his last known place of residence, and to cause the same to be published at least once a week for four consecutive weeks in some newspaper of general circulation published in each county in which such stream system or any part thereof is located, and the state water commission shall file with the clerk of the court proof of such service by registered mail and by publication. Such service by registered mail and by publication shall be deemed full and sufficient notice to all parties in interest of the date and purpose of such hearing. [New section added May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 236.]

Filing of notice of exceptions. Decree affirming order. Hearing of exceptions. When state a party.

§ 36b. At least ten days prior to the day set for hearing, all parties in interest who are aggrieved or dissatisfied with the order of determination of the state water commission shall file with the clerk of said court notice of exceptions to the order of determination of the state water commission, which notice shall state briefly the exceptions taken, the reasons therefor, and the prayer for relief, and a copy thereof shall be transmitted by registered mail at least ten (10) days prior to such hearing, to the state water commission and to each claimant, who was an adverse party to any contest wherein such exceptor was a party in the proceedings. The order of determination by the state water commission and the statements or claims of claimants and exceptions made to the order of determination shall constitute the pleadings but the court may allow such additional or amended pleadings as may be necessary to a final determination of the proceeding. If no exceptions shall have been filed with the clerk of the

court as aforesaid, then on the day set for the hearing, on motion of the state water commission, or its attorney, the court shall enter a decree affirming said order of determination. On the day set for hearing all parties in interest who have filed notices of exceptions as aforesaid shall appear in person, or by counsel, and it shall be the duty of the court to hear the same or set the time for hearing, until such exceptions are disposed of, and all proceedings thereunder shall be as nearly as may be in accordance with the rules governing civil actions. Whenever in the judgment of the court the state is a necessary party to the action, the court shall make an order to that effect and thereupon a copy of all pleadings and proceedings on file with the court in said matter shall be served upon the attorney general who shall represent the state therein. [New section added May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 236.]

Decree determining right of all persons involved. Appeals.

§ 36c. For further information on any subject in controversy, the court may employ one or more qualified persons to investigate and report thereon under oath, subject to examination by any party in interest as to his competency to give expert testimony thereon. The court may take additional evidence on any issue and may, if necessary, refer the case for such further evidence to be taken by the state water commission as it may direct, and may require a further determination by it. After the hearing, the court shall enter a decree determining the right of all persons involved in such proceeding. Said decree shall in every case declare as to the water right by appropriation adjudged to each party, the extent, priority, amount, purpose of use, point of diversion, and place of use of said water; and as to water used for irrigation, such decree shall also declare the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority. Upon the hearing the court may assess and adjudge against any party such costs as it may deem just. Appeals from such decree may be taken to the supreme court by the state water commission or any part in interest, in the same manner and with the same effect as in civil cases. [New section added May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 237.]

Decree filed with county recorder. Certificate to claimant.

§ 36d. A certified copy of the decree of the superior court shall be prepared by the clerk thereof, without charge, and filed for record in the office of the county recorder of each county in which any part of the stream system is situated and also in the office of the state water commission. It shall be the duty of the state water commission to issue to each claimant represented in such determination a certificate to be signed by the president of the state water commission, and attested under seal of the secretary of said commission, setting forth the name and post-office address of the owner of the right; the priority of the date, extent and purpose of such right; and, if such water be for irrigation purposes, a description of the legal subdivisions of land to which said water is appurtenant. [New section added May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 237.]

Claimant failing to appear forfeits rights.

§ 36e. Whenever proceedings shall be instituted for the determination of rights by appropriation of water, it shall be the duty of all claimants interested therein and having notice thereof as in this act provided, to appear and submit proof of their respective claims at the time and in the manner required by law; and any such claimant who shall fail to appear in such proceedings and submit proof of his claim shall be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream system, embraced in such proceedings, and shall be held to have forfeited all rights by appropriation to said water theretofore claimed by him on such stream

system, unless entitled to relief under the laws of this state; provided, that such proceedings shall result in a determination by the state water commission and a decree by the superior court determining the rights on such stream. Such decree shall be conclusive as to the rights by appropriation of all existing claimants upon the stream system lawfully embraced in the determination. [New section added May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 237.]

Determination of rights initiated prior to December 19, 1914. Review of findings.

§ 36f. The state water commission shall have authority and power in making a determination as to the rights by appropriation of the waters of any stream system, to fix a time limit for the completion of all appropriations of water from such stream, where such rights of appropriations were initiated prior to December 19, 1914, and since prosecuted with reasonable diligence, and such appropriators having been duly notified as provided in this act, must appear and submit their proofs of claim, in accordance with section twenty-eight of this act, or they shall be deemed and held to be in default, and to have abandoned or to have no right, title or interest in or to the waters of such stream. In determining rights of such appropriators, the state water commission shall prescribe such a reasonable time for the completion of such appropriations, and the application of the water appropriated to a beneficial use, as will enable such appropriators acting in good faith and with due diligence to complete the same. The findings of the state water commission shall provide for the submission of proof or evidence as to the completion of such appropriation and the amount of water actually applied to beneficial use upon the expiration of such time limit, and shall, in accordance with such proof, enter supplemental findings, establishing and determining such rights of appropriation, in so far as the same shall have been completed; and certificates of water right shall be issued in accordance with such supplemental findings and order of determination of said commission; but this section shall not be construed to confer any rights of appropriation upon parties who shall have abandoned their said appropriations or failed to use due diligence in the application of the water to a beneficial use and in the completion of their appropriations; and all such appropriators, who shall fail to complete their said appropriations within the limit of time fixed by the state water commission in said findings, or such further time granted upon application made prior to the expiration of such time limit, as the state water commission shall find equitable and just, shall be deemed to have abandoned their rights of appropriation, and rights acquired by virtue thereof waived, and such appropriators shall be deemed and held to have no right, title or interest in or to the waters of such stream by virtue of their said appropriations. The findings and determination of the state water commission made under the provisions of this section may be reviewed in the manner prescribed by section thirty-six b of this act. [New section added May 5, 1917. In effect July 27, 1917, Stats. 1917, p. 238.]

Power to supervise distribution of water.

§ 37. The power to supervise the distribution of water in accordance with the priorities established under this act, when such supervision does not contravene the authority vested in the judiciary of the state, is hereby vested in the state water commission.

Unauthorized diversion, trespass.

§ 38. The diversion or use of water subject to the provisions of this act other than as it is in this act authorized is hereby declared to be a trespass, and the state water commission is hereby authorized to institute in the superior court in and for any county wherein such diversion or use is attempted appropriate action to have such trespass enjoined.

Water appropriated for specific purpose.

§ 39. Water or the use of water which has heretofore been appropriated or acquired, or which shall hereafter be appropriated or acquired for one specific purpose shall not be deemed to be appropriated or acquired for any other or different purpose. And any person, firm, association or corporation applying to the state water commission for a license to appropriate water or the use of water shall state in the application for said license the specific purpose to which it is proposed to put such water or the use thereof. Water heretofore or hereafter appropriated for other than domestic use, may be applied to domestic use, in whole or in part, without a separate and distinct appropriation being made therefor. And water appropriated for one purpose under the provisions of this act may be subsequently appropriated for other purposes under the provisions of this act; provided, that such subsequent appropriation shall not injure any previous appropriation.

Reservoir investigation.

§ 40. The state water commission is also authorized and empowered to investigate any natural situation available for reservoirs or reservoir systems for gathering and distributing flood or other waters not under beneficial use in any stream, stream system or lake or other body of water; and to ascertain the feasibility of such projects, including the supply of water that may thereby be made available, the extent and character of the areas that may be thereby irrigated, and make estimate of the cost of such project.

Rights of cities, etc., not limited.

§ 41. Nothing in this act shall be construed as depriving any city, city and county, municipal water district, irrigation district or lighting district of the benefit of any law heretofore or hereafter passed for their benefit in regard to the appropriation or acquisition of water or the use of water; and nothing in this act shall affect or limit in any manner whatsoever the right or power of any municipality which has heretofore appropriated or acquired water or the use of water for municipal purposes, to use or to sell or otherwise dispose of such water or the use thereof, either within or without its limits for domestic, irrigation or other purposes, in accordance with laws in effect at the time of the passage of this act.

“Water.” “Usefulness or beneficial purposes.”

§ 42. The word “water” in this act shall be construed as embracing the term “or use of water”; and the term “or use of water” in this act shall be construed as embracing the word “water.” Whenever the terms stream, stream system, lake or other body of water or water occurs in this act, such term shall be interpreted to refer only to surface water, and to subterranean streams flowing through known and definite channels. But nothing in this act shall be construed as giving or confirming any right, or title, or interest to or in the corpus of any water; provided, that the term “useful or beneficial purposes” as used in this act shall not be construed to mean the use in any one year of more than two and one-half acre feet of water per acre in the irrigation of uncultivated areas of land not devoted to cultivated crops.

Right of appeal.

§ 43. Nothing in this act shall be construed as depriving any person, firm, association or corporation of the right of appeal conferred under the laws of this state.

Repealed.

§ 44. All acts or parts of acts in conflict herewith are hereby repealed.

Title of act.

§ 45. This act shall be known as the "water commission act."

Constitutionality of act.

§ 46. If any section, sub-section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, sub-section, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, sub-sections, sentences, clauses or phrases be declared unconstitutional.

1. Public use—Water for electric energy.
—The use of water for electrical energy is a public use.—*El Dorado, etc., Ass'n v. Western, etc., Co.*, 1 R. C. D. 681.

2. Same—Can not lawfully be converted into private use.—Water dedicated to a public use can not lawfully be converted into a private use so as to create a private pref-

erential right thereto for the benefit of a specific parcel of land; but no such conversion is attempted in the articles and by-laws of a company which provide that the certificates of its stock shall be transferable only with the land to which they are attached.—*Riverside Land Co. v. Jarvis*, 174 Cal. 316, 324, 163 Pac. 54.

WATER COMMISSIONERS.

See tits. "Water Commission"; "Waters."

CHAPTER 420.**WATER COMPANIES.**

References: See tits. "Conservation"; "Irrigation and Irrigation Districts"; "Municipal Corporations"; "Public Utilities"; "Water Commission"; "Water Districts"; "Waters."

Water and canal corporations, see *Kerr's Cyc. Civil Code*, § 548.

Water companies, injury to works, see *Kerr's Cyc. Penal Code*, §§ 594, 607, 624.

Water companies, defrauding, see *Kerr's Cyc. Penal Code*, § 625.

CONTENTS OF CHAPTER.

ACT 5498. REGULATION OF THE SALE, RENTAL AND DISTRIBUTION OF APPROPRIATED WATER.

5500. REGULATION OF WATER COMPANIES BY THE RAILROAD COMMISSION.

5501. UNLAWFUL SUPPLY OF POLLUTED WATER.

5502. PROPER AND ADEQUATE SERVICE OF WATER.

REGULATION OF THE SALE, RENTAL AND DISTRIBUTION OF APPROPRIATED WATER.

ACT 5498—An act to regulate and control the sale, rental, and distribution of appropriated water in this state, other than in any city, city and county, or town therein, and to secure the rights of way for the conveyance of such water to the places of use.

History: Approved March 12, 1885, Stats. 1885, p. 95. Amended March 2, 1897, Stats. 1897, p. 49; February 28, 1901, Stats. 1901, p. 80. Prior act of March 26, 1880, Stats. 1880, p. 16, was largely, if not entirely, superseded by the present act. The present act is probably not now in force in any particular, having been largely, if not entirely, superseded by the Public Utilities Act (Act 3775), which became effective March 23, 1912, supplemented by the act of April 25, 1913, Stats. 1913, p. 84 (Act 5500), which became effective August 10, 1913.

Citations: *McFadden v. Los Angeles Co.*, 74 Cal. 571, 573, 16 Pac. 397; *Crow v. San Joaquin, etc., Irr. Co.*, 130 Cal. 309, 313, 62 Pac. 562, 1058; *Fresno Canal, etc., Co. v. Park*, 129 Cal. 437, 446, 62 Pac. 87; *Hildreth*

v. Montecito Creek W. Co., 139 Cal. 22, 28, 72 Pac. 395; *Fellows v. Los Angeles*, 151 Cal. 52, 58, 64, 90 Pac. 137; *San Joaquin, etc., Irr. Co. v. Stanislaus Co.*, 155 Cal. 21, 23, 26, 27, 28, 99 Pac. 365; *Leavitt v. Las-*

sen Irrig. Co., 157 Cal. 82, 93, 29 L. R. A. 164 Cal. 117, 130, 128 Pac. 21; Lowe v. Yolo (N. S.) 213, 106 Pac. 404; Lowe v. Yolo Co. Co., etc., Water Co., 8 Cal. App. 167, 169, Cons. Co., 157 Cal. 503, 506, 507, 513, 108 170, 173, 174, 96 Pac. 379. Pac. 297; Thayer v. Cal. Development Co.,

REGULATION OF WATER COMPANIES BY THE RAILROAD COMMISSION.

ACT 5500—An act providing for the regulation of water companies, defining their powers and duties, defining the powers and duties of the railroad commission with reference thereto, and defining the conditions under which such water companies become subject to the provisions of the public utilities act and the railroad commission of the state of California.

History: Approved April 25, 1913. In effect August 10, 1913. Stats. 1913, p. 84.

Water company public utility.

§ 1. Whenever any person, firm or private corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any water system within this state, sells, leases, rents or delivers water to any person, firm, private corporation, municipality or any other political subdivision of the state whatsoever, except as limited by section 2 hereof, whether under contract or otherwise, such person, firm or private corporation is a public utility, and subject to the provisions of the public utilities act of this state and the jurisdiction, control and regulation of the railroad commission of the state of California.

Private company not public utility.

§ 2. Whenever any private corporation or association is organized for the purpose solely of delivering water to its stockholders or members at cost, and delivers water to no one except its stockholders or members at cost, such private corporation or association is not a public utility, and is not subject to the jurisdiction, control or regulation of the railroad commission of the state of California.

When private company becomes public utility.

§ 3. Whenever any private corporation or association organized for the purpose of delivering water solely to its stockholders or members at cost does deliver water to others than its stockholders or members for compensation, such private corporation or association becomes a public utility and is subject to the terms of the public utilities act and the jurisdiction, control and regulation of the railroad commission of the state of California.

Private company, public utility.

§ 4. Whenever any private corporation or association is organized both for the purpose of delivering water to its stockholders or members at cost and to persons, firms, corporations, municipalities or other political subdivisions of the state in addition thereto, such private corporation or association is a public utility and subject to the provisions of the public utilities act and to the jurisdiction, control and regulation of the railroad commission of the state of California.

Limitation on service of water company.

§ 5. Whenever the railroad commission, after a hearing had upon its own motion or upon complaint, shall find that any water company which is a public utility operating within this state has reached the limit of its capacity to supply water and that no further consumers of water can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have theretofore been supplied by such corporation, the railroad commission may order and require that no such corporation shall furnish water to any new or additional consumers until

such order is vacated or modified by the said commission. The commission shall likewise have the power after hearing upon its own motion or upon complaint, to require any such water company to allow additional consumers to be served when it shall appear that to supply such additional consumers will not injuriously withdraw the supply wholly or in part from those who theretofore had been supplied by such public utility.

Report to railroad commission.

§ 6. The railroad commission shall have the power to require any and all water corporations to file with the commission a statement in writing defining and describing the lands and territory to be supplied by such corporation with water, and when such territory is described and defined in the articles of incorporation of any such corporation or in the places of designated use in the notices of appropriation under which the rights of such corporation to appropriated water are initiated in accordance with section 1415 of the Civil Code, and it shall appear either from said statement filed by such water corporation or from said articles of incorporation or said notices of appropriation that such water corporation has undertaken to supply more consumers or a greater number of acres than it can adequately supply, the commission may require such corporation to limit the number of consumers or acres of land which it has undertaken to supply or which is set out in its articles of incorporation or notices of appropriation to such a limited number of consumers or acres of land as the commission shall find, after hearing, such water corporation may adequately supply. This provision does not apply to territory or consumers which have once been served by said corporation, and as between consumers who have been voluntarily admitted to participate by the corporation in its supply of water or been required to be supplied by an order of the railroad commission, in times of shortage there shall be no priority or preference, and such corporation in times of shortage shall be required to apportion such supply ratably among its consumers.

Language construed.

§ 7. The language in section 1 of this act "whether under contract or otherwise" shall not be construed as authorizing a contract by a person or corporation defined herein as a public utility which shall in anywise deprive the state or the railroad commission or other competent authority of power to regulate the rates and service of any such public utility.

Water company a public utility.—A water company which sells water to others than its stockholders, is a public utility, and subject to the jurisdiction of the commission.—*In re Citizens Water Company*, 16 R. C. D. 950.

Mutual water company—Jurisdiction of railroad commission.—A water company whose by-laws provide that water shall be delivered to stockholders only, and whose officers have strictly followed this policy, is not a public utility, but a mutual water company, and the commission has no jurisdiction over it.—*Clark v. Tulare, etc.*, Co., 16 R. C. D. 624.

Public utility and consumer—When relationship established.—The relationship of public utility water company and consumer is established when the obligation on the part of the company to supply, and the obligation on the part of the prospective consumer to take the water, arises.—*Butte, etc., Ass'n v. Railroad Commission*, 61 Cal. Dec. 316, 196 Pac. 265.

Right of water company to take on new consumers.—A water company has no right to take on new consumers to the necessary injury of its old ones, but with this limitation, and the absence of statute or order of the railroad commission, it has the general power to take on new consumers.—*Butte, etc., Ass'n v. Railroad Commission*, 61 Cal. Dec. 316, 196 Pac. 265.

Act of 1880 superseded.—This act covers the subject and supersedes most of the provisions of the act of 1880 (Stats. 1880, p. 16).—*Fresno, etc., Co. v. Park*, 129 Cal. 437, 62 Pac. 87.

Scope of act—Power of supervisors.—The act gives power of regulation to boards of supervisors in the event they are petitioned to exercise such power by 25,000 inhabitants who are taxpayers.—*Fresno, etc., Co. v. Park*, 129 Cal. 437, 62 Pac. 87.

Legality of contract for less than maximum rates.—The act does not make it illegal to contract for less than the maxi-

mum rates therein fixed.—*Fresno, etc., Co. v. Park*, 129 Cal. 437, 62 Pac. 87.

Until supervisors fix rates, customary rates continue.—Under the act, until compensation shall be fixed by the supervisors, persons selling water shall continue to collect as they have been accustomed to do.—*Fresno, etc., Co. v. Park*, 129 Cal. 437, 62 Pac. 87.

Contract for water.—See *Stanislaus Water Co. v. Bachman*, 152 Cal. 716, 15 L. R. A. (N. S.) 359, 93 Pac. 858.

Power of commission to change contract rates.—The railroad commission is empowered to fix the rates of water companies without regard to their contracts with consumers, whether entered into prior or subsequent to the amendments of 1911 of the constitution and the effective date of the public utilities act.—*In re Murray & Fletcher*, 2 R. C. D. 464.

Maximum rates—Power of supervisors under act of 1885.—Under the act of 1885 boards of supervisors were empowered only to fix maximum rates, and until they had fixed such rates the parties were free to contract, and after they had fixed such rates the parties were free to contract within the same.—*In re Murray & Fletcher*, 2 R. C. D. 464.

Function of rate contract.—The sole function of a rate contract between a water company and a consumer is to fix the relationship of the parties before the public authorities shall have acted, and in addition thereto, probably, such contract would have the effect, as to the land involved, "to establish its status as land permanently entitled to share in the public use."—*In re Murray & Fletcher*, 2 R. C. D. 464.

Power of commission—New consumers.—The public utilities act gives the commission ample power to require a water company to take on new consumers, or to prevent such action, as the public convenience and necessity will be best served.—*Palmer v. Southern, etc., Co.*, 2 R. C. D. 43.

Same—Same.—The action of the commission depends upon the reasonableness of the request under the particular circumstances of the case.—*Palmer v. Southern, etc., Co.*, 2 R. C. D. 43.

Same—Same—Another available supply.—The fact that a prospective consumer has another available supply is material and should be considered.—*Palmer v. Southern, etc., Co.*, 2 R. C. D. 43.

Charge for water right in addition to rental charge, can not be made.—A water company has no right to exact a charge from its consumer for water rights in addition to the regular rates for service.—*In re Murray & Fletcher*, 7 R. C. D. 334.

Suit by a water user—Claim of public use—Judgment in condemnation of right of way admissible in evidence.—A judgment in a condemnation suit for a right of way for a ditch by a water company, is admissible in evidence in a suit by a water user in support of the claim that such company

is exercising a public use.—*Lowe v. Yolo, etc., Co.*, 157 Cal. 503, 108 Pac. 297.

1. Constitutional law—Superseded by constitution and public utilities act.—Prior to March 23, 1912, the rental and distribution of water, outside of municipalities, was subject to regulation by county boards of supervisors under provisions of the act of 1885, and article XIV of the constitution; but the powers of such boards was conferred on the railroad commission and enlarged by the 1911 amendments to the constitution, and by the public utilities act, which became effective on the date first above named.—*In re Murray & Fletcher*, 2 R. C. D. 464.

2. Same—Apportionment of water in time of shortage.—The provision of the act that there shall be no priority or preference between the consumers of a water company in time of shortage, and directing the company to apportion the supply ratable, is constitutional.—*Butte, etc., Ass'n v. Railroad Commission*, 61 Cal. Dec. 316, 196 Pac. 265.

3. Same—Same—Order of commission held valid.—An order of the railroad commission requiring a water company to pro rate its available supply between its customers, in the event of a shortage, is valid.—*Butte, etc., Ass'n v. Railroad Commission*, 61 Cal. Dec. 316, 196 Pac. 265.

4. Same—Exercise of right to collect compensation for use of water—Section 2, article XIV, of the constitution—Statute must be followed.—Under the provisions of section 2 of article XIV of the constitution, means that if the legislature shall by statute, prescribe the particular manner in which the right to collect compensation for the use of water, that manner, if it be reasonable, must be followed if consumers insist on it.—*Fresno, etc., Co. v. Park*, 129 Cal. 437, 62 Pac. 87.

5. Same—Same—In absence of statute.—In the absence of statute, the phrase "by authority of law" in that section, means by the authority of the general substantive law of the state, whereon all rights of property, and its use, are enjoyed.—*Fresno, etc., Co. v. Park*, 129 Cal. 437, 62 Pac. 87.

6. Same—Use of water—Public use—Constitutional construction.—The provision of section 1, article XIV, of the constitution declaring that "the use of all water appropriated for sale, rental, or distribution" is a public use, does not cover the proposition that all water which is distributed among a number of persons is, from that fact alone, to be considered as devoted to a public use.—*Hildreth v. Montecito, etc., Co.*, 139 Cal. 22, 72 Pac. 395.

7. Same—Same—Nature of right.—The beneficiaries of water in public use within the meaning of the constitution have no private property right therein, in the usual sense; but his right is in the nature of a public right possessed by him as a person of the class for whose benefit the water is appropriated or dedicated.—*Hildreth v. Montecito, etc., Co.*, 139 Cal. 22, 72 Pac. 395.

8. Same—Same—Showing required of the beneficiary of such use.—If a person, claiming to be a beneficiary of the public use of water, asks the court to protect him in the enjoyment of his right as such beneficiary, against the person in charge of such use, he must show that such person has the ownership or control of the water which is subject thereto.—*Hildreth v. Montecito, etc., Co.*, 139 Cal. 22, 72 Pac. 395.

9. Same—Same—Same—Insufficient complaint.—A complaint of a person claiming to be the beneficiary of a public use of water against the person alleged to be in control thereof, which merely alleges the ownership and control by the defendant of a system of water works, without also alleging that defendant owns or controls or has the right to control any water, or that the particular water had been appropriated and dedicated to public use by the defendant, or that the water remains subject to such use, is defective.—*Hildreth v. Montecito, etc., Co.*, 139 Cal. 22, 72 Pac. 395.

10. Same—Same—Water held devoted to public use.—Under section 1, article XIV, of the constitution and sections 1, 8, and 10 of the present act, the use to which water obtained from the Moulton land within the city of Los Angeles, by the East Side Spring Water Co., in the manner and under the circumstances shown here, was a public use, and its sale and distribution subject to public control under the act.—*Fellows v. Los Angeles*, 151 Cal. 52, 90 Pac. 137.

11. Same—Same—Company required to distribute at rates fixed.—Under sections 8 and 10 of the act, corporations or persons engaged in furnishing water to the inhabitants of any county which have appropriated water to that use (other than to the inhabitants of a city, or town, or city and county), are required to distribute such water at the rates fixed by the board of supervisors of the county, or as fixed by the corporation or person, and, upon tender of such rates and demand therefor by any inhabitant who is entitled to water from such system, such person or corporation is under an obligation and duty to supply such inhabitant with water to the extent of his reasonable share of the available supply belonging to the system.—*Fellows v. Los Angeles*, 151 Cal. 52, 90 Pac. 137.

12. Same—Same—Same—Exception of section 10—"Appropriation."—The exception in section 10 of the act as cities, etc., is not construed so as to apply to water used outside of municipalities, but having its source within the same; and the word "appropriation" therein refers to the place of use and not to the place of the source of supply.—*Fellows v. Los Angeles*, 151 Cal. 52, 90 Pac. 137.

13. Same—Same—Same—Same.—If the place of distribution and use is outside of a municipality, the provisions of the act apply, although the supply of water may be obtained from a natural source situated within the limits of the municipality.—*Fellows v. Los Angeles*, 151 Cal. 52, 90 Pac. 137.

14. Same—Same—A private contract is not necessary.—It is not necessary to establish an agreement establishing a private obligation between a beneficiary of the public use of water and the administrator of that use, to entitle the former to compel the latter to furnish water to his property.—*Fellows v. Los Angeles*, 151 Cal. 52, 90 Pac. 137.

15. Same—Same—Continuance of service—Use administered by municipality.—If a proper demand, by a person entitled to water devoted to a public use, is made upon the administrator of that use, for a continuance of the service thereof, the latter must either comply or permit the use of the property and plant in previous use and necessary for the service, by the demandant, or by the person beneficially interested, to the end that he, or they, may continue to devote the property to the public service to which it is dedicated; and it matters not that the water has passed into the control of a municipality, and the place of use of the water is outside its limits.—*Fellows v. Los Angeles*, 151 Cal. 52, 90 Pac. 137.

16. Same—Power to fix rates of water companies is police power.—The power to fix the rates of a water company is in the nature of the police power; at least it is the power of government to control property devoted to a public use.—*In re Murray Fletcher*, 2 R. C. D. 464.

17. Same—Rates fixed by contract—Subject to change by state.—The right of a water company to fix a rate for water service by contract is subject to the power of the state to substitute a rate fixed by its duly constituted authorities for the contract rate.—*In re Murray & Fletcher*, 2 R. C. D. 464.

18. Public use, defined—Water for irrigation.—It is an essential to a public use of water for irrigation that the water shall be available, as of right, upon equal terms to all landowners of the class and within the area to be benefited who can get the water from the ditches to their land, and if the dispenser of the water has the right to say who shall have it, and upon what terms, selling to one and refusing to sell to another at will, it is not devoted to a public use.—*Thayer v. California Development Co.*, 164 Cal. 117, 128 Pac. 21.

19. Same—Sale, rental and distribution a public use—Company bound by established rates.—Under the constitution and the act of 1885, the sale, rental and distribution of water is a public use, and a company engaged in such sale, rental and distribution is bound by the rates established under the act.—*Crow v. San Joaquin, etc., Co.*, 130 Cal. 309, 62 Pac. 562, 1058.

20. Change of private to public use—Consent required—All persons bound by regulations made under public control.—A water corporation may convert a private use into a public use with the consent of the owners, subject to public control, and when this is done all persons concerned are

bound by the regulations.—*Franscioni v. Soledad, etc., Co.*, 170 Cal. 221, 149 Pac. 161.

21. Same—Same—Application to commission to fix rates.—An application to the railroad commission by a water company to have its rates for water established, and an order of the commission allowing an increase in such rates, is a submission to the authority of the regulating body, and was effective to change the use from a private and particular use to a public use, so as to make the service and terms of delivery subject to regulation and control by public authority.—*Franscioni v. Soledad, etc., Co.*, 170 Cal. 221, 149 Pac. 161; *Palermo, etc., Co. v. Railroad Commission*, 173 Cal. 380, 160 Pac. 228.

22. Private appropriation—Use of ditches—May reserve in sale of public system.—One who has appropriated water for sale, rental and distribution under the constitution of 1879, may make an appropriation for private use on his own lands, and may use the same ditches, and on the sale of the system may reserve the private appropriation.—*Leavitt v. Lassen, etc., Co.*, 157 Cal. 82, 29 L. R. A. (N. S.) 213, 106 Pac. 404.

23. Same—Same—Private right.—The private right is measured by the amount of water he may put to beneficial use on his lands, not by the amount taken.—*Leavitt v. Lassen, etc., Co.*, 157 Cal. 82, 29 L. R. A. (N. S.) 213, 106 Pac. 404.

24. Limitation of territory—Appropriator may limit.—The appropriator of water for sale, rental and distribution may limit the territory to be supplied, and such restriction is not in derogation of the public trust assumed by it.—*Leavitt v. Lassen, etc., Co.*, 157 Cal. 82, 29 L. R. A. (N. S.) 213, 106 Pac. 404.

25. Preferential right—Water company can not confer.—A water company can not confer a preferential right on a consumer to the use of any part of water subject to the public use.—*Leavitt v. Lassen, etc., Co.*, 157 Cal. 82, 29 L. R. A. (N. S.) 213, 106 Pac. 404.

26. Same—Same—Contracts under constitution.—A water company is not prevented from entering into contracts with consumer that are not violative of the constitution and are within the enactments of the legislature, but the breach of such contracts does not deprive the consumer of his constitutional right, upon tender of the legal rate to have the service continued.—*Leavitt v. Lassen, etc., Co.*, 157 Cal. 82, 29 L. R. A. (N. S.) 213, 106 Pac. 404.

27. Apportionment of water—Shortage.—In case of shortage the water may be apportioned to the consumers.—*Leavitt v. Lassen, etc., Co.*, 157 Cal. 82, 29 L. R. A. (N. S.) 213, 106 Pac. 404.

28. Power of board of supervisors over rates of water company organized for and furnishing water solely to its stockholders.—The board of supervisors are not authorized to fix the rates of a corporation not organized for the sale, distribution and rental of water, but for the sole purpose of supplying water to the lands of its stockholders.—*McFadden v. Los Angeles Co.*, 74 Cal. 571, 16 Pac. 397.

29. Railroad commission vested with powers of boards of supervisors.—The railroad commission is vested with power to regulate the water rates of a public utility furnishing water to a mutual company under a pre-existing contract made subsequent to the adoption of the constitution, notwithstanding such contract, and in doing so may modify and practically annul the said contract in so far as it fixes a rate for the service covered by it.—*Limoneira Co. v. Railroad Commission*, 174 Cal. 232, 162 Pac. 1033.

30. The act expressly authorizes the commission to regulate water companies and require them to serve additional customers.—*Palermo, etc., Co. v. Railroad Commission*, 173 Cal. 380, 160 Pac. 228.

See, also, *Long v. Atwood*, 4 R. C. D. 34.

31. Action to declare orders of the board of supervisors fixing rates void—One year statute of limitations.—Under the act of 1885 a water company can not maintain an action to declare void orders of the board of supervisors establishing rates and to enjoin their enforcement, after one year, with first attempting by petition to the board to secure a readjustment.—*San Joaquin, etc., Co. v. Stanislaus Co.*, 155 Cal. 21, 99 Pac. 365.

32. Demand for water service—Sufficient under section 10 of the act of 1885.—Leaving a written demand at the office of the defendant water company, during office hours, with the person in charge thereof, was a sufficient compliance with section 10 of the act of 1885.—*Lowe v. Yolo, etc., Co.*, 157 Cal. 503, 108 Pac. 297.

33. As to deposits for service, see.—In re Practice of Water, Gas, Electric and Telephone Utilities Requiring Deposits Before Rendering Service, 7 R. C. D. 830.

34. Water right appurtenant to land.—Where a water company buys land and develops water and sells farm lots on such land, with the appurtenances, after making suitable ditches and connections thereon to carry water thereto, reserving the right to maintain such ditches for that purpose, the right to have such water delivered on the lots becomes appurtenant to the lots, and the owner is entitled to have the water delivered so long as the source holds out.—*Franscioni v. Soledad, etc., Co.*, 170 Cal. 221, 149 Pac. 161.

UNLAWFUL SUPPLY OF POLLUTED WATERS.

ACT 5501—An act to prevent the supply of water dangerous to health for domestic purposes and to provide for the installation of sanitary water systems.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 793. Amended June 7, 1915, in effect August 8, 1915, Stats. 1915, p. 1282; June 1, 1917, in effect July 31, 1917, Stats. 1917, p. 1562.

Unlawful to supply polluted water.

§ 1. It shall be unlawful for any person, firm, corporation, public utility, municipality or other public body or institution to furnish or supply or to continue to furnish or supply water used or intended to be used for human consumption or for domestic uses or purposes which is impure, unwholesome, unpotable, polluted or dangerous to health, to any person in any county, city and county, municipal corporation, village, district, community, hotel, temporary or permanent resort, institution or industrial camp. [Amendment of June 1, 1917. In effect July 31, 1917, Stats. 1917, p. 1562.]

Persons desiring to furnish water to file petition. Investigation of works. Exemption. Hearing.

§ 2. Whenever any person, firm, corporation, public utility, municipality or other public body or institution shall desire to furnish or supply or to continue to furnish or supply water for domestic uses or purposes to any person in any county, city and county, municipal corporation, village, district, community, hotel temporary or permanent resort, institution or industrial camp, or shall desire to install, add to, modify or alter any of the plant, works, system or sources of supply, it or he shall file as herein provided with the state board of health a petition for permission so to do, together with complete plans and specifications and a statement containing a general description and history of the existing or proposed water supply system of proposed changes therein showing the geographical location thereof with relation to, the source of the water supply and all the sanitary and health conditions surrounding and affecting said supply and the works, system and plant, such plans, specifications and general statement to be in such form and to cover such matters as the state board of health shall prescribe. Thereupon a thorough investigation of the proposed or existing works, system, plant, water supply and all other circumstances and conditions by it deemed to be material must be made by the state board of health; and provided, however, that no person, firm or corporation supplying water for domestic purposes or use on his or its private property upon which there is no industrial camp, hotel, temporary or permanent resort using said water, or supplying less than two hundred service connections, shall be required to apply for a permit under the provisions of this section, except upon formal complaint filed with the state board of health.

Hearing.

As a part of such investigation, and after ten days' notice by mail to the petitioner, a hearing or hearings may be had before said board or an examiner appointed by it for the purpose. At such hearing or hearings witnesses who testify shall be sworn by the person conducting the hearing, and evidence, oral and documentary, may be received, a record of which shall be made and filed with said board. Upon the completion of such investigation, said board:

When petition shall be denied. Appointment of person to take charge of plant. Temporary permit.

(a) If it shall determine, as a fact, that the water being furnished or to be furnished or supplied is such that under all the circumstances and conditions it is impure, unwholesome or unpotable, or may constitute a menace or danger to the health or lives of human beings, or that under all the circumstances and conditions the existing

or proposed works, system, plant or water supply, or proposed modifications therein, are unhealthful or insanitary, or not suited to the production and delivery of healthful, pure and wholesome water at all times, it shall deny the prayer of such petitioner, and said board shall order the petitioner to make such changes as it deems necessary to secure a continuous supply of pure, wholesome, potable and healthful water. Said board may order the appointing of a competent person, to be approved by the state board of health and paid by said petitioner, who shall take charge of and operate such plant or system so as to secure the results demanded by the state board of health; and it may order such repair, alteration or addition to the existing system, plant and works that the water furnished or supplied shall at all times be pure, wholesome, potable and shall not endanger the lives or health of human beings; and said board may order such changes of source of the water supply or installation of purification and refining works and such other measures as shall insure a continuous supply of pure, wholesome and potable water which shall not endanger the lives and health of human beings; which orders shall designate the period within which the required changes are to be made; provided, however, that a temporary permit may be issued by the state board of health for said period to permit the petitioner to comply with such order or orders.

When petition shall be granted. Permits revocable. Report may be required. Persons without permit may be enjoined. Public nuisance.

(b) If it shall determine, as a fact, that the water being furnished or supplied to such human beings is such, that under all the circumstances and conditions, it is pure, wholesome and potable and does not endanger the lives or health of human beings, it shall grant to petitioner a permit authorizing petitioner to furnish or continue to furnish or supply such water to such human beings; provided, however, that all permits issued hereunder shall be revocable or subject to suspension by said board at any time that it shall determine, as a fact, that the water being supplied or furnished is or may become impure, unwholesome or unpotable or does or will endanger the lives or health of human beings. The state board of health and its inspectors shall at any and all reasonable times have full power and authority to, and shall be permitted to, enter into and upon any and all places, property, inclosures and structures for the purpose of making and to make examinations and investigations to determine whether any provision of this act is being violated. The holder of any permit granted by said board under the provisions of this act may at any time by order of said board be required to furnish to said board, upon demand, a complete report upon the condition and operation of the water supply, plant, works or system owned, operated or controlled by it, which report shall be made by some competent person designated for the purpose by said board, and at the sole cost and expense of the holder of the permit. Any person, firm, corporation, public utility, municipality or other public body or institution who shall furnish or supply or continue to furnish or supply water used or intended to be used for human consumption or for domestic uses or purposes, or shall install additions to, modifications or alterations in, any of the existing plant, works, system, or sources of supply without having an unrevoked permit from the state board of health so to do, as in this act provided, may be enjoined from so doing by any court of competent jurisdiction, at the suit of any person or persons, firm, corporation, municipal or other public corporation whose supply of water for human consumption or for domestic uses or purposes is taken, or received from, or supplied or furnished by any such water furnishing or distributing person, firm, corporation, public utility or municipality or other public body or institution, or it or he may be enjoined at the suit of the state board of health in the same manner. Anything done, maintained or suffered in violation of any of the provisions of this act shall be deemed to be a public nuisance dangerous to health

and may be summarily abated in the manner provided by law and it shall be the duty of all and every public officer or officers, body or bodies lawfully empowered so to do to immediately abate the same.

Penalty for violation.

Every person, firm, corporation, public utility, municipality, or other public body or institution, or officer, employee or agent thereof upon whom the duty to act is cast, and every person who shall violate any provision or part thereof of this act, or who shall fail to obey, observe or comply with any direction, order, requirement or demand or any part or provision thereof of the state board of health, or who procures, aids, or abets any such person, firm, corporation, public utility, municipality, or other public body or institution, or officer or employee or agent thereof, in any failure to obey or comply with the provisions of this act or the orders of the state board of health as provided in this act, shall become liable for and forfeit to the state of California the penal sum of not more than one thousand dollars for each separate offense. The continued existence of any violation of this act for each and every day beyond the time stipulated for compliance with any of its provisions or of any order of the state board of health as provided herein shall constitute a separate and distinct offense. All penalties are to be recovered by the state in civil action brought by the state of California and such penalties when collected shall be paid into the general fund of the state treasury.

Every officer, agent or employee of any person, firm, corporation, public utility, municipality, or other public body or institution or person who shall violate or fail to comply with any of the provisions of this act or the order of the state board of health or any part thereof, or who procures, aids or abets in any failure to observe and comply with any such provision, order, or part thereof, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year or by both such fine or imprisonment, for each offense. Each day's violation of this provision shall constitute a separate and distinct offense. [Amendment of June 1, 1917. In effect July 31, 1917, Stats. 1917, p. 1562.]

This section was also amended June 7, 1915, Stats. 1915, p. 1282.

1. Constitutionality—Unreasonable exercise of police power.—The act, so far as it provides for an injunction is unconstitutional as an unreasonable exercise of the police power of the state.—*Frost v. Los Angeles*, 181 Cal. 22, 6 A. L. R. 468, 183 Pac. 342.

2. Jurisdiction of state board of health.

—Under this act jurisdiction to prevent water supply which is polluted or dangerous to health is vested in the state board of health, and the railroad commission has no jurisdiction over the subject.—*Saratoga, etc., Association v. San Jose, etc., Co.*, 4 R. C. D. 1250; *Shelly v. Ocean Park Water Co.*, 7 R. C. D. 431.

PROPER AND ADEQUATE SERVICE OF WATER.

ACT 5502—An act to require water companies to properly and adequately serve with water the inhabitants of the territory for the service of which they have a franchise.

History: Approved June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1420.

Water companies to serve inhabitants in franchise territory.

§ 1. Any water company having a franchise to use the streets of a municipal corporation, shall properly and adequately serve with water the inhabitants of the territory for the service of which it has such franchise. If the railroad commission has jurisdiction of extensions and service in the municipal corporation it shall enforce a compliance with the foregoing requirement. If the railroad commission does not have such jurisdiction, then it shall be the duty of the governing body of such city to adopt rules and regulations to carry out this requirement. In addition to the penalties which may be provided by such governing body for failure to comply with

such regulations adopted by it, any person aggrieved by the failure of any such water company to comply with such regulations may recover, by civil action against such water company, twice the amount of damages he may sustain by reason of such failure.

Definition of "water company."

§ 2. The term "water company" as used in this act, shall be deemed to include any person, firm or private corporation engaged in the business of supplying water for domestic use within any municipal corporation.

CHAPTER 421.

WATER DISTRICTS.

References: See tits. "Conservation"; "Irrigation and Irrigation Districts"; "Water Commission"; "Waters."

CONTENTS OF CHAPTER.

- ACT 5505. COUNTY WATERWORKS DISTRICT ACT.
- 5506. COUNTY WATER DISTRICT ACT No. 1.
- 5507. COUNTY WATER DISTRICT ACT. No. 2.
- 5508. COUNTY WATERWORKS DISTRICT BONDS.
- 5509. PLEASANTON TOWNSHIP COUNTY WATER DISTRICT—VALIDATION.
- 5510. ALAMEDA COUNTY WATER DISTRICT—VALIDATION.

COUNTY WATERWORKS DISTRICT ACT.

ACT 5505—An act to provide for the formation, management and dissolution of county waterworks districts; for supplying the inhabitants thereof with water; for levying and collecting taxes on property in such districts; and for the issuance of county waterworks district bonds, and the payment thereof.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 785. Amended June 5, 1915, in effect August 8, 1915, Stats. 1915, p. 1188. The amendatory act amended the title by striking out the word "irrigation," where it appeared and inserting in lieu thereof the word "waterworks," so as to make provision, with the amendments in the body of the act, for county waterworks districts, instead of county irrigation districts.

Formation of county waterworks districts.

§ 1. Any portion of a county, containing unincorporated territory, or containing the whole or any portion of one or more incorporated cities and contiguous unincorporated territory, and not included in a county irrigation district or county waterworks district, may be formed into a county waterworks district, and provision made for the purpose of supplying the inhabitants of such district with water, in the manner and under the proceedings hereinafter described. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1189.]

Petition.

§ 2. A petition for the formation of such county waterworks district may be presented to the board of supervisors of the county in which the proposed district is located, which petition shall be signed by not less than fifty freeholders, resident within the proposed district, and shall contain:

(1) The name and boundaries of the proposed county waterworks district to be benefited by the said improvement.

(2) A general description of the improvement desired for the purpose of supplying the inhabitants of such district with water, and which may embrace any or all of the

following: The acquisition, construction, installation, completion, extension, repair or maintenance of waterworks, structures and appliances, and the acquisition, by purchase, condemnation, contract, lease, or otherwise, of lands, rights of way, water, water rights and water service, necessary or convenient for such purpose.

(3) An estimate of the cost of the proposed improvement and of the incidental expenses in connection therewith.

(4) A request that an election be called in said district for the purpose of submitting to the qualified voters thereof the proposition of forming such district and incurring indebtedness by the issuance of bonds of such district to pay the cost and expenses of the proposed improvement. Such petition must be accompanied by a map showing the exterior boundaries of the proposed district, with relation to the territory immediately contiguous thereto, and contain a general description of the proposed improvement. There shall also be filed with said petition a good and sufficient undertaking, to be approved by the board of supervisors, in double the amount of the probable cost of forming such district, conditioned that the sureties shall pay said cost, in case the formation of such district shall not be effected. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1189.]

Protests. Notice of hearing. Posting and publication of notice.

§ 3. Such petition must be presented at a regular meeting of said board of supervisors, and the board shall thereupon fix a time for hearing the same, and protests of interested parties, not less than twenty-one, nor more than thirty days after the date of presentation thereof. The clerk of the said board shall thereupon cause notices of the filing and hearing of such petition to be posted in three of the most public places in said district. Said notice shall be headed "Notice of the formation of county waterworks district No." (stating name of county in which the district is located and the number of the proposed district) in letters not less than one inch in length, and shall, in legible characters, state the fact that date of the filing of such petition, the date and hour set for hearing such petition and protests, briefly describe the proposed improvement, specify the exterior boundaries of the district to be benefited by such improvement and to be taxed to provide for such improvement, and refer to said petition, map and general description of the proposed improvement for further particulars. The said clerk shall also cause a notice, similar in substance, to be published at least once a week for two consecutive weeks in a newspaper of general circulation printed and published in the county in which the proposed district is located, and designated by said board for that purpose. Said notice must be posted and published, as above provided, at least ten days before the date set for the hearing of said petition.

Written protests. Protests sustained. Changes in boundaries. Jurisdiction deemed when.

§ 4. Any person interested, objecting to the formation of said district, or to the extent of said district, or to the proposed improvement, or to the inclusion of his property in said district, may file a written protest, setting forth such objections, with the clerk of said board at or before the time set for the hearing of said petition. The clerk of said board shall indorse on each such protest the date of its reception by him, and, at the time appointed for the hearing above provided for, shall present to said board all protests so filed with him. Said board shall hear said petition and protests at the time appointed, or at any time to which the hearing thereof may be adjourned, and pass upon the same, and its decision thereon shall be final and conclusive. If any of such protests be against the formation of said district, or against the proposed improvement, and be sustained, no further proceedings shall be had or taken pursuant to said petition, but a new petition for the same or a similar purpose

may be filed at any time. If any of such protests be against the extent of said district, or against the inclusion of property in said district, then the board shall have power to make such changes in the boundaries of the proposed district as it shall find to be proper and advisable, and shall define and establish such boundaries, but said board shall not modify such boundaries so as to exclude from such proposed district any territory which will be benefited by said improvement, nor shall any territory which will not, in the judgment of said board be benefited by said improvement be included within such proposed district.

Neither shall said board modify such boundaries except after notice of its intention so to do, given by one insertion in a newspaper of general circulation printed and published in said county and designated by said board for that purpose, describing the proposed modification, and specifying a time for hearing objections to such modification, which time shall be at least ten days after the publication of said notice. Written objections to such proposed modification may be filed with the clerk of said board by any interested person at or before the time set for hearing the same. Said board shall hear and pass upon such objections at the time appointed, or at any time to which the hearing thereof may be adjourned, and its decision thereon shall be final and conclusive. If such objections or any of them, be sustained, no further proceedings pursuant to such petition shall be taken, but a new petition for the same or a similar purpose may be filed at any time.

At the expiration of the time within which protests may be filed, if none be filed, or if protests be filed and, after hearing be denied, or at the expiration of the time within which objections to the modification of the boundaries of the district, in case such modification be proposed, may be filed, if none be filed, or if such objections be filed and, after hearing, be overruled, as above provided, then said board shall be deemed to have acquired jurisdiction to further proceed in accordance with the provisions of this act.

Election. Rate of interest.

§ 5. The board of supervisors shall, by ordinance or resolution adopted at a regular or special meeting thereof after having acquired jurisdiction to proceed, as provided above, provide for and order the holding of a special election in such proposed county waterworks district and the submission to the qualified voters thereof, of the proposition of forming such district and incurring a debt by the issuance of bonds of such district for the purposes set forth in said petition. The ordinance or resolution calling such special election shall also recite the objects and purposes for which the proposed indebtedness is to be incurred, the estimated cost of the proposed improvement, the amount of the principal of the indebtedness to be incurred therefor, and the rate of interest to be paid on said indebtedness, and shall fix the date on which said special election shall be held, the manner of holding the same, and the manner of voting for or against said proposition. The maximum rate of interest to be paid on such indebtedness shall be eight per centum per annum, payable semi-annually. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1190.]

Precincts. Polling places, etc.

§ 6. For the purposes of said election, the board of supervisors shall, in said ordinance or resolution, establish one or more precincts within the boundaries of the said county waterworks district, designate a polling place, and appoint one inspector, one judge and one clerk for each such precinct. In all particulars not recited in such ordinance or resolution, such election shall be held as provided by law for holding general elections in such county. Said ordinance or resolution ordering the holding of said election shall, prior to the date set for such election, be published five times

in a daily, or twice in a weekly or semi-weekly newspaper of general circulation printed and published in said county and designated by said board of supervisors for said purpose, and shall be posted in three of the most public places in said county waterworks district at least ten days prior to the date set for such election. No other notice of such election need be given. If at such election a majority of the votes cast are in favor of the formation of such district and the incurring of such bonded indebtedness, then the board of supervisors shall enter an order to that effect upon its minutes, declaring said district formed, and said board shall thereupon, be authorized and empowered to issue the bonds of said district for the amount provided for in such proceedings, payable out of funds of such district to be provided as in this act prescribed. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1190.]

Form of bonds, coupons, etc. Date of maturity. Denominations. Validity of signatures.

§ 7. The board of supervisors, by an order entered upon its minutes, shall, subject to the provisions of this act, prescribe the form of said bonds and of the interest coupons attached thereto. Said bonds shall be payable in the following manner: a part to be determined by said board, and which shall not be less than one-fortieth part of the whole amount of such indebtedness, shall be payable each and every year on a day and date, and at a place, to be fixed by said board, and designated in such bonds, together with the interest on all sums unpaid on such date, until the whole of said indebtedness shall have been paid; provided, however, that the board of supervisors may, in its discretion, determine and fix a date for the earliest maturity of the principal of such bonds not more than ten years from the date of the issue of such bonds, but, in this event, the whole amount of such indebtedness must be made payable in equal annual parts in not to exceed forty years from the time of contracting the same. The bonds shall be issued in such denominations as the board of supervisors may determine, except that no bonds shall be of a less denomination than one hundred dollars, nor of a greater denomination than one thousand dollars, and shall be payable on the day and at the place fixed in such bonds and with interest at the rate specified in such bonds, which rate shall not be in excess of eight per cent per annum and shall be payable semi-annually, and said bonds shall be signed by the chairman of the board of supervisors and countersigned by the auditor of said county, and the seal of said county shall be affixed thereto. The interest coupons of said bonds shall be numbered consecutively and signed by the auditor of said county by his engraved or lithographed signature. In case any such officers whose signatures or countersignatures appear on the bonds or coupons shall cease to be such officer before the delivery of such bonds to the purchaser, such signature or countersignature shall, nevertheless, be valid and sufficient for all purposes, the same as if such officer had remained in office until the delivery of the bonds.

Sale of bonds.

§ 8. The board of supervisors may issue and sell the bonds of such district, authorized as hereinabove provided, at not less than par value, and the proceeds of the sale of such bonds shall be placed in the county treasury to the credit of the proper county waterworks district fund and shall be applied exclusively to the purposes and objects mentioned in the ordinance or resolution ordering the holding of the bond election, as aforesaid; provided, that in such case of the annexation of all the territory comprising a county waterworks district to an incorporated city, as provided for in section 13 of this act, subsequent to the authorization of bonds by such district and prior to the issuance and sale thereof, the governing legislative authority of such city is hereby authorized to issue and sell said bonds. The proceeds of the sale of such bonds shall be placed in the city treasury to the credit of the

proper county waterworks district fund, and shall be applied exclusively to the purposes and objects mentioned in the ordinance or resolution ordering the holding of the bond election, as aforesaid. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1190.]

Tax levy. Principal and interest.

§ 9. The board of supervisors shall levy a tax, each year, upon the taxable property in such county waterworks district, sufficient to pay the interest on said bonds for that year, and such portion of the principal thereof as is to become due before the time for making the next general tax levy; provided, however, that if the maturity of the indebtedness created by the issue of such bonds be made to begin more than one year after the date of such issue, such tax shall be levied and collected at the time and in the manner aforesaid each year, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof on or before maturity. Such tax shall be levied and collected at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury and be used for the payment of the principal and interest on said bonds, and for no other purpose. The principal and interest on said bonds shall be paid by the county treasurer in the manner provided by law for the payment of principal and interest on bonds of such county. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1190.]

Tax for maintaining waterworks.

§ 10. The board of supervisors of any county wherein a county waterworks district has been formed under the provisions of this act, shall have the power, in any year after the establishment of such district, to levy a tax upon the taxable property in such district sufficient to pay the cost and expenses of maintaining, operating, extending and repairing the waterworks of said district for the ensuing fiscal year, and said tax shall be levied and collected at the time and in the same manner as the general tax levy for county purposes, and the revenue derived from said tax shall be paid into the county treasury to the credit of the proper fund of said district, and said board shall have the power to control and order the expenditure thereof for said purpose. Said board of supervisors shall also have power to fix and collect rates or charges for the use and supply of water furnished by the system of said county waterworks district, and to apply the receipts from said rates or charges to the expenses of the administration and government of said district and the use, operation and extension of the waterworks and water supply. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1191.]

Contracts to lowest bidder. Contract need not be made. Improvements along public roads.

§ 11. All contracts for furnishing the labor, materials or supplies required for any improvement mentioned in this act, shall be let to the lowest responsible bidder. The board of supervisors of the county shall advertise for two or more days in a newspaper of general circulation, printed and published in such county, inviting sealed proposals for furnishing the labor, materials and supplies for the proposed improvement before any contract shall be made therefor. The board shall have the right to require such bonds as it may deem best from the successful bidder, to insure the faithful performance of the contract, and shall also have the right to reject any and all bids; provided, however, that nothing herein contained shall be construed as prohibiting such county itself, and, when ordered by the board of supervisors thereof, it shall have power, to make the proposed improvement without a contractor therefor, and to purchase the materials and supplies, and employ the labor necessary for such

purpose; and provided, further, that any improvement for which bonds are voted under the provisions of this act, shall be made in conformity with the general description of the proposed improvement thereof provided for in section two hereof. Any improvement provided for in this act may be located, constructed and maintained in, along or across any public road or highway, or publicly owned right of way in the county, in such manner as to afford security for life and property; but the board of supervisors of the county shall restore, or cause to be restored, such road or highway, or publicly owned right of way to its former state, as near as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1191.]

Rules and regulations.

§ 12. The board of supervisors of any county wherein any such county waterworks district is situated, shall have power to make and enforce all rules and regulations necessary for the administration and government of such district, and for the acquisition, purchase or construction, the use and operation of the waterworks thereof; to appoint or employ all needful agents, superintendents and engineers to properly look after the performance of any work provided for in this act; and to perform all other acts necessary or proper to accomplish the purposes of this act. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1193.]

In case of annexation of territory. Annexation of major part of territory.

§ 13. The title to all property which may have been acquired for a county waterworks district, created under the provisions of this act, shall be vested in the county wherein such county waterworks district is located; provided, that whenever all of the territory in such county waterworks district shall be annexed to or otherwise included within, any municipal corporation owning works for supplying the inhabitants thereof with water, then such county waterworks district shall be deemed dissolved, but said municipal corporation shall have authority to issue and sell any bonds of such district theretofore voted but not issued and sold, as provided in section eight of this act. Upon such annexation, the property of such county waterworks district shall thereupon become the property of such municipal corporation and shall become a part of, and be used in connection with the works so owned by said municipal corporation; and such municipal corporation and the proper officers thereof shall, as to such property, and as to the levy and collection of taxes to meet the payments of principal and interest on outstanding bonds of such district and the making of such payments, have and exercise the powers and perform the duties vested in and imposed upon the said county, and the board of supervisors and other officers thereof, prior to such annexation or inclusion. All money in the county treasury to the credit of any fund of such county waterworks district shall, upon the annexation or inclusion of such territory, as above provided, be forthwith transferred to the treasury of said municipal corporation and be used for the purposes for which the same was available prior to such transfer and none other.

Whenever the major portion of the territory of a county waterworks district, created under the provisions of this act, shall be annexed to, or otherwise included within any one municipal corporation, owning works for supplying the inhabitants thereof with water then the board of supervisors of the county may lease to said municipal corporation, for periods not exceeding five years each, that portion of the distributing system of said county waterworks district which may be in said portion of said district annexed to or included in such municipal corporation. Such municipal corporation may use said leased distributing system for the purpose of distributing water directly to individual consumers thereon, with the same power of regulating the service of water through the same, and of charging and collecting for said service,

as if said leased distributing system were part of the municipally owned water plant of said municipal corporation. The board of supervisors shall, in any such lease, reserve the right to use said leased distributing system, for the benefit of that portion of the county waterworks district not annexed to or included in said municipal corporation, to the extent that said leased system is essential to the efficient operation of the balance of the system. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1195.]

Dissolution of district.

§ 14. Any such county waterworks district may, except as otherwise provided in this act, be dissolved by the board of supervisors as hereinafter provided. Upon receiving a petition signed by fifty or more freeholders and residents of such county waterworks district, requesting the dissolution of such district, the board of supervisors shall fix a time for hearing such petition, which shall be not less than ten nor more than thirty days after the receipt of such petition, and shall, at least five days prior to the time so fixed, publish notice of such hearing by one insertion in a daily, weekly or semi-weekly newspaper printed, published and circulated in said county. At the time appointed for such hearing, or at any time to which the same may be adjourned, the board of supervisors shall hear and pass upon such petition and may grant or deny the same, and its decision thereon shall be final and conclusive. If such petition be granted the board of supervisors shall, by ordinance or resolution, order the dissolution of said district, and such district shall thereby be dissolved; provided, that if at the time of the dissolution of said district there be any outstanding bonded or other indebtedness of such district, then taxes for the payment of such bonded or other indebtedness shall be levied and collected the same as if such district had not been dissolved. [Amendment of June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1194.]

Alternative method provided.

§ 15. This act shall not affect any other act or acts relating to the same or a similar subject, but is intended to provide an alternative method of procedure governing the subject to which it relates. When proceeding under the provisions of this act its provisions and none other shall apply.

Act to be liberally construed.

§ 16. The provisions of this act shall be liberally construed to effect the purposes thereof.

Change of name. Proceedings not affected. Title of act.

§ 17. The name of any county irrigation district, heretofore organized under the provisions of this act, is hereby changed to "..... county waterworks district No." retaining the same county name and the same number heretofore a part of its name.

Any proceedings heretofore taken under the provisions of this act, and any bond issue heretofore voted by any county irrigation district, under the provisions of this act, whether said bond issue shall have been issued and sold, or not, shall not be affected in any manner, except as in this act provided, by reason of the change of name provided for herein, or by reason of any amendment or change of this act made by the amending act, providing, among other amendments, this section seventeen; but any such proceedings and any such bond issue shall continue and proceed without interruption, in accordance with the provisions of this act amended.

This act may be referred to as the "county waterworks district act." [New section added June 5, 1915. In effect August 8, 1915, Stats. 1915, p. 1194.]

1. **Constitutional law—Act not unconstitutional.**—The county irrigation district act is not unconstitutional because the tax therein provided for is imposed upon all the property of the district irrespective of benefits.—Bliss v. Hamilton, 171 Cal. 123, 133, 152 Pac. 303.

2. **Same—Section 18, article XI, constitution not to be extended to county irrigation districts.**—Section 18, article XI, of the constitution, is limited in its application to the corporations named therein, counties, cities, towns, townships, boards of education, and school districts, and can not be extended to a county irrigation district.—Bliss v. Hamilton, 171 Cal. 123, 132, 152 Pac. 303.

3. **Same—Elections—Section 25, article IV, constitution, subdivision 11.**—The elections referred to in subdivision 11, section 25, article IV, of the constitution, are the ordinary elections held to choose civil officers of the state and local subdivisions, and has no application to the elections provided for in the county irrigation district act.—Bliss v. Hamilton, 171 Cal. 123, 132, 152 Pac. 303.

4. **Petition—Sufficient.**—A petition to form a county irrigation district under the act of 1913 (785) stating that the name should be "Los Angeles County Irrigation District Number (—)," the clerk of the board of supervisors, after filing, inserting the numeral "3" before presenting it to the board, making the name read "Los Angeles County Irrigation District Number (3), by which the district was subsequently known in all proceedings, held a sufficient compliance with the act as to statement of name of district.—Bliss v. Hamilton, 171 Cal. 123, 129, 152 Pac. 303.

5. **Notice—Filed with petition.**—Where the original notice of the petition and protests was ineffectual because of its failure to specify correctly the boundaries of the district, the board of supervisors have the power to vacate all proceedings and fix a new date and give a new notice; and an undertaking filed prior to the second notice, though not at the filing of the petition, as the act provides, is deemed to be filed "with said petition" in the sense of the act.—Bliss v. Hamilton, 171 Cal. 123, 130, 152 Pac. 303.

6. **Same—Protests disregarded when filed after time for hearing expired.**—Where the notice fixed the time of hearing at 10 a. m., October 13, 1914, the board of supervisors were justified in disregarding protests filed subsequent to that hour.—Bliss v. Hamilton, 171 Cal. 123, 131, 152 Pac. 303.

7. **Same—Hearing, time of.**—The requirements of section 3 that the time shall be set for the hearing not less than twenty-one days from the date of the order, and those in regard to the notice, are mandatory, while the provision fixing the maximum of thirty days after date of presentation of the petition is directory merely.—Bliss v. Hamilton, 171 Cal. 123, 130, 152 Pac. 303.

8. **Bonds of district not indebtedness of county.**—The bonds provided for in the county irrigation district are in no sense indebtedness of the county in which the irrigation district is situated, or of any of the subdivisions or districts in said county which are specified in section 18, article XI, of the constitution.—Bliss v. Hamilton, 171 Cal. 123, 132, 152 Pac. 303.

COUNTY WATER DISTRICT ACT, NO. 1.

ACT 5506—An act to provide for the incorporation and organization and management of county water districts, and to provide for the acquisition of water rights or construction thereby of waterworks and for the acquisition of all property necessary therefor, and also to provide for the distribution and sale of water by said districts.

History: Approved June 10, 1913. In effect August 10, 1913. Stats. 1913, p. 1049. Amended April 7, 1915, in effect August 8, 1915, Stats. 1915, p. 26; May 4, 1917, in effect July 27, 1917, Stats. 1917, p. 225; May 23, 1919, in effect July 23, 1919, Stats. 1919, p. 816.

Organization of county water districts.

§ 1. A county water district may be organized and incorporated and managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

Same.

§ 2. The people of any county, or city and county, or portion of a county, or city and county, whether such portion includes unincorporated territory or not, in the state of California, having a population of not less than one thousand inhabitants, may organize a county water district under the provisions of this act by proceeding as herein provided.

Petition. Boundaries of district. Publication.

§ 3. A petition, which may consist of any number of separate instruments, shall be presented at a regular meeting of the board of supervisors of the county in which the proposed water district is located, signed by the registered voters within the boundaries of the proposed water district, equal in number to at least ten per centum of the number of votes cast in said proposed county water district for the office of governor of this state at the last general election prior to the presenting of the petition; provided, that where one or more municipal corporations or part thereof is included in such proposed water district, such petition must be signed by at least ten per centum of the qualified electors of each such municipal corporations or part thereof and of the unincorporated territory included in such proposed water district so voting at such election. Such petition shall set forth and describe the proposed boundaries of such water district, and shall pray that the same be incorporated under the provisions of this act, and the text of such petition shall be published for at least two weeks before the time at which the same is to be presented in at least one, but not to exceed three, newspapers printed and published in such county, together with a notice stating the time of the meeting at which same will be presented. When contained upon more than one instrument, one copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated.

Time of consideration. Final hearing.

With such publication there shall also be published a notice of the time of the meeting of the board when such petition will be considered and that all persons interested therein may then appear and be heard. At such time the board of supervisors shall hear the petition and those appearing thereon together with such written protests as shall have been filed with the clerk of the board prior to such hearing by or on behalf of owners of taxable property situated within the boundaries of the proposed district and may adjourn such hearing from time to time, not exceeding four weeks in all. No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures, thereto shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto. On the final hearing said board shall make such changes in the proposed boundaries as may be deemed advisable and shall define and establish such boundaries. But said board shall not modify said boundaries so as to exclude from such proposed district any territory which would be benefited by the formation of such district; nor shall any lands which will not, in the judgment of said board, be benefited by such district be included within such proposed district. Any person whose lands are benefited by such district may upon his application, in the discretion of said board, have such lands included within said proposed district.

Proposition submitted. Who may vote. Certificate of secretary of state. District deemed incorporated. Must hear testimony. Suit commenced within one year. Election.

Upon such hearing of said petition, the board of supervisors shall determine whether or not said petition complies with the requirements of the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of supervisors. A finding of the board of supervisors in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of California upon suit commenced by the attorney general. Any such suit must be commenced within one year after the order of the board of supervisors declaring such district organized as herein pro-

vided, and not otherwise. Upon the final determination of the boundaries of the district the board of supervisors shall give notice of an election to be held in said proposed water district for the purpose of determining whether or not the same shall be incorporated, the date of which election shall be not more than sixty days from the date of the final hearing of such petition. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words "——— county water district"), and this notice shall be published at least two weeks prior to such election in at least one, but not to exceed three, newspapers printed and published in said county. At such election the proposition to be submitted shall be: "Shall the proposition to organize ——— county water district under (naming the chapter containing this act) of the acts of the fortieth session of the California legislature and amendments thereto be adopted?" And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of electors under the general election laws of the state. Within four days after such election the vote shall be canvassed by the board of supervisors. If a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory included in such proposed water district shall be in favor of organizing such county water district, said board shall by an order entered on its minutes declare the territory enclosed within the proposed boundaries duly organized as a county water district under the name theretofore designated, and the county clerk shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county in which such district is situated, each, a certificate stating that such a proposition was adopted. Upon the receipt of such last mentioned certificate the secretary of state shall, within ten days, issue his certificate reciting that the county water district (naming it) has been duly incorporated according to the laws of the state of California. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such county water district is situated. From and after the date of such certificate, the district named therein shall be deemed incorporated as a county water district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor of said proposition the organization fails but without prejudice to renewing proceedings at any time in the future. [Amendment of April 7, 1915. In effect August 8, 1915, Stats. 1915, p. 26.]

Election of directors. Term of office.

§ 4. At an election to be held within such water district under the provisions of this act and the laws governing general elections not inconsistent herewith, the county water district thus organized shall proceed within ninety days after its formation to the election of a board of directors consisting, if there are no municipalities within the boundaries of said district, of five members. In all cases where the boundaries of such water district include any municipality or municipalities, said board of directors, in addition to said five directors to be elected as aforesaid, shall consist of one additional director for each one of said municipalities within such county water district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed; and if there be any unincorporated territory within said water district, of one additional director, to be appointed by the said board of supervisors. Any director so appointed need not be an elector or resident of said district. All directors, elected or appointed, shall hold office until

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to, at No., street,, California.

Clerk to furnish forms.

(4) It shall be the duty of the county clerk to furnish upon application a reasonable number of forms of individual certificates of the above character.

Certificates.

(5) Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector residing within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, nor, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public or a verification deputy, as provided for in this section. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

Verification deputies.

(6) Verification deputies, under this section, must be qualified electors of such county water district, and shall be appointed by the county clerk upon application in writing, signed by not less than five qualified electors of such county water district. The application shall set forth that the signers thereto desire to procure the necessary signatures of electors for the nomination of candidates for office in said county water district at an election therein specified, and that the applicants desire the person or persons whose names and addresses are given appointed as verification deputies, who shall upon appointment be authorized and empowered to take the oath of verification of the signers of petitions of nomination. Such verification deputies need not use a seal, and shall not have power to take oaths for any other purposes whatsoever, and their appointments shall continue only until all petitions of nomination, under this section, shall have been filed by the county clerk.

Presentation of petition.

(7) A petition of nomination, consisting of not less than twenty-five individual certificates for any one candidate, may be presented to the county clerk not earlier than forty-five days nor later than thirty days before the election. The county clerk shall indorse thereon the date upon which the petition was presented to him.

Examination of petition.

(8) When a petition of nomination is presented for filing to the county clerk, he shall forthwith examine the same, and ascertain whether or not it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing designate on said petition the defect or omission or reason why such petition can not be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk as in the first instance. The clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the board of supervisors shall provide extra help to enable the clerk to perform satisfactorily and promptly the duties imposed by this section.

Signer may withdraw name.

(9) Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county clerk a verified revocation of his signature before the filing of a petition by the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

Candidate may withdraw.

(10) Any person whose name has been presented under this section as a candidate may, not later than twenty-five days before the day of election, cause his name to be withdrawn from nomination by filing with the county clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than twenty-five days prior to such election.

Petition filed.

(11) If either the original or amended petition of nomination be found sufficiently signed as hereinbefore provided, the clerk shall file the same twenty-five days before the date of the election. When a petition of nomination shall have been filed by the clerk it shall not be withdrawn or added to and no signature shall be revoked thereafter.

Petitions preserved.

(12) The county clerk shall preserve in his office for a period of two years, all petitions of nomination and all certificates belonging thereto, filed under this section.

List of candidates.

(13) Immediately after such petitions are filed, the county clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of supervisors shall cause said certified list of names and the offices to be filled, to be published in the proclamation calling the election at least ten successive days before the election in at least one but not more than three newspapers of general circulation published in the county in which such municipal water district is located. Such proclamation shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

Ballots. Form.

(14) The county clerk shall cause the ballots to be printed and bound and numbered as provided by said general state law, except as otherwise required in this act. The ballots shall contain the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

GENERAL (OR SPECIAL) DISTRICT ELECTION.

..... County Water District,
(Inserting date thereof.)

Instructions to Voters: To vote, stamp or write a cross (X) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the inspector of election, and obtain another.

How printed.

(15) All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguished one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right-hand side for questions to be voted upon at municipal water district elections, as provided for under this act. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

No candidate omitted.

(16) The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided shall be omitted from the ballot.

Office.

(17) The offices to be filled shall be arranged in the following order: "For director vote for (giving number)."

Voting squares.

(18) Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

Spaces below printed names.

(19) Half-inch spaces shall be left below the printed names of candidates for each office equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

Sample ballots.

(20) The county clerk shall cause to be printed sample ballots, identical with the ballot to be used at the election, and shall furnish copies of the same on application to registered voters at his office at least five days before the date fixed for such election, and shall mail one such ballot to each voter entitled to vote at such election, so that all of said sample ballots shall have been mailed at least three whole days before said election.

Votes necessary to elect.

(21) In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office, shall be declared elected; in case there are two or more persons to be elected to an office, as that of director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected; provided however, that no person shall be declared elected to any office at such first election unless the number of votes received by him shall be greater than one-half the number of ballots cast at such election.

First election considered primary.

(22) If at any election held as above provided there be any office to which the required number of persons was not elected, then as to such office the said first election shall be considered to have been a primary election for the nomination of candidates, and a second election shall be held to fill said office. The candidates not elected at such first election, equal in number to twice the number to be elected to any given office, or less if so there be, who receive the highest number of votes for the respective offices at such first election, shall be the only candidates at such second election; provided, that if there be any person who, under the provisions of this sub-

division, would have been entitled to become a candidate for any office, except for the fact that some other candidate received an equal number of votes therefor, then all such persons receiving such equal number of votes shall likewise become candidates for such office. The candidates equal in number to the persons to be elected who shall receive the highest number of votes at such second election shall be declared elected to such office.

Second election.

(23) The said second election, if necessary to be held, shall be held three weeks after the first election.

Provisions governing.

(24) All the provisions and conditions above set forth as to the conduct of an election, so far as they may be applicable, shall govern the second election, except that notice of election need be published twice only; and provided, also, that the same precincts and polling places shall, if possible, be used.

Failure to qualify.

(25) If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as hereinafter provided.

Mode of appointment by mayor.

(26) The mode of appointment of director or directors by a mayor, or by a board of supervisors shall be by certificate of appointment signed by said mayor or mayors, or issued by said board of supervisors, and transmitted to the board of directors of said county water district.

Informality not to invalidate.

(27) No informality in conducting county water district elections shall invalidate the same, if they have been conducted of directors to fill a vacancy, or appointed by a mayor or by this act.

General law to govern.

§ 6. The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all water district elections, except as in this act otherwise provided; provided, that the board of supervisors shall canvass the returns of the first election and that thereafter, except as herein provided, the board of directors shall meet as a canvassing board and duly canvass the returns within four days after any water district election, including any water district bond election.

Officers subject to recall.

§ 7. Every incumbent of an elective office, whether elected by popular vote for a full term, or elected by the board of directors to fill a vacancy, or appointed by a mayor or by said board of supervisors for a full term, is subject to recall by the voters of any county water district organized under the provisions of this act, in accordance with the recall provisions of the general laws of the state applicable to officers of counties.

Organization of board.

§ 8. The board of directors shall be the governing body of such county water district. It shall hold its first meeting on the sixth Monday after the first general election for the election of directors as herein provided; it shall choose one of its members

president, and shall thereupon provide for the time and place of holding its meetings and the manner in which its special meetings may be called. All legislative sessions of the board of directors whether regular or special shall be open to the public. A majority of the board of directors shall constitute a quorum for the transaction of business. The board of directors shall establish rules for its proceedings.

Ordinances. Enacting clause. Compensation.

§ 9. The board of directors shall act only by ordinance or resolution. The ayes and noes shall be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. No ordinance or resolution shall be passed or become effective without the affirmative votes of at least a majority of the members of the board. The enacting clause of all ordinances passed by the board shall be in these words: "Be it ordained by the board of directors of county water district as follows:" All resolutions and ordinances shall be signed by the president of the board of directors and attested by the secretary. Each of the members of the board of directors shall receive for each attendance at the meetings of the board ten dollars, and shall receive no other compensation. No director, however, shall receive pay for more than three meetings in any calendar month. Any vacancy in the board of directors, whether the vacant office is elective or appointive, shall be filled by the remaining directors.

General manager, secretary and auditor.

§ 10. The board of directors shall at its first meeting, or as soon thereafter as practicable, appoint, by a majority vote, a general manager, a secretary, and an auditor. No director shall be eligible to the office of general manager, secretary, or auditor. The general manager, secretary, and auditor, shall receive such compensation as the board of directors shall determine, and each shall serve at the pleasure of the board.

Informality not to invalidate.

§ 11. No informality in any proceeding or informality in the conduct of any election, not substantially affecting adversely the legal rights of any citizen, shall be held to invalidate the incorporation of any county water district, and any proceeding wherein the validity of such incorporation is denied shall be commenced within three months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said county water district, and all proceedings in respect thereto, shall be held to be valid and in every respect legal and incontestable.

Powers of district.

§ 12. Any county water district incorporated as herein provided, shall have power:

1. To have perpetual succession;

Sue and be sued.

2. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;

Adopt seal.

3. To adopt a seal and alter it at pleasure;

Hold property.

4. To take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers;

Acquire waterworks.

5. To acquire, by purchase, lease or otherwise, water rights, waterworks, canals, conduits, reservoirs, storage sites, watersheds, works, machinery, lands, rights and

privileges, useful or necessary to convey, supply, store, or otherwise, make use of water for irrigation, power, or other useful purpose, and to operate and maintain such water rights, waterworks, canals, conduits, reservoirs, storage sites, watersheds, works, machinery, lands, rights, and privileges, for the uses aforesaid, for the benefit of the district;

Store water.

6. To store water for the benefit of the district; and to conserve water for future use and to appropriate, acquire and preserve water and water rights and for this purpose to sue, intervene and compromise, in the name of the district, and assume the costs of litigation involving the ownership of waters or water rights within the district and those used and useful for the purposes of the district or of any of the lands situated therein; to maintain and defend actions to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters being used for irrigation of lands within the district or which are a benefit essentially common to the lands within the district or its inhabitants; and to maintain and defend actions to prevent any such interference with the aforesaid waters as may endanger the inhabitants or lands of the district;

Lease waterworks.

7. To lease of and from any person, firm, or public or private corporation, with the privilege of purchase, or otherwise, existing water rights, waterworks, canal, or reservoir systems; and to carry on and maintain the same; also to sell water, or the use thereof, for irrigation, power, or other useful purposes, and whenever there is a surplus, sell, or otherwise, dispose of the same, to municipalities, or towns, or to consumers, located within or without the boundaries of the district;

Right of eminent domain.

8. To have and exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use, to take any property necessary to supply the district or any portion thereof with water, whether such property be already devoted to the same use or otherwise, and may condemn any existing water rights, canals, reservoirs, storage sites, watersheds, waterworks or systems, or any portion thereof owned by any person, firm or corporation; provided, that property and water rights of municipal corporations shall not be subject to the provisions of this section. In proceedings relative to the exercise of such right, the district shall have the same rights, powers and privileges as a municipal corporation;

Borrow money.

9. To borrow money and incur indebtedness and to issue bonds or other evidences of such indebtedness; also to refund or retire any indebtedness or lien that may exist against the district or property thereof;

Levy taxes.

10. To cause taxes to be levied for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided;

Make contracts.

11. To make contracts, to employ labor and to do all acts necessary for the full exercise of the foregoing powers. [Amendment of May 23, 1919. In effect July 23, 1919, Stats. 1919, p. 817.]

Powers exercised by board.

§ 13. The powers herein enumerated shall, except as herein otherwise provided, be exercised by the board of directors above provided for and elected and appointed as described herein.

Duties of officers of board. Depositary of funds. Officers' bonds.

§ 14. The president shall sign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The secretary shall countersign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The secretary shall give his full time during office hours to the affairs of the district. The general manager shall have full charge and control of the maintenance, operation and construction of the waterworks or waterworks system of said water district, with full power and authority to employ and discharge all employees and assistants at pleasure, prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform such other duties as may be imposed upon him by the board of directors. The general manager shall report to the board of directors in accordance with such rules and regulations as they may adopt. The auditor shall be charged with the duty of installing and maintaining a system of auditing and accounting that shall completely and at all times show the financial condition of the district. He shall draw warrants to pay demands made against the district when such demands have been first approved by at least three members of the board of directors and by the general manager. The board of directors shall also designate a depositary or depositaries to have the custody of the funds of the district, all of which depositaries shall give security sufficient to secure the district against possible loss, and who shall pay the warrants drawn by the auditor for demands against the district under such rules as the directors may prescribe. The general manager, secretary and auditor, and all other employees or assistants of said district who may be required so to do by the board of directors, shall give bonds to the district conditioned for the faithful performance of their duties as the board of directors from time to time may provide.

Bonded indebtedness. Election. Notice. Publication. Canvass of returns.

§ 15. Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness, it shall, by resolution, so declare and state the proposition to be submitted to the electors, the purpose for which the proposed debt is to be incurred, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty years, and the maximum rate of interest to be paid, which shall not exceed seven per cent per annum. The board of directors shall fix a date upon which an election shall be held for the purpose of authorizing said bonded indebtedness to be incurred. It shall be the duty of the board of directors to provide for holding such special election on the day so fixed and in accordance with the general election laws of the state so far as the same shall be applicable, except as herein otherwise provided. Such board of directors shall give notice of the holding of such election, which notice shall contain the resolution adopted by the board of directors of the water district, boundaries of precincts, the location of polling places, and the names of the officers selected to conduct the election, who shall consist of one judge, one inspector and two clerks in each precinct. Such notice shall be published for two weeks in at least one newspaper and not more than three newspapers published in such water district, which newspaper or newspapers shall be designated by the board of directors; and if there is no newspaper printed in such water district, then by posting such notice in three public places therein. All the expenses of holding such election shall be borne by the district. The returns of such election shall be made, the votes canvassed by said board of directors on the first Monday fol-

lowing said election, and the results thereof ascertained and declared in accordance with the general election laws of the state so far as they may be applicable, except as herein otherwise provided. The secretary of the board of directors, as soon as the result is declared, shall enter in the records of such board a statement of such results. No irregularities or informalities in conducting such election shall invalidate the same, if the election shall have otherwise been fairly conducted. In all respects not otherwise provided for herein said election shall be called, managed and directed as is by law provided for general elections in this state applicable thereto, except as herein otherwise provided.

Two-thirds vote necessary.

§ 16. If from such returns it appears that more than two-thirds of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as it may deem to be to the public interest.

Value of bonds issued.

§ 17. Any bonds issued by any district organized under the provisions of this act are hereby given the same force, value and use as bonds issued by any municipality and shall be exempt from all taxation within the state of California.

Power to construct works across streets, etc. Right of way through state lands.

§ 18. The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said works may intersect or cross; provided, such works are constructed in such manner as to afford security for life and property, and said board of directors shall restore the crossings and intersections to their former state as near as may be, or in manner not to have impaired unnecessarily their usefulness. Every company whose right of way shall be intersected or crossed by said works shall unite with said board of directors in forming said intersections and crossings and grant the rights therefor. The right of way is hereby given, dedicated and set apart to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state, and to have the same rights and privileges appertaining thereto as have been or may be granted to the municipalities within the state.

Water rates.

§ 19. The board of directors shall fix all water rates, subject to the power of the state railroad commission to fix rates for water furnished to municipal corporations and their inhabitants, and shall through the general manager collect the charges for the sale and distribution of water to all customers. [Amendment of April 7, 1915. In effect August 8, 1915, Stats. 1915, p. 28.]

Rate to pay operating expenses.

§ 20. The board of directors in the furnishing of water shall fix such rate as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and, so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due; it being the intention of this section to require the district to pay the interest and principal of its bonded debt from the revenues of the district.

Supervisors to levy water tax.

§ 21. If, from any cause the revenues of the district shall be inadequate to pay the principal or interest on any bonded debt as it becomes due, or any other expenses

or claims against the district, then the board of directors must at least fifteen days before the first day of the month in which the board of supervisors of the county or city and county in which such water district is located is required by law to levy the amount of taxes required for county or city and county purposes and furnish to the board of supervisors and to the auditor respectively an estimate in writing of the minimum amount of the money required by the district for that purpose, and the board of supervisors of such county or city and county, must annually, at the time and in the manner of levying other county or city and county taxes, and until all such claims are fully paid levy and cause to be collected a tax to be known as the "_____ county district water tax." [Amendment of April 7, 1915. In effect August 8, 1915, Stats. 1915, p. 29.]

Levy and collection of tax.

§ 22. Such tax shall be levied on all property in the territory comprising the district and shall be collected at the same time and in the same manner and form as county taxes are collected and when collected, shall be paid to the district for which such tax was levied and collected. Such tax shall be a lien on all the property within the territory comprising the district and of the same force and effect as other liens for taxes and its collection shall be enforced by the same means as provided for in the enforcement of liens for state and county taxes.

Initiative.

§ 23. Ordinances may be passed by the electors of any county water district organized under the provisions of this act in accordance with the methods provided by the general laws of the state for direct legislation applicable to counties.

Referendum.

§ 24. Ordinances may be disapproved and thereby vetoed by the electors of any such county water district by proceeding in accordance with the methods provided by the general laws of the state for protesting against legislation by counties.

Adding to district.

§ 25. Any portion of a county or any municipality, or both, may be added to any county water district organized under the provisions of this act, at any time, upon petition presented in the manner herein provided for the organization of such water district, which petition may be granted by ordinance of the board of directors of such water district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such water district and in the proposed addition, at a general or special election held as herein provided, within seventy days after the adoption of such ordinance. If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such water district is located. Upon the receipt of such last mentioned certificate the secretary of state shall, within ten days, issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such county water district is situated. From and after the date of such certificate the territory named therein shall be deemed added to and form a part of said county water district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto.

Definitions.

§ 26. Nothing in this act shall be so construed as repealing or in any wise modifying the provisions of any other act relating to water or the supply of water to, or the acquisition thereof by counties or municipalities within this state. The term

"municipality," as used in this act, shall include a consolidated city and county, city or town, and shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing and those hereafter organized for municipal purposes within such water districts. The term "county" shall be understood and construed to include "city and county." In municipalities in which there is no mayor the duty imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees or other chief executive of the municipality. The word "district" shall apply, unless otherwise expressed or used, to a water district formed under the provisions of this act, and the word "board" and the words "boards of directors" shall apply to the board of directors of such district. Any county water district heretofore organized under the provisions of the act of which this act is amendatory shall enjoy all the powers herein granted and the organization of such districts and all proceedings leading to such organization are hereby affirmed and validated and such districts are hereby declared to be duly organized and incorporated. [Amendment of April 7, 1915. In effect August 8, 1915, Stats. 1915, p. 29.]

Duties performed by registrar of voters.

§ 27. Whenever a registrar of voters in any county, or city and county, shall be appointed, or elected, under the provisions of law, or charter providing therefor, the duties imposed on the county clerk by the provisions of this act shall be performed by the registrar of voters with like effect, and in such case all papers or documents required to be filed with the county clerk shall be filed with said registrar of voters when so appointed or elected.

Exclusion of territory. Petition. Contents. Duties of secretary. Hearing. Order excluding lands.

§ 28. Any territory, included within any county water district formed under the provisions of this act, and not benefited in any manner by such district, or its continued inclusion therein, may be excluded therefrom by order of the board of directors of such district upon the verified petition of the owner or owners in fee of lands whose assessed value, with improvements, is in excess of one-half of the assessed value of all the lands, with improvements, held in private ownership in such territory. Said petition shall describe the territory sought to be excluded and shall set forth that such territory is not benefited in any manner by said county water district or its continued inclusion therein, and shall pray that such territory may be excluded and taken from said district. Such petition shall be filed with the secretary of the water district and shall be accompanied by a deposit with such secretary of the sum of one hundred dollars, to meet the expenses of advertising and other costs incident to the proceedings for the exclusion of such territory, including the cost of recording a certified copy of the order hereinafter provided for, any unconsumed balance to be returned to the petitioner. Upon the filing of such petition with the secretary of the water district he shall call a meeting of the board of directors of the district at a time not less than twenty-five days nor more than fifty days after the filing of the petition and cause a notice of the filing of such petition to be published for at least two weeks in some newspaper of general circulation within said district, if there be one, and if not, in some newspaper of general circulation published in the county in which the district is situated. Such notice shall also state the date of the filing of such petition and that the same will come on for hearing before the board of directors of the district and shall state the time of the hearing and the place thereof, which shall be the regular meeting place of the board of directors of the district; provided, that the board may adjourn the hearing to a more convenient meeting place within the district. Any landowner or taxpayer within the district shall have the right to appear at said

hearing, either in behalf of or in opposition to the granting of said petition. Said petition shall come on for hearing before the board of directors of the district at the time and place specified in the notice of hearing. If upon such hearing the board of directors determines that it is for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, or if it appears that such lands, or some portion thereof, will not be benefited by their continued inclusion in the district, then the board of directors shall make an order that such lands, or such portion thereof, be excluded from the district, such order to describe specifically the lands so excluded. From the time of the making of such order the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded. A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county in which the district is situated and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby.

Directors may institute proceedings for exclusion. Hearing. Referendum.

The board of directors of any county water district formed under the provisions of this act may itself initiate the proceedings for the exclusion from the district of any land or lands which it may not be for the best interests of the district to be included, or which may no be benefited in any manner by their continued inclusion therein. Such proceedings shall be initiated by the board of directors by the passage of a resolution requiring all persons interested to appear and show cause before the board of directors, at a time and place specified, why such lands, describing them, should not be excluded from the district and fixing a time and place for such hearing and directing the secretary of the district to give notice of the passage of such resolution and of such hearing. Upon the passage of such resolution the secretary of the district shall give notice thereof and of the time and place of such hearing in the manner hereinbefore prescribed for notice of hearing upon petition by a landowner or landowners, and thereafter all proceedings shall be had in the manner and with the effect herein provided for proceedings upon a petition by a landowner or landowners. The time of hearing fixed by the board of directors by its resolution hereinbefore mentioned shall be not less than twenty-five days nor more than fifty days after the passage of such resolution and the place of hearing so fixed shall be a convenient place within the district; provided, that the final action of the board of directors under this section shall be subject to the referendum by the electors of the water district according to section twenty-four of this act. [New section added May 14, 1917. In effect July 27, 1917, Stats. 1917, p. 225.]

1. Notice of hearing of protests—Place of meeting.—A notice of hearing of a petition to organize a county water district under this act, giving the time of hearing, and reciting that it would be held at the office of the board of supervisors in the county court house, was held sufficient where the protesting land owner was actually present at the meeting and participated therein, although the board did not meet at the county court house, but at its regular meeting place across the street from the court house in the hall of records, one of the group of buildings in which the official activities of the county were carried on.—*Dumbarton, etc., Co. v. Murphy*, 32 Cal. App. 626, 163 Pac. 866.

2. Inclusion of land not included in the petition. Must be by petition of owner.—The act precludes the inclusion by the supervisors in a county water district of land not included within the boundaries of the district as set forth in the petition initiating the proceeding, and in the notice of proposed presentation published, except upon the application of the land to be included.—*People ex rel. Mastick v. Lake, etc., District (Cal.)*, 190 Pac. 630.

3. Same—Same.—Under the authority of section 3 of the act to make changes, the supervisors, may make such changes in the proposed boundaries as they may deem advisable, within the specified limitations, but they can not add land to the proposed dis-

tract except on the owner's application.—*People ex rel. Mastick v. Lake etc., District, (Cal.)* 190 Pac. 630.

of supervisors as to benefits on conflicting evidence can not be reviewed on certiorari.—*Dumbarton, etc., Co. v. Murphy*, 32 Cal. App. 626, 163 Pac. 866.

4. **Findings as to benefits on conflict evidence, conclusive.**—A finding of the board

COUNTY WATER DISTRICT ACT NO. 2.

ACT 5507—An act providing for the organization of water districts by the board of supervisors of the different counties of the state upon petition therefor by the landowners; providing for the joint government and control thereof by the landowners thereof and the board of supervisors of the county in which the same are formed; providing for the duties in connection therewith of the county officials of each county in which any of the lands contained in said district are located; providing for the acquisition and construction by said district of irrigation works, for the irrigation of the lands embraced therein and for the distribution thereby of water for irrigation purposes; providing for the payment of the debts thereof by a tax on the lands embraced therein; providing for the issuance and sale of bonds thereby; providing that said bonds may be investigated by an appointive board of three hydraulic engineers; providing for the approval of said bonds by the state superintendent of banks in case said investigation is favorably reported and that thereafter said bonds may be lawfully purchased, or received in pledge as security for any money or deposits or for the performance of any act, by banks, banking institutions, insurance companies, trust companies, guardians, executors, administrators and special administrators; providing in certain cases for the transfer of districts from the supervision of one county board of supervisors to another; and providing for the dissolution of said districts for non-user of corporate power.

History: Approved June 13, 1913. In effect August 10, 1913. Stats. 1913, p. 815. Amended May 31, 1917, in effect July 30, 1917, Stats. 1917, p. 1408.

Organization of water districts. Petition. Evidence of title.

§ 1. The holders of title or evidence of title to a majority in area of lands which are susceptible of irrigation from a common source and by the same system of works may propose the organization of a water district by signing and presenting to the board of supervisors of the county in which the lands or the greater part thereof are situated, at any of its regular meetings, a petition setting forth the following facts,—that they propose to form under the provisions of this act a water district to be known as the “(.....) Water District”; the boundaries thereof; a description of the lands contained therein by legal subdivisions or other boundaries, specifying the county in which the same are located; the number of acres in the proposed district and in each parcel or tract of land contained therein with the names, if known, of the owners thereof, and, if not, designating them as “unknown”; the place where the principal business thereof is proposed to be transacted; and the source or sources (which may be in the alternative) from which said lands are proposed to be irrigated. The words “title or evidence of title” as used in this section include the possessory rights of entrymen or purchasers of public lands under any law of the United States or of this state whether evidenced by receipts or otherwise. The records of the United States land office for the district in which said lands are located; the records of the state land office; and the records in the office of the county recorder of the county in which said lands are situated shall be conclusive evidence of ownership for the purposes of this section.

Publication of petition. Fixing boundaries. District declared organized.

§ 2. A copy of said petition and a notice signed by one or more of the petitioners stating the time and place at which the petition will be presented to and heard by

the board of supervisors shall be published once a week for four weeks in some newspaper of general circulation published in the county where said proceedings are to be held. Proof of publication must be attached to the petition and filed with the clerk of the board on or before the day in which the petition is presented. During the hearing, or any continuation thereof until concluded, the board must keep a full and complete record of all the proceedings and shall preserve the evidence of all persons appearing and testifying therein. If, at the hearing, it shall appear that the petition has been prepared and presented in the manner required by law and that it contains the required and properly qualified signatures thereto, the board shall enter its order approving the same. Thereupon the board shall fix the boundaries of the district and to that end may exclude therefrom any lands improperly included therein by the petitioners; and after a hearing thereon pursuant to a notice thereof published for the time and in the manner required for the publication of the petition (proof whereof has been filed with the clerk of the board on or before the date of said hearing) shall include in said district any land which shall appear to have been improperly excluded therefrom by the petitioners; and the board shall appoint until such time as their successors are elected and shall have qualified as in this act provided and from among those qualified to serve, a board of directors and an assessor. The various orders of the board approving the petition, fixing the boundaries of the district and appointing its officials shall be indorsed upon or attached to the petition, and be signed by the president and attested by the clerk of the board and it must then be by them filed for record with the county recorder of each county in which any of the lands contained in said district are located, and by him recorded in a book kept by him for the purpose of recording instruments and writings relating to said district. When said documents have been so recorded, the district shall be and is hereby declared to be legally organized and shall have power to sue and be sued.

Determination of legality of district.

§ 3. Any district formed hereunder, in order to determine the legality of its existence, may institute a proceeding therefor in the superior court of the county in which it was organized by filing with the clerk of said county a complaint setting forth the name of the district, its exterior boundaries, the date of its organization and a prayer that it be adjudged a legal water district formed under the provisions of this act. The summons in such proceeding shall be served by publishing a copy thereof once a week for four weeks in some newspaper of general circulation published in each county in which any of the lands contained in said district are located. Within thirty days after the last publication thereof shall have been completed and proof thereof filed with the complaint any person interested may appear and answer said complaint, in which case said answer shall set forth the facts relied upon to show the invalidity of the district. If no answer shall be filed within said time the court must render judgment as prayed for in the complaint. If an answer be filed the court shall proceed as in other civil cases. Said proceeding is hereby declared to be a proceeding in rem and the judgment rendered therein shall be conclusive against all persons whomsoever and against the state of California.

By-laws. Evidence of ownership.

§ 4. The district must adopt for the government and control of its affairs a code of by-laws not inconsistent with the constitution and laws of the state or the provisions of this act. Sixty days after they shall have qualified for office the board of directors shall prepare by-laws for the written approval of the board of supervisors of the county in which the district was organized, and, when said by-laws are approved, shall adopt the same by resolution entered in the minutes of the meeting, unless, prior thereto, by-laws shall have been adopted and filed with the secretary of the

district by written assent of the holders of title or evidence of title, including such aforesaid possessory rights, to a majority in area of the lands embraced in said district. The records of the United States land office for the district in which said lands are located; the records of the state land office; and the records in the office of the county recorder of the county in which said lands are situated shall be conclusive evidence of ownership for the purposes of this section. The by-laws shall provide for: the manner of calling, and the time, place and manner of conducting all elections and the manner of giving notice thereof; the mode of voting in person or by proxy; the qualifications and duties of officers, the tenure of their office, the time and manner of their appointment or election; their compensation; the place at which the principal business of the district is to be transacted and the mode of changing the same; the mode of amending or repealing the by-laws and suitable penalties for the violation of the by-laws not to exceed in any one case two hundred dollars for any one offense. The by-laws may be repealed or amended, or new by-laws may be adopted by the assent of two-thirds of the total vote of the district given either in writing or by ballot cast at an election of the district. The by-laws in their original form, and any repeal thereof, or amendment or addition thereto, must, together with the approval of the board of supervisors and the resolution of the directors, or the written assent thereto or a memorandum of the returns of the election at which the assent was given, be certified by a majority of the directors and the secretary of the district and must be filed for record with the county recorder of each county in which any of the lands contained in said district are located and by him recorded in a book kept by him for the purpose of recording instruments and writings relating to said district. Until so recorded, no by-law, addition thereto, amendment or repeal thereof, can be enforced against any person not having actual notice of the same.

Officers of district. Vacancies. Salaries.

§ 5. The officers of the district shall be a board of five directors, a secretary, and an assessor, all of whom shall, except as herein otherwise provided, be elected by ballot, except the secretary who shall be appointed by the board of directors. No person shall be qualified to hold any of said offices, except that of secretary, unless he is a holder of title or evidence of title, including such aforesaid possessory rights, to lands contained in the district. Each appointee to office or officer-elect shall forfeit his office unless within ten days after he has notice of his election or appointment or before the expiration of ten days from the commencement of his term of office, when no such notice is given, he shall have filed for record with the county recorder of each county in which any of the lands contained in said district are located, a written acceptance of his office which shall be recorded in a book kept for the purpose of recording instruments and writings relating to the district. If any office shall become vacant by forfeiture, death, resignation, or from any other cause, the same shall be filled by appointment,—by the board of directors in case of vacancy in the office of secretary, and by the board of supervisors of the county in which the district was organized in all other cases. Until such time as their salaries shall have been fixed by the adoption of by-laws, the officers of the district shall receive the following compensation for their services: the secretary and assessor such sum each as shall be fixed by the board of directors; and the directors five dollars each for each directors' meeting attended or for each day's service rendered as a director by order of the board of directors, together with any expenses incident to such service, except expenses incurred in traveling between his place of residence and the place at which directors' meetings are held.

Organization of board; meetings, etc. Quorum. Records open to inspection.

§ 6. The board of directors shall choose from among its members a president; shall appoint the secretary of the district; shall select and maintain an office for the district in the principal place of business thereof and shall hold regular meetings therein at such time and place as may be agreed upon by resolution adopted, and shall hold therein such other meetings as, from time to time, may be deemed advisable; provided, that no meetings, except regular meetings, shall be valid unless prior thereto each director shall have filed with the secretary his written consent to the same, or unless the president, or three members of the board of directors, shall have called the same by giving each of said directors five days' written notice thereof, or unless said directors shall have authorized the same by resolution adopted at a former meeting and shall have caused five days' written notice thereof to be given by the secretary to each director not joining therein. A majority of the board of directors shall constitute a quorum for the transaction of business. The vote of a majority of those present at any meeting where a quorum is had shall be necessary to determine any proposition or resolution presented. The secretary shall keep a record of all the proceedings had at meetings of the board of directors. The books, maps, papers, contracts, records and other documents pertaining to the affairs of the district shall be filed in the office of the district with the secretary and must be open to inspection at all times by any persons interested.

Duties and powers of board. Not to let contracts until bonds are sold.

§ 7. It shall be the duty of the board of directors to manage and conduct the affairs of the district and to that end it shall, in the name of the district, have power to plan, construct, maintain and keep in repair the irrigation works necessary or proper to supply the lands contained therein with sufficient water for irrigation purposes; to acquire by purchase, condemnation or other legal means all water, water rights, lands, properties or rights in properties necessary or proper therefor; to lease or sell for a valuable consideration any property, or right in property, belonging to the district and no longer necessary to its use and purpose; to take conveyances, contracts, leases or other assurances for property acquired by the district under the provisions of this act; to execute by its president and secretary all contracts, leases, conveyances and other documents necessary to carry out the duties and powers specified herein; to institute, maintain and defend in person, or by attorneys, all actions, proceedings or suits at law or in equity necessary or proper to carry out the provisions of this act, or to enforce, maintain, protect or preserve the rights, privileges and immunities created by or acquired in pursuance thereof; to establish, print and distribute among the land owners of the district equitable rules and regulations for the distribution of water; to enter, for the above purposes, either in person or by its agents or employees, in and upon any lands contained in the district; to employ or fix the salary of such persons as may be necessary or proper to fully carry out the uses and purposes of the district; and to do any other lawful thing necessary or proper to carry out the provisions of this act or the uses and purposes for which the district is formed; provided, however, that the board of directors shall not let, or enter into, a contract for the construction of irrigation works, nor shall said board of directors construct the same by employees of the district until an election has been called and held to determine whether or not bonds of the district shall be issued as provided in section thirteen of this act, nor, in case bonds are voted, until eighty-five per cent of the total amount of said bond issue has been sold and the money received thereon, as provided in section eighteen hereof.

Annual estimate of funds needed. Assessment. Hearing of objections. Tax rate fixed. Charge against each parcel of land computed. Appeal from decision of supervisors.

§ 8. Between thirty and ninety days after the organization of the district, and between said dates annually thereafter the board of directors must file with the clerk of the board of supervisors of the county in which said district was organized an estimate of the sum required by the district to discharge the unpaid matured obligations thereof at that date and the obligations thereof that will mature or that it is probable will be incurred and mature during the two years next following, specifying that portion of said estimate which will be required for the payment of bonds and of the interest on bonds. Between the date on which the district was organized and ninety days thereafter, and between said dates in each succeeding year, the assessor must view the lands of the district and assess each parcel or tract of land contained therein at the cash value of the benefit derived by it from the construction and maintenance or proposed construction and maintenance of irrigation works and said assessor must, within said time, file with the clerk of said board of supervisors, an assessment-book, with appropriate headings, in which must be listed each parcel or tract of land within the district, specifying,—(1) the name, if known, (and, if unknown, stating that fact) of the holder of title or evidence of title, including such aforesaid possessory rights, thereto; (2) the description thereof by legal subdivisions, metes and bounds, or other boundaries sufficient to identify the same; and (3) the value assessed thereon. If the district is contained in more than one county, then the assessment-book shall be prepared with a separate part in a separate volume for the lands of each county. Within sixty days after the said estimate and the said assessment list shall have been filed as above provided, the said board of supervisors, acting as a board of equalization, shall meet and hear any verified, written objections, stating the ground therefor, to the assessment as made, which objections shall, prior to the hearing, be filed with the clerk of said board. Prior to the hearing, and during the office hours of said board of supervisors, the assessment list shall be open to public inspection. At the hearing, which must be continued from time to time until completed, the said board of supervisors shall hear the evidence offered in support of the objections presented and shall add to or deduct from the valuation assessed to any tract or parcel of land such per centum thereof as shall be sufficient to raise it or reduce it to the full cash value of the benefit derived by said tract or parcel of land from the construction or maintenance or proposed construction and maintenance of irrigation works and shall fix the value of any lands contained in said district that shall not have been so assessed. Thereupon, and before said hearing is closed, the assessor shall have the total valuation of all the lands assessed extended into columns, added and a statement thereof made. When said statement is completed, the board of supervisors must fix such ad valorem rate of taxation upon each hundred dollars in value of the lands so assessed as will raise the sum specified in said estimate. Any changes in or additions to said list shall be entered in said assessment-book in the proper place therefor and the order therefor shall be indorsed on the margin of the entry and signed by the president and attested by the secretary of said board of supervisors. The order of the board of supervisors approving the assessment, the statement of the assessor showing the total valuation of the property assessed, the order fixing the rate of taxation thereon, and the estimate of the sum required by the board of directors of the district for the expense thereof during the two years next following shall be signed by the president and attested by the secretary of the district and shall be attached to the assessment-book on the last volume thereof, unless the lands of the district are contained in more than one county, in which case a copy thereof shall be signed and attached in a similar manner to each separate part of the assessment-book. Within ten days after the hearing is completed, the assessor shall

compute and charge in the assessment-book in a place provided therefor in the record of each parcel or tract of land assessed the amount of the tax due thereon and shall file each said separate part of the assessment-book with the county tax collector of the county in which the lands therein assessed are located and thereafter the charges therein taxed shall be due and payable to the county tax collector of the county in which the lands on which they are taxed are situated. The various orders of the board of supervisors made at the hearing shall be final and when indorsed on or attached to the assessment-book shall be conclusive evidence that the assessment was made and the tax levied in accordance with the law; provided, however, that any person interested in lands of the district and aggrieved by the decision of the board of supervisors may, in order to have said assessment, or the tax levied thereon, corrected, modified, or annulled, institute an action therefor in the superior court of the county in which said district was organized. No action to determine the validity in any respect of any such assessment, or tax levied thereon, shall be maintained unless the same shall have been commenced within thirty days after the assessment-book, or each separate part thereof, is filed with said county tax collector as above provided, and no objection to the assessment shall be considered by said board of supervisors or allowed in any other action, or proceeding, unless such objection shall have been made in writing, verified and presented to the clerk of the board of supervisors in the manner herein required.

Assessment lien on property.

§ 9. From and after the filing of the assessment-book, or separate part thereof, with said county tax collector, as provided in section eight of this act, the charges therein taxed upon any tract or parcel of land within the county for which he is the tax collector and any penalties added thereto as hereafter provided shall constitute a lien thereon and shall impart notice thereof to all persons.

Delinquency notice. Publication.

§ 10. Within ten days after each tax shall have become due and payable, the assessor shall publish in some newspaper of general circulation published in the county in which the district was organized, a notice stating that the same became due and payable on (inserting date) to the county tax collector of the county in which the lands on which the charge therefor is a lien are located and that unless paid within six calendar months from said date the same will become delinquent, an additional charge of ten per cent thereof added thereto and the delinquent property sold at public auction. The tax must be paid in United States gold coin and the tax collector must mark the date of payment in the assessment-book opposite the name of the person paying, and must give to such person a receipt, specifying the property taxed, the amount of the charge thereon and the amount paid, and thereafter must pay the moneys so received to the county treasurer of said county, who must pay the same to the county treasurer of the county in which said district was organized, and he shall place the same to the credit of the district. As soon as possible after the tax shall become delinquent the assessment-book and each separate part thereof shall be returned to the secretary of the district and the board of directors thereof shall publish once a week for three weeks in some newspaper of general circulation published in the county in which said district was organized a notice containing a description of the delinquent property; the name, if known, and, if unknown, stating that fact, of the person to whom it is assessed; the amount of the taxes and penalties due thereon; and a statement that the delinquent property will be sold therefor in front of the courthouse of said county on a date therein stated, which must be not less than twenty-one nor more than twenty-eight days from the first publication, unless an error is made in the publication and discovered prior to the sale, in which case the notice shall be

republished in the same manner, specifying the sale for a date not less than twenty-one or more than twenty-eight days from the first republication.

Purchaser. Certificate of sale. Certificates recorded. Redemption of property sold. Purchaser entitled to deed after one year. Sale by district which became purchaser.

§ 11. At the time and place stated in said notice or at such other time (written notice whereof has been posted at the place of sale) to which the board of directors may have postponed it, not exceeding thirty days in all from the original date of sale, that person is the purchaser who will immediately pay in gold coin of the United States the delinquent tax and the penalty thereon for the smallest portion of the delinquent property, or in case an undivided interest is taxed, then the smallest portion of the interest. In case there is no purchaser in good faith for the same the whole amount of the delinquent property shall, for the amount of the tax and penalty thereon, be struck off to the district as the purchaser. A certificate of sale shall be executed in duplicate by the board of directors, one of which shall be delivered to the purchaser or to the district, if the property shall have been struck off to the district, and the other of which shall be recorded in the office of the county recorder of the county in which the property sold is located. The certificate shall be dated the day of the sale and shall specify—the description of the property sold; the name, if known, and if not, stating that fact, of the person to whom it was assessed; the fact that it was sold for the amount of the tax and penalty thereon, giving the amount and year of said tax; and the date on which the purchaser will be entitled to a deed. The recorder upon receiving the certificates of sale must, when he records the same, enter, in a book provided for that purpose and kept with the book provided for the purpose of recording instruments and writings relating to the district, a description of the land sold, corresponding with the description in the certificate, the date of sale, the name of the purchaser, and the amount paid. The entries in said book shall be numbered consecutively on the margin thereof and a corresponding number shall be indorsed on the certificate. At the time of the sale the board of directors shall indorse in the assessment-book opposite the description of the property, the portion of the same sold for taxes and penalties, with the date of sale and name of purchaser, and shall thereafter pay to the tax collector of the county in which the lands sold are located the amount received on the sale thereof and shall return said assessment-book, or any such separate part thereof, to the county tax collector from whom the same was received, who must keep and file the same for the use and benefit of the district. Any person interested in any property sold may redeem the same within one year from the date of sale by paying in gold coin of the United States to the county tax collector of the county in which the property is located, and in trust for the purchaser or his assignees, the amount for which the same was sold, together with interest thereon at the rate of two per cent per month from the date of sale, and the tax collector must give him a receipt therefor, specifying therein a description of the property redeemed, the name of the purchaser and the date of sale, and he shall credit the amount so paid to the purchaser and shall thereafter pay the same on demand to the purchaser or his assignee. The county recorder of the county in which is located the property redeemed shall, upon presentation of the tax collector's receipt for said amount, mark the word "redeemed," the date and by whom redeemed on both the record of the certificate of sale of said property and on the margin of the memorandum thereof made in the book kept for that purpose. If no redemption shall be made within said one year, the purchaser, or the district, if said property shall have been sold to the district, shall be entitled to a deed executed by the board of directors, and said deed shall contain all the recitals of the certificate, and when duly acknowledged shall be (except as against actual fraud) conclusive evidence of the regularity of all proceedings from the assessment to the execution of said deed,

inclusive, and said deed will convey to the grantee the absolute title to the lands described therein, free of all encumbrances, except state, county, municipal or subsequent district taxes, and except when the land is owned by the United States or this state, in which case it is the prima facie evidence of the right of possession. All property sold for taxes to the district shall subsequently be assessed for district taxation as though it had never been sold, but it shall not again be sold for delinquent tax, as long as it is owned by the district. The title acquired by the district, in case it becomes a purchaser at a delinquent tax sale of the district, may, subject to the right of redemption herein provided, be sold at public auction or private sale, but such sale shall not be made for less than the reasonable market value of the property, or for less than the amount of the taxes levied thereon, plus any penalties that may have been added thereto.

Additional tax in case of failure or error.

§ 12. If for any reason any tract or parcel of land contained within the district shall not have been charged with its portion of any tax levied, or if the tax levied on any tract or parcel of land shall be adjudged invalid by any court of competent jurisdiction, then such tract or parcel of land shall at the hearing in any subsequent tax levy be additionally taxed and charged by the board of supervisors of the county in which said district was organized in a sum which bears the same proportion to the total amount of said former tax as its then assessed valuation bears to the total amount of the assessed valuation placed on all the lands in the district at the time said former tax was levied.

Plan of irrigation works. Special bond election. Notice. Ballots.

§ 13. The board of directors shall, as soon after the organization of the district as is practicable, prepare and adopt a plan of irrigation works and shall estimate the cost of constructing the same and of acquiring the lands, property, property rights, water, and water rights necessary or proper therefor and to supply the lands contained in the district with sufficient water for irrigation purposes, together with every other expense of the district that it is probable will be incurred and become payable before the expiration of one year from the completion of said works, for which the funds of the district then in the treasury or thereafter to be received from a tax previously levied, are inadequate, including the interest on any bonds of the district due and payable prior to said date. Thereafter, when it is considered by the board of directors for the best interest of the district that bonds thereof shall be issued for the purpose of obtaining all of the money necessary to pay the costs and expenses specified in the estimate accompanying the plan of the irrigation works or when the holders of title, or evidence of title, including such aforesaid possessory rights, to a majority in area of the land contained in the district, shall sign and file with the secretary of the district a petition therefor, the said board of directors shall, by resolution adopted and entered in its minutes, order a special election to be held at the time designated by said board at which shall be submitted to the landowners the question of whether or not bonds of the district shall be issued in said amount. A notice of said election, specifying the time and place at which the same will be held, the amount of the bonds proposed to be issued, the interest rate and purpose thereof, shall be published once a week for four weeks in some newspaper of general circulation published in each county in which any of the lands contained in said district are located, and proof thereof must be filed with the secretary of the district prior to the date on which said election is held. The ballots cast at such election shall specify the amount and purpose of the proposed bond issue and the rate of interest proposed. If two-thirds of the votes cast thereat are in favor of the issuance of bonds, the board of directors shall cause bonds in the amount speci-

fied in the order for the election to be executed and delivered to the county treasurer of the county in which said district was organized.

Term, denomination, etc., of bonds. Interest. Coupons. Form. Form of interest coupons. Bonds placed to credit of district.

§ 14. Bonds of the district, when issued, shall be payable in gold coin of the United States in twenty series as follows, five per cent of the whole amount of said bonds at the expiration of eleven years and at the expiration of each succeeding year to and including the expiration of thirty years from the date of execution thereof; they shall be of the denomination of not less than one hundred dollars nor more than one thousand dollars each; and they shall be signed by the president of the board of directors and attested by the county auditor of the county in which the district was organized. Each bond must be made payable at a given time for its entire amount and not for a percentage; shall bear interest at a rate not in excess of seven per cent per annum, payable semi-annually on the dates therein named at the office of said county treasurer upon the presentation and surrender of the proper coupons therefor, and the principal thereof shall be payable when due upon the presentation and surrender thereof to said county treasurer by the holder of the same. Each issue shall be numbered consecutively and the bonds of each issue shall be numbered consecutively and bear date at the time of their issue. Coupons for each installment of interest shall be attached to the bonds and shall be numbered the same as the bonds, and attested by the fac-simile signature of the county auditor of the county in which said district was organized.

The bonds shall be substantially in the following form:

"Issue No. For value received, water district situated in the county of, state of California, promises to pay the holder hereof at the office of the treasurer of said county, on the day of, 19..., the sum of dollars in gold coin of the United States with interest in like gold coin at the rate of per centum per annum, payable at the office of said treasurer semi-annually, on the day of and the day of in each year, on presentation and surrender of the interest coupons hereto attached. This bond is issued pursuant to an election held by said district on the day of, 19..., authorizing its issuance, and by authority of an act entitled (specifying the title and date of approval of this act).

In witness whereof, the said district, by its board of directors, has caused this bond to be signed by the president of said board and attested by the auditor of said county, with his seal of office attached, this of, 19....

.....
President of said board.

Attest:

.....
Auditor of county."

The interest coupons shall be substantially in the following form:

"No.

The treasurer of county, state of California, will pay the holder hereof, on the day of, 19..., at his office in, dollars, gold coin of the United States, out of the funds of water district for interest on bond numbered of said district.

Attest:

.....
County Auditor."

The county treasurer of the county in which said district was organized shall, when he receives the same, place the said bonds to the credit of the district and he shall, in a book provided for that purpose, keep a record of said bonds and of the payment thereof and the interest thereon. When filed with said county treasurer, as above pro-

vided, the bonds of the district and the interest thereon shall be and remain until paid a lien on the lands of the district, and a lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue.

Test of validity of bonds.

§ 15. As soon as said bonds shall have been delivered to said county treasurer, the board of directors, or any holder of title, or evidence of title, including such aforesaid possessory rights, to lands contained in the district, may, in order to determine that said bonds are a legal obligation of the district, institute a proceeding therefor in the superior court of the county in which the district was organized by filing with the clerk of said county a complaint setting forth that on a date therein named bonds of said district were delivered to the said treasurer, stating the amount of such bonds, and praying that such bonds be adjudged to be a valid legal obligation of such district. The summons in such proceeding shall be served by publishing a copy thereof once a week for four weeks in some newspaper of general circulation published in each county in which any of the lands contained in said district are located. Within thirty days after the last publication thereof shall have been completed and proof thereof filed with the court, any person interested may appear and answer said complaint, in which case said answer shall set forth the facts relied upon to show the invalidity of said bonds. If no answer shall be filed within said time, the court must render judgment as prayed for in the complaint. If an answer be filed the court shall proceed as in other civil cases. Said proceeding is hereby declared to be a proceeding in rem and the judgment rendered therein shall be conclusive against all persons whomsoever and against the state of California.

Issue of additional bonds.

§ 16. For the purpose of completing the irrigation works and of acquiring the lands, property, property rights, water and water rights necessary or proper therefor and to supply the lands contained in the district with sufficient water for irrigation purposes, or for the purpose of making additions to said irrigation works, or for the purpose of paying for and retiring any issue of bonds previously made, the district may, when it is necessary or proper therefor, issue additional bonds in the same manner as is hereinbefore provided for the original issue of bonds.

Sale of bonds.

§ 17. The board of directors shall provide ways and means for the sale of said bonds or for the exchange thereof dollar for dollar for bonds of the state of California. Said board shall in no event sell or exchange, as above provided, any of said bonds for less than the par value thereof, plus the accrued interest thereon, nor shall any of said bonds be sold or exchanged nor shall said treasurer deliver any of the same unless the total proceeds thereof, either in gold coin of the United States or bonds of the state of California at their par value, shall be at least eighty-five per centum of the total amount of said bond issue, nor unless said bonds shall first have been approved as provided in section eighteen of this act. When any of said bonds are sold by the board of directors, the county treasurer in which the district was organized shall transfer the bonds purchased to the purchaser upon receiving the purchase price, and the moneys received therefrom shall be placed to the credit of the district and in a similar manner bonds of the state of California that may be received for bonds of the district shall be placed to the credit thereof to be sold as the board of directors may direct, in no case, however, for less than the par value thereof.

Water district bonds lawful investment of trust funds, etc. Hydraulic engineer. Board of investigation. Approval of superintendent of banks. Expense of investigation.

§ 18. When approved as provided in this section the bonds of any water district issued in pursuance of this act may be lawfully purchased, or received in pledge as

security for any money or deposits or for the performance of any act, by banks, banking institutions, insurance companies and trust companies and, when thereunto duly authorized by the court, by guardians, executors, administrators and special administrators. When requested therefor in writing by a majority of the board of directors of any water district formed hereunder, the governor must select and appoint one hydraulic engineer, who, with one such engineer appointed by said board of directors and one such engineer mutually agreed upon and jointly appointed by the governor and said board of directors, shall constitute a board of investigation to determine whether or not the total cost of acquiring the water rights and the system of works that may be necessary to supply the lands of the district with water in sufficient quantities for irrigation purposes will be in excess of one hundred per centum of the total amount of the bonds theretofore issued by such district. Within ninety days after the third and last member thereof is chosen, unless said time shall be extended by the board of directors, in which case within said extension of time, each member of said board of investigation shall prepare his separate written report and shall file the same with the state superintendent of banks and shall certify and file a copy thereof with the board of directors of said district, which report shall specify whether or not said cost will be in excess of one hundred per centum of the total amount of the said bonds so issued. If two members of said board of investigation shall find that said cost will not be in excess of an amount equal to one hundred per centum of the total amount of the said bonds so issued, the state superintendent of banks must, when so requested by the board of directors of said district, indorse upon the face of each of said bonds the word "approved" and shall affix thereunder his signature and the title of his office. The said district shall bear and pay for all expense incident to the investigation and the governor, before appointing any member of the board of investigation which he hereby empowered to select and appoint, may require that the said district provide, subject to his approval, a good and sufficient undertaking in an amount not in excess of six thousand dollars, conditioned that said district, or its sureties, which shall be two in number, will pay the salary and necessary expenses of that member of said board of investigation appointed by him, not to exceed, however, the total sum of five thousand dollars.

Destruction of unused bonds.

§ 19. Whenever there remains in the hands of the treasurer of the county in which the district was organized any unsold bonds of the district which it is not necessary to sell for the purpose of raising funds for the district, the board of directors may call a special election to determine whether said bonds shall be destroyed or not, or may submit such proposition at a general election. The notice thereof shall specify, in addition to the requirements therefor as provided in section twenty-three of this act, the amount of the bonded indebtedness authorized, the amount of the bonds remaining unsold and the amount thereof proposed to be destroyed. When the vote cast at said election is canvassed by the board of election, if a two-thirds majority of the votes cast shall be found to be in favor of the destruction of said bonds, then the president of the board of directors, in the presence of a majority of the members thereof, must destroy the bonds so voted to be destroyed and the amount thereof shall be deducted from the total amount authorized to be issued, and no part thereof shall thereafter be reprinted or reissued.

Use of excess money to redeem bonds.

§ 20. Whenever the funds of the district are in excess of the amount necessary to complete the construction of the irrigation works or to acquire the necessary water, water rights, property and rights in property therefor and to supply all the lands contained in the district with sufficient water for irrigation purposes and in addition

thereto to pay every obligation of the district that is due and payable or that will become due and payable or that it is probable will become due and payable before the expiration of two years from the date on which the next preceding tax of the district was levied, the board of directors may direct the treasurer of the county in which said district was organized to pay with said excess (specifying the amount thereof) such an amount of the sold bonds of the district as said excess sum of money will redeem at the lowest value at which they may be obtained for liquidation, in no case for more than the par value thereof.

County treasurer to receive funds for district. Bond fund. General fund. Payments from funds.

§ 21. The county treasurer of the county in which the district was organized shall receive to the credit of the district and in trust for the uses and benefits thereof all the funds thereof, and all such funds or moneys belonging to the district, or to which the district is entitled, shall, when received, except as herein otherwise provided, be paid by the person so receiving them to the said treasurer. The said treasurer shall establish for the district two funds, to wit: a bond fund and a general fund, and shall apportion the moneys of the district to said funds, as follows: to the bond fund that portion of the moneys received from the collection of taxes or from the sale of property for delinquent taxes which bears the same proportion to the total amount so received from the collection of taxes or from the sale of property for delinquent taxes as that portion of the estimate of the board of directors (on which said tax was based) which is required for the payment of bonds and of the interest on bonds bears to the whole amount of said estimate; to the general fund, the balance of all moneys or funds so received. In case lands of the district, when sold for delinquent taxes, are struck off to the district as the purchaser, the tax collector of the county in which said lands are located shall, in making his accounting with the treasurer of said county, furnish a statement of the lands so sold to the district of the amount for which the same were sold, and said treasurer shall deliver the same to the treasurer of the county in which said district was organized and said last-named treasurer shall thereupon estimate that portion of said amount belonging to the bond fund and shall charge the general fund with said portion and shall pay the same from the general fund into the bond fund. The moneys placed in the bond fund shall be used for the payment of bonds and of the interest thereon, and, until the total bonded indebtedness of the district is discharged, shall not be used for any other purpose. The funds of the district shall not, except for the payment of bonds and the interest thereon, be paid out by the treasurer of the county in which said district was organized, unless a warrant therefor shall have been drawn and executed by the board of directors and approved by the board of supervisors of said county. Such warrants are and shall be considered as contracts in writing for the payment of money, and the period prescribed for the commencement of an action based thereon, or connected therewith, is and shall be the term of four years from the date of their issuance. In any proceeding for a writ of mandate to compel the board of directors to issue a warrant, the court must determine the controversy in the manner provided for determining controversies in other civil actions, and shall cause a writ to issue for such sum as may be found to be due.

Voters.

§ 22. Except as herein otherwise provided, every holder of title or evidence of title (including the aforesaid possessory rights) to land contained in said district, and no other, shall be qualified and entitled to vote either in person or by proxy at any election held by said district. Each person entitled thereto shall have one vote for each dollar's worth of land, the title to which is held by him as above provided. The next

preceding assessment-book of said district shall, for the purposes of this section, be conclusive evidence of ownership and of the value of the property so owned.

Conduct of elections. Election officers. Polls open 10 a. m. to 5 p. m. Australian ballot. Canvass of votes. Contest of election. Proxies.

§ 23. Except as herein otherwise provided, all elections held under the provisions of this act shall be called, held and conducted at the time, place and in the manner provided by the by-laws of the district; provided, however, that no such election shall be valid unless the place at which the same is held is at the principal place of business of the district and unless notice thereof shall first have been given in the following manner: by publication thereof once a week for at least two weeks in some newspaper of general circulation published in each county in which any of the lands contained in said district are located. The said notice of election shall state the time, place and purposes thereof. At least ten days before any election, the board of directors must appoint from among those persons qualified and entitled to vote at said election an inspector and two judges, who shall constitute a board of election, and three alternates who shall, in the order in which they are appointed, fill any vacancies on said board if any members thereof do not attend at the opening of the polls. Each member of such board of election, or his successor, must, before entering upon his duties as such, take an official oath as such member of the board of election, which may be administered by any officer authorized to administer oaths or by any landholder in the district. The inspector is chairman of the election board and shall appoint the necessary clerks, and if during the progress of the election any judge or clerk shall cease to act, he shall appoint his successor. The polls shall be kept open for the reception of votes from ten o'clock a. m. until five o'clock p. m., when the same must be closed. The election board shall, before the opening of the polls, post in a conspicuous place thereat a list of all persons entitled to vote at said election with the number of votes they are entitled to cast. The ballots used at the election shall be provided by the board of directors and one of the clerks of election shall deliver one of them to each person qualified to cast a vote or to his representative by proxy. The Australian ballot shall be used and the clerk of the election board at the time of delivering the same to the voter, or his representative by proxy, shall mark thereon in a place provided for that purpose the name of the person casting the ballot and the number of votes which he is entitled to cast. The person casting the ballot shall stamp a cross with a rubber stamp, to be provided by the board of directors, in the square behind the name of each candidate or proposition he wishes to vote for. The election board shall retain and file with the returns of the election all proxies presented at said election. A list of the ballots cast shall be made by the board of election, containing, the name of the voter and, if the ballot be cast by proxy or by the legal representative of the voter, the name of the person casting it; the number of votes cast; and how the person voted on the different matters presented at the election. At the close of the polls the board of election shall at once proceed to canvass the votes and declare the result, and shall forward a certificate, showing the same and the number of votes cast for or against each candidate or proposition and shall forward said certificate, together with all ballots used and all documents and papers used at such election, to the clerk of the board of supervisors of the county in which the district was organized, and a duplicate copy thereof to the secretary of the district. A copy of said certificate, certified by said clerk of the board of supervisors, shall be by him filed for record with the county recorder of each county in which any of the lands contained in said district are located, and by him recorded in a book kept by him for the purpose of recording instruments and writings relating to said district. Any person interested may contest such election, within twenty days after the result thereof has been declared, by filing a complaint in the superior court of the county where such election was held, and if no contest shall be commenced within

said time, the declaration of the result by the board of election shall be final and conclusive. No proxy shall be valid and no proxy shall be accepted or vote allowed thereon at any election held under the provisions of this act unless the same be executed in writing by the person or corporation who, according to the next preceding assessment-book of the district, is entitled to the votes for which the proxy is given. The said proxy shall be acknowledged before some person authorized to take certified acknowledgments of conveyances of real property and shall specify the election for which it is given and shall only be used at such election. Every proxy shall be revocable at the pleasure of the person executing it.

Rights may be exercised by legal representative.

§ 24. The rights, privileges and immunities created by this act in favor of any holder of title or evidence of title, including such aforesaid possessory rights, to lands contained in the district may for his benefit and on his behalf be exercised by, and are hereby extended to, his legal representative in all cases where said legal representative is an official of a corporation owning land within the district or is a guardian, executor or administrator of an estate who is appointed as such under the laws of this state and who as such is entitled to the possession of lands included within said water district belonging to the estate which he represents and who has been by the court duly authorized to exercise the particular right, privilege or immunity which he seeks to exercise; provided, however, that he must, before he casts a ballot at any election of the district, present the board of election or some clerk thereof with a certified copy of his authority, which must be kept and filed with the returns of the election.

Use of water for district declared public use.

§ 25. The use of all water required for the irrigation of the lands of any district formed under the provisions of this act, and for domestic and other incidental and other beneficial uses, within such district, together with the rights of way for canals and ditches, sites for reservoirs and all other property required in fully carrying out the provisions of this act, is hereby declared to be a public use, subject to the regulation and control of the state in the manner prescribed by law.

Power to construct works across streets, etc. Right of way through state lands.

§ 26. The board of directors shall have power to construct the irrigation works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of a canal or canals of said works may intersect or cross, in such manner as to afford security for life and property; but said board shall restore the same, when so crossed or intersected, to its former state as near as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed by said works shall unite with said board in forming said intersections and crossings and shall grant the privileges aforesaid; and if such railroad company and said board or the owners and controllers of said property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the matter of said crossings or intersections, the same shall be ascertained and determined in all respects as is herein provided in respect to the taking of land. A right of way is hereby given, dedicated, and set apart to locate, construct, and maintain said works over and through any of the lands which are now or may be the property of this state; and also there is given, dedicated, and set apart for the uses and purposes aforesaid, all waters and water rights belonging to this state within the district. The rights of way, ditches, flumes, pipe lines, dams, water rights, reservoirs and other property of like character belonging to any district organized under this act shall not be taxed for state and county or municipal purposes.

Condemnation proceedings.

§ 27. In case of condemnation proceedings, the board of directors shall proceed in the name of the district under the provisions of title 7, part 3 of the Code of Civil Procedure.

Officers not to be interested in contracts.

§ 28. No officer of the district shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded, or in the profits to be derived therefrom; and for any violation of this provision such officer shall be deemed guilty of a misdemeanor and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Apportionment of waters. Penalty,

§ 29. It is hereby expressly provided that all waters distributed for irrigation purposes shall be apportioned ratably to each landowner upon the basis of the ratio which the last assessment of such owner for district purposes within said district bears to the whole acreage assessed upon the district. When the equitable rules and regulations for the distribution of water have been provided by the board of directors and published once a week for two weeks in some newspaper of general circulation published in each county in which any of the lands contained in said district are located, any violation thereof shall be and is hereby declared to be a misdemeanor, and the person committing the same shall, upon conviction thereof, be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars.

No fees for services of county officers.

§ 30. No supervisor, recorder, tax collector, treasurer, auditor or clerk of any county shall receive any fee for any service required to be performed by him under the provisions of this act; provided, however, that the tax collector of each county in which any of the lands contained in the district are located, during the time for the collection of the taxes of the district, may require the board of directors to provide and pay for a deputy tax collector whose duty it shall be to care for the matters relating to the collection of the said taxes of the district.

In case of division of a county excluding lands of district.

§ 31. If at any time after the organization of any district hereunder, the boundaries of the county in which the same was organized shall be so changed or modified as to exclude therefrom all of the lands contained in said district, then in that event the records and documents of said district in the possession and care of the board of supervisors of said county, together with a certified copy of the proceedings had by the district under the jurisdiction of said board of supervisors, shall be transferred and filed with the clerk of the board of supervisors of the county in which the greater portion of the lands contained in said district are located. All proceedings, petitions, orders or other documents which have been filed with the recorder of the county in which said district was organized, and which, or a certified copy thereof, have not been recorded in the county to which said district is transferred, shall be certified to by said county recorder and filed for record with the county recorder of the county to which said district has been transferred, and by him recorded in a book kept by him for the purpose of recording instruments and writings relating to said district. The treasurer and the auditor of the county in which said district was organized shall draw their warrant upon said treasurer for all of the funds of such district in the treasury of said county and the said treasurer shall pay such warrant and said funds, together with all unsold bonds of the district and the bond record kept by him, shall be transferred by

him to the treasurer of the county to which the district has been so transferred. From and after the transfer in the manner above specified the board of supervisors of the county to which the district is transferred shall have and exercise all of the jurisdiction, power and authority over said district as was theretofore exercised by the board of supervisors of the county wherein such district was originally formed and thereafter any act or duty which is herein required to be done by the board of supervisors or any officer of the county in which said district was organized shall be performed by the corresponding board of supervisors or other official of the county to which said district has been transferred, and in general the said district shall thereafter conduct and manage its affairs through its proper officials and in conjunction with the proper officials of each county in which any of the lands contained in said district are located as though said district was originally organized in the county to which it was transferred.

Action for dissolution of district. Hearing.

§ 32. An action may be brought by the attorney general in the name of the people of this state, upon his own information, or that of a private party, for the dissolution of any district formed hereunder for a non-user of its corporate powers. In such action the complaint and summons shall be personally served upon said district by delivery of a copy thereof to either the president of the board of directors or the secretary of the district. When service has been made upon the defendant and an appearance has been entered or a default of the defendant entered, the court, upon the application of any of the parties, shall thereupon enter an order fixing a day for a hearing, which shall not be less than twenty-five days from the date of the order and shall, also, enter an order directing notice by publication to be given by the clerk to all persons interested in said district either as the owners of land or interests in land in said district or as creditors of said district, or otherwise, requiring them to be and appear on the day fixed for the hearing and show cause, if any they have, why the district named in the complaint as defendant should not be dissolved. The notice shall be published in some newspaper of general circulation published in each county in which any of the lands contained in said district are located, for a period of not less than twenty days. On the day fixed for a hearing, or some later date to which the cause may be continued, the court may proceed with the hearing, due proof having been first made of the service of the notice by publication for the length of time required by the order. Any person interested in the district that is defendant, shall, upon showing his interest, be allowed to file an answer or objections to the dissolution of the defendant and shall from the filing of said answer or objections become a party defendant, and be entitled to all the rights of a defendant in any civil action. If upon the trial of any such action it be determined by the court: that the district is not in debt, or if in debt, that all claims are barred by the statute of limitations and that in addition thereto said district, or the board of directors thereof, are not proceeding to place the lands of the district under irrigation and are not exercising the powers of the corporation and have not been so doing for a period of one year prior thereto, the court shall then enter a decree dissolving the corporation, or make such further order as may be deemed necessary to protect the rights of all parties interested.

Constitutionality of act.

§ 33. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each of said parts thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Nothing repealed.

§ 34. This act does not change, modify, add to or repeal any other act or law of this state.

County assessment roll may be adopted.

§ 35. The board of directors of any district hereafter organized hereunder may at their option adopt the assessment roll of the county or counties in which the land of the district is contained in so far as said assessment roll affects the lands in the district; and file with the clerk of the board of supervisors a certified copy of such assessment roll, in lieu of the assessment book mentioned in section eight of this act. [New section added May 13, 1917. In effect July 30, 1917, Stats. 1917, p. 1409.]

Sale of water.

§ 36. The board of directors of any district hereafter organized hereunder shall have the power to sell water to owners of land in the district and to fix rates for the sale of water, and such rates may vary in different months and in different localities of the district to correspond to the cost and value of the service, and to collect for all water sold and to use so much of the proceeds of the sale of water as may be necessary to defray the ordinary operating expenses of the district and any funds derived from the sale of water, in excess of the amount necessary for operating expenses, shall be paid to the treasurer of the county in which said district is located and applied upon the payment of interest on bonds or to create a sinking fund. [New section added May 13, 1917. In effect July 30, 1917, Stats. 1917, p. 1409.]

COUNTY WATERWORKS DISTRICT BONDS.

ACT 5508—An act relating to bonds of county waterworks districts, providing under what circumstances such bonds shall be legal investments for funds of banks, insurance companies and trust companies, trust funds, state school funds and any money or funds which may now or hereafter be invested in bonds of cities, cities and counties, counties, school districts or municipalities, and providing under what circumstances the use of bonds of county waterworks districts as security for the performance of any act may be authorized.

History: Approved June 5, 1915. In effect August 8, 1915. Stats. 1915, p. 1211.

Unsold bonds of county water districts.

§ 1. Whenever the board of supervisors of any county in which a county waterworks district has been formed and organized under and pursuant to the laws of the state of California shall by resolution declare that it deems it desirable that any contemplated or outstanding bonds of said district, including any of its bonds authorized but not sold, shall be made available for the purposes provided for in section seven of this act, the said board of supervisors shall thereupon file a certified copy of such resolution with the commission hereinafter provided for.

Report on district's affairs.

§ 2. Such commission, upon the receipt of a certified copy of such resolution, shall, without delay, make or cause to be made an investigation of the affairs of the district and report in writing upon such matters as it may deem essential, and particularly upon the following points:

(a) The supply of water available for the project and the right of the district to so much water as may be needed.

(b) The nature of the soil as to its fertility and susceptibility to irrigation, the probable amount of water needed for its irrigation and the probable need of drainage.

(c) The feasibility of the district's waterworks system and of the specific project for which the bonds under consideration are desired or have been used, whether such system and project be constructed, projected or partially completed.

(d) The reasonable market value of the water, water rights, canals, tanks, reservoirs, reservoir sites, rights of way, pipe lines, waterworks, buildings and machinery owned by such district or to be acquired or constructed by it with the proceeds of any of such bonds.

(e) The reasonable market value of the lands included within the boundaries of the district.

(f) Whether or not the aggregate amount of the bonds under consideration and any other outstanding bonds of said district, including bonds authorized but not sold, exceeds sixty per centum of the aggregate market value of the lands within said district and of the water, water rights, canals, tanks, reservoirs, reservoir sites, rights of way, pipe lines, waterworks, buildings, machinery owned, or to be acquired or constructed with the proceeds of any of said bonds, by said district, as determined in accordance with paragraphs (d) and (e) in this section.

(g) The numbers, date or dates of issue and denominations of the bonds, if any, which the commission shall find are available for the purposes provided for in section seven of this act, and, if the investigation has covered contemplated bonds, the total amount of bonds which the district can issue without exceeding the limitation expressed in paragraph (f) of this section.

Report filed with controller. When bonds may be certified. Preservation of reports.

§ 3. The written report of the investigation herein provided for shall be filed in the office of the state controller, and a copy of said report shall by the commission be forwarded to the board of supervisors of the county in which said district is formed and for which the investigation shall have been made, and if said commission shall have found, as set out in said report, that the waterworks system of the district and the specific project for which the bonds under consideration are desired or have been used, whether such project be constructed, projected or partially completed, are feasible and that the aggregate amount of the bonds under consideration and any other outstanding bonds of said district, including bonds authorized but not sold, does not exceed sixty per centum of the aggregate market value of the lands within said district and of the water, water rights, canals, tanks, reservoirs, reservoir sites, rights of way, pipe lines, waterworks, buildings and machinery owned or to be acquired or constructed with the proceeds of any of said bonds by said district, the bonds of such county waterworks district, as described and enumerated in said report filed with the state controller, shall be certified by the state controller, as hereinafter provided for. If the commission shall be notified by the board of supervisors of any county where a county waterworks district has been formed that such waterworks system has been found in such report to be feasible that the district has issued bonds and the commission shall find that said bonds are for any project or projects approved in such report and that the amount of said bonds does not exceed the limitation stated in such report, the commission shall prepare and file with the state controller a supplementary report giving the numbers, date or dates of issue and denominations of said bonds, which shall then be entitled to certification by the state controller as hereinafter provided for. Subsequent issues of bonds may be made available for the purposes specified in this act upon like proceedings by said district, but, after any of the bonds of a county waterworks district have been enumerated and described as entitled to certification by the state controller as herein provided for, it shall be unlawful for that district to issue bonds that will not be entitled to such certification. It is hereby made the duty of the state controller to provide for filing and preserving the reports mentioned in this section and, also, to

make, keep and preserve a record of the bonds certified by him in accordance with the provisions of section four of this act, including the date of certification, the legal title of the district, the number of each bond, its par value, the date of its issue and that of its maturity

Form of certificate.

§ 4. Whenever any bond of a county waterworks district organized and existing as aforesaid, including any bond authorized in any such district but not sold, which shall be eligible to certification by the state controller under section three of this act, shall be presented to the state controller, he shall cause to be attached thereto a certificate in substantially the following form:

Sacramento, Cal. (insert date).

I,, controller of the state of California, hereby certify that the within bond, No. of issue No. of the county waterworks district, issued (insert date), is, in accordance with an act of the legislature of California approved, a legal investment for all trust funds and for the funds of all insurance companies, banks, both commercial and savings, trust companies, the state school funds and any funds which may be invested in county, municipal or school district bonds, and it may be deposited as security for the performance of any act whenever the bonds of any county, city, city and county, or school district may be so deposited, it being entitled to such privileges by virtue of an examination by the state engineer, the attorney general and the superintendent of banks of the state of California in pursuance of said act.

.....
Controller of State of California.

In case of a change in the constitution or any of the laws of this state relating to the bonds of county waterworks districts, the state controller shall, if necessary, modify the above certificate so that it shall conform to the facts.

Commission.

§ 5. The attorney general, the state engineer and the superintendent of banks are hereby constituted the commission herein provided for, and said commission shall elect one of its members chairman and may employ such clerks and assistants as may be necessary for the performance of the duties herein imposed, and may fix the compensation to be paid to such clerks and assistants.

Expenses.

§ 6. All necessary expenses incurred in making the investigation and report in this act provided for shall be paid as the commission may require by the county waterworks district whose property has been investigated and reported on by the said commission; provided, that the benefit of any services that may have been performed and any data that may have been obtained by any member of said commission or any other public official in pursuance of the requirements of any law other than this act, shall be available for the use of the commission herein provided for without charge to the district whose affairs are under investigation.

Bonds legal investments.

§ 7. All bonds certified in accordance with the terms of this act shall be legal investments for all trust funds, and for the funds of all insurance companies, banks, both commercial and savings, and trust companies, and for the state school funds, and whenever any money or funds may, by law now or hereafter enacted, be invested in bonds of cities, cities and counties, counties, school districts, or municipalities in the state of California, such money or funds may be invested in the said bonds of county water-

works district, and whenever bonds of cities, cities and counties, counties, school districts or municipalities may by any law now or hereafter enacted be used as security for the performance of any act, bonds of county waterworks districts under the limitations in this act provided may be so used. This act is intended to be and shall be considered the latest enactment upon the matters herein contained, and any and all acts in conflict with the provisions hereof are hereby repealed.

PLEASANTON TOWNSHIP COUNTY WATER DISTRICT—VALIDATION.

ACT 5509—An act validating the formation and organization and determining the boundaries of the Pleasanton township county water district in the county of Alameda, state of California.

History: Approved April 27, 1915. In effect August 8, 1915. Stats. 1915, p. 219.

ALAMEDA COUNTY WATER DISTRICT—VALIDATION.

ACT 5510—An act validating the formation and organization, and determining the boundaries of Alameda county water district in the county of Alameda, state of California.

History: Approved April 10, 1915. In effect August 8, 1915. Stats. 1915, p. 43.

WATERING RESORTS.

See "Bathing Resorts."

CHAPTER 422.

WATERS.

References: See tits. "Buoys and Beacons"; "Conservation"; "Irrigation and Irrigation Districts"; "Water Commission"; "Water Companies"; "Water Districts."

CONTENTS OF CHAPTER.

- ACT 5517.** WATER RESOURCES OF STATE—JOINT INVESTIGATION.
- 5520. "MINER'S INCH" DEFINED.
- 5521. ARTESIAN WELLS.
- 5527. FRANCHISES TO BUILD BOOMS.
- 5529. EXAMINING COMMISSION ON RIVERS AND HARBORS.
- 5532. MOORING OF HOUSEBOATS, ETC.
- 5534. APPROPRIATION OF WATER FOR POWER.
- 5536. CONSTRUCTION OF CANALS AND CANALIZATION OF RIVERS.
- 5537. WATER CONFERENCE.
- 5538. SURTERRANEAN STORAGE ACT.
- 5539. RECORDATION OF WATER USERS' ASSOCIATION CONTRACTS.

WATER RESOURCES OF STATE—JOINT INVESTIGATION.

ACT 5517—An act to provide for the joint investigation with the federal government of the water resources of the state, and to make an appropriation for the expenses of such investigations.

History: Approved March 11, 1907, Stats. 1907, p. 194. Prior acts on same subject matter: (1) Act of March 16, 1903, Stats. 1903, p. 171; (2) Act of March 18, 1905, Stats. 1905, p. 152.

Board of examiners to contract for topographic maps. Ascertaining methods of distributing water.

§ 1. The state board of examiners are hereby empowered to enter into contracts with the director of the United States geological survey for the purposes of making topographic maps, to the extent of thirty thousand dollars; also for the purpose of

gauging streams, determining underground water supplies, surveying reservoir sites and canal locations, for the conservation and utilization of waters of the state, to the extent of three thousand dollars, provided, no work of the nature heretofore stated shall be done where the same will interfere with the water already appropriated or in reservoirs or now in use for irrigation purposes, or domestic purposes, under the laws of this state; also with the director of the office of experiment stations of the department of agriculture for the purpose of ascertaining the best methods of distributing and using the water, to the extent of fifteen thousand dollars; provided, however, that these expenditures for such purposes shall not be in excess of the amounts to be expended by the various departments of the federal government in the collaboration with the specific work named above; and provided further, that in case any of the departments of the federal government above mentioned do not contribute these funds for said co-operation, that the state board of examiners shall have power to enter into such contracts as may seem best to them with the lawfully authorized representatives of any of the departments of the federal government for the expenditure of said remaining balance; and provided further, that said last mentioned expenditure for such purpose shall not be in excess of the amount to be expended by that department of the federal government in collaboration with the state.

Powers of persons employed.

§ 2. In order to carry out the purposes of this act, any person or persons employed hereunder are authorized to enter and cross all lands within this state; provided, in so doing no damage is done to private property; it shall be a misdemeanor, punishable as provided in such cases, for any person or persons to wilfully and maliciously remove or destroy any permanent marks or monuments made or erected by any such persons.

Appropriation. When available.

§ 3. The sum of sixty-eight thousand dollars is hereby appropriated for the purposes specified in this act, and the controller of state is hereby authorized and directed to draw warrants upon such fund from time to time, upon the requisition of the state board of examiners and the state treasurer is hereby authorized and directed to pay such warrants; provided, one-half of the appropriation herein shall be available in the fifty-ninth fiscal year, and the remaining one-half of said appropriation shall be available in the sixtieth fiscal year, except that one-half of the funds for making topographic maps shall be available during the twelve months immediately following the passage of this act, and the remaining one-half of this fund shall be available during the second twelve months following the passage of this act.

Duty of surveyor general and engineer of public works.

§ 4. It is hereby made the duty of the surveyor general and the engineer of the board of public works to render any assistance desired by the state board of examiners in furtherance of the aims of this act.

This act shall take effect and be in force on and after the passage of this act.

“MINER’S INCH” DEFINED.

ACT 5520—An act fixing and defining a miner’s inch of water.

History: Approved March 23, 1901, Stats. 1901, p. 660.

Miner’s inch of water defined.

§ 1. The standard miner’s inch of water shall be equivalent to one and one-half cubic feet of water per minute, measured through any aperture or orifice.

§ 2. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 3. This act shall be in effect and force sixty days from and after its passage.

1. "Miner's inch"—Seventy-five cubic inches of water measured under a four-inch pressure means nothing.—A miner's inch of water under the act is equal to one and one-half cubic feet of water per minute measured through an aperture or orifice, and the expression "seventy-five cubic inches, measured under a four-inch pressure" has no meaning whatever as applied to the measurement of a flowing stream. *Lillis v. Silver Creek, etc., Co.*, 32 Cal. App. 668, 163 Pac. 1040.

2. "Miner's inch"—How proved.—To show the quantity of water diverted in miner's inches there should be evidence as to the measurement according to some prescribed method, or evidence upon which a

definite calculation could be made.—*Logan v. Geuchard*, 159 Cal. 592, 114 Pac. 989.

3. Pressure—Judgment for 121.3 inches of water under four-inch pressure upheld.—It would be better that reference to a miner's inch of water should be "one and one-half cubic feet of water per minute," without specifying the pressure; but a judgment calling for a four-inch pressure was upheld notwithstanding the provisions of the act.—*Barr v. Branstetter* (Cal. App.), 184 Pac. 409.

4. "Three inches of water"—Indefinite and uncertain.—A judgment for "waters to the extent of three inches," is uncertain and indefinite in the absence of some qualifying or explanatory recital.—*Logan v. Guichard*, 159 Cal. 592, 114 Pac. 989.

ARTESIAN WELLS.

ACT 5521—An act to prevent the waste and flow of water from artesian wells, and prescribing penalties therefor, and defining waste and artesian wells.

History: Approved March 6, 1907, Stats. 1907, p. 122. Amended March 25, 1909, Stats. 1909, p. 749.

Uncapped artesian wells declared public nuisance.

§ 1. Any artesian well which is not capped, equipped or furnished with such mechanical appliance as will readily and effectively arrest and prevent the flow of any water from such well, is hereby declared to be a public nuisance. The owner, tenant, or occupant of the land upon which such well is situated, who causes, permits, or suffers such public nuisance, or suffers or permits it to remain or continue, is guilty of a misdemeanor; and any person owning, possessing, or occupying any land upon which is situated an artesian well, who causes, suffers, or permits the water to unnecessarily flow from such well, or to go to waste, is guilty of a misdemeanor.

Artesian well defined.

§ 2. For the purposes of this act, an artesian well is defined to be any artificial hole made in the ground through which water naturally flows from subterranean sources to the surface of the ground for any length of time.

Waste defined.

§ 3. Waste is defined, for the purposes of this act, to be the causing, suffering or permitting any water flowing from an artesian well, to run into any river, creek, or other natural watercourse or channel, or into any bay or pond (unless used thereafter for the beneficial purpose of irrigation of land or domestic use), or into any street, road, or highway, or upon the land of any person, or upon the public lands of the United States or of the state of California, unless it be used thereon for the beneficial purposes of the irrigation thereof or for domestic use or the propagation of fish. The use of any water flowing from an artesian well for the irrigation of land whenever over 5 per cent of the water received on such land for such purposes is allowed to escape therefrom, is also hereby declared to be waste within the meaning of this act; provided, that nothing herein shall prevent the running of artesian water into an artificial pond or storage-reservoir, if used thereafter for a beneficial use; provided, such beneficial use shall not exceed one-tenth of one miner's inch of water per acre, perpetual flow, but such user of water shall have the right to cumulate the said amount within any period of each year. [Amendment. Approved March 25, 1909; Stats. 1909, p. 749.]

New offense.

§ 4. Each day's continuance of such waste shall constitute a new offense under this act.

Penalty.

§ 5. Any person violating any of the provisions of this act shall, for each offense, upon conviction thereof, be punished by a fine of not less than \$25.00 and not more than \$500.00, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment. All prosecutions for the violation of any of the provisions of this act shall be instituted in the justice's court of the county in which such well is situated. Any fine imposed under the provisions of this act may be collected as in other criminal cases, and the justice may also issue an execution upon the judgment therein rendered, and the same may be enforced and collected as in civil cases.

Conflicting acts repealed.

§ 6. All acts and parts of acts in conflict with this act, are hereby repealed.

Act takes effect when.

§ 7. This act shall take effect immediately.

1. Constitutionality — Special privileges.

—No special privileges appear to have been granted by this act, and it is not unconstitutional on that ground.—Ex parte Elam, 6 Cal. App. 233, 91 Pac. 811.

2. Same—Uniformity of operation.—The act operates uniformly upon every one owning lands in an artesian belt as described therein, and is constitutional.—Ex parte Elam, 6 Cal. App. 233, 91 Pac. 811.

3. Same—Fourteenth amendment.—The act is not unconstitutional as violative of the fourteenth amendment of the federal constitution, or of any provision of the state constitution.—Ex parte Elam, 6 Cal. App. 233, 91 Pac. 811.

4. Ownership of subterranean water of artesian belt.—The ownership of subterranean waters in an artesian belt is in the portion of the public which owns the

surface of such belt, and is subject to reasonable use by an owner interested.—Ex parte Elam, 6 Cal. App. 233, 91 Pac. 811.

5. Same—Commission of public nuisance.—Whenever such owner exceeds such reasonable use and wastes the water he commits a public nuisance, to which the police power of the state may be applied.—Ex parte Elam, 6 Cal. App. 233, 91 Pac. 811.

6. Same—Same—Scope of legislation.—An act of the legislature, such as the present, designed for the purpose of preventing such public nuisance is referable to the police power, and is constitutional.—Ex parte Elam, 6 Cal. App. 233, 91 Pac. 811.

Editor's note: Flow of water from—Prohibiting.—See 33 L. R. A. 781.

Discharge of mineral water from not enjoined.—See 41 L. R. A. 737.

FRANCHISES TO BUILD BOOMS.

ACT 5527—An act to authorize the board of supervisors of the several counties in this state to grant franchises and privileges to corporations, associations, or individuals.

History: Approved March 3, 1881, Stats. 1881, p. 25.

This act authorized supervisors to grant privileges to build booms to hold logs and timber.

Editor's note: The code commissioners say that this act was superseded by subdivision 35, section 25, county government act of 1897 (Stats. 1897, p. 466), and that it

was afterwards repealed by the act of March 11, 1901 (Stats. 1901, p. 265). It was not so repealed in terms, and it is doubtful if it was either superseded or repealed as stated.

As to the grant of franchises in general, see Act 1601.

EXAMINING COMMISSION ON RIVERS AND HARBORS.

ACT 5529—An act to provide for the appointment of an examining commission on rivers and harbors, defining their duties and powers, and prescribing their compensation.

History: Approved March 19, 1889, Stats. 1889, p. 420.

Appointment of engineers.

§ 1. The governor of the state, within thirty days after the passage of this act, shall appoint three competent engineers in good standing in their profession, to be known and called the "examining commission on rivers and harbors." The persons so appointed shall hold office until the first day of January, eighteen hundred and ninety-

one. In case any vacancy may arise in such commission from any cause, the governor shall immediately fill such vacancy by appointment.

Oath of office.

§ 2. Each of said commissioners shall, before entering upon the discharge of his duties, take and subscribe an oath of office. The said commission shall organize by electing a president and secretary.

Duty of commission.

§ 3. The said commission shall make a full and careful examination into the condition of the Sacramento and San Joaquin rivers, and such other rivers and streams as they may select for that purpose. They shall determine what steps are necessary for the rectification and improvement of such rivers and streams, and shall make, or cause to be made, all such necessary and proper surveys, examinations, maps, designs, drawings, estimates, specifications, and exhibits as will enable the congress of the United States to clearly understand the condition of such rivers, and the cost and expense of properly rectifying and improving the same. The said commission shall, whenever requested by the governor, also make an examination for a similar purpose into such harbors as they may be so required to examine. Said commission shall have power to employ such persons at such compensation as they may deem proper, as surveyors or assistants in any of the work hereinabove specified.

Report of.

§ 4. The said commission shall make a full report on or before the first day of October, eighteen hundred and ninety, to the governor, on the matters herein specified, which said report shall be in such form and contain such calculations, specifications, and estimates as that it may be to congress as the basis of an appropriation by congress for the improvement of the Sacramento and San Joaquin rivers, and other navigable streams of the state, and of such bays and harbors as may have been examined by said commission as herein provided. The superintendent of state printing shall print and publish as many copies of said report and exhibits as may be ordered by the governor.

Salaries.

§ 5. Each member of the said commission shall receive a salary of two thousand four hundred dollars per annum, payable monthly, and his traveling expenses while engaged in the performance of official duties. Said salary and expenses to be paid out of any money in the state treasury not otherwise appropriated.

§ 6. This act shall take effect and be in force from and after its passage.

MOORING OF HOUSEBOATS, ETC.

ACT 5532—An act to prohibit within certain limits the mooring and anchoring of houseboats in rivers and streams, and the maintaining of privies, vaults, cess-pools, sewer pipes, and conduits on the banks of rivers and streams, and providing for punishment for violation thereof, declaring such acts to be public nuisances, and providing for the abatement of such nuisances.

History: Approved March 6, 1909, Stats. 1909, p. 140.

Houseboats, mooring of. Sewage, discharge of.

§ 1. It shall be unlawful for the owner, tenant, lessee or occupant of any houseboat or boat intended for or capable of being used as a residence, house, dwelling or habitation, or for the agent of such owner, tenant, lessee or occupant to moor or anchor the same or permit the same to be moored or anchored in or on any river or stream, the waters of which are used for drinking or domestic purposes by any city, town or

village within a distance of two miles above the intake or place where such city, town or village water system takes water from such river or stream; provided, however, that in the transportation of any such houseboat on any such river or stream nothing herein contained shall prevent the owner, agent, tenant or occupant of such houseboat from mooring or anchoring the same when necessary within the limits herein fixed and established; provided, such houseboat shall not remain moored or anchored within such limits for a longer period than one day.

It shall be unlawful for any person to erect, construct, excavate or maintain on or near the banks of any river or stream and within two miles above the intake of any water supply used for domestic or drinking purposes in any city, town or village any privy, vault, cesspool, sewer pipe or conduit which shall cause or suffer to be discharged into said stream or river any sewage, garbage, feculent matter, offal, filth, refuse, or any animal, mineral or vegetable matter, or substance offensive, injurious or dangerous to health.

Penal clause.

§ 2. Any person who violates any of the provisions of section 1 of this act is guilty of a misdemeanor. Each day's violation of any of the provisions of said section 1 shall constitute a separate and distinct offense.

Public nuisances. Abatement of.

§ 3. Any privy, vault, cesspool, sewer pipe or conduit erected, constructed, excavated or maintained on or near the banks of any river or stream within two miles above the intake of any water supply used for drinking or domestic purposes in any city, town or village, which shall cause or suffer to be discharged therefrom sewage, garbage, feculent matter, offal, refuse, filth or any animal, mineral or vegetable matter or substance, offensive, injurious or dangerous to health into such river or stream, and any houseboat or boat intended for or capable of being used as a residence, house, dwelling or habitation, which shall for more than one day be moored or anchored in or upon any river or stream within two miles above the intake of any water supply used for domestic or drinking purposes in any city, town or village are hereby declared to be public nuisances; and it is hereby made the duty of any and all sheriffs, constables, policemen and health officers to immediately abate said nuisance.

§ 4. This act shall take effect immediately.

Citation: In re Mulholland, 13 Cal. App. 734, 110 Pac. 585.

APPROPRIATION OF WATER FOR POWER.

ACT 5534—An act regulating and limiting the appropriation of water and the use of water for generating electricity or electrical or other power; fixing the terms and conditions and providing the manner and procedure upon which water or the use of water for generating electricity or electrical or other power may be appropriated and providing for the renewal of licenses granted hereunder; providing for the issuing of licenses for water or the use of water for generating electricity or electrical or other power and limiting rights under such licenses; prohibiting the appropriation of water or the use of water for generating electricity or electrical or other power for a longer period than forty years; limiting the right to water or the use of water appropriated for generating electricity or electrical or other power to the specific purposes for which it is appropriated; declaring certain water to be unappropriated; providing for the granting of licenses to divert and store surplus and flood waters for generating electricity, or electrical or other power and declaring what is surplus water; reserving to the state the right to regulate and fix the rates of compensation for which electricity or electrical or

other power generated by water or the use of water appropriated may be sold, rented or distributed; reserving to the state the right to impose charges for water or the use of water appropriated for electricity or electrical or other power and fixing fees and charges; preventing the combination or formation of any unlawful trust by appropriators of water or the use of water for generating electricity or electrical or other power and providing a penalty therefor; creating and establishing a state water commission; providing the powers and duties of said water commission and fixing their compensation; compelling persons, firms, associations and corporations supplying electricity or electrical or other power generated by the use of appropriated water to keep their plants and systems in repair and requiring an annual report from them to said water commission; providing for the appointment and compensation of employees and assistants to said water commission; limiting the expenses of said water commission and providing for the payment thereof; making an appropriation to carry out the provisions of this act; fixing the place of business of said water commission; declaring the diversion of water or use of water for generating electricity, or electrical or other power, otherwise than provided in this act, to be a misdemeanor and providing a penalty therefor, and also providing penalties for other violations of this act; repealing an act entitled "An act regulating and limiting the appropriation of water for generating electricity or electrical or other power; fixing the terms and conditions and providing the manner and procedure upon which water for generating electricity or electrical or other power may be appropriated and providing for the renewal of licenses granted hereunder; providing for the issuing of licenses for the use of water for generating electricity or electrical or other power and limiting rights under such licenses; prohibiting the appropriation of water or the use of water for generating electricity or electrical or other power for a longer period than twenty-five years; limiting the right to the use of water appropriated for generating electricity or electrical or other power to the specific purposes for which it is appropriated; declaring certain water to be unappropriated; providing for the granting of licenses to divert and store surplus and flood waters for generating electricity, or electrical or other power and declaring what is surplus water; reserving to the state the right to regulate and fix the rates of compensation for which electricity or electrical or other power generated by water appropriated may be sold, rented or distributed; reserving to the state the right to impose charges for the use of water appropriated for electricity or electrical or other power and fixing fees and charges; preventing the combination or formation of any unlawful trust by appropriators of water or the use of water for generating electricity or electrical or other power and providing a penalty therefor; creating and establishing a state board of control; providing the powers and duties of said board of control and fixing their compensation; compelling persons, firms, associations and corporations supplying electricity or electrical or other power generated by the use of appropriated water to keep their plants and systems in repair and requiring an annual report from them to said board of control; providing for the appointment and compensation of employees and assistants to said board of control; limiting the expenses of said board of control and providing for the payment thereof; fixing the place of business of said board of control; declaring the diversion or use of water for generating electricity, or electrical or other power, otherwise than provided in this act, to be a misdemeanor and providing a penalty therefor, and also providing penalties for other violations of this act; repealing all acts and parts of acts in conflict with this act," approved April 8, 1911, and all acts and parts of acts in conflict with this act.

History: Approved January 2, 1912, Stats. 1911 (ex. sess.), p. 175.
Prior act of April 8, 1911, Stats. 1911, p. 813, was repealed by this act.

Period of appropriation.

§1. Water or the use of water for the generation of electricity or of electrical or other power shall not be appropriated for a longer period than forty years.

General application of act.

§2. Subject to vested and existing rights, in so far as such vested and existing rights are based upon actual needs and application to useful or beneficial purposes, the appropriation of water or of the use of water for the generation of electricity or of electrical or other power shall be made as provided by this act, and not otherwise; provided, however, that nothing in this act shall be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state.

Restrictions on use of appropriated water.

§3. Water or the use of water appropriated for purposes other than the generation of electricity or of electrical or other power shall not be used for the generation of electricity or of electrical or other power except under a separate and distinct appropriation made as provided in this act for such purpose.

Declaration of what is unappropriated water.

§4. All water or the use of water which has been heretofore appropriated and which has not been put, or which has ceased to be put to some useful or beneficial purpose, or which is not now in process of being put to some useful or beneficial purpose with due diligence in proportion to the magnitude of the work necessary properly to utilize for the purpose of such appropriation such water or such use of water, is hereby declared to be unappropriated.

Right of state to fix rates.

§5. All appropriations of water or the use of water for generating electricity or electrical or other power shall be subject to the right of the state to regulate and fix the rates of compensation for which such electricity or electrical or other power may be sold, rented or distributed.

Application for permit to make appropriation of water. Wilful diversion.

§6. Any person, firm, association or corporation hereafter intending to appropriate water or the use of water for the generation of electricity, or of electrical or other power, before commencing the construction or enlargement or extension of any building, power house, ditch, canal or any distributing or controlling works, or performing any work in connection with said appropriation or proposed appropriation, shall make an application in duplicate to the state water commission, provided for in this act, for a permit to make such appropriation. No person, firm, association or corporation shall wilfully divert or use water or shall wilfully attempt to divert or use water for generating electricity or electrical or other power without first complying with the provisions of this act. The possession or use of water for generating electricity or electrical or other power, except when a right to said water or the use thereof shall have been acquired in accordance with law, shall be prima facie evidence of such wilful diversion or use or attempted diversion or use of such water.

Contents of application for permit to make appropriation of water.

§7. Every application for a permit to appropriate water or the use of water for the generation of electricity or of electrical or other power shall set forth the residence, or principal place of business if the applicant be a corporation, and postoffice address of the applicant, the source of the water or the use of water to be appropriated or used, the nature and amount of the proposed use, the head of and amount of water to be utilized, the uses to which the water and electricity or electrical or other power are

to be applied, the nature, the location (which may be changed by permission of the state water commission), the character, the estimated capacity, and the estimated cost of the works, and whether the water is to be and will be returned to the stream or source from which it is to be taken, and if so at what point on the stream or source it is proposed to return said water to said stream or source. If the application is for the construction of a reservoir for the purpose of storing water to be used for the generation of electricity or of electrical or other power, it shall give the estimated height of the dam and the estimated capacity of the reservoir in addition to the other requirements above set forth. All applications shall be accompanied by such maps and drawings in duplicate and such other data in duplicate as may be prescribed by the water commission, and such accompanying data shall be considered as a part of the application. A true copy of such application without such accompanying data and maps and drawings shall be recorded by the applicant in the office of the recorder of the county, or city and county, in which the proposed works are to be erected, within ten days after said application is filed with said commission.

Examination of application. Supplemental application.

§ 8. Upon receipt of an application under this act, it shall be the duty of the water commission immediately to cause to be made an indorsement thereon of the date of its receipt, and to keep the duplicate of said application and its indorsement on file as a record of the same. The water commission shall immediately examine the said application after it has been filed. If, upon such examination, the application is found to be defective, one copy of it and its accompanying data, maps and drawings shall be returned to the applicant for correction or completion, and the date of and reasons for the return thereof shall be indorsed thereon, and a record kept of such indorsement in the office of the water commission. No application shall lose its priority of filing on account of such defect; provided, a proper application is filed in the office of the water commission within thirty days of the date of said return to the applicant. It shall be the duty of the water commission within six months to enter an order directing the rejection of such application if after further hearing the public interests shall seem to the water commission so to demand. Applications may be approved for a less amount of water or the use of water than that applied for, if there exist substantial reasons therefor, but in any event shall not be approved for more water or the use of water than can be applied to the use for which application is made under an efficient and economical use thereof.

Indorsement of application. Duties and rights of applicant in case of approval.

§ 9. The approval or rejection of an application shall be indorsed thereon and a record made of such indorsement in the office of the water commission. One copy of the application so indorsed shall be returned immediately to the applicant in person or by registered mail. If said application be approved, the applicant shall immediately record said approved application, together with the indorsement thereon, in the office of the recorder of the county, or city and county, in which the proposed works are to be constructed, and shall be authorized on receipt of said approval and on recording the same, to proceed with the construction of the necessary works, and to take all steps required to apply the water or the use of the water to the purpose of generating electricity or electrical or other power, as provided in the approved application, and to perfect the proposed appropriation; provided, however, that no right in or to such water or the use thereof shall vest in or accrue to the said applicant until the final permit is issued as is hereinafter provided.

Approval of application may be revoked for failure to do work. Extension of time.

§ 10. Actual construction work shall begin within six months from the date of the approval of the application, and the construction of the work shall thereafter be prose-

cuted with reasonable diligence in proportion to the magnitude of the undertaking, and if such work is not so commenced and prosecuted, the water commission may revoke its approval of the application; and such work shall be completed within a reasonable time as fixed in the permit not to exceed five years from the date of such approval. Upon application of the proposed appropriator the water commission may for good cause shown extend the time within which such work shall be completed under any permit, but no such extension shall be for a longer period than one year beyond the period fixed in the permit.

Examination upon completion of works.

§ 11. Upon the completion of the works for the diversion and application of water or the use of water under this act, the holder of such permit, or his assigns, shall report such completion to the water commission, and the water commission without delay shall cause to be made a full inspection and examination of the works constructed and a report upon their construction and condition, and whether or not they conform to the terms of the application and permit and are adequate for the purposes intended.

Final permit. License.

§ 12. Upon the receipt of such report, the commission shall, if the law has been fully complied with, and if the work shall have been completed in accordance with the application, issue a license to the applicant or his assigns, allowing him or them to divert and use said water, or so much thereof as may be necessary, for the use proposed, for a certain period of time therein specified, but in no case for more than forty years. Licenses granted upon application made under this act for water or the use of water shall be numbered consecutively as to each stream or other source in the order as to the dates when such applications are filed.

Contents of license.

§ 13. Said license shall set forth the name of the licensee, his place of residence, and if a corporation or firm or association the date of its organization and its principal place of business, the stream or source for which the water is to be diverted or used, the quantity of water the licensee is authorized to divert from the stream or source, the point or points on said stream or source at which said water is to be diverted or used, the location of the proposed works, the period of time for which the water may be used, which in no case shall be for more than forty years, by what means, and the purposes for which the licensee is authorized to use the same.

Rights of licensee.

§ 14. Any license issued as above provided for water or the use of water appropriated under this act shall vest in the licensee the right to the use of the amount of water mentioned therein for the period of time therein set forth, in the manner and for the purposes therein mentioned and not otherwise; provided, that such license shall not impair or affect any rights to water or the use of water which shall have become vested prior to the making of the application above provided for.

Renewal of license.

§ 15. Any appropriator of water or the use of water under the provisions of this act for the purpose of generating electricity or electrical or other power, or the successor or assigns of said appropriator, if a renewal or extension of the license herein provided for is desired, shall, not less than one or more than two years prior to the termination of the license granted as herein provided, notify the water commission that a renewal and extension of such license is desired. The water commission shall thereupon issue to said appropriator a renewal and extension of said license for a fixed period, but in no case for more than a period of forty years from the date of such

renewal in compliance with such laws of the state as shall then be in force regulating the renewal, issuing and granting of any license for water or the use of water for generating electricity or electrical or other power.

Excess capacity of works.

§ 16. No license for the appropriation of water or the use of water as herein provided shall be valid as to any excess of the capacity of the works actually constructed.

Use of surplus water.

§ 17. The water commission may, upon application made therefor in the manner provided in this act and upon like procedure, grant to any person, firm, association or corporation a license to divert and store for the purpose of generating electricity or electrical or other power the surplus waters of any stream during floods or high water, or during those portions of the year when such water is not required or being stored for irrigation purposes, and for the purpose of this act all water which is not used during the season of flood or high water is declared to be surplus water.

Right of state to fix fees and charges to appropriators.

§ 18. All appropriation of water or the use of water for generating electricity or electrical or other power heretofore or hereafter made shall be subject to the right of the state to impose the fees and charges herein provided, and shall also be subject to the right of the state to increase or decrease such fees and charges from time to time thereafter.

Fee for applicants. Fee and charge for licensees. Disposition of fees collected.

§ 19. Every person, firm, association or corporation making application for permission to appropriate water or the use of water under this act shall, at the time of filing the said application, pay to said water commission a fee of ten dollars. Every person, firm, association or corporation at the time of receiving a license to appropriate water or the use of water, as provided in this act, shall pay to said commission a fee of one hundred dollars, and shall also pay to said commission when the said license is issued, and, in addition thereto and annually thereafter, shall pay to said commission a charge for each theoretical horsepower of the works estimated as follows: For the first one hundred (100) horsepower there shall be no charge; and for all above one hundred (100) horsepower ten (10) cents for each horsepower. All fees collected shall be accounted for at the following regular meeting of the water commission and paid by said commission into the general fund of the state treasury within thirty days thereafter.

Water commission, how constituted and term of members. Compensation.

§ 20. For the purpose of carrying out the provisions of this act, a commission, to consist of five persons, is hereby created and established to be known as the state water commission. Three members of said commission shall be appointed by the governor for a term of four years; provided, that the members first appointed shall be appointed so that one of them shall go out of office at the end of one year, one at the end of two years, and one at the end of three years. The governor and the state engineer are hereby made ex officio members of said commission in addition to the three members appointed by the governor. The appointed members of said commission shall receive as compensation for services rendered by them, as such members, the sum of ten (10) dollars per day for each day's service actually rendered.

General powers and duties.

§ 21. The water commission is hereby authorized and empowered to do and perform the acts and things required of it by this act and to adopt rules and regulations neces-

sary to carry out the provisions of this act, and it shall be the duty of the commission to provide for the public hearing upon the merits of all applications filed with the commission and to prescribe the rules of procedure to be observed at such hearings.

Authority to administer oaths and issue process.

§ 22. Every member of said water commission is hereby authorized to administer oaths and to cause the production of persons, papers, records and books in all matters of business transacted before said commission.

Record of commission.

§ 23. A full and accurate record of the business transacted or acts performed by any member of the water commission, and the proceedings of the meetings of said commission, shall be kept and shall be placed on file in the office of said water commission.

Power to employ assistants. Reappropriation.

§ 24. Said commission is hereby granted power to employ such persons and to engage such assistants, clerical, professional and other, as it may see fit, and at such salaries or compensation as the commission may determine. And for the purpose of carrying out the provisions of this act so much of the sum appropriated by chapter 406 of the laws of 1911, approved April 8, 1911, entitled "An act regulating and limiting the appropriation of water for generating electricity," etc., as may not have been expended is hereby reappropriated, and the state controller is hereby authorized and directed to draw his warrants from time to time on the requisition of the state water commission approved by the state board of control and the state treasurer is hereby authorized and directed to pay such warrants.

Payment of salaries and expenses.

§ 25. All indebtedness incurred for salaries, and all necessary costs and traveling and other expenses of said commission, and each of its members and persons employed by it, while actually engaged in the business of said commission, shall be paid by the state out of the funds hereby appropriated upon a sworn statement of the person or persons incurring such indebtedness and upon the approval of the water commission and the state board of control upon warrants drawn upon the state treasurer as provided by law for the payment of similar costs and expenses and the drawing of similar warrants.

Repair of plants and systems. Annual reports to commission.

§ 26. All persons, firms, associations or corporations generating electricity or electrical or other power by water or the use of water appropriated under the provisions of this act shall keep their plants and systems in proper repair, and shall upon the first day of January after the passage of this act, and annually thereafter, report to said water commission the condition of their plants and distributing systems, the number of kilowatt hours of electricity or electrical or other power generated during each month of said year, the number of kilowatt hours of electricity or electrical or other power rented, sold or distributed during each month of said year, and the names of the persons, firms, associations or corporations to whom said power has been rented, sold or distributed.

Office of commission, location.

§ 27. The water commission shall maintain its office at Sacramento, California. The superintendent of capitol building and grounds shall furnish and set aside in the capitol rooms suitable for offices for said water commission, and if the superintendent of capitol building and grounds shall make and file an affidavit with the said commis-

sion that it is not possible for him as such superintendent of capitol building and grounds to provide offices for said commission in the capitol, then the said commission may rent rooms suitable for offices in the city of Sacramento, and said rental shall be deemed a necessary expense of said commission.

Combinations in restraint of trade forbidden. Forfeiture of rights.

§ 28. No person, firm, association or corporation appropriating water or the use of water hereunder shall enter into any agreement, combination or trust in restraint of trade contrary to law, and if any of the works owned or operated by any licensee under his act or his assign or assigns shall be owned, leased, trusteeed, possessed or controlled by any device, permanently, temporarily, directly or indirectly, tacitly, or in any manner whatsoever, so that it or they form a part of or in any way effect any combination, or if it or they are in anywise controlled by any combination or conspiracy to limit the output of electricity or electrical or other power, or to increase the price at which electricity or electrical or other power is sold, rented or distributed, or to prevent the lowering of said price or in restraint of trade with foreign nations, or between two or more states or territories or with any state or territory, in the generation, sale, distribution of electricity or electrical or other power, all rights to the appropriation of water or the use of water shall cease and be forfeited to the people of the state by proceedings instituted in the courts for that purpose by the attorney general of the state either upon his own initiative or upon demand of the water commission.

Penalty for violations of this act.

§ 29. Any violation of the provisions of this act, or of any order or regulation of the water commission, is hereby declared to be a misdemeanor, and shall be punished by a fine not exceeding five thousand (5,000) dollars or by imprisonment in the county jail not exceeding one (1) year, or by both such fine and imprisonment. It shall be the duty of the water commission to enforce the provisions of this act, and to prosecute violations thereof by proceeding in a court of competent jurisdiction against any person, firm, association or corporation violating any such provisions, or failing or refusing to comply with any regulation or requirement of the water commission made pursuant to the provisions of this act.

Application of act to municipal corporations, irrigation districts, and lighting districts.

§ 30. None of the provisions of this act shall apply to municipal corporations, other than irrigation districts or lighting districts, nor to the use by any irrigation district of water for the generation of electricity, electrical or other power only for use and distribution within its own limits, and as subsidiary to and mainly for the purpose of serving and carrying out irrigation, nor to the use by any lighting district of water for the generation of electricity, electrical or other power only for use and distribution within its own limits; provided, however, that all municipal corporations, other than irrigation districts and lighting districts, desiring to appropriate water for the generation of electricity, electrical or other power, and all irrigation districts and lighting districts desiring to appropriate water for the generation of electricity, electrical or other power, and all irrigation districts and lighting districts desiring to appropriate water for the generation of electricity, electrical or other power, for the uses hereinabove in this section specified shall within ten days from the time that they post and record notices of appropriation, as required by law, file with the water commission a notice of said appropriation together with the name and postoffice address of the appropriator, the source of the water to be appropriated or used, the nature and amount of the proposed use, the head of an[d] amount of water proposed to be utilized, the uses to which the water and power are to be applied, the nature, location,

character, estimated capacity and estimated cost of the works and whether the water is to be and will be returned to the stream or source from which it is to be taken and, if so, at what point on said stream or source. If the appropriation contemplates the construction of a reservoir for the purpose of storing water to be used for the generation of electricity or electrical or other power, the notices filed with the commission shall also give the estimated height of the dam and the estimated capacity of the reservoir in addition to the other requirements above set forth.

Liability of persons participating in violations of this act.

§ 31. Whenever in this act the performance or doing of certain acts or things by any firm, association or corporation is made a misdemeanor, and a penalty provided therefor, the person, officer, member, manager, agent, director or employee of any such firm, association or corporation who by vote, act, authorization, direction, order or request shall have caused such act or thing to be done is likewise and in the same manner guilty of a misdemeanor, and shall be punished likewise and in the same manner as the person actually performing or doing the act or thing.

Repeal of prior act.

§ 32. An act entitled "An act regulating and limiting the appropriation of water for generating electricity or electrical or other power; fixing the terms and conditions and providing the manner and procedure upon which water for generating electricity or electrical or other power may be appropriated and providing for the renewal of licenses granted hereunder; providing for the issuing of licenses for the use of water for generating electricity or electrical or other power and limiting rights under such licenses; prohibiting the appropriation of water or the use of water for generating electricity or electrical or other power for a longer period than twenty-five years; limiting the right to the use of water appropriated for generating electricity or electrical or other power to the specific purposes for which it is appropriated; declaring certain water to be unappropriated; providing for the granting of licenses to divert and store surplus and flood waters for generating electricity, or electrical or other power and declaring what is surplus water; reserving to the state the right to regulate and fix the rates of compensation for which electricity or electrical or other power generated by water appropriated may be sold, rented or distributed; reserving to the state the right to impose charges for the use of water appropriated for electricity or electrical or other power and fixing fees and charges; preventing the combination or formation of any unlawful trust by appropriators of water or the use of water for generating electricity or electrical or other power and providing a penalty therefor; creating and establishing a state board of control; providing the powers and duties of said board of control and fixing their compensation; compelling persons, firms, associations and corporations supplying electricity or electrical or other power generated by the use of appropriated water to keep their plants and systems in repair and requiring an annual report from them to said board of control; providing for the appointment and compensation of employees and assistants to said board of control; limiting the expenses of said board of control and providing for the payment thereof; fixing the place of business of said board of control; declaring the diversion or use of water for generating electricity, or electrical or other power, otherwise than provided in this act, to be a misdemeanor and providing a penalty therefor, and also providing penalties for other violations of this act; repealing all acts and parts of acts in conflict with this act," approved April 8, 1911, and all acts or parts of acts in conflict herewith are hereby repealed.

§ 33. This act shall take effect ninety days after the final adjournment of this session of the legislature.

Bernardino. (Approved April 15, 1919. In effect July 22, 1919, Stats. 1919, p. 99.)

1. Code provision repealed—Section 1416, Civil Code.—The provisions of section 1416, Civil Code, so far as they relate to the time within which diversion works may be commenced after judgment in legal proceedings to determine the rights of the appropriator, were repealed by the act of 1911.—*Silver Lake, etc., Co. v. Los Angeles*, 176 Cal. 96, 167 Pac. 697.

CONSTRUCTION OF CANALS AND CANALIZATION OF RIVERS.

ACT 5536—An act to provide for the investigation of the practicability of the construction of canals and the canalization of rivers, their tributaries, and other waterways in California in aid of commerce; to define the duties of the department of engineering and of the governor, in relation thereto, and to make an appropriation to defray the cost of such investigation.

History: Approved May 1, 1911, Stats. 1911, p. 1445.

Department of engineering to investigate practicability of canals along Sacramento and San Joaquin rivers. Subjects embraced.

§ 1. The department of engineering is hereby authorized and directed to investigate the practicability of the construction of canals, with dams, locks and other structures required for their operation, in, along, or adjacent to, the Sacramento and San Joaquin rivers, their tributaries, and other waterways, and of the canalization thereof, where necessary, and also of the construction of such canals, with dams, locks and other structures required for their operation, inland in the Sacramento, San Joaquin and Santa Clara valleys, with the view of determining the utility thereof in aid of commerce and navigation. Such investigation to be made as complete as possible and to embrace all of said rivers, their tributaries, and other waterways and all of said valleys, wherever therein, canal navigation can be maintained. The investigation shall also embrace the following subjects:

1. Water supply and sources thereof;
2. Duration of period during year when water would be available for canal navigation and other purposes;
3. Quantity of water obtainable by storage;
4. Feasibility of use of electrical energy for propulsion of boats in canal navigation and other purposes;
5. Probable depth obtainable for canals in the various rivers, waterways and sections to be investigated, and the cargo capacity of boats suitable for different portions of such canals.

Report.

§ 2. The said department shall complete such investigation as soon as practicable, consistent with efficiency and accuracy. Its report and recommendations shall be prepared in duplicate and one copy thereof transmitted to the governor on or before December 1, 1912, whereupon the governor shall submit the same with his recommendations thereon, to the legislature on or before January 10, 1913.

May confer with United States engineers. Construction of canals.

§ 3. The said department, when thereto directed by the advisory board thereof, may confer with the board of officers of the engineer corps, United States army, stationed at San Francisco, California, the California debris commission, and the official representatives and engineers of reclamation and drainage districts, concerning the investigation contemplated by this act. When appropriations are available therefor, the department of engineering, when thereto directed by said advisory

board, shall proceed to construct canals and other works in connection therewith, in the manner and at the place, or places, specified by law.

Appropriation.

§ 4. There is hereby appropriated the sum of two thousand five hundred dollars out of any moneys in the state treasury not otherwise appropriated, for the purpose of carrying into effect the provisions of this act, to be expended under the supervision of said department of engineering.

Controller to draw warrant.

§ 5. The controller of state is hereby directed to draw his warrant for the amount herein appropriated in favor of the officers of said department of engineering authorized by law to receive the same, in such amounts and at such times as may be approved by the state board of examiners, and the state treasurer is directed to pay the same.

§ 6. This act shall take effect and be in force from and after July 1, 1911.

WATER CONFERENCE.

ACT 5537—An act providing for the calling by the governor of a conference on irrigation, reclamation, water storage, flood control, and drainage, and making an appropriation to pay the expenses thereof.

History: Approved May 18, 1915. In effect August 8, 1915. Stats. 1915, p. 514.

Conference on irrigation, water storage, etc.

§ 1. For the purpose of considering and recommending a unified state policy with reference to irrigation, reclamation, water storage, flood control, municipalities, and drainage, with due regard to the needs of water power, mining, and navigation, the governor of the state is hereby empowered to call a conference of properly qualified persons, consisting of the lieutenant governor, who shall be chairman thereof, the speaker of the assembly and the chairman of each of the committees of the senate and assembly of the forty-first session of the state legislature on irrigation and on drainage, swamp, and overflowed lands, the state engineer, the chairman of the state water commission, the chairman of the state reclamation board, the chairman of the state conservation commission, the secretary of agriculture, and six others to be appointed by the governor. Such conference shall first meet at the call of the governor, and shall meet thereafter during the years 1915 and 1916 at such times as the chairman shall determine. Not later than November 30, 1916, the conference shall report its findings and conclusions to the governor, together with any recommendations it deems desirable to make regarding legislation; and with the filing of its report with the governor as aforesaid its existence shall cease and determine.

Compensation.

§ 2. No member of the conference provided for in this act shall receive any compensation for any work performed in connection therewith other than as already allowed by law; but each member of such conference shall be entitled to receive his actual and necessary traveling expenses incident to attendance at regular called meetings of the conference or committees thereof; provided, that the traveling expenses of the members of the conference who become such members by reason of being members of a state department, board or commission shall be paid out of the funds appropriated by law for such department, board, or commission. The chairman of the conference is hereby authorized to employ such assistants as he may deem to be requisite to perform the clerical work made necessary by the proper performance of the duties of the conference.

Appropriation.

§ 3. Out of any moneys in the state treasury not otherwise appropriated there is hereby appropriated the sum of twenty-five hundred dollars to be expended in accordance with law in defraying the expenses herein authorized.

SUBTERRANEAN STORAGE ACT.

ACT 5538—An act to promote the utilization of the water of streams in this state and for that purpose authorizing the storage of the same underground and the damming of streams and the flowage of lands in effecting such storage for beneficial use.

History: Approved May 23, 1919. In effect July 23, 1919. Stats. 1919, p. 826.

Storage of water under ground declared beneficial use.

§ 1. The storing of water underground by the owner of the right to the use thereof, and the damming of streams and the flowing of water on lands necessary to the accomplishment of such storage, if the water is to be later withdrawn by pumps, tunnels, or other suitable means for irrigation, domestic or other beneficial uses within the territory served by the owners of the water right, with water for irrigation, domestic or other beneficial uses are hereby declared to be reasonable, economic, and beneficial methods of taking and applying such water, if the water so taken is from time to time being put to the beneficial uses for which it was appropriated.

Previous appropriations validated.

§ 2. Each appropriation heretofore made or consummated in the manner and for the purposes hereby authorized is hereby recognized and validated to the same extent and with the same force as if made or consummated pursuant to the provisions hereof, so far as the same is possible without injury to existing rights.

Application of act.

§ 3. None of the provisions hereof shall apply to the use of artesian well water or affect riparian rights in any way.

RECORDATION OF WATER USERS' ASSOCIATION CONTRACTS.

ACT 5539—An act to provide for the recordation of contracts and subscription agreements to stock in water users' association, organized in conformity with an act of congress, approved June 17, 1902, and to regulate recorders' fees for filing, recording and indexing same.

History: Approved March 20, 1907, Stats. 1907, p. 749.

§ 1. All county recorders in this state are hereby authorized and directed to accept from any incorporated water users' association, organized under the laws of the state of California for the purpose of securing the benefits of an act of congress approved June 17, 1902, known as the "reclamation act," books containing printed copies of agreements with the United States, or with such water users' association, in relation to the lands affected by the projects provided for by said act, and copies of blank forms of subscription agreements to the capital stock of such water users' associations, or the transfer thereof, or other documents necessary to be recorded by such associations and to use such form books or such form blanks for the purpose of recording the same; and recorders shall charge for filing, recording and indexing such documents, papers, writings or contracts the sum of seventy-five cents for each document.

§ 2. This act shall take effect immediately.

CHAPTER 423.

WATSONVILLE.

CONTENTS OF CHAPTER.

ACT 5542. FREEHOLDERS' CHARTER.

FREEHOLDERS' CHARTER.

ACT 5542.—Freeholders' charter of the city of Watsonville.

History: Voted for and ratified at a special election held for that purpose August 30, 1902; resolution of approval adopted February 16, 1903, Stats. 1903, p. 647. Originally incorporated by the act of March 30, 1868, Stats. 1867-68, p. 688. This act was amended (1) January 30, 1874, Stats. 1873-74, p. 43; (2) March 28, 1876, Stats. 1875-76, p. 511; (3) March 20, 1878, Stats. 1877-78, p. 363. This act was superseded by incorporation in 1889 under the general incorporation act, and this incorporation was superseded by the present charter.

Citation: The charter was cited in *Trafton v. Quinn*, 143 Cal. 469, 472, 77 Pac. 164.

WATTS.

See Act 3094, note.

CHAPTER 424.

WEIGHTS AND MEASURES.

Reference: See Kerr's Cyc. Political Code, § 3209.

CONTENTS OF CHAPTER.

ACT 5554. WEIGHTS AND WEAHERS FOR WAREHOUSEMEN AND WHARFINGERS.

5556. STANDARD OF WEIGHTS AND MEASURES ACT OF 1913.

5557. PUBLIC WEIGHMASTER.

WEIGHTS AND WEAHERS FOR WAREHOUSEMEN AND WHARFINGERS.

ACT 5554—An act relating to weights and weighers for warehousemen and wharfingers, and matters connected therewith.

History: Approved March 24, 1903, Stats. 1903, p. 387.

Designation of weigher. Oaths of weighers required. Form of.

§ 1. All persons now engaged in or who may hereafter engage in a general warehouse, wharfinger or storage business for the storage of grain or other commodities, which in the course of such business are weighed, shall, before they engage in such business, or within sixty days after the appointment of an inspector of weights as provided in section 4 of this act, designate in writing a person or persons as weigher or weighers for such business at the place thereof, and the person or persons so designated shall thereupon, and before they shall do any weighing for such business subscribe, before an officer authorized to administer oaths, the following oath, to wit:

“(I or we) designated as (weigher or weighers) will correctly weigh all grain or other commodities brought to (here designating the business and place of business) for storage or weighing, or which may be taken out from the same, and in all cases render to the person bringing or receiving the same, as the case may be, upon demand, a full, true and correct account of the weight thereof.”

Scales must be true.

§ 2. All persons engaged in the business in the foregoing section mentioned shall keep for and use in such business no other than true and correct scales and weights.

Designation and oath, recording of. No other persons to weigh.

Said designation and said oath shall thereupon and within the time aforesaid, be

recorded in the office of the recorder of the county in which such business is to be or is being carried on.

No person, excepting the person or persons thus designated and subscribing and recording such oath shall do any of the weighing of such business.

True weights to be kept. To conform to United States standard.

§ 3. Every person engaged in the business in said section 1 mentioned, shall keep and use therein none but true weights, and scales; said weights must conform to the United States standard of weights.

Inspectors of weights and measures, appointment and duties.

§ 4. The board of supervisors of the respective counties of the state of California, hereby are authorized to appoint for their respective counties an inspector of weights and measures, who shall hold office at the pleasure of said board and receive such compensation as each board may allow, and whose duty it shall be from time to time to test and examine all scales and weights kept or used in the business in the foregoing sections mentioned, and report all violations of this act to the district attorney of such county, whose duty it shall be to prosecute all violations thereof.

Violation of statute, penalty.

§ 5. Every violation of this act shall be and is punishable as a misdemeanor.

Recovery for shortage.

§ 6. Besides the prosecution of the criminal actions herein provided for, every person defrauded by false or incorrect weighing shall be entitled to recover from the person owning or conducting such business as in the foregoing sections mentioned, in any court of competent jurisdiction, three times the amount of such shortage in weight of the grain or other commodity so delivered or taken out by him.

STANDARD OF WEIGHTS AND MEASURES ACT OF 1913.

ACT 5556—An act to establish a standard of weights and measures in the state of California; to regulate weights and measures and weighing and measuring instruments and devices and providing for the inspection and sealing thereof; to prevent the use and sale of false weights and measures and weighing and measuring instruments and devices; providing for the inspection, measurement and weighing of goods, commodities, wares, packages and amounts of commodities kept for sale or in process of delivery; to prevent the sale of goods, wares and merchandise by false weights and measures; to provide penalties for the violation of the provisions of this act; for the admission in evidence of copies of the state's standard of weights and measures; providing for the appointment of officers to enforce and carry into effect the provisions of this act, including a state superintendent of weights and measures and his deputy, sealers of weights and measures and their deputies; defining the powers and duties of such officers; and making an appropriation to carry this act into effect.

History: Approved June 16, 1913. In effect August 10, 1913. Stats. 1913, p. 1086. Amended (1) June 8, 1915, in effect August 8, 1915, Stats. 1915, p. 1312; (2) June 1, 1917, in effect July 31, 1917, Stats. 1917, p. 1647. This act supersedes the act of 1911 (Stats. 1911, p. 383). It is an exercise of the power conferred by the amendment of 1911, to section 14, article XI, of the constitution (Stats. 1911, p. 1798), while the act of 1911 was enacted prior to such amendment. This act partly, if not entirely, superseded the act of 1903 relating to wharfingers and warehousemen. (See Act 5554.) It also superseded the act of April 6, 1891, Stats. 1891, p. 487, as to which the code commissioners say: "Of doubtful constitutionality, and has never been acted under. (Condict v. Police Court, 59 Cal. 278; section 14, article XI, state constitution; subdivision 5, section 8, article I, constitution of United States)."

Office of superintendent of weights and measures created.

§ 1. There is hereby created the office of state superintendent of weights and measures. Within thirty days after this act becomes effective, the governor shall appoint a suitable person as state superintendent of weights and measures. Wherever in this act the term superintendent or state superintendent is used, it shall be taken as referring to and meaning state superintendent of weights and measures.

Terms, etc., of state superintendent of weights and measures.

§ 2. The term of office of state superintendent of weights and measures shall be four years, or until his successor shall have been appointed and qualified, but he shall always be subject to removal at the pleasure of the governor. The salary of state superintendent of weights and measures shall be four thousand dollars per annum, payable in the same manner as other state officers are paid. Before entering upon his duties he shall execute a bond to the state in the sum of five thousand dollars, conditioned upon the faithful performance of his duties. [Amendment of June 1, 1917. In effect July 31, 1917, Stats. 1917, p. 1648.]

This section was also amended June 8, 1915, Stats. 1915, p. 1312.

Deputies.

§ 3. The state superintendent may appoint a deputy who shall have the same powers as the state superintendent. Such deputy shall receive a salary of eighteen hundred dollars per annum, payable in the same manner as other state officers are paid. He shall be at all times subject to removal at the pleasure of the state superintendent. The state superintendent may also appoint additional deputies from time to time to serve as sealers of weights and measures at the request of counties, as provided in section sixteen of this act. Such deputies when actually employed shall be paid at the rate of one hundred and fifty dollars per month by the county engaging their services and not by the state. They also shall receive their actual traveling expenses from such county. [Amendment of June 8, 1915. In effect August 8, 1915, Stats. 1915, p. 1313.]

Traveling and office expenses.

§ 4. The state superintendent and his deputy shall each be allowed their actual traveling expenses, to be approved by the state board of control in the same manner as other claims against the state. The state superintendent shall also be allowed necessary office expenses to be approved by the state board of control in the same manner as other claims against the state.

Standards of weights and measures.

§ 5. The standards of weights and measures received from the United States under a resolution of congress approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or renewal thereof, and such as shall be procured by the state in conformity therewith and certified by the national bureau of standards, shall be the state standards by which all state, county and municipal standards of weights and measures shall be tried, proved and sealed.

Standards.

§ 6. The standards referred to in the preceding section shall be kept by the state superintendent in a safe and suitable place in his office from which they shall not be removed except for repairs or certification. He shall maintain such standards in good order and shall submit them at least once in ten years to the national bureau of standards for certification. Upon demand the secretary of state shall deliver to the state superintendent all standards now under the control and in the possession of

the secretary of state in his capacity of ex officio state sealer of weights and measures. The state superintendent shall thereupon submit such standards received from the secretary of the state to the national bureau of standards for certification, and he shall replace such standards as are incorrect and purchase such additional standards as shall be necessary to complete and make up a complete standard of weights and measures as required by this act. He shall also purchase such apparatus as shall be found necessary to a proper prosecution of the work of the office. The state superintendent of weights and measures may establish tolerances and specifications for commercial weighing and measuring apparatus for use in the state of California similar to the tolerances and specifications recommended by the national bureau of standards, and he may establish a standard net weight, or net measure, or net count of any commodity, produce or article except any manufactured commodity consisting of four or more staple ingredients, and prescribe such tolerances for same as he may in his best judgment deem necessary for the proper protection of the public. Any person violating such standards or tolerances shall be guilty of a misdemeanor. [Amendment of June 1, 1917. In effect August 31, 1917, Stats. 1917, p. 1648.]

This section was also amended June 8, 1915, Stats. 1915, p. 1313.

§ 7. There is no section of this number.

Copies furnished cities, etc. Testing.

§ 8. The state superintendent shall, at the request of the legislative body of any county, city, town, or city and county, furnish to said county, city, town or city and county, copies of the standard weights and measures of the state; such copies shall be furnished at the expense of the county, city, town or city and county requesting the same. He shall upon request of the legislative body of any county, city, town, city and county or upon the request of a sealer of weights and measures of any such county, city, town or city and county, appointed pursuant to the provisions of this act, test and accurately approve copies of the state's standards of weights and measures procured by any such county, city, town or city and county to be used by a sealer of weights and measures in the performance and discharge of his duties. Copies furnished under the provisions of this section or copies tested and approved by the state superintendent under the provisions of this section shall be true and correct; shall be sealed and certified to by the state superintendent and stamped with the letter "C." Such copies need not be of the same material or construction as the standards of the state and such copies may be furnished in any suitable materials or construction that the county, city, town, or city and county requiring the same may specify, subject to the approval of the state superintendent.

Inspection of standards used by cities, etc. Expense of testing. Complete set of copies.

§ 9. The state superintendent shall inspect and correct the standards used by each county, city, town and incorporated city and county of the state, and at least once in two years compare the same with those in his possession and keep a record of the same, and where not otherwise provided by law he shall have general supervision of the weights and measures and weighing and measuring devices offered for sale, sold or in use in the state. Sealers of weights and measures appointed under the provisions of this act shall, upon the request of the state superintendent, deliver to the state superintendent at his office copies of the state's standards of weights and measures in their possession, and used in the discharge and performance of their duties, for verification and certification by the state superintendent. The actual expense of such comparison and verification shall be borne by the county, city, town or city and county whose weights and measures are compared and verified. In addition to the standards heretofore referred to and required to be kept by the state, the state shall also have a complete set of copies of said original standards of weights and measures adopted

by this act, which shall be used for adjusting county and municipal standards by the state superintendent and his deputy in the performance of their duties, and the original standards shall not be used except for the adjustment of this set of copies and for certification purposes. Additional complete sets of copies of such original standard of weights and measures may be purchased by the superintendent when the same are necessary for use by any deputy state superintendent employed by counties under section 16 of this act. The state, however, shall be reimbursed for the purchase of such copies by the county in which the same are used, in the manner hereinafter provided.

Testing of weights and measures used by state institutions.

§ 10. The state superintendent or his deputy shall, at least once annually and as often as requested by the state board of control or the executive officers of the institutions herein referred to, test the scales, weights and measures used in checking the receipt and disbursement of supplies in every institution conducted by the state, and he shall report in writing his findings to the executive officer of the institution concerned and to the state board of control.

Inspecting work of local sealers.

§ 11. The state superintendent or his deputy shall at least once in two years visit the various cities and counties of the state and inspect the work of the local sealers of weights and measures, and in the performance of said duties he or his deputy may inspect the weights, measures, balances or any other weighing or measuring devices, of any person, firm or corporation. The state superintendent and his deputy shall have all the powers of sealers of weights and measures provided for in this act.

Sealers who neglect duty, etc. Hearing, etc.

§ 12. The state superintendent if he finds that any sealer of weights and measures appointed under the provisions of this act, or any sealer or deputy sealer appointed by any city or county in this state, prior to this act, has refused or neglected to perform the duties of his office or refused to accept the recommendations and instructions of the state superintendent or is guilty of any malfeasance in office or who is incompetent, shall present to the body, officer or board having power to remove such sealer or deputy sealer of weights and measures a written charge and accusation based upon and clearly stating the alleged offense or offenses of such sealer or deputy sealer and request such body, officer or board to hear and determine such charge and accusation. Upon receipt of such charge and accusation, it shall be the duty of the body, officer or board with whom the same have been filed to make an order setting the same for hearing at a time which shall be not less than ten nor more than twenty days from the date upon which such charge and accusation shall have been filed, and shall in such order fix the time and place for such hearing. A copy of such charge and accusation, together with a copy of such order, shall be served upon the accused at least seven days prior to the time fixed for such hearing; provided, that in the event he shall absent himself from his usual place of business, or office, such service may be made by depositing such copies in a conspicuous place therein or by leaving the same at the last known place of residence of the accused, within the time above limited. At such hearing the accused shall have the right to be represented by counsel, if he so desires, and to produce witnesses and documentary evidence in his defense. If, upon such hearing, he be found guilty of malfeasance in office, or adjudged to be incompetent to perform the duties of the office; the body, officer or board before whom such hearing is had must forthwith remove him from office. If he be found guilty of any of the other offenses herein enumerated he may be punished by removal, or by suspension without pay for a period not exceeding thirty days, as such body, board or officer may determine.

If he has reason to believe that any such sealer or deputy sealer of weights and measures has committed any of the offenses specified in section seven hundred and seventy-two of the Penal Code, the state superintendent may, in his discretion, present an accusation to the superior court of the county in which the accused is employed, which shall thereupon be heard and determined by such court in the manner provided by law. The remedies provided in this section are cumulative merely, and shall not in any wise detract from the right of the appointing power to remove at will any such sealer or deputy sealer of weights and measures. It shall be unlawful for the state superintendent, his deputies, or any sealer of weights and measures to keep for sale, or offer or expose for sale, or to sell to any person, firm, or corporation, or dealer in goods, wares and merchandise, doing or intending to do business in the state of California any weighing or measuring instrument, or to be interested directly or indirectly in the sale of any weighing or measuring instrument. [Amendment of June 8, 1915. In effect August 8, 1915, Stats. 1915, p. 1313.]

Investigate conditions in state. Annual report.

§ 13. It shall be the duty of the state superintendent to investigate conditions in the various counties, cities and towns of the state in respect to weights and measures, and to the sale of goods, wares and merchandise, commodities and foodstuffs in containers. The state superintendent shall annually report to the governor, and shall prior to each regular session report to the legislature the work of his office, and shall make such recommendations as he shall deem proper and necessary.

Instructions to sealers.

§ 14. The state superintendent shall issue instructions and make recommendations to the county and municipal sealers of weights and measures, appointed under the provisions of this act, and such instructions and recommendations shall govern the procedure to be followed by the aforesaid officers in the discharge of their duties.

Record of acts done.

§ 15. The state superintendent shall keep in his office a complete record of all acts done by him and a record of all prosecutions for violation of the provisions of this act, and the reports of the various sealers of weights and measures appointed under the provisions of this act, which records and reports shall always be open to the public.

Office of sealer of weights and measures created. Compensation. Deputies. Failure to appoint.

§ 16. The office of sealer of weights and measures is hereby created. Whenever in this act the term "sealer" is used, the same shall be taken to mean and refer to sealer of weights and measures. Within one hundred and twenty days after the approval of this act by the governor, it shall be the duty of the board of supervisors of each of the counties of the state except as hereinafter provided, to appoint a sealer of weights and measures for their respective counties; said sealer shall receive as compensation the sum of five dollars per day for each day actually employed in the service of the county, to be audited and paid as other claims against the county. He shall be allowed his traveling expenses actually and necessarily incurred in the performance of his duties. The term of office of such sealer of weights and measures shall be four years, but he shall be subject to removal at the will of such board. A sealer appointed under this act may, with the consent of the board of supervisors of the county appointing him, appoint a deputy or deputies when necessary or expedient to carry out the provisions of this act. The compensation of such deputies shall be the same as the county sealer and paid in the same manner. Such deputies shall always be subject to removal by the sealer of weights and measures. In case the

legislative body of that county or city and county shall not appoint a sealer for such county or city and county within thirty days after written request for such appointment by the state superintendent, is received, said state superintendent shall assign as soon as practicable a deputy superintendent who shall perform all the duties of sealer in such county or city and county as provided in this act to be performed by county or city sealers and to provide copies of the original standards of weights and measures for use by said deputy in such county. The actual cost of such services shall be paid by the county in the same manner in which other claims against the county are paid. The amount to be paid shall be at the rate of one hundred and fifty dollars per month for the time such deputy superintendent is employed in such county in addition to the actual traveling expenses of such deputy made necessary by such appointment. The county shall also stand its proportionate share of the actual cost of the set of copies to be used in such county by such deputy, at the rate of one-twelfth of the cost thereof for every month such copies are employed therein during the first year of their use, and in that event such county may at any time pay the balance of the cost of such copies and become the owner thereof, or the county may pay rental to the state for the use of such copies at the rate of ten per cent per annum of the cost price thereof. [Amendment of June 8, 1915. In effect August 8, 1915, Stats. 1915, p. 1315.]

Appointment of sealers.

§ 17. The legislative body of any county or consolidated city and county of the first to the thirty-fifth classes, both inclusive, and the legislative body of any city or town may appoint a sealer of weights and measures, fix his compensation and provide for the appointment by the sealer of such number of deputies as the said legislative bodies may deem necessary and expedient. Such sealer shall receive as compensation the sum of one hundred fifty dollars per month, or at the rate of one hundred fifty dollars per month for each month or part thereof actually employed in the service of such county or city and county, or city and town. He shall be allowed his traveling expenses actually and necessarily incurred in the performance of his duties; and such deputies shall each receive as compensation the sum of five dollars per day for each day actually employed in the service of such county, or city and county, or city and town. They shall be allowed their traveling expenses actually and necessarily incurred in the performance of their duties. The term of office of sealer of weights and measures appointed under the provisions of this section shall be four years. He shall be subject to removal by the power appointing him. Deputies appointed under the provisions of this section by a sealer of a county, city and county, or city, or town, shall be subject to removal by the sealer.

In counties of second class.

In counties of the second class whose charters provide for a department of weights and measures, the appointment of a sealer and deputies, the number of such deputies and the term of office thereof shall be as provided in said charter; provided, that the sealer shall receive for compensation the sum of three thousand dollars per annum, and one deputy, to be known as chief deputy, shall receive as compensation the sum of two thousand four hundred dollars per annum. Deputies shall receive as compensation the sum of one thousand eight hundred dollars per annum, each payable in the same manner as the salaries of other county officers are paid. In counties of the third class the sealer shall receive as compensation the sum of one thousand eight hundred dollars per annum, and deputies shall each receive as compensation the sum of one thousand five hundred dollars per annum, payable in the same manner as the salaries of other county officers are paid.

Counties in which deputies appointed by state superintendent.

In all counties other than those of the first to the thirty-fifth classes, both inclusive, no county sealer or deputies shall be appointed by the legislative body thereof, but the state superintendent of weights and measures shall assign to such counties, or groups of such counties, such deputy superintendents as may be necessary, but not more than one to each of such counties. Such deputies shall have jurisdiction over such county, or group of counties, as the state superintendent may designate, except within the territorial limits of those cities and towns within which sealers have been appointed under the provisions of this act. They shall have all the powers and perform the duties of a sealer of weights and measures. They shall be paid by the county wherein employed, five dollars a day for each day employed therein, which shall not exceed one hundred and twenty days in any one county in any one year, and they shall also receive from such county their actual traveling expenses. The terms of office of all sealers and deputy sealers in all counties other than those of the first to the thirty-fifth classes, both inclusive, shall terminate when this section becomes effective. [Amendment of June 1, 1917. In effect July 31, 1917, Stats. 1917, p. 1649.]

Jurisdiction of sealers.

§ 18. The jurisdiction of a sealer appointed or a deputy state sealer employed for a county shall extend over the entire territorial limits of the county appointing such sealer, except within the territorial limits of those cities and towns within which sealers have been appointed under the provisions of this act. The jurisdiction of the sealer of weights and measures appointed by the legislative body of any city or town under the provisions of this act shall extend over the entire territorial limits of such city or town.

Sealers appointed heretofore not affected.

§ 19. This act shall not affect the appointment of any sealer of weights and measures heretofore appointed for any city, town or city and county under any law, but such sealers shall perform the duties of the office under the provisions of this act, and shall possess the same powers and duties as sealers appointed under the provision of this act.

Copies of standards for counties, etc.

§ 20. Except as herein otherwise provided the board of supervisors or legislative body of each county, city, town and city and county of the state shall, upon the appointment of a sealer under the provisions of this act, provide and procure for their respective county, city, town and city and county, copies of the state's standards of weights and measures at the expenses of such county, city, town or city and county; such copies shall be verified and certified to by the state superintendent of weights and measures as in section eight of this act provided.

Copies to be tested.

§ 21. Sealers appointed under the provisions of this act shall, at least every two years, cause to be proved and tested by the state superintendent copies of the state's standards in their possession. If, upon such inspection, or any inspection by the state superintendent, the copies of the weights and measures tested shall be found to be incorrect, the same shall be adjusted, if the same are susceptible of being adjusted, but if not, new copies shall be procured and certified to in the same manner as original copies.

Copies deemed correct.

§ 22. In any prosecution for a violation of any of the provisions of this act any copy of the standards of weights and measures of the state furnished, procured and certified to under the provisions of this act, shall be admitted in evidence upon the trial, and such copy shall be deemed prima facie true and correct.

Duties of sealers.

§ 23. It shall be the duty of any sealer of weights and measures to carefully preserve all copies of the standards of weights and measures in his possession, and to keep the same in a safe and suitable place when not actually in use; and it shall be his duty annually and at such other times as the state superintendent may require, to file with such superintendent a written report of the work done by him of the weights, measures, weighing and measuring instruments inspected or tested by him and of the result of such inspection, of all prosecutions instituted by him for violations of the provisions of this act and of all other matters and things pertaining to his duties or which may be required by the state superintendent.

Dealers in weighing and measuring instruments to have same tested.

§ 24. Every person using or keeping for use or having or offering for sale weights, scales, beams, measures of every kind, instruments or mechanical devices for weighing or measurement, and tools, appliances and accessories connected with any or all such instruments or measures within a county, city, town, or city and county in which there has been appointed a sealer under the provisions of this act, shall within three months after the appointment of such sealer cause all such weights, scales, beams, measures of every kind, instruments or mechanical device for weighing or measurement, and tools, appliances and accessories connected with any or all such instruments or measures to be sealed and marked by the sealer of weights and measures of the county, city, town or city and county in which the same are used, kept for use or kept or offered for sale.

Instruments must be tested before sale.

§ 25. No weight, scale, beam, measure of any kind, instrument or mechanical device for weighing or measurement, nor tools, appliances or accessories connected with any or all of such instruments or measures shall be used, kept for use, sold, offered for sale or kept for sale in any county, city, town or city and county, in which there is a sealer appointed under the provisions of this act and in which for three months there has been continuously in office in such county, city, town or city and county a sealer, unless such weight, scale, beam, measure of any kind, instrument or mechanical device for weighing or measurement, and tools, appliances and accessories connected with any or all such instruments or measures shall have been sealed and tested as in this act provided.

Instruments which may be sold. Subject to inspection.

§ 26. When any weight, scale, beam, measure of any kind, instrument or mechanical device for weighing or measurement, and tools, appliances and accessories connected with any or all such instruments or measurements have been tested and found correct by any sealer appointed under the provisions of this act, the same may be used, kept for use, offered for sale, sold, or kept for sale within any county, city, town or city and county of this state for one year without any further test. Any weight, scale, beam, measure of any kind, instrument or mechanical device for weighing or measurement, and tools, appliances and accessories connected with any or all such instruments or measures, which have been tested and sealed and certified to as correct by the national bureau of standards, may be kept for sale, sold or offered for sale without

being first tested and sealed by a sealer as in this act provided. But all such weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measurement, and tools, appliances and accessories connected with any or all such instruments or measures shall always be subject to inspection and testing as herein provided, notwithstanding that the same have been tested and sealed either by a sealer appointed under the provisions of this act or by the national bureau of standards.

Testing of devices which must be assembled before use.

§ 27. Any scale, beam or mechanical device for weighing or measuring, which, after being sold and before being used for weighing or measuring it is necessary to assemble or set up, may be sold, kept for sale, or offered for sale without first being tested and sealed as in this act provided; but such scale, beam or mechanical device for weighing or measuring, before being used for weighing or measuring, must be tested and sealed as in this act provided.

Testing upon request of resident. Testing upon request of firm, etc., using. Not relieved from violation.

§ 28. Upon a written request of any resident of a county, city, town or city and county, in which there has been appointed a sealer under the provisions of this act there appearing reasonable ground therefor, the sealer for such county, city, town or city and county shall test or cause to be tested, as soon thereafter as is practicable, the weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measurement, tools, appliances and accessories connected with any or all such instruments or measurements used in buying or selling by the person, firm or corporation, designated in such request. Upon the written request of any person, firm or corporation, using, having for use, selling, keeping or offering for sale any weight, scale, beam, measure of any kind or instrument or mechanical device for weighing or measurement, tools, appliances and accessories connected with any or all such instruments or measures, in any county, city, town, or city and county in which there has been appointed a sealer under the provisions of this act, the sealer for such county, city, town or city and county shall test or cause to be tested, as soon thereafter as is practicable, the weights, scales, beams, measures of any kind, instrument or mechanical device for weighing or measurement, tools, appliances and accessories connected with any or all such instruments or measures belonging to or used by such person, firm or corporation; but such written request shall not relieve the person, firm or corporation making it from any violation of the provisions of this act or of the responsibility provided in this act for using, keeping for use, selling or offering to sell, or keeping for sale, any false weight, scale, beam, measure of any kind, instrument or mechanical device for weighing or measurement, tools, appliances and accessories connected with any or all such instruments or measures.

Duties of sealers. Weigh packages.

§ 29. The sealer shall, within his county, city, town or city and county, inspect, try, test all weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measurements, and tools, appliances and accessories connected with any or all such instruments or measures, kept for the purpose of sale, sold, or used by any proprietor, agent, lessee or employee in providing the size, quantity, extent, area, weight or measurement of quantities, things, produce, articles for distribution or consumption, purchased or offered or submitted by such person or persons for sale, hire or award and ascertain if the same are correct; and he shall have the power to and shall, from time to time, weigh or measure packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale or sold, or in the

process of delivery, in order to determine whether the same contain the quantity or amount represented and whether they are being offered for sale or sold in accordance with law and may seize for use as evidence any such amounts of commodities or package or packages which shall be found to contain a less amount than that represented. He shall, at least once in each year, or as much oftener as he deems necessary, see that the weights, measures and all weighing and measuring apparatus, used in his county, city, town, or city and county, are correct. He may, for the purpose above mentioned, and in the general performance of his duty, without formal warrant, enter or go into or upon, any stand, place, building or premises or stop any vendor, peddler, junk dealer, driver of a coal wagon, ice wagon or delivery wagon or the driver of any wagon containing commodities for sale or delivery and, if necessary, require him to proceed to some place which the sealer may specify for the purpose of making the proper tests.

Violators prosecuted.

§ 30. Any sealer having knowledge of a violation of any of the provisions of this act, or of any law relating to weights and measures shall cause the violator to be prosecuted.

Marking weights and measures tested, etc. "Out of order." Removal of tags prohibited.

§ 31. Whenever a sealer compares weights and measures or weighing or measuring instruments and finds that they correspond, or causes them to correspond, to the standards in his possession, he shall seal or mark, under his name, such weight or measure or weighing or measuring instrument with an appropriate device showing that the weight or measure or weighing or measuring instrument is correct and the date of the inspection, which device shall be placed so as to be easily seen. He shall condemn and seize and may destroy incorrect weights and measures and weighing and measuring instruments which in his best judgment are not susceptible of repair, but any weight, measure or weighing or measuring instrument which shall be found to be incorrect, but which in his best judgment are susceptible of repair, he shall cause to be marked with a tag or other suitable device with the words "out of order." The owners or users of any weights or measures or weighing or measuring instruments which have been marked "out of order," as in this section provided, may have the same repaired or corrected within thirty days, but until the same have been repaired or corrected and tested as herein provided the owners or users thereof may neither use nor dispose of the same in any way, but shall hold the same at the disposal of the sealer. When the same have been repaired or corrected the owner or user thereof shall notify the sealer and the sealer shall again test and prove the weight, measure, or weighing or measuring instrument, which had been found incorrect and marked as in this section provided, and until such weight, measure, or measuring or weighing instrument has been reinspected by the sealer and found correct, the same shall not be used or in any way disposed of by the owner. Any person who removes or obliterates any tag or device placed upon any weight, measure, or weighing or measuring instrument by the sealer as in this act provided, shall be guilty of a misdemeanor. When any weight, measure or weighing or measuring instrument has been repaired and corrected, as in this act provided, and has been reinspected and found correct by the sealer of weights and measures, as in this act provided, the sealer of weights and measures shall remove the tag or device with the words "out of order," and shall seal and mark such weight, measure, or weighing or measuring instrument in the manner provided for the marking of the same where upon inspection they are found correct.

Penalty for using false weights and measures.

§ 32. Any person who, by himself, or his employee or agent, or as the employee or agent of another, shall use, in the buying or selling of any commodity, or retain in his possession a false weight or measure or weighing or measuring instrument, or shall offer or expose for sale, or sell, except as heretofore specifically allowed in section twenty-seven of this act, or use or retain in his possession any weight or measure or weighing or measuring instrument in any county, city, town, or city and county in which there has been appointed a sealer of weights and measures in accordance with the provisions of this act, which has not been sealed by a sealer within one year, or who shall use or dispose of any condemned weight or measure, or weighing or measuring instrument contrary to law, or any person who, by himself, or his employee or agent, or as the employee or agent of another, shall sell or offer or expose for sale or use or have in his possession for the purpose of selling or using any device or instrument to be used or calculated to falsify any weight or measure, and any person who, by himself, or his employee or agent, or as the employee or agent of another, shall sell or offer, or expose for sale any commodity, produce, article or thing in a less quantity than he represents it to be or contain, shall be guilty of a misdemeanor. Possession of any false weight or measure or weighing or measuring instruments or records thereof shall be prima facie evidence of the fact that they were intended to be used in the violation of law. [Amendment of June 1, 1917. In effect July 31, 1917, Stats. 1917, p. 1650.]

This section was also amended June 8, 1915, Stats. 1915, p. 1316.

Penalty for selling commodity at other than true net weight.

§ 32a. No person shall by himself or his employee or agent, or as the employee or agent of another sell or offer or expose for sale any commodity, produce, article or thing at, by, or according to gross weight or measure, or at, by, as, of, or according to any weight, measure or count which is greater than the true net weight, measure or count thereof, or which is less than the standard net weight, standard net measure or standard net count, including tolerances, as such standards and tolerances are now or may hereafter be established pursuant to the provisions of this act. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [New section added June 1, 1917. In effect July 31, 1917, Stats. 1917, p. 1650.]

Power of peace officers.

§ 33. The state superintendent, his deputy, all sealers and their deputies, in the performance of their official duties, shall have the same powers as are possessed by peace officers of this state.

Hindering sealers.

§ 34. Any person who shall hinder or obstruct in any way the state superintendent, or his deputy, or a sealer or his deputy, in the performance of their official duties, shall be guilty of a misdemeanor.

Refusing to exhibit weights or measures.

§ 35. Any person neglecting or refusing to exhibit any weight, measure, or weighing or measuring instrument of any kind, or appliances and accessories connected with any or all of such instruments or measures which is in his possession or under his control, to the state superintendent, or his deputy, or to a sealer or his deputy, for the purpose of allowing the same to be inspected and examined as in this act provided, shall be guilty of a misdemeanor.

Refusing to exhibit commodities.

§ 36. Any person, who by himself, or his employee or agent, or as a proprietor or manager, shall refuse to exhibit any article, commodity, produce or anything being sold or offered for sale at a given weight or quantity, or ordinarily so sold, to the state superintendent, or to his deputy, or to a sealer or his deputy, for the purpose of allowing the same to be tested and proved as to the quantity contained therein as in this act provided, shall be guilty of a misdemeanor.

Penalty for false sealing.

§ 37. Any sealer who shall seal any weight, measure, balance or apparatus before first testing and making the same conform with the standards of the state, or who shall condemn any weight, measure, balance or apparatus without first testing the same, shall be deemed guilty of a misdemeanor.

Violation of act a misdemeanor.

§ 38. Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

“Person.”

§ 39. The word “person,” as used in this act, shall be deemed to include person, firm or corporation.

Duty of officers of corporations.

§ 40. It shall be the duty of all officers, directors and managers of corporations, whose respective corporations use or keep for use, sell or offer for sale, any weights, measures, or weighing or measuring instruments which are subject to inspection by the provisions of this act, to comply with the provisions of this act on behalf of their respective corporations; and it shall be the duty of all officers, directors and managers of corporations, whose respective corporations offer for sale or keep for sale any commodity, produce, article or thing which is subject to inspection by the provisions of this act, to comply therewith on behalf of their respective corporations. In case any corporation shall violate any of the provisions of this act, the corporation and the officers thereof directly concerned with the act or acts constituting such violation shall be severally guilty of a misdemeanor.

Sealing by state superintendent or deputy, effect of.

§ 41. Any sealing or testing of any weight, measure, weighing or measuring instrument by the state superintendent or his deputy shall have the same force and effect as a sealing or testing by a sealer or his deputy.

Appropriation.

§ 42. There is hereby appropriated out of the general fund of the state the sum of twelve thousand dollars for carrying into effect the provisions of this act.

Title.

§ 43. This act when cited or amended may be designated as the “weights and measures act.” [Amendment of June 1, 1917. In effect July 31, 1917, Stats. 1917, p. 1650.]

1. Constitutionality — Act constitutional.—The legislature was empowered by section 14 of article XI of the constitution to enact the statute of March 18, 1911, authorizing the appointment of county and city sealers of weights and measures, and pre-

scribing their duties.—*Scott v. Boyle*, 164 Cal. 321, 324, 128 Pac. 941.

2. Act not repealed or rendered inoperative.—The act of March 18, 1911, was not repealed or rendered inoperative by the amendment of October 10, 1911, to section

14, article XI, of the constitution.—*Scott v. Boyle*, 164 Cal. 321, 325, 128 Pac. 941.

3. **Same.**—In the absence of a later statute on the subject, the act of March 18, 1911 (384) remains in full force and effect, and officials appointed under its authority are de jure officials.—*Scott v. Boyle*, 164 Cal. 321, 326, 128 Pac. 941.

4. **Freeholder charter city — Compensation of deputy sealer of weights and measures a "municipal affair."**—The compensation of a deputy sealer of weights and measures of a freeholder charter city whose charter authorizes the fixing of such compensation, is a municipal affair, and the provisions of this act have no application, where such compensation has been fixed by ordinance.—*Milliken v. Meyers*, 25 Cal. App. 510, 144 Pac. 321.

5. **County and city sealers.**—The act provides for state sealer of weights and measures, and makes the appointment of county sealers obligatory upon boards of supervisors, or requires them to apply to the state sealer for the assignment of a local deputy, and the legislative bodies of cities the optional power to appoint city deputies.—*Milliken v. Meyers*, 25 Cal. App. 510, 144 Pac. 321.

6. **Same.—Power of appointment.**—The power of legislative bodies of cities to appoint city deputy sealers, under the act, is the same as if the charter made provision therefor, but it is to be exercised at their discretion, and such appointment becomes a "municipal affair" only to the extent of making the appointment and fixing the compensation.—*Milliken v. Meyers*, 25 Cal. App. 510, 144 Pac. 321.

PUBLIC WEIGHMASTER.

ACT 5557—An act defining public weighmaster; describing his duties; providing for rules and regulations governing the performance of his duties; prescribing a bond and fixing the amount thereof; and providing penalties for any violation of the provisions of this act.

History: Approved June 8, 1915. In effect August 8, 1915. Stats. 1915, p. 1288. Amended May 18, 1919, in effect July 22, 1919, Stats. 1919, p. 723.

Public weighmaster. Bond. Exceptions. Seals.

§ 1. All persons, firms, corporations, copartners or individuals engaged in the business of public weighing for hire, or any person, firm or corporation, who shall weigh or measure any commodity, produce, or article, and issue therefor a weight certificate which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce or article, is based, shall be known as a public weighmaster, and shall file a bond with the state superintendent of weights and measures in the sum of one thousand dollars for the faithful performance of his duties, and shall obtain from the state superintendent of weights and measures a seal for the stamping of weight certificates hereinafter provided for, which shall only be in such form as such superintendent may prescribe; provided, that nothing in this act shall apply to any scales, or to the owner or lessee thereof, which are situated wholly outside of any incorporated city or town, except where said scales are being used in the weighing of any commodity which has been or is being purchased by the owner or lessee thereof, which are being used in the weighing of any commodity intended for storage for which a storage charge is made.

(a) The said seals shall be the property of the state and shall be forfeited and returned to the state superintendent of weights and measures upon termination of the performance of the duties herein prescribed as being the duties of a public weighmaster. Such seal shall be of a form and design prescribed by the state superintendent and furnished by him at the expense of the weighmaster. Said seal shall be a recognized authority of accuracy when applied to weight certificates. [Amendment of May 18, 1919. In effect July 22, 1919, Stats. 1919, p. 723.]

Weight certificates.

§ 2. The state superintendent shall prescribe a form of weight certificates to be used by all public weighmasters, which certificates shall be known as the "state certificate of weights and measures," and shall state thereon the kind of product, the number of units of the same, the date of receipt of the product, the owner, agent or

consignee, the total weight of the product, the vessel, railroad, team, or other means by which the product was received, any trade or other mark thereon, and such other information as may be necessary to distinguish or identify the product from a like kind. No certificate other than the one herein prescribed shall be used by public weighmasters.

Records.

§ 3. All public weighmasters shall keep and preserve correct and accurate records of all public weighings, as provided by this act, which records shall at all times be open for inspection by the state superintendent of weights and measures, or his deputy.

Penalty.

§ 4. All state certificates of weights and measures, as provided by this act, shall contain the accurate and correct weight of any and all commodities weighed when issued by the public weighmaster.

(a) Any public weighmaster who shall issue a state certificate of weights and measures giving a false weight or measure of any article or commodity weighed or measured by him, or his representative, to any person, firm or corporation, shall be guilty of a misdemeanor, and the state superintendent may direct and compel the return to him of the state seal, or declare his bond as public weighmaster forfeited, or both.

False or incorrect statements.

§ 5. Any person, firm, corporation, who shall reequest the public weighmaster, or any person employed by him to weigh any product, commodity, or article falsely or incorrectly, or who shall request a false or incorrect state certificate of weight and measure, or any person issuing a state certificate of weights and measures who is not a public weighmaster as provided for in this act, shall be guilty of a misdemeanor. [Amendment of May 18, 1919. In effect July 22, 1919, Stats. 1919, p. 724.]

Reweighing in case of doubt. Deputy weighmasters.

§ 6. When doubt or differences arise as to the correctness of the net or gross weight of any amount or part of any commodity, produce, or article for which a state certificate of weights and measures has been issued by a public weighmaster, the owner, agent, or consignee may, upon complaint to the state superintendent of weights and measures, or his deputy, have said amount or part of the amount of any commodity, produce, or article, reweighed by the state superintendent of weights and measures, or a public weighmaster designated by him, upon depositing a sufficient sum of money to defray the actual cost of reweigh with the state superintendent of weights and measures. If, on reweighing, a difference in the original weight is discovered as the result of fraud, carelessness, or faulty apparatus, the cost of reweighing shall be borne by the public weighmaster responsible for the issuance of such faulty state certificate of weights and measures. All public weighmasters employing or designating any person to act for them as deputy public weighmaster, shall be responsible for all acts performed by such person, and the public weighmaster shall forward to the state superintendent of weights and measures the name and address of persons so appointed. [Amendment of May 18, 1919. In effect July 22, 1919, Stats. 1919, p. 724.]

Lots shall be piled separately.

§ 7. All amounts, lots, shipments, or consignments of products, after having been weighed, shall be piled or stored separately, as near as can be, or in some manner marked in order that said amounts, lots, shipments, or consignments may be distinguished from each of a like kind. When any product is sold subject to public weighmaster weights, such weights shall be the true net weight of the product. Net weight within the meaning of this act shall be the correct or actual weight of the commodity

excluding the weight of the container. [Amendment of May 18, 1919. In effect July 22, 1919, Stats. 1919, p. 725.]

Penalty.

§ 7a. Any person violating any of the provisions of this act shall be guilty of a misdemeanor. [New section added May 18, 1919. In effect July 22, 1919, Stats. 1919, p. 725.]

Appropriation.

§ 8. There is hereby appropriated out of the general fund of the state, three thousand dollars, for carrying into effect the provisions of this act.

Conflicting acts repealed.

§ 9. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

WHARFINGERS.

See tits. "Warehouses"; "Weights and Measures."

WHARVES.

See Kerr's Cyc. Political Code, § 2906.

WHEATLAND.

See Act 3094, note.

WHITTIER.

See Act 3094, note.

CHAPTER 425.**WHITTIER STATE SCHOOL.**

References: See tits. "California State Reformatory"; "Juvenile Court"; "Preston School of Industry."

CONTENTS OF CHAPTER.

- ACT 5581. ACT OF ESTABLISHMENT.
- 5583. COMMITMENTS.
- 5585. ACQUISITION OF PROPERTY.
- 5586. DEPARTMENT FOR DEFECTIVES.
- 5587. DEPARTMENT OF CLINICAL DIAGNOSIS.
- 5588. SALE OF PROPERTY.

ACT OF ESTABLISHMENT.

ACT 5581—An act to establish a state reform school for juvenile offenders, and to make an appropriation therefor.

Amended title.

An act to establish a school for the discipline, education, employment, reformation, and protection of juvenile delinquents, in the state of California, to be known as "The Whittier state school." [As amended March 23, 1893, Stats. 1893, p. 328.]

History: Approved March 11, 1889, Stats. 1889, p. 111. Amended March 23, 1893, Stats. 1893, p. 328; March 7, 1905, Stats. 1905, p. 80; February 7, 1907, Stats. 1907, p. 3; April 19, 1909, Stats. 1909, p. 988. Superseded as to mode of commitment by the "Juvenile Court Law" of February 26, 1903, Stats. 1903, p. 44, and by all subsequent juvenile court acts. See, ante, Act 2341. Superseded as to the girls' department by the act creating the state school for girls. See, ante, Act. 676.

Change of name.

§ 1. There shall be established and maintained in this state, and located at Whittier, in the county of Los Angeles, an institution for the discipline, education, employment, reformation, and protection of juvenile delinquents in the state of California, to be known as "The Whittier state school"; and in all judicial, official, or other proceedings, and in all contracts, transfers, or other instruments in writing, the above name shall be deemed a sufficient designation of said institution. [Amendment approved March 23, 1893, Stats. 1893, p. 328.]

Board of trustees. Terms of office. Vacancy, how filled.

§ 2. The general supervision and government of said institution shall be vested in a board of trustees consisting of three citizens of the state of California, who shall be appointed by the governor with the advice and consent of the senate. The members of said board shall hold their offices for the respective terms of two, three, and four years from the first day of March, eighteen hundred and eighty-nine, and until their successors shall be appointed and qualified said respective terms to be designated in their appointments; and thereafter there shall be one of said board appointed in the same manner every two years, whose term of office shall continue four years, and until his successor is appointed and qualified. If a vacancy shall occur in said board by expiration of the term of any such trustee, or otherwise, when the senate is not in session, the governor shall fill such vacancy for the unexpired term, subject to the approval of the senate at its next regular session. Said trustees, before entering on the discharge of the duties of their office, shall each take an oath faithfully to discharge the same.

Powers.

§ 3. The trustees of such institution shall be a body corporate and politic for certain purposes, namely: To receive, hold, use, and convey or disburse moneys or other property, real and personal, in the name of said corporation but in trust and for the use and by the authority of the state of California, and to control, manage, and direct the several trusts committed to them respectively, including the organization, government, and discipline of all officers, employees, and other inmates of said institution, with power to make contracts, to sue and be sued, plead and be impleaded, to have and to use a common seal, and to alter the same at pleasure, and to exercise all the powers usually belonging to said corporations and necessary for the successful discharge of the obligations devolved by law upon said members of trust; provided, that they shall not have power to bind the state by any contract or obligation beyond the amount of appropriations which may at the time have been made for the purposes expressed in the contract or obligation, nor to sell or convey any part of the real estate belonging to such institution without the consent of the legislature, except that they may release any mortgage, or convey any real estate which may be held by them as security for any money or upon any trust, the terms of which authorize such conveyance; and provided further, that the legislature shall have power at any time to amend, alter, revoke, or annul the grant of corporate powers herein contained.

Selection of site.

§ 4. The said board of trustees are hereby empowered [invested] with full power and authority to select a site for the permanent location of said school in the county of Los Angeles. Said trustees shall, within thirty days after their appointment and qualification, examine the different sites offered by the people of the county of Los Angeles for the location of the said school, and select therefrom a suitable location for said buildings; and the site selected by them shall be and remain the permanent site for said school; said site to contain not less than forty nor more than one hundred

and sixty acres, giving preference, other things being equal, to a location central and easy of access from all parts of the county or state; provided, that no buildings shall be commenced or erected in said county of Los Angeles until a deed in fee simple of the land selected by the said board of trustees shall be made to the state, and recorded in the records of the county recorder of said Los Angeles county, and said deed deposited in the office of the secretary of state. [Amendment approved March 23, 1893, Stats. 1893, p. 328.]

To adopt plans.

§ 5. The said board of trustees shall prepare and adopt plans for the grounds, buildings, and fixtures necessary and proper for such an institution, not in their judgment to exceed in cost the amount of money hereinafter appropriated, but if practicable of such description that other buildings can be added to or enlarged without injury to their symmetry or usefulness; and may let or make all necessary contracts, with the approval of the governor, for the construction of such buildings and fixtures and the improvement of the grounds according to such plans. Said board of trustees shall use all practicable diligence in the commencement and completion of said buildings and fixtures, and the improvement of the grounds, according to such plans.

Trustee or employee not to be interested.

§ 6. No trustee or employee of such institution shall be personally, directly or indirectly, interested in any contract, purchase, or sale made, or any business carried on in behalf of or for said institution. All contracts, purchases, or sales made in violation of this section shall be held and declared null and void, and all moneys paid to such trustee, employee, or any other person for his benefit, in whole or in part, in consideration of such purchases, contracts, or sales made, may be recovered back by civil suit, to be instituted in the name of the state of California, against such trustee, employee, or person acting in his behalf; and in addition it is hereby made the duty of the governor and the board of trustees, as the case may be, upon proof satisfactory of the fact of such interest, to immediately remove the trustee or employee delinquent as aforesaid, and to report the facts to the attorney-general, who shall take such legal steps in the premises as he shall deem expedient.

Meetings and mode of transaction of business. Furniture and apparatus. Deficiencies.

§ 7. The board shall make all needful rules and regulations concerning their meetings and the modes of transacting their business; shall take charge of said institution to see that its affairs are properly conducted, that strict discipline is maintained, and that suitable employment and education are provided for its inmates. They are authorized to make contracts for the purchase of furniture, apparatus, tools, stock, provisions and everything necessary to equip the institution for the purposes herein specified and to maintain and operate the same; provided, said board shall incur no expense nor contract any debt beyond appropriations made or donations given for the said school, and then only in such manner as may be prescribed by the act of appropriation or the instrument of donation. [Amendment approved March 23, 1893, Stats. 1893, p. 329.]

Annual election of officers.

§ 8. The board shall annually elect from their own number a president and a vice president, whose term of office shall be for one year, and until their successors shall be duly appointed and qualified. They shall also elect a treasurer, not one of their own number, whose term of office shall be for two years, and until his successor shall be duly elected and qualified, who shall be at all times subject to removal by the board for good cause. [Amendment approved March 23, 1893, Stats. 1893, p. 329.]

Superintendent and other officers.

§ 9. The board shall appoint a superintendent of said school, not of their own number, whose salary shall be fixed by said board, not to exceed three thousand six hundred dollars per annum, and shall also appoint such other officers and such assistants as the wants of the institution may from time to time require, and shall prescribe their duties and fix their salaries, as may be reasonable. [Amendment approved March 23, 1893, Stats. 1893, p. 329.]

Report of trustees.

§ 10. Said board of trustees shall, on or before the first day of December every two years, make to the governor a full and detailed report of their doings as such trustees, and of the expense of said institution, with such other information relating thereto as they may think interesting or useful to the state; which report shall be communicated by the governor to the next succeeding session of the state legislature. Said trustees shall receive no salary for their services as such from the state, but shall be allowed all necessary expenses incurred in the discharge of their duties.

Meetings.

§ 11. The board of trustees shall have a regular meeting once every three months, at such time and place as they may direct; special meetings may be called by the president of said board in all cases where it becomes necessary for such a meeting.

Duty of superintendent.

§ 12. The superintendent before entering upon the duties of his office shall take an oath faithfully to discharge the same and execute a bond with sureties to be approved by the board, in a sum to be fixed by the board, conditioned for the faithful performance of all his duties as such superintendent. He shall be a resident at the institution, and shall be ex-officio the secretary of the board, taking charge of all books and papers. He shall have charge of the land, buildings, furniture, apparatus, tools, stock, provisions, and every other species of property belonging to the institution, subject to the direction and control of said board, and shall account to the board in such manner as they may require for all property intrusted to him, and all moneys received by him from whatever source shall be deposited with the treasurer. His books shall at all times be open to the inspection of the board, who shall at least once in every three months carefully examine the same and all accounts, vouchers, documents connected therewith, and make a report of the result of such examination in a book provided for the purpose. He shall have charge of the inmates of said institution; he shall discipline, govern, instruct, employ, and use his best efforts to reform the children and youth under his care, and shall at all times be subject to removal by the board for incapacity, cruelty, negligence, immorality, or any good cause.

Duty of treasurer.

§ 13. The treasurer before entering upon the duties of his office shall take an oath faithfully to discharge the same, and shall execute a bond to the people of California with sureties to be approved by said board in at least double the sum of money for which he may be responsible as treasurer, conditioned for the faithful performance of all his duties as such treasurer; he shall take charge of all the funds of the institution, receiving the same and disbursing them on the written order of the superintendent, and shall account to the board in such a manner as they may require for all funds intrusted to him from whatever source. His books shall at all times be open to the inspection of the board and superintendent, who shall at least once in every six months carefully examine the same and all the accounts, vouchers, and documents connected therewith, and make a report of the result of such examinations. Such treasurer must

be a citizen of Los Angeles county, and shall receive for his services a salary of six hundred dollars per annum.

Buildings and grounds.

§ 14. Said board of trustees shall arrange the building or buildings to be used for said school, and the grounds about the same, so that a portion thereof may be used for the proper confinement, care, and education of the male inmates, and the remaining portion for the proper confinement, care, and education of the female inmates, and to the absolute exclusion of all communication of any kind or character between the sexes. [Amendment approved March 23, 1893, Stats. 1893, p. 329.]

Age of boys and girls subject to admission.

§ 15. Whenever said institution shall have been so far completed as to properly admit of the reception of inmates therein, the governor shall make due proclamation of the fact, and thereafter it shall be lawful for said board of trustees to receive into its care and guardianship, boys between the ages of eight and nineteen years, and girls between the ages of eight and eighteen years, committed to its custody, as hereinafter provided. [Amendment approved April 19, 1909, Stats. 1909, p. 988.]

This section was also amended March 23, 1893, Stats. 1893, p. 329.

For what offenses may be committed.

§ 16. When any boy between the ages of eight and nineteen years, or any girl between the ages of eight and eighteen years, shall be found guilty of any offense punishable by fine or imprisonment, or by both, in any court of competent jurisdiction in the state, and who, in the opinion of the judge thereof, would be a fit subject for training in said school, it shall be lawful for such judge to suspend judgment or sentence, except when the penalty is life imprisonment or death, and commit such boy or girl to the custody and guardianship of said school until he or she shall become twenty-one years of age. [Amendment approved April 19, 1909, Stats. 1909, p. 988.]

This section was also amended March 23, 1893, Stats. 1893, p. 330; March 7, 1905, Stats. 1905, p. 80.

Truant children, commitment of.

§ 16a. Any child between the ages of eight and fourteen years who wilfully and habitually absents himself or herself from school contrary to the provisions of an act entitled "An act to enforce the educational rights of children and providing penalties for violation of the act," approved March 24th, 1903, and as amended by an act approved March 20th, 1905, and as further amended by an act approved March 4th, 1907, may be committed to the custody and guardianship of said school by any superior court judge on the complaint of any peace-officer, teacher, parent, guardian or other person, under the same conditions and in the same manner as is provided in section 16 of this act. [Amendment approved April 19, 1909, Stats. 1909, p. 988.]

This section was added March 7, 1905, Stats. 1905, p. 81.

Dependent and delinquent children may be committed.

§ 16b. Any child who comes under the provision of an act entitled an act defining and providing for the control, protection and treatment of dependent and delinquent children; prescribing the powers and duties of courts with respect thereto; providing for the appointment of probation officers, and prescribing their duties and powers; providing for the separation of children from adults when confined in jails or other institutions; providing for the appointment of boards to investigate the qualifications of organizations receiving children under this act and prescribing the duties of such boards; and providing what proceedings under this act shall be admissible in evidence, approved February 26, 1903, may be committed to the Whittier state school by any

superior judge under the same conditions and in the same manner as provided in section sixteen of this act. [Added March 7, 1905, Stats. 1905, p. 81.]

The original section 16b was added by Stats. 1893, p. 330; renumbered section 16c by Stats. 1905, p. 82, when the present section 16b was added; section 16c amended by Stats. 1909, p. 990, and renumbered section 18, q. v., post.

Conditions and manner of commitment.

§ 16c. Any judge of any superior court of this state may commit any boy between the ages of eight and nineteen years, or girl between the ages of eight and eighteen years to the custody and guardianship of the said school on the conditions and in the manner following:

1. On the complaint in writing filed and due proof thereof made, by the parent or guardian of said boy or girl, showing that by reason of the incorrigible or vicious conduct of such boy or girl, he or she is beyond the control and power of such parent or guardian.

2. On complaint in writing filed and due proof thereof made, showing that such boy or girl is a proper subject for the care and guardianship of said school, by reason of vagrancy or incorrigible or vicious conduct; or in cases where, from moral depravity or otherwise, the parent or guardian having control of such boy or girl is incapable of exercising, or unwilling to exercise, the proper care or discipline over such boy or girl, and in cases where such boy or girl has no parent, guardian or other protector.

3. On complaint in writing filed and due proof thereof made by the mother, or guardian when the father is dead, or has abandoned his family, or is an habitual drunkard, or does not support his family, and it appears that such boy or girl is destitute of a home and adequate means of obtaining an honest living and is in danger of being brought up to lead an idle or immoral life. [Amended and renumbered. Approved April 19, 1909, Stats. 1909, p. 989.]

Added as section 20, March 23, 1893; Stats. 1893, p. 332. Amended and renumbered section 16c, April 19, 1909; Stats. 1909, p. 989. The original section 16c was added by Stats. 1893, p. 332; renumbered section 16d by Stats. 1905, p. 82; section 16d amended and renumbered section 19 by Stats. 1909, p. 990, q. v., post.

§ 16d. [Renumbered section.]

Added by Stats. 1893, p. 331. Amended and renumbered section 16e by Stats. 1905, p. 82. Section 16e amended and renumbered section 20 by Stats. 1909, p. 991, q. v., post.

§ 16e. [Renumbered section.]

See, *supra*, note to section 16d, and, post, section 20.

Citation to custodian of child. Warrant for arrest of parent or custodian. Detention of child. Term of commitment.

§ 17. In all cases where complaint is made by another than the parent or guardian having the custody of said boy or girl, a citation shall issue requiring the person having custody or control of said boy or girl, or with whom the said boy or girl may be, to appear with him or her at a place and time stated in the citation. Service of such citation must be made at least twenty-four hours before the time stated therein. The parents or guardian of the boy or girl, if residing in the county in which the court sits, and if their places of residence be known to the petitioner, or if there be neither parent nor guardian so residing, or if their places of residence be not known to petitioner, then some relative of the boy or girl, if there be any residing in said county, and if his residence and relationship to such boy or girl be known to petitioner, shall be notified of the proceedings by service of citation requiring them to appear at the time and place to be stated in such citation. In any case the judge may appoint some suitable person to act in behalf of the boy or girl, and may order such further notice of the proceeding to be given as he may deem proper. If any person, cited as herein provided, shall fail, without reasonable cause, to appear and abide by the order of the

court, or to bring the boy or girl, if so required in the citation, such failure shall constitute a contempt of said court and may be punished as provided for in cases of contempt of court. In case any such citation can not be served, or the party served fails to observe the same, and in any case in which it shall be made to appear to the court that such citation shall be ineffectual, a warrant of arrest may issue on the order of the court, either against the parent or guardian, or the person having the custody of the boy or girl, or with whom he or she may be, or against the boy or girl, or any of said persons; or if there be no person to be served with citation as above provided, a warrant of arrest may be issued against the boy or girl immediately. On the return of the citation or other process, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case in a summary manner. Until the final disposition of any case, the boy or girl may be retained in the possession of the person having charge of the same, or may be kept, upon the order of the court, in some suitable place, provided by the county, or city and county, or may be held otherwise, as the court may direct. In all cases of commitment to said school the same shall be until said boy or girl is twenty-one years of age, and it shall be the duty of the court committing such boy or girl to such school to certify to the superintendent thereof, the date of birth or age of such boy or girl so committed, as nearly as the same can be ascertained by testimony taken under oath either before the court or in such manner as he may direct. [Added April 19, 1909, Stats. 1909, p. 989.]

The original section 17 was enacted March 11, 1889 (Stats. 1889, p. 115); amended by Stats. 1893, p. 332; amended by Stats. 1905, p. 82; repealed by Stats. 1909, p. 991.

Discharge of child.

§ 18. It shall be lawful for the board whenever it may deem any inmate of said institution to have been so far reformed as to justify his discharge, to give him an honorable dismissal and to cause an entry of the reasons for such dismissal to be made in the book of records prepared for that purpose. All persons thus honorably dismissed and all those who have attained the age of twenty-one years shall thereafter be released from all penalties and disabilities resulting from the offenses or crimes for which they were committed. Upon the final discharge of any inmate as in this section provided, the superintendent shall immediately certify such discharge in writing and shall transmit the certificate to the court by which such inmate was committed. Said court, thereupon, shall dismiss the accusation and the action pending against said person. [Amended and renumbered. Approved April 19, 1909, Stat. 1909, p. 990.]

Added as section 16b, March 23, 1893; Stats. 1893, p. 332. Section 16b renumbered section 16c, March 7, 1905; Stats. 1905, p. 82. Section 16c amended and renumbered section 18, April 19, 1909; Stats. 1909, p. 990. The original section 18 was enacted March 11, 1889 (Stats. 1889, p. 116); amended by Stats. 1893, p. 332; amended by Stats. 1905, p. 82; repealed by Stats. 1909, p. 991.

Right to parole.

§ 19. There shall be established in said school a system of marketing and grading upon merit or attainments in school and shop and general conduct, by which the boy or girl committed under this act may work out his or her way to parole and honorable discharge. When in the opinion of the superintendent a boy or girl, by the regulations established for that purpose, has earned a right to a parole, he shall cause to be obtained a reputable home or place of employment where said boy or girl may be employed and earn a living by honorable labor, and then shall recommend said boy or girl to the board for parole, and if the board is satisfied that it is for the welfare of such boy or girl to be paroled, it shall grant such parole under such conditions as it may deem best, which shall be continued until such boy or girl has proved his or her ability for honorable self-support, when he or she shall, upon the recommendation

of the superintendent, be honorably discharged. Any boy or girl who, while on parole, violates any of the conditions of the parole may be returned to said school. [Amended and renumbered. Approved April 19, 1909, Stats. 1909, p. 990.]

Added as section 16c, March 23, 1893; Stats. 1893, p. 331. Section 16c renumbered 16d, March 7, 1905, Stats. 1905, p. 82. Section 16d amended and renumbered section 19, April 19, 1909; Stats. 1909, p. 990. For the original section 19, see, post, section 21.

Incorrigible children to be returned to court.

§ 20. Any boy or girl committed to said school who, after due trial, is found to be, in the opinion of the superintendent, incapable of reformation, or so morally deficient or incorrigible as to render his or her retention detrimental to the interests of said school, or when it is ascertained by good and sufficient evidence, that said boy or girl has misrepresented his or her age to the court who sentenced him or her, or has been previously convicted of a felony, he may recommend such boy or girl to the board of trustees for return to the said court and if the said board is satisfied that it is for the best interests of the school that such boy or girl be returned, it shall so cause him or her to be returned to said court, and it shall be lawful for said court to annul and set aside the previous commitment to the said Whittier state school and resume proceedings where the same were suspended when such commitment was made. [Amended and renumbered. Approved April 19, 1909, Stats. 1909, p. 991.]

Added as section 16d, March 23, 1893; Stats. 1893, p. 331. Section 16d amended and renumbered section 16e, March 7, 1905; Stats. 1905, p. 82. Section 16e amended and renumbered section 20, April 19, 1909; Stats. 1909, p. 991. For original section 20, see, ante, section 16c.

Private examinations.

§ 21. All minors between the ages of eight and eighteen years who may be accused of any offense under this act shall, with a view to the question whether they ought to be committed to said school, be entitled to a private examination before the court, to which only the parties to the case and the parent or guardian of the accused and such officers of the court as he may direct, and such attorneys as may be engaged in the hearing, shall be admitted, unless one of the parents, the guardian or other legal representative of the minor demands a public trial; in such cases the proceedings shall be in the usual manner. [Amended and renumbered. Approved April 19, 1909, Stats. 1909, p. 991.]

Enacted as section 19, March 11, 1889; Stats. 1889, p. 116. Section 19 amended March 23, 1893; Stats. 1893, p. 333. Section 19 amended and renumbered section 21, April 19, 1909; Stats. 1909, p. 91. The original section 21 was enacted March 11, 1889 (Stats. 1889, p. 117); amended by Stats. 1893, p. 333; repealed by Stats. 1909, p. 992.

Record, what only to be made.

§ 22. In all cases where the commitment is executed by the official person, whose proceedings are usually evidenced by the record, or where the occasion of the commitment is a criminal charge or conviction against the infant, no other record shall be made (unless demanded by the infant, his parent, or guardian) than that, in substance, such infant (naming him), who on a day therein named was of the age of years, having been brought, before said court, or officer, and it having been ascertained by the testimony of the witnesses that such infant was a suitable person to be committed to the instruction and discipline of such institution, and in case of conviction for crime (naming the offense), therefore such infant was ordered to be committed to said institution.

Clothing, money, and transportation for those released.

§ 23. Upon the discharge of any person committed to said school, the superintendent thereof, under such regulations and restrictions as the said board of trustees may prescribe, may provide such person with suitable clothing and five dollars in money,

and procure transportation for such person to his or her home, if resident in this state, or to the county to [in] which he or she may have been committed, [convicted,] at his or her option. [Amendment approved March 23, 1893, Stats. 1893, p. 333.]

Aiding escapes. Punishment therefor.

§ 24. If any person procure the escape of any person committed to the school, or advise or connive at, aid, or assist in such escape, or conceal any such person so committed after such escape, he shall, upon conviction thereof in any superior court, be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not less than two months nor more than one year, or by both such fine and imprisonment; or, if such person so convicted be under the age of sixteen years, then he shall be sentenced to the school, as in this act provided. [Renumbered. Approved April 19, 1909, Stats. 1909, p. 992.]

Enacted as section 26, March 11, 1889; Stats. 1889, p. 118. Section 26 amended March 23, 1893; Stats. 1893, p. 334. Section 26 renumbered section 24, April 19, 1909; Stats. 1909, p. 992.

Who shall execute writ of commitment.

§ 25. It shall be the duty of the sheriff of any county wherein an order is made or approved by a superior judge committing any minor to said school, to execute any and all writs of commitment issued or approved by said judge, and to receive as compensation therefor such fees as are now or may hereafter be provided by law for the transportation of prisoners to the state prison, provided, that in all cases where the commitment shall be made under section 16a, 16b, or 16c, of this act, the parent, guardian, or other protector of such minor may, at his option, and in all cases where he is liable, or where the estate of such minor is sufficient, execute said writ of commitment, after having been duly sworn therefor with like powers and with like effect as the sheriff would possess in such case, but without expense to the state; and further provided, that in the case of a minor female committed to said school, and there is no parent, guardian, or other protector of such minor, who, in the opinion of the court, is a proper person to safely conduct such female to said school, that then, in such case, the court shall appoint some suitable woman of satisfactory character and discretion, who shall take the custody of such minor female after her said commitment, and shall forthwith deliver her to said school, and be entitled to the same compensation therefor as is otherwise provided to be paid to the sheriff in all cases where, if such minor were a boy and were by a sheriff delivered to said schools, he, the said sheriff, would be entitled to receive compensation, under the terms of this act. [Amended and renumbered. Approved April 19, 1909, Stats. 1909, p. 992.]

Enacted as section 28, March 11, 1889; Stats. 1889, p. 119. Section 28 amended March 23, 1893; Stats. 1893, p. 335. Section 28 amended and renumbered section 25, April 19, 1909; Stats. 1909, p. 992. The original section 25 was enacted March 11, 1889 (Stats. 1889, p. 118); repealed by Stats. 1909, p. 992.

Auditing by board of trustees.

§ 26. The said board of trustees shall examine, audit, and allow the demands arising under the terms of the aforesaid act and the amendments thereto, and the state controller shall thereupon draw his warrants therefor, payable out of the proper fund, and the state treasurer is hereby ordered to pay such warrants. [Renumbered. Approved April 19, 1909, Stats. 1909, p. 992.]

Enacted as section 30, March 11, 1889; Stats. 1889, p. 120. Section 30 amended March 23, 1893; Stats. 1893, p. 336. Section 30 renumbered section 26, April 19, 1909; Stats. 1909, p. 992. The original section 26 was enacted March 11, 1889 (Stats. 1889, p. 118); amended by Stats. 1893, p. 334; renumbered section 24 by Stats. 1909, p. 992, q. v., ante.

Boys may be transferred from state prison.

§ 27. Any boy under the age of eighteen years, who is undergoing sentence in any state prison in this state (except such as are undergoing a life sentence), and who shall be deemed a fit subject for training in the said school, may, upon recommendation of the state board of prison directors, with the approval of the governor, be transferred to said school for the unexpired period of his sentence, and when honorably discharged from said school, as hereinbefore provided, shall be entitled to such benefits and immunities as are provided for other inmates of the institution. [Renumbered. Approved April 19, 1909, Stats. 1909, p. 992.]

Added as section 31, February 7, 1907; Stats. 1907, p. 3. Section 31 renumbered section 27, April 19, 1909; Stats. 1909, p. 992. The original section 27 was enacted March 11, 1889 (Stats. 1889, p. 118), amended by Stats. 1893, p. 334; repealed by Stats. 1909, p. 992.

§ 28. [Renumbered section.]

Enacted March 11, 1889; Stats. 1889, p. 119. Amended March 23, 1893; Stats. 1893, p. 335. Amended and renumbered section 25, April 19, 1909; Stats. 1909, p. 992; q. v., ante.

When inmate must support himself.

§ 29. [Repealed section.]

Enacted March 11, 1889; Stats. 1889, p. 119. Amended March 23, 1893; Stats. 1893, p. 336. Repealed April 19, 1909; Stats. 1909, p. 992.

§ 30. [Renumbered section.]

Enacted March 11, 1889; Stats. 1889, p. 120. Amended March 23, 1893; Stats. 1893, p. 336. Renumbered section 26, April 19, 1909; Stats. 1909, p. 992; q. v., ante.

§ 31. [Renumbered section.]

Added February 7, 1907; Stats. 1907, p. 3. Renumbered section 27, April 19, 1909; Stats. 1909, p. 992; q. v., ante.

Act takes effect when.

§ 31. This act shall take effect and be in force from and after its passage.

1. Constitutionality — Title fully expresses subject of act.—The subject of the act is fully expressed in its title, and it is constitutional.—Ex parte Liddell, 93 Cal. 633, 29 Pac. 251.

2. Same—Same.—It is sufficient if the title contains a reasonable intimation of the matters under legislative consideration, and if it states the subject in the fewest words, according to general custom.—Ex parte Liddell, 93 Cal. 633, 29 Pac. 251.

3. Same — Same.—Numerous provisions having one general object fairly indicated by the title may be united in the act.—Ex parte Liddell, 93 Cal. 633, 29 Pac. 251.

4. Same—Same—General purpose of act.—When the general purposes of the act are declared the details provided for the accomplishment of that purpose will be regarded as mere incidents.—Ex parte Liddell, 93 Cal. 633, 29 Pac. 251.

5. Same—Longer term of detention.—The act is not unconstitutional because it authorizes a longer term of detention in the reform school than of imprisonment in jail or state prison for the same offense.

6. "Whittier reform school fund"—Trustees can not divert for the erection of buildings.—The trustees have no authority to expend the fund provided for the "support" of the school and the "care and keeping" of the minors committed to the school, for the erection of buildings, however much

needed.—Mitchell v. Colgan, 122 Cal. 296, 54 Pac. 905.

7. Payment of one-half expense by counties.—It was the legislative intention of the amendment of 1893 of section 24 of the act that the counties should pay half the expense of keeping minors in the reform school, in all cases where the parents, guardians or other protectors were unable to pay such expense, and this imposition was not limited whether the minor was committed as incorrigible, abandoned or indigent minors, or for a violation of the penal statutes of the state.—Cochran v. Los Angeles Co., 117 Cal. 534, 49 Pac. 570.

8. Section 16 as amendment to Penal Code—Section not void.—The fact that section 16 was not enacted as an amendment to the Penal Code, as it might have been, does not render it void.—Ex parte Liddell, 93 Cal. 633, 29 Pac. 251.

9. Same—In case of conflict act must prevail over code provisions.—In case of conflict the act must prevail over provisions of the Penal Code.—Ex parte Liddell, 93 Cal. 633, 29 Pac. 251.

10. Power to lease conferred by act on board of trustees.—The powers conferred upon the board of trustees are sufficiently ample to include the power to make a lease, which was "necessary for the successful discharge of the duties devolved by law" on the trustees, and especially the

duty imposed upon them by section 14 of the act.—*Harvey v. Board of Trustees*, 142 Cal. 391, 75 Pac. 1086.

11. Trial—Error to be corrected on appeal, not reviewed on habeas corpus.—The failure to give the defendant a private examination, or a public trial on the demand of his parents, is a mere error to be corrected on appeal and on review on habeas corpus.—*Ex parte Liddell*, 93 Cal. 633, 29 Pac. 251.

12. Commitment of minor under fourteen, accused of burglary, without trial by jury, and without notice to his parents, void.—Where a minor accused of burglary was

presented to the court as a suitable person to be committed to the reform school, with a recommendation to that effect, and the court, upon receipt of such presentment, proceeded against the defendant's protest and objection that the court was without jurisdiction to act in the matter, to take testimony, and without other proceedings and without a jury trial committed him to the reform school during his minority, the judgment is void, his parents, his natural guardians not being parties to the proceeding, and the minor is discharged from custody.—*Ex parte Becknell*, 119 Cal. 496, 51 Pac. 692.

COMMITMENTS.

ACT 5583—An act relating to commitments to the state school at Whittier and to the Preston school of industry; fixing the authority to examine and commit to such schools with the superior judges of the counties, and fixing the responsibilities from which commitments are made to the state for maintenance of the persons committed therefrom; providing for the manner of payment thereof, and fixing the responsibility of the parents to the counties from which their children are committed.

History: Approved March 26, 1895, Stats. 1895, p. 122. Probably superseded as to commitments by the juvenile court law. See History of act, ante, Act 5581.

Only superior judges shall commit to Whittier and Preston schools. Parents shall pay.

§ 1. The superior judge of any county, and no other judicial officer, shall have power to examine, discharge, or commit any offender either to the Whittier state school or to the Preston school of industry; provided, that the superior judge shall determine whether or not the parent or guardian of any minor committed to the Whittier state school or to the Preston school of industry is able to pay to the county in which the commitment is made for the maintenance of such minor during the term of such commitment; and when the superior judge shall determine that said parent or guardian has the ability to pay as aforesaid for the maintenance of such minor during the term of such confinement, the parent or parents or guardian shall pay into the treasury of such county the sum of eleven dollars per month in advance; and in case of the failure to pay the same as herein provided, it shall be the duty of the district attorney of such county to proceed to collect the amount from such parent, parents, or guardian in the manner that other indebtedness against the county is collected.

Counties shall pay.

§ 2. For each and every person hereafter committed to either the Whittier state school or the Preston school of industry, the county from which the commitment is made shall pay into the state treasury the sum of one hundred and thirty-two dollars per annum, and at that rate for each fraction of a year.

Duty of clerk of court. Duty of county treasurer.

§ 3. It is hereby made the duty of the clerk of the superior court of the county from which such commitment is made, to certify to the county auditor the name, age, and date of commitment of each person committed by the superior judge thereof, and the amount due to the state from the county by reason of such commitments, and before the first day of May and December of each and every year to file with the treasurer of the county a statement of the number of commitments, with the date thereof, and the amount due from the county by reason of such commitments, to the state treasurer; and it is further made the duty of the county treasurer during the settlement or at the time of the settlement with the state during the months of May and December of

each year, to pay to the state treasurer, through the state controller, the amount so found to be due to the state by reason of commitments to the state schools as herein provided.

Duty of superintendents of state schools.

§ 4. The superintendent of the state school at Whittier and the Preston school of industry are hereby required to transmit to the state treasurer a statement of all commitments to their respective institutions, showing the name of the person committed, the date of the commitment, and the county from which the commitment is made, and the amount due to the state from the county by reason of such commitments; said statement to be made quarterly, as follows: on or before the first day of January, the first day of April, the first day of July, and the first day of October of each year; and it is hereby made the duty of the controller of state to add the amounts due to the state from said counties such sum as may be shown to be due by reason of commitments to such schools, as in section two of this act provided.

Conflicting acts repealed.

§ 5. All acts and parts of acts in conflict herewith are hereby repealed.

Act takes effect when.

§ 6. This act shall take effect immediately.

See note to Act 5581, ante.

Citations: Matter of Robinson, 138 Cal. 491, 493, 494, 71 Pac. 690; In re Lewis, 3 Cal. App. 738, 740, 86 Pac. 996.

ACQUISITION OF PROPERTY.

ACT 5585—An act to authorize the trustees of the Preston school of industry and the Whittier state school to acquire property by gift, bequest or devise.

History: Approved March 6, 1909, Stats. 1909, p. 149.

Receiving and administering bequests.

§ 1. The board of trustees of the Preston school of industry and the board of trustees of the Whittier state school shall each have power to receive by gift, bequest or devise any property, real or personal, and administer the same for the purpose of the school under the control of each of said boards, and in accordance with any lawful conditions attached to such gift, bequest or devise. The title of such property shall vest in the state, unless a different disposition is made in the instrument declaring such gift, bequest or devise.

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed.

DEPARTMENT FOR DEFECTIVES.

ACT 5586—An act authorizing the board of trustees of Whittier state school to maintain a department for the care and training of defective persons and for the study of mental defectiveness at the Whittier state school and to provide for the commitment of defective persons thereto.

History: Approved June 11, 1915. In effect August 10, 1915. Stats. 1915, p. 1439.

Department of Whittier for defectives.

§ 1. The board of trustees of Whittier state school are hereby authorized and empowered to maintain on the property of the Whittier state school a department for the care, training, confinement, discipline and instruction of defective persons, and for the study of mental defectiveness and the proper care of defective persons.

Management.

§ 2. Under the direction of said board of trustees the superintendent of Whittier state school shall have supervision over the said department. The trustees of the Whittier state school, and any superintendent whom they may appoint, shall respectively exercise the same powers with relation to said department for defective persons and the inmates thereof, as are now exercised by them under the law regulating the management of the Whittier state school.

Admission of defectives.

§ 3. Commitment or admission to said department for defective persons at Whittier state school may be made in the same manner and upon the same terms and upon the same payments by persons responsible therefor, or by the several counties, with the same provision for payment as now provided by law in the case of the Sonoma state home; provided, however, that no person ordered committed by the court shall be received except upon application first made to the trustees of said Whittier state school and the ascertainment that the person committed or to be committed will be received and cared for by said institution; and the said trustees are hereby authorized to reject said application and refuse to accept any and all such persons whenever in their judgment it is best or proper so to do, it being the intention that the said board of trustees shall determine the number and character and mental status of the persons who can best be cared for in said department for defective persons.

Committee to make recommendations.

§ 4. The superintendent and trustees of the said Whittier state school together with two persons to be designated by the Psychopathic Association of California are hereby authorized and empowered to prepare and present to the next session of the state legislature of the state of California recommendations regarding the establishing of an institution for the care, training, confinement, discipline and instruction of defective persons, together with recommendations as to the best methods to be employed in conducting the same, the character of buildings and equipment best adapted to the purpose, and as to a suitable location for such an institutions.

DEPARTMENT OF CLINICAL DIAGNOSIS.

ACT 5587—An act authorizing the board of trustees of the Whittier state school to maintain a department for the clinical diagnosis of inmates of the school and other state institutions, and to inquire into the causes and consequences of delinquency and mental deficiency, and related problems.

History: Approved May 11, 1917. In effect July 27, 1917. Stats. 1917, p. 422.

Department of clinical diagnosis at Whittier state school.

§ 1. The board of trustees of the Whittier state school is hereby authorized and empowered to maintain on the property of the school, a department for the clinical diagnosis of the inmates of the school, and of such other state institutions as may, from time to time, request assistance from said department, such request to be approved by the state board of control. This department shall also carry on research into the causes and consequences of delinquency and mental deficiency, and shall inquire into social, education and psychological problems relating thereto, and for that purpose may make such investigations and inquiries in the said institutions, when so requested, and elsewhere as may be deemed advantageous. The state board of control may apportion the expenses of the said department, among the different institutions receiving the benefit of the work of the department, in such manner as it may deem proper.

Clinical psychologist and assistants.

§ 2. The said department shall be under the direction of a clinical psychologist, subject to the control of the superintendent of the said school. The said psychologist shall be given a sufficient staff of trained assistants that the intelligence level of each inmate may be established through the standardized psychological tests, supplemented by personal and family history and data from such other lines of investigation as may seem advisable, and that such other work may be done as may be undertaken by the department. The said psychologist and assistants shall be employed by the said superintendent, with the approval of the said board of trustees and at compensation satisfactory to it.

SALE OF PROPERTY.

ACT 5588—An act empowering the board of trustees of the Whittier state school to sell all or any portion of the property heretofore acquired for the use of the Whittier state school, and to appropriate the proceeds for the purpose of re-establishing the said school elsewhere.

History: Approved May 27, 1919. In effect July 27, 1919. Stats. 1919, p. 1282.

Authorization for sale of property of Whittier state school.

§ 1. The board of trustees of the Whittier state school, subject to the approval of the state board of control, is hereby authorized and empowered to sell all or any portion of the property heretofore acquired for the use of the Whittier state school, being part of the Rancho Paso de Bartolo Viejo, and part also of the southeast quarter of section twenty and the northwest quarter of section twenty-eight, township two south, range eleven west, San Bernardino base and meridian, containing in all two hundred four and three hundred eighty-nine thousandths acres more or less, and now used and occupied by the said school, and also that certain tract in the city of Whittier known as "the old reservoir site" which is more particularly described as follows: Commencing at the southwest corner of lot five in block "C" of Pickering Land and Water Company subdivision and running north parallel with Greenleaf avenue two hundred feet to a point; thence running east at right angles and parallel with Hadley street two hundred feet to a point; thence running south at right angles and parallel with Greenleaf avenue two hundred feet to a point; thence running west at right angles two hundred feet to the place of beginning. Such sale shall be made only after said property shall have been appraised by three disinterested persons appointed by the board of trustees, and after publication for not less than thirty days in three newspapers of general circulation, published in the county of Los Angeles, which notice shall describe the property to be sold, and shall set forth the terms of sale, and the date on or before which bids therefor will be received, and where such bids will be received; and said board of trustees shall have the right to reject any and all bids, and call for new bids by like publication of notice.

Purchase of new site.

The proceeds from such sale or sales shall be paid into the state treasury to the credit of the contingent fund of the Whittier state school, all or any part of which may be expended with the approval of the state board of control in the purchase of a new site for said school and for the making of improvements, and the erection of buildings thereon; provided, however, that the Whittier state school shall not be discontinued at its present location unless another location is secured for it elsewhere in the state. The said site shall be selected by a site selecting committee composed of the superintendent and trustees of the Whittier state school, the state engineer, a member named by the board of trustees of the Preston school of industry and a member named by the

state board of charities and corrections. The said committee, if they consider it advisable, and subject to the approval of the state board of control, may also purchase water rights, or make provision for the development of water for the use of said lands. The state department of engineering shall, at the request of the said committee, examine into the matter of water, light, power and sanitation and the engineering problems involved in connection with any site or sites the board may investigate with a view to purchasing and shall report thereon to the said committee with special regard to the suitability of such site or sites for the purposes of the institution.

Assistance from University of California.

The University of California shall render the said committee such reasonable assistance as the committee may desire in determining the quality and character of the soil of such site or sites for agricultural, horticultural and other purposes and its suitability for the purposes of the institution.

Expenses of investigations.

The said committee, the said department of engineering, and the said university shall be entitled to receive their necessary expenses in connection with such investigations and the selection and purchase of said site.

Plans for development of property purchased.

The said committee may also prepare plans for the development for state school purposes of such property as may be purchased and for buildings to be erected thereon.

WILLITS.

See Act 3094, note

WILLOWS.

See Act 3094, note

CHAPTER 426.

WINE.

Reference: See tits. "Adulteration"; "Intoxicating Liquors"; "Viticulture."

CONTENTS OF CHAPTER.

ACT 5592. WINE NOMENCLATURE.

WINE NOMENCLATURE.

ACT 5592—An act to prevent deception in the manufacture and sale of California wines by establishing a uniform wine nomenclature for pure wines, to secure its enforcement, and to provide a penalty for the violation of the provisions thereof.

History: Approved March 6, 1907, Stats. 1907, p. 127.

WINTERS.

See Act 3094, note.

CHAPTER 427.

WOMAN'S RELIEF CORPS.

Reference: See Kerr's Cyc. Political Code, §§ 2210, et seq.

CONTENTS OF CHAPTER.

ACT 5597. WOMAN'S RELIEF CORPS HOME AT EVERGREEN.

5598. NURSES AND MEDICAL ATTENDANTS.

WOMAN'S RELIEF CORPS HOME AT EVERGREEN.

ACT 5597—An act to provide for improvements, repairs and furnishings for the buildings and grounds of the Woman's Relief Corps home located at Evergreen, Santa Clara county, and to appropriate money therefor.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 483.

Appropriation: improvements, Woman's Relief Corps home.

§ 1. The sum of twenty-five hundred dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be expended in accordance with law, for necessary repairs, improvements and furnishings for the buildings and grounds of the Woman's Relief Corps home at Evergreen, Santa Clara county.

NURSES AND MEDICAL ATTENDANTS.

ACT 5598—An act to provide for nurses and medical attendants for the inmates of the Woman's Relief Corps home located at Evergreen, Santa Clara county, and to appropriate money therefor.

History: Approved May 17, 1915. In effect August 8, 1915. Stats. 1915, p. 483.

Appropriation: nurses, Woman's Relief Corps home.

§ 1. The sum of fifteen hundred dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to be expended in accordance with law in providing trained nurses, when necessary, or practical nurses, and skilled medical attendants for the inmates of the Woman's Relief Corps home at Evergreen, Santa Clara county.

WOODLAND.

See Act 3094, note.

WRECKS.

See **Kerr's Cyc. Civil Code**, §§ 1864-1872; and **Kerr's Cyc. Political Code**, §§ 2403-2418.

YACHT CLUBS.

See **Kerr's Cyc. Civil Code**, §§ 593-605.

CHAPTER 428.**YOLO COUNTY.**

References: **Boundary**, see **Kerr's Cyc. Political Code**, § 3965.

County government, etc., see **Kerr's Cyc. Political Code**, §§ 4000, et seq.

See tit. "Public Lands."

CONTENTS OF CHAPTER.

ACT 5623. TRESPASSING ANIMALS.

5634. HOGS AND GOATS RUNNING AT LARGE IN YOLO COUNTY.

TRESPASSING ANIMALS.

ACT 5623—An act to prevent trespassing of animals upon private property in the county of Yolo.

History: Approved March 20, 1878, Stats. 1877-78, p. 360. Prior act of March 11, 1874, Stats. 1873-74, p. 343, repealed by the present act.

The code commissioners say this act was repealed by the general stray law of 1897; but see editor's note to chapter on "Estrays."

HOGS AND GOATS RUNNING AT LARGE IN YOLO COUNTY.

ACT 5634—An act to prevent hogs, goats, and cows running at large in the town of Washington in Yolo county.

History: Approved April 1, 1876, Stats. 1875-76, p. 800.

The code commissioners are of the opinion that this act was repealed by the general estray act of 1897; but see editor's note to chapter on "Estrays."

CHAPTER 429.

YOSEMITE VALLEY.

Reference: See tits. "Highways"; "Public Parks."

CONTENTS OF CHAPTER.

ACT 5645. CESSION TO UNITED STATES OF EXCLUSIVE JURISDICTION.

5646. REGRANT TO UNITED STATES.

CESSION TO UNITED STATES OF EXCLUSIVE JURISDICTION.

ACT 5645—An act to cede to the United States exclusive jurisdiction over Yosemite national park, Sequoia national park, and General Grant national park in the state of California.

History: Approved April 15, 1919. In effect July 22, 1919. Stats. 1919, p. 74.

Jurisdiction over national parks ceded to United States.

§ 1. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the state of California set aside and dedicated for park purposes by the United States as "Yosemite national park," "Sequoia national park," and "General Grant national park" respectively; saving, however, to the state of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; provided, however, that jurisdiction shall not vest until the United States through the proper officer notifies the state of California that they assume police jurisdiction over said parks.

REGRANT TO THE UNITED STATES.

ACT 5646—To recede and regrant unto the United States of America, the "Yosemite Valley," and the land embracing the "Mariposa Big Tree Grove."

History: Approved March 3, 1905, Stats. 1905, p. 54.

Yosemite Valley receded to the United States.

§ 1. The state of California does hereby recede and regrant unto the United States of America, the "Cleft" or "Gorge" in the granite peak of the Sierra Nevada mountains, situated in the county of Mariposa, state of California, and the headwaters of the Merced river, and known as the Yosemite Valley, with its branches or spurs, granted unto the state of California in trust for public use, resort and recreation by the act of congress entitled "An act authorizing a grant to the state of California of the Yosemite Valley and of the land embracing the 'Mariposa Big Tree Grove,'" approved June thirtieth, eighteen hundred and sixty-four; and the state of California

does hereby relinquish unto the United States of America and resign the trusts created and granted by the said act of congress.

Mariposa Big Tree Grove ceded to United States.

§ 2. The state of California does hereby recede and regrant unto the United States of America, the tracts embracing what is known as the "Mariposa Big Tree Grove," granted unto the state of California in trust for public use, resort and recreation by the act of congress referred to in section one of this act; and the state of California does hereby relinquish unto the United States of America and resign the trusts created and granted by the said act of congress.

Time of taking effect. Property to be held for public use. Cost of maintenance.

§ 3. This act shall take effect from and after acceptance by the United States of America of the recessions and regrants herein made, thereby forever releasing the state of California from further cost of maintaining the said premises, the same to be held for all time by the United States of America for public use, resort and recreation, and imposing on the United States of America the cost of maintaining the same as a national park. Provided, however, that the recession and regrant hereby made shall not affect vested rights and interests of third persons.

The Yosemite Valley and Mariposa big tree grove were ceded to and were accepted by the state of California April 2, 1866, Stats. 1865-66, p. 710.

YREKA.

See Act 3094, note.

YUBA CITY.

See Act 3094, note.

CHAPTER 430.

YUBA COUNTY.

References: Boundary, see Kerr's Cyc. Political Code, § 3966.

County government, etc., see Kerr's Cyc. Political Code, §§ 4000, et seq.

CONTENTS OF CHAPTER.

- ACT 5662. TRESPASSING ANIMALS IN MARYSVILLE AND LONG BAR TOWNSHIP.
- 5669. TRANSCRIBING RECORDS.
- 5670. TRANSCRIBING TORN AND MUTILATED RECORDS.
- 5673. SEPARATE JUDGE.

TRESPASSING ANIMALS IN MARYSVILLE AND LONG BAR TOWNSHIPS.

ACT 5662—An act for protection of agriculture and to prevent the trespassing of animals upon private property in Marysville and Long Bar townships, Yuba county.

History: Approved March 11, 1876, Stats. 1875-76, p. 216.

The code commissioners say this act was repealed by the general estray law of 1897; but see editor's note to chapter on "Estrays."

TRANSCRIBING RECORDS.

ACT 5669—An act concerning the records of Yuba county.

History: Approved April 19, 1856, Stats. 1856, p. 139.

This act authorized the transcribing of certain records kept by Stephen J. Field, Philip W. Keyser and Alfred Lawton.

TRANSCRIBING TORN AND MUTILATED RECORDS.

ACT 5670—An act to provide for transcribing certain records in the county of Yuba.

History: Approved March 9, 1878, Stats. 1877-78, p. 212.

This act provided for the transcribing of torn and mutilated records.

SEPARATE JUDGE.

ACT 5673—An act providing for the election or appointment of a separate judge of the superior court for each of the counties of Yuba and Sutter.

History: Approved March 2, 1897, Stats. 1897, p. 48.

GENERAL INDEX

- Abandonment of highway act of 1915, Act 1917b, p. 996.**
- Abandonment of parks, Act 3769, p. 2496.**
- Abandonment of proceedings under street improvement act of 1909, Act 4952, p. 3184.**
- Abandoned streets, disposition of land of, Act 4958, p. 3272.**
- Abortion, see tit. "Advertisements."**
- Acceptance of donations—Golden Gate park, Act 3763, p. 2483.**
- Accident and health insurance, standard form of policy, Act 2189a, p. 1154.**
- "Accident prevention fund," Act 2103, p. 1079.**
- Accord and satisfaction, p. 1.**
- Accountancy—Chap. 1, p. 1.**
state board of accountancy, Act 9, p. 1.
- Accounts for liquor, collection of, Act 2213, p. 1183.**
- Acknowledgments—Chap. 2, p. 3.**
legalizing certain acknowledgments, Act 12, p. 3.
- of deeds by inmates of prisons, Act 3583, p. 2327.
- Acquisition by municipal corporations of land for cemetery purposes, Act 3032, p. 1819.**
- by municipalities of property sold for delinquent assessments, Act 3050, p. 1848.
- by municipalities of public utilities, Act of 1913, Act 3040, p. 1820.
- by municipalities of water rights, etc., Act 3048, p. 1842.
- Acting school districts declared incorporated, Act 4498, p. 2855.**
- Actions against insurance carriers, Act 2106a, p. 1096.**
- against state, see tit. "State."
- Additional help in county clerk's offices, Act 1113, p. 487.**
- Adjutant general's office, revolving fund, Act 3164, p. 2185.**
- Adoption, p. 4.**
- Adulteration—Chap. 3, p. 4.**
food and drug adulteration, Act 25, p. 4.
food and liquor act, Act 26, p. 6.
drug act, Act 27, p. 12.
paints, oils, varnishes and pigments, Act 29, p. 17.
dairy products, Act 36, p. 18.
honey, Act 38, p. 20.
syrup, Act 39, p. 21.
analysis, for adulteration, Act 41, p. 21.
insecticide and fungicide act, Act 45, p. 23.
- Adultery, p. 27.**
- Advertisements—Chap. 4, p. 28.**
lawful and unlawful signs, etc., Act 60, p. 28.
venereal disease remedies, Act 61, p. 29.
fraudulent, Act 62, p. 29.
- for employees during strikes, etc., Act 2774a, p. 1531.
- Aged persons, see tits. "Home of Adult Blind"; "Paupers"; "Veterans' Home Association."**
- Agencies, detective, Act 1235, p. 550.**
- Agents, interference with Indian, Act 2098, p. 1076.**
- see tits. "Employment Agencies"; "Insurance Companies"; "Investment Companies"; "Real Estate Brokers."
- Agnews state hospital—Confirming sale to Western Industries Company, Act 2147b, p. 1115.**
- conveyance of property to Western Distilleries, Act 2147, p. 1115.
- college for female working patients, Act 2148, p. 1115.
- erection of water towers and tanks, Act 2145, p. 1114.
- grant of right of way to Southern Pacific Company, Act 2147a, p. 1115.
- replacing buildings destroyed in 1906, Act 2146, p. 1114.
- Agricultural and industrial statistics, Act 4883, p. 3002.**
- Agricultural buildings, see tit. "Agriculture."**
- Agricultural college land grant, reconveyance of part of, to United States, Act 5332c, p. 3436.**
- Agricultural colleges, endowment of, Act 880, p. 367.**
- Agricultural districts, see tit. "Agriculture."**
- Agricultural district act of 1909, Act 74a, p. 42.**
- Agricultural district land leasing act, Act 74b, p. 45.**
- Agricultural expert, Act 93, p. 48.**
- Agricultural extension work, Act 95, p. 49.**
- Agricultural fairs, see tit. "Agriculture."**
- Agricultural land, drainage, Act 1281, p. 554.**
- Agricultural park, see tit. "Agriculture."**
- improvement of, by day's work, Act 70a, p. 35.
- Agricultural societies, see tit. "Agriculture."**
- Agricultural society lands, sale of, Act 74, p. 39.**
- Agriculture—Chap. 5, p. 30.**
I. agricultural buildings and park, p. 31.
state fair buildings, Act 65, p. 31.
woman's building, Act 66, p. 33.
machinery hall, Act 67, p. 34.

Agriculture—(Continued).

- dairy buildings, Act 68, p. 34.
- memorial buildings, Act 69, p. 34.
- extension of fair grounds, Act 70, p. 34.
- improvement of park by day's work, Act 70a, p. 35.
- improvement of park, Act 70b, p. 35.
- relief of directors of society, Act 70c, p. 35.
- II. state agricultural society, p. 36.
- incorporation of society, Act 71, p. 36.
- management and control of society, Act 72, p. 36.
- III. county and district agricultural societies and associations, p. 39.
- incorporation of county and district societies, Act 73, p. 39.
- sale of society lands, Act 74, p. 39.
- IV. agricultural districts, p. 42.
- district act of 1909, Act 74a, p. 42.
- land leasing act, Act 74b, p. 45.
- V. miscellaneous, department of agriculture, p. 46.
- improvement of cereal crops, Act 75, p. 46.
- propagation of Johnson grass, Act 77, p. 46.
- investigation of plant diseases, Act 78, p. 47.
- agricultural expert, Act 93, p. 48.
- delegates on rural credits and agricultural finance commission, Act 94, p. 48.
- agricultural extension work, Act 95, p. 49.
- department of agriculture, Act 96, p. 49.
- Alameda City**—Chap. 6, p. 53.
- freeholders' charter of the city of Alameda, Act 104, p. 53.
- street extension and widening, Act 106, p. 53.
- extension of streets, Act 107, p. 53.
- school building fund, Act 108, p. 54.
- salt marsh and tide land, Act 109, p. 54.
- Alameda County**—Chap. 7, p. 56.
- increase of number of superior judges, Act 124, p. 56.
- receiving hospital, Act 130, p. 56.
- bridge across San Antonio estuary, Act 131, p. 56.
- prohibiting destruction of fish in, Act 1720, p. 873.
- Alameda county lands**, suits to quiet title of, against the state, Act 4830, p. 2959.
- Alameda county water district**—Validation, Act 5510, p. 3590.
- Albany**—Chap. 8, p. 56.
- tide-land grant, Act 146, p. 56.
- Alhambra**—Chap. 9, p. 57.
- freeholders' charter, Act 147, p. 57.
- Allens**—Chap. 10, p. 57.
- licenses to aliens, Act 150, p. 57.
- indexing of persons who have declared intention, Act 151, p. 58.
- escheated estates, Act 152, p. 58.
- fishing by aliens, Act 153, p. 58.
- employment of native born and naturalized citizens in public offices, Act 155, p. 58.
- alien land law, Act 156, p. 59.
- licenses to certain, prohibited, Act 2533, p. 1459.
- Alleys**, passageways over or under, permits for, Act 3076, p. 1907.
- Almshouses**, records of, Act 805, p. 343.
- Alpine county**, p. 62.
- Alpine state highway**, Act 1922, p. 1001.
- Alturas to Cedarville county road**, Act 1927, p. 1002.
- Amador City**—Chap. 11, p. 63.
- hogs and goats, Act 176, p. 63.
- Amador County**—Chap. 12, p. 63.
- portion of El Dorado county added to, Act 185, p. 63.
- indebtedness prior to organization, Act 186, p. 63.
- Amador and Nevada wagon road, Act 187, p. 64.
- trespassing of goats, Act 188, p. 64.
- hogs and goats, Act 189, p. 64.
- American river**, removal of obstructions in, Act 1700, p. 871.
- American river reclamation district No. 1**, Act 3843, p. 2688.
- American Water and Mining Company**—Chap. 13, p. 64.
- extension of works, Act 195, p. 64.
- Analysis for adulteration**, Act 41, p. 21.
- "Anderson-Cottonwood irrigation district"**—Validation, Act 2287, p. 1351.
- Anderson, Peter**, relief of, Act 3739, p. 2444.
- Angeles forest reserve**, reforestation, Act 1586, p. 781.
- Angler's license**, issuance for resale act of 1915, Act 1692a, p. 845.
- Animal diseases**, prevention of spread of contagious, Act 2568a, p. 1473.
- Animal inspection**, slaughtered for food, Act 1574, p. 768.
- Animals**—Chap. 14, p. 64.
- destruction of squirrels and gophers, Act 249, p. 65.
- abatement of squirrel nuisance, Act 250, p. 65.
- destruction of predatory animals, Act 251, p. 65.
- tampering with domestic, Act 2560, p. 1466.
- Annexation act of 1889**, municipal, Act 3054, p. 1859.
- "Annexation act of 1913,"** municipal, Act 3055, p. 1866.
- Annexation of uninhabited territory** act of 1899, municipal, Act 3056, p. 1874.
- Annexation of San Mateo territory to San Francisco**, Act 4306, p. 2809.
- Annexation validation act of 1915**, municipal, Act 3057, p. 1876.
- Anti-rabic virus**, purchase and distribution of, Act 3686, p. 2405.
- Antonio creek**, p. 66.
- Antwerp messenger**, p. 66.
- Apiaries**—Chap. 14a, p. 66.
- apiary inspection act, Act 282, p. 66.
- Appeals** from orders forming or refusing to form reclamation districts, Act 3906, p. 2698.
- Apple act of 1917**, standard, Act 1654, p. 806.

- Apprentices**, p. 68.
 — from orphan asylums, binding of, Act 3374, p. 2228.
- Appropriated waters**, regulation of sale, rental, and distribution of, Act 5498, p. 3540.
- Appropriation of water power**, Act 5534, p. 3595.
- Appropriations**—Chap. 15, p. 68.
 general appropriations, 1919, Act 300, p. 68.
 — reversion of unexpended balances of, Act 1657, p. 824.
 — unexpended balances of, Act 1656, p. 823.
- Arbitration**—Chap. 16, p. 84.
 state board of arbitration, Act 306, p. 84.
- Arcata**—Chap. 17, p. 86.
 tide-land grant, Act 313, p. 86.
- Architecture**—Chap. 18, p. 88.
 practice of architecture, Act 317, p. 88.
- Armory**, p. 92.
 — Los Angeles, Act 3160, p. 2183.
 — Sacramento, Act 3161, p. 2183.
 — San Diego, Act 3162, p. 2184.
- Armory building and wharf**, see tit. "National Guard."
- Armory site**, San Francisco, Act 3157, p. 2183.
 — Stockton state hospital, Act 2134, p. 1113.
- Arms**—Chap. 19, p. 92.
 authorizing the governor to issue arms and accoutrements to colleges and academies, Act 323, p. 92.
- Army nurses**, home for, Act 4713, p. 2939.
- Arrest**, p. 92.
 — of escaping inmates of state reformatories, Act 682, p. 325.
- Arroyo del Medo**, p. 92.
- Arsenal**, see tit. "National Guard."
- Artesian wells**, Act 5521, p. 3592.
- Assault with corrosive liquids**, p. 94.
- Asexualization**—Chap. 20, p. 93.
 asexualization in state institutions, Act 346, p. 93.
- Assembly and convention halls**, municipal, Act 3052, p. 1857.
- Assignment of non-negotiable instruments**, p. 94.
- Assessment liens**, irrigation districts, release of on cancellation of bonds, Act 2273, p. 1342.
 — irrigation districts, redemption of property sold for delinquent, Act 2274, p. 1343.
- Assessment rolls**, restoration of, Act 584, p. 299.
- Assessment of state land by irrigation districts**, Act 2266j, p. 1320.
- Assessments**, equalization of reclamation district, Act 3901, p. 2696.
 — irrigation districts payment in installments, Act 2272, p. 1341.
 — validation of, Act 5129, p. 3326.
 — to pay reclamation bonds issued under Act 3903, Act 3904, p. 2697.
- Assessors**, p. 94.
- Attendance of students at National College for Deaf**, Act 1190, p. 537.
- Attorney General**, p. 94.
- Attorneys at law**, p. 94.
- Attorneys' fees abolished in foreclosure**, Act 1577, p. 770.
- Attorney for bureau of labor statistics**, Act 2402, p. 1399.
- Attorney for state board and San Francisco board of health**, Act 3678, p. 2402.
- Auburn**—Chap. 21, p. 94.
 removal of cemetery, Act 381, p. 94.
- Auditors**—Chap. 22, p. 94.
 report of commitments, Act 385, p. 94.
- Auto bus transportation act**, Act 3014, p. 1809.
- Automobile**, see tit. "Motor Vehicles."
- Autopsy physician in counties of first class**, Act 1009, p. 416.
- Aviary inspection act**, Act 282, p. 66.
- Badge, G. A. R.**, wearing without right, Act 1815, p. 894.
- Bakersfield**—Chap. 23, p. 95.
 freeholders' charter, Act 387, p. 95.
- Bakersfield, Maricopa and Ventura state highway**, Act 1940, p. 1004.
- Balboa Park, exposition at**, see tit. "Expositions."
- Ball, Robert C.**, suit by against the state, Act 4832, p. 2959.
- Balloting machines**, commission on, Act 1328, p. 624; Act 1329, p. 635.
- "Bank act,"** Act 409, p. 143.
- Bankruptcy and Insolvency**—Chap. 24, p. 95.
 insolvent act of 1895, Act 392, p. 95.
- Banks and Banking**—Chap. 25, p. 141.
 involuntary dissolution of savings banks, Act 406, p. 141.
 the "bank act," Act 409, p. 143.
 involuntary liquidation of banks, Act 410, p. 231.
- Banks**, involuntary liquidation of, Act 410, p. 231.
- Base land selections**, amendment of, Act 3745c, p. 2451.
- Bath, Mary Ann**, and others, relief of, Act 3739a, p. 2445.
- Bathing Resorts**—Chap. 26, p. 232.
 bathing resorts on rivers and streams, Act 433, p. 232.
 bathing resorts on seacoast and lakes, Act 434, p. 233.
 general sanitation act, Act 435, p. 233.
- Battle creek**, disposal of fish hatchery at, Act 1703, p. 871.
- "Baxter Creek Irrigation District"**—Validation, Act 2294b, p. 1354.
- Bear river district No. 1**, Act 2510, p. 1416.
- Bear flag**, adoption of, as state flag, Act 1563, p. 766.
- Bear flag monument**, Act 4725, p. 2943.
- Beckkeeping**, regulating, in San Bernardino county, Act 4087, p. 2706.

- Bell-ringing devices for locomotives**, automatic, Act 3838, p. 2679.
- Bellevue-Wilfred drainage district**, Act 1285, p. 598.
- Benefit Societies**—Chap. 26a, p. 235.
fraternal insurance act, Act 440, p. 235.
unincorporated societies may hold real estate, Act 441, p. 248.
fraternal fire insurance, Act 442, p. 249.
family protection, Act 443, p. 250.
change to regular life plan, Act 444, p. 252.
consolidation, merger, reinsurance, Act 445, p. 254.
- Benicia**—Chap. 27, p. 255.
cession of waterfront, Act 450, p. 255.
— settlement of titles in, Act 5199, p. 3404.
- Beneficiaries of workmen's compensation insurance policies**, Act 2106b, p. 1097.
- Bequests to deaf, dumb and blind asylum**, Act 1185, p. 536.
- Berkeley**—Chap. 28, p. 255.
freeholders' charter, Act 456, p. 255.
creating justice court, Act 457, p. 256.
grant of salt marsh and tide lands, Act 458, p. 256.
- Bicycle license**, Act 2539, p. 1461.
- Bidwell grant in Butte county**, acceptance of, Act 3767, p. 2485.
- Big Oak Flat and Yosemite toll road** a state highway, Act 1942, p. 1005.
- "Big Oak Flat" and "Yosemite and Wawona" roads**, purchase of, Act 1919, p. 1000.
- Big tree groves**, protection of, Act 1830, p. 896.
- Bills and notes**, p. 257.
- Bird and Arbor Day**—Chap. 29, p. 258.
conservation, bird and arbor day act, Act 471, p. 258.
- Blanchardil parlatoria**, Act 2013, p. 1025.
- Blind**—Chap. 29a, p. 258.
county relief fund, Act 472, p. 258.
- Blindness**, infant, prevention of, Act 2805, p. 1700.
- Blind students**, instruction of, Act 4556, p. 2907.
- Blue Book**—Chap. 29b, p. 260.
compilation, publishing and distribution, Act 473, p. 260.
- "Blue Sky Law,"** Act 2235, p. 1195.
- B'nai B'rith**—Chap. 30, p. 261.
permission to incorporate, Act 477, p. 261.
- Board of accountancy**, Act 9, p. 1.
- Board of agriculture**, see tit. "Agriculture."
- Board of authorization**, see tit. "Taxation."
- Board of charities and corrections**, see tit. "Charities and Corrections."
- Board of Colton Hall trustees**, see tit. "Colton Hall."
- Board of control**, p. 261.
- Board of election commissioners**, p. 261.
- Board of equalization**, p. 261.
- Board of examiners**, p. 261.
- Board of forestry**, see tit. "Forestry."
- Board of freeholders**, see tits. "Elections"; "Municipal Corporations."
- Board of harbor commissioners**, see tit. "Harbor Commissioners."
- Board of medical examiners**, see tit. "Medicine."
- Board of parole commissioners**, Act 3408, p. 2242.
- Board of pharmacy**, see tit. "Pharmacy."
- Board of pilot commissioners** for San Diego, Act 3474, p. 2272.
- Board of police commissioners**, Act 3542, p. 2296.
- Board of regents**, see tit. "University of California."
- Boards of education**, see tit. "Schools."
- Boards of examination**, p. 262.
- Boards of health**, see tit. "Public Health."
- Boards of trade**, see tit. "Chambers of Commerce."
- Bollnas bay**, prevention of distruction of fish in, Act 1721, p. 873.
- Bonds**—Chap. 31, p. 262.
I. Bonds, surety, p. 262.
cost of trust bonds, Act 485, p. 262.
cost of official bonds, Act 487, p. 263.
deposit of funds held by bonded fiduciaries, Act 488, p. 263.
II. bonds, money securities, p. 263.
state bonds, Act 493, p. 264.
state funded debt, Act 494, p. 264.
loan commissioners state funded debt, Act 495, p. 265.
county bonds, Act 501, p. 265.
registration of bonds, Act 514, p. 266.
state fiscal agency, Act 515, p. 267.
state building bonds, Sacramento, Act 516, p. 269.
farm loan bonds, legal as investments, Act 518, p. 272.
commissions on sale of state bonds, Act 519, p. 273.
- Bonds and photographs of employees**, cost of, Act 2779c, p. 1540.
- Bond act of 1911**, levee districts, Act 2517, p. 1420.
- Bonds, county water works district**, Act 5508, p. 3587.
— to secure performance of conditions of franchises, cancellation of, Act 1600, p. 791.
— Fresno county, see tit. "Fresno County."
— irrigation, legalizing, Act 2268a, p. 1336.
— irrigation, legal investments, Act 2271, p. 1337.
— municipal improvement and public utility, validation of, Act 3093n, p. 1959.
— municipal water district, legalized, Act 3103, p. 2173.
— of reclamation districts, Act 3903, p. 2697.
— registration of school, Act 4570, p. 2911.

Bonds—(Continued).

- Sacramento and San Joaquin drainage district, Act 3988, p. 2741.
 - school, issue in cities of the fifth class, Act 4571, p. 2912.
 - school district, validation of, Act 4564, p. 2910.
 - of University of California, payment of interest on outstanding, Act 5360, p. 3454.
 - water district, declared legal investments, Act 3102, p. 2172.
- Bonds of municipalities**, declared due before maturity, Act 3093g, p. 1952.
- payment of, before maturity, Act 3093h, p. 1953.
 - special tax levy to pay principal and interest of, Act 3093o, p. 1959.
 - validation act of 1915, Act 3093m, p. 1958.
 - legalization act of 1919, Act 3093l, p. 1957.

Bonham notarial acknowledgments, legalizing, Act 3117, p. 2177.

Boom franchises, Act 5527, p. 3593.

Booms, p. 274.

Boophilus annulatus tick, extermination of, Act 2568c, p. 1475.

Botanical gardens in municipalities, Act 3070, p. 1900.

Bottles, protection of owners of, Act 5211, p. 3405.

Boulevard district act of 1911, Act 1902, p. 941.

Boundaries of State—Chap. 32, p. 274.
eastern boundary defined and established, Act 531, p. 274.

Boundary improvement act of 1911, Act 4957, p. 3258.

"Boynton Act," Act 2106, p. 1081.

Branciforte, settlement of titles in, Act 5197, p. 3404.

Branch agricultural experiment station, University of California, Act 5388, p. 3463.

Branch state normal school in northern California, Act 4526, p. 2868.

Brazos del Rio, see "Rio Vista."

Bridge across San Antonio estuary, Act 131, p. 56.

Bridge bonds, Mendocino county, Act 2816, p. 1726.

Bridge on Lake Tahoe wagon road, Act 1920a, p. 1000.

- Bridges—Chap. 33**, p. 275.
- drawbridges, Act 551, p. 275.
 - bridges across navigable streams, Act 552, p. 275.
 - bridge franchises across navigable streams, Act 553, p. 276.
 - bridges between counties, Act 554, p. 277.
 - bridge at Needles, Act 555, p. 278.
 - joint bridges, Act 556, p. 278.
- free, Mendocino county, Act 2815, p. 1725.

"Bridgeford Act," Act 2266, p. 1232.

Bristle bur, prohibited, Act 1162, p. 496.

"Broughton Act," Act 1601, p. 792.

Building act of 1895, municipal, Act 3044, p. 1837.

Building bond act, University of California, Act 5391, p. 3464.

Building nuisance abatement act, sale of liquor, Act 2227, p. 1197.

Building bonds, state—Sacramento, Act 516, p. 269.

Building and Loan Associations—Chap. 34, p. 279.

"building and loan commission" act, Act 568, p. 279.

Buildings—Chap. 35, p. 290.

building zone act, Act 570, p. 290.

building lines, Act 571, p. 292.

Buoys and Beacons—Chap. 35a, p. 292.

protection of buoys and beacons, Act 575, p. 292.

Bureau of child hygiene, Act 3699a, p. 2423.

Bureau of criminal identification, Act 1155, p. 493.

Bureau of labor statistics, Act 2401, p. 1396.
— attorney, Act 2402, p. 1399.

Bureau of tuberculosis, Act 3694, p. 2412.

Bureaus, free employment, Act 1374, p. 708.

Burial of indigent soldiers, sailors and marines, Act 4712, p. 2937.

Burlingame—Chap. 36, p. 293.

tide-land grant, act 578, p. 293.

Burnt or Destroyed Records or Documents—Chap. 37, p. 295.

"burnt record act," Act 580, p. 295.

new trial act, Act 581, p. 297.

reproduction of registers of state boards, Act 583, p. 299.

restoration of assessment roll, Act 584, p. 299.

duplicate municipal securities, Act 585, p. 300.

duplicate public certificates, Act 586, p. 301.

copying public documents, Act 587, p. 301.

Butte County—Chap. 38, p. 302.

"no fence law," Act 593, p. 302.

lawful fence, Act 596, p. 302.

hunting in private grounds, Act 597, p. 302.

transcribing records, Act 602, p. 303.

certified copies of records, Act 603, p. 303.

charter of Butte county, Act 613, p. 303.

Butte county drainage district No. 1, Act 1286, p. 599.

Butte county drainage district No. 100, Act 1287, p. 600.

— validation, Act 1296a, p. 604.

Butte county highway to Willows highway, Act 1945a, p. 1011.

Butte creek, protection of fish in, Act 1722, p. 874.

Butter—Chap. 39, p. 303.

marking packages, Act 617, p. 303.

renovated butter, Act 618, p. 303.

short weight butter, Act 620, p. 305.

imitation butter and cheese, Act 621, p. 305.

imported butter, Act 624, p. 309.

Butter—(Continued).

— certified, production of, Act 1169, p. 523.

Butter and eggs in storage more than three months, Act 871, p. 365.

Button, unlawful wearing of labor union, Act 2412, p. 1400.

Cache slough, use of nets, etc., in, prohibited, Act 1738, p. 878.

Calaveras County—Chap. 40, p. 310.

“no fence law,” Act 630, p. 310.

redemption of bonded indebtedness, Act 631, p. 310.

— indebtedness of, prior to organization of Amador county, Act 186, p. 63.

California Development Company, purchase of bonds of by “Imperial Irrigation District,” Act 2285b, p. 1350.

California historical survey commission, Act 1951, p. 1013.

California in great war, record of, Act 1953, p. 1016.

California home for care and training of feeble minded children, see tit. “Feeble Minded Children.”

California Industrial Farm—Chap. 41, p. 310.

“California industrial farm,” Act 640, p. 310.

“**California Irrigation Act**,” Act 2266b, p. 1282.

“**California Irrigation District Act**,” Act 2266, p. 1232.

California polytechnic school, Act 4500, p. 2856.

California and Oregon Railroad Company—Chap. 42, p. 315.

giving effect to act of congress, Act 648, p. 315.

California Pacific Railroad Company—Chap. 43, p. 315.

grant of rights and privileges, Act 653, p. 315.

California Pioneers—Chap. 44, p. 315.

memorial monument at Donner lake, Act 658, p. 315.

California Redwood Park—Chap. 45, p. 316.

management, commission, Act 670, p. 316.

enlargement of park, Act 672, p. 317.

California School for Girls—Chap. 46, p. 317.

state training school for girls, Act 676, p. 318.

California State Reformatory—Chap. 47, p. 321.

“California state reformatory” act, Act 681, p. 321.

arrest of escaping inmates, Act 682, p. 325.

control and management of Napa land, Act 683, p. 326.

California Statutes, Index To—Chap. 48, p. 326.

compilation, publication and distribution, Act 692, p. 326.

California Volunteers—Chap. 49, p. 327.

revision of records of, Act 696, p. 327.

Camp of instruction, national guard, Act 3151, p. 2180.

Camp sanitation, Act 2772, p. 1528.

Camping ground in Placer county, Act 1746, p. 884.

Canal, Colusa, Solano and Yolo irrigation and navigation, Act 896, p. 368.

Canals—Chap. 50, p. 327.

Sacramento irrigation and navigation canal company, Act 702, p. 327.

— construction of, Act 5536, p. 3604.

Canalization of rivers, Act 5536, p. 3604.

Canners’ license act of 1917, Act 1691a, p. 840.

Capitol—Chap. 51, p. 328.

salary and duties of janitor, Act 709, p. 328.

drinking fountains, Act 710, p. 328.

state capitol bonds, Act 712, p. 328.

permanent employees, Act 713, p. 328.

repair of capitol building, Act 714, p. 328.

decoration of rotunda, Act 715, p. 329.

state capitol planning commission, Act 716, p. 329.

Card, unlawful use of labor union, Act 2413, p. 1400.

Carey act commission, Act 3748, p. 2453.

“**Carmichael Irrigation District**”—Validation, Act 2290, p. 1352.

Carquinez Straits—Chap. 52, p. 330.

disposition of certain property, Act 717, p. 330.

— release of land covered by, Act 2753, p. 1526.

Cartwright act, Act 5264, p. 3425.

Casualty report, employers’, Act 2782, p. 1692.

Cattle protection board, Act 2568e, p. 1478.

Cemeteries—Chap. 53, p. 330.

protection of bodies of deceased persons, Act 720, p. 330.

disinterment, Act 721, p. 330.

removal from cemeteries in cities, Act 722, p. 332.

public cemetery districts, Act 724, p. 332.

execution of deeds by cemetery corporations, Act 725, p. 333.

rural cemetery associations, Act 726, p. 334.

rural cemetery associations, Act 727, p. 338.

— opening streets through, Act 4959, p. 3273.

Cemetery, removal of, Auburn, Act 381, p. 94.

Census, see tit. “Municipal Corporations.”

Central Pacific Railroad Company—Chap. 54, p. 339.

relocation of route, Act 790, p. 339.

state and bond act, Act 791, p. 339.

franchise grant, Act 792, p. 339.

incorporation validation, Act 793, p. 339.

Cereal crops, improvement of, Act 75, p. 46.

Certificates of status of school land furnished surveyor general by auditors, Act 3912, p. 2699.

Certificates and tax deeds validated, Act 5117, p. 3319.

Certified butter, production of, Act 1169, p. 523.

- Certified cheese**, production of, Act 1169, p. 523.
- Certified cream**, production of, Act 1169, p. 523.
- Certified milk**, production of, Act 1169, p. 523.
- Chambers of commerce**, p. 340.
- Change of grade act of 1909**, Act 4954, p. 3207.
- Change of name** from "city" to "town," Act 3067a, p. 1899.
- from "town" to "city," Act 3067, p. 1898.
- freeholder charter cities, Act 3066, p. 1897.
- of high school districts, Act 4547, p. 2885.
- of school districts, Act 4546, p. 2885.
- Charities**, registration and publicity of, Act 806, p. 344.
- Charities and Corrections**—Chap. 55, p. 340.
creation of state board, Act 803, p. 340.
homes for dependent children, Act 804, p. 342.
records of county hospitals and almshouses, Act 805, p. 343.
maternity hospitals, Act 805a, p. 344.
registration and publicity of charities, Act 806, p. 344.
- Charters**, see tits. "Elections"; "Municipal Corporations."
- Chattel loans**, corporations organized to make, Act 1022, p. 424.
- Chattel mortgage loans**, rates of interest on, Act 2200, p. 1182.
- Cheese**—Chap. 56, p. 345.
grades of cheese, Act 815, p. 345.
- Cheese, certified**, production of, Act 1169, p. 523.
- Cheese, imitation**, Act 621, p. 305.
- Chemicals**, use of to prevent fermentation in milk and milk products, Act 1168a, p. 521.
- Child hygiene**, bureau of, Act 3699a, p. 2423.
- Child labor law of 1905**, Act 2113, p. 1107.
- Child labor law of 1919**, Act 2113a, p. 1108.
- Chinese**—Chap. 57, p. 347.
immigration, Act 825, p. 347.
competition of Chinese labor, Act 826, p. 347.
exclusion, registration, Act 827, p. 347.
Chinese criminals, coolie slavery, Act 828, p. 347.
kidnaping and importation of females, Act 829, p. 347.
suppression of Chinese houses of ill-fame, Act 830, p. 348.
removal outside cities and towns, Act 831, p. 348.
- Chiropractic**, see tit. "Medicine."
- Cider**, see tit. "Adulteration."
- City Attorney**—Chap. 58, p. 348.
assistants in cities and cities and counties of 100,000 and over, Act 836, p. 348.
- City planning commissions**, Act 3093a, p. 1943.
- Citrus fruit containers**, marking, Act 2727, p. 1523.
- "Civic Center Act,"** use of school houses, Act 4574, p. 2914.
- Civic and vocational education** in high schools, Act 4579, p. 2917.
- Civil rights**, p. 348.
- Civil Service Commission**—Chap. 59, p. 349.
general system of civil service and creation of commission, Act 846, p. 349.
- Claim of Fidelity and Deposit Company of Maryland**, payment of, Act 1878, p. 921.
- Claims against the United States**, employment of counsel to prosecute, Act 1808, p. 894.
- Claims of counties against state**, Act 1071, p. 446.
- Claims, abandoned mining**, covering or fencing, Act 2873, p. 1730.
- Classification act**, municipal corporations, Act 3016, p. 1840.
- Clear lake**, p. 361.
- Cleveland national forest**, prevention of destruction of game in, Act 1588, p. 732.
- Coachella storm water district**, Act 4926, p. 3018.
- Coal mines and miners**, protection of, Act 2875, p. 1731.
- Coast Survey**—Chap. 60, p. 361.
enter lands and protect operations, Act 860, p. 362.
- Code Commission**—Chap. 61, p. 362.
creation of commission, Act 865, p. 362.
- Cold Storage**—Chap. 62, p. 362.
cold storage act, Act 870, p. 362.
butter and eggs, Act 871, p. 365.
fraudulent sale of butter and eggs, Act 872, p. 366.
- College City**, see tit. "Intoxicating Liquors."
- College of medicine**, Los Angeles department, University of California, Act 5377, p. 3457.
- Colleges**—Chap. 63, p. 366.
incorporation of, Act 878, p. 366.
endowment of agricultural colleges, Act 880, p. 367.
- Colleges and academies**, issue of arms and accoutrements to, Act 323, p. 92.
- Colton Hall**—Chap. 64, p. 367.
Colton Hall trustees, Act 890, p. 367.
- Colusa County**—Chap. 65, p. 367.
"no fence law," Act 895, p. 367.
irrigation and navigation canal, Act 896, p. 368.
Colusa and Yolo drainage district, Act 899, p. 368.
partition fences, Act 900, p. 368.
quiet title, Act 910, p. 368.
- Colusa, Town Of**, Chap. 66, p. 368.
issue of road bonds authorized, Act 916, p. 368.
- Colusa, Yolo and drainage district**, Act 1296, p. 604.

- Combinations to obstruct sale of livestock**, Act 2568d, p. 1477.
- Combinations in restraint of trade**, see tit. "Trusts."
- Commercial fishery statistics**, Act 1693b, p. 850.
- Commission market**, see tit. "State Commission Market."
- Commission on voting or balloting machines**, Act 1328, p. 624, Act 1329, p. 635.
- Commissions on sale of state bonds**, Act 519, p. 273.
- Commissioner of transportation**, see tit. "Public Utilities."
- Commissioners in equity**, p. 368.
- Commitments to public institutions**, report of to county auditor, Act 385, p. 94.
- Commitments to Whittier state school**, Act 5583, p. 3632.
- Common law**, p. 369.
- Complaint, form of**, in suits for delinquent taxes, Act 5119, p. 3320.
- Completion of railroad**, extending time, Act 3825, p. 2670.
- Completion of unfinished buildings act of 1887**, Act 3655, p. 2375.
- act of 1895, Act 3656, p. 2376.
- Compulsory school attendance**, Act 4554, p. 2894.
- enforcement aid act, Act 4555, p. 2906.
- Concealed weapons**, Act 1182, p. 532.
- Condensed milk**, standard for, Act 1168, p. 521.
- Congressional districts**, p. 369.
- Conservation**—Chap. 67, p. 369.
- state conservation commission, Act 940, p. 369.
- "conservancy act of California," Act 941, p. 371.
- Conservation, bird and arbor day act**, Act 471, p. 258.
- Conservation of fish supply**, Act 1693c, p. 852.
- Consolidation act of 1909**, municipal, Act 3063, p. 1880.
- Consolidation act of 1915**, municipal, Act 3064, p. 1888.
- Consolidation of elections**, Act 1339, p. 678.
- Consolidated reclamation district No. 108**, boundaries, act of 1919, Act 3859c, p. 2690.
- validation, Act 3859b, p. 2690.
- Conspiracy**—Chap. 68, p. 410.
- union labor injunctions, Act 946, p. 410.
- crime against president and other officials, Act 947, p. 410.
- Constitution**—Chap. 69, p. 411.
- dissemination of knowledge concerning proposed constitutional amendments, Act 960, p. 411.
- Constitution of the state of California**, p. xxxii.
- Constitution of the United States**, p. xxi.
- Construction camp**, sale of liquor near, Act 2224, p. 1184.
- Contagious diseases, introduction into California**, Act 3682, p. 2402.
- act of 1913, Act 3684, p. 2403.
- Contra Costa County**—Chap. 70, p. 412.
- lawful fence law, Act 967, p. 412.
- quiet title to marsh and tide lands, Act 977, p. 412.
- additional judge of superior court, Act 981, p. 412.
- Contracts of irrigation districts with federal reclamation service**, Act 2266d, p. 1316.
- water for irrigation, Act 2276, p. 1345.
- Contracts, water users' association, recordation of**, Act 5539, p. 3606.
- Controller**, p. 412.
- Controversy between state and United States**, settlement of, Act 5333, p. 3437.
- Controversy as to disputed school land claims**, settlement of, with United States, Act 5333a, p. 3437.
- Conveyances by persons with changed names**, Act 1206, p. 538.
- Conveyance of mining claims**, Act 2872, p. 1729.
- Conveyance of Veterans' home to state**, Act 5419, p. 3475.
- Convict labor on state highways**, Act 1917c, p. 996.
- Convicts**—Chap. 71, p. 412.
- photographs and marks of identification, Act 995, p. 412.
- expenses and costs of trial of convicts, Act 996, p. 413.
- indemnity for erroneous conviction, Act 997, p. 413.
- Coolie slavery**, Act 828, p. 347.
- Co-operative associations**, p. 415.
- Co-operation of irrigation districts with districts in other states**, Act 2266f, p. 1318.
- Co-operative agricultural extension work**, Act 5390, p. 3464.
- Coroner**—Chap. 72, p. 415.
- assistant coroners in cities of 100,000, or more inhabitants, Act 1008, p. 415.
- autopsy physician in counties of first class, Act 1009, p. 416.
- official reporter in cities of 100,000, or more inhabitants, Act 1010, p. 416.
- "Corporate Securities Act," Act 2236**, p. 1208.
- Corporation tax act**, Act 5122, p. 3321.
- Corporations**—Chap. 73, p. 417.
- corporation license tax act, Act 1021, p. 418.
- repayment of corporation license tax erroneously collected, Act 1021a, p. 423.
- corporations to lend money on chattels, Act 1022, p. 424.
- issue of shares without nominal or par value, Act 1033a, p. 424.

Corporations—(Continued).

- issue of shares of stock without nominal or par value by public utility corporations, Act 1033b, p. 425.
- corporations as executor and trustee, Act 1034, p. 427.
- for the protection of stockholders, etc., Act 1035, p. 432.
- payment of employees of corporations, Act 1036, p. 433.
- payment of wages of employees of corporations, Act 1037, p. 433.
- foreign corporations act, Act 1041, p. 434.
- "industrial loan companies," Act 1042, p. 442.

Costs—Chap. 74, p. 445.

- service of summons and subpoenas in civil actions, Act 1051, p. 445.

Costs and expenses of trial of convicts, Act 996, p. 413.**Costs and expenses of trials for violations of fish and game laws, Act 1739, p. 879.****Cotenancy, p. 445.****Coulterville and Yosemite Turnpike Company, suit by, against the state, Act 4828, p. 2958.****Council of defense, Act 5462, p. 3500.****Counsel bureau, legislative, Act 2494, p. 1405.****Counterfeiting, p. 445.****Counties—Chap. 75, p. 446.**

- claims of counties against the state, Act 1071, p. 446.
- formation, organization and classification of new counties, Act 1075, p. 446.
- misappropriated school money, Act 1076, p. 453.
- reports of financial transactions, Act 1077, p. 459.
- payment of judgments against, Act 2311, p. 1356.

County auditors, see tit. "Auditors."**County boards of public welfare, Act 3781, p. 2661.****County bonds, Act 501, p. 265.****County and district agricultural societies, incorporation of, Act 73, p. 39.****County Boundaries—Chap. 76, p. 460.**

- Butte and Plumas, Act 1085, p. 460.
- Butte and Yuba, Act 1086, p. 462.
- Plumas and Lassen, Act 1087, p. 463.
- Glenn and Colusa, Act 1088, p. 466.
- commission to define boundaries between Humboldt, Mendocino, Trinity and Klamath counties, Act 1091, p. 467.
- Shasta and Plumas, Act 1092, p. 469.
- Mariposa and Fresno, Act 1093, p. 469.
- Siskiyou and Lassen, Act 1094, p. 470.
- northern boundary of Napa, Act 1095, p. 470.
- San Luis Obispo and Kern, Act 1096, p. 471.
- Fresno and Tulare, Act 1097, p. 472.
- Lake and Yolo, Act 1098, p. 472.
- Shasta and Lassen, Act 1099, p. 473.
- Humboldt and Del Norte and Siskiyou, Act 1100, p. 473.

II Gen. Laws—123

County Boundaries—(Continued).

- election to change boundary between Fresno and Kings, Act 1101, p. 474.
- Fresno and Kings, Act 1102, p. 477.
- Lake and Glenn, Mendocino, and Colusa counties, Act 1103, p. 479.
- Mendocino and Glenn, Act 1104, p. 480.
- Butte and Glenn, Act 1105, p. 481.
- between Mendocino and Sonoma, Act 1106, p. 481.
- Kern and San Bernardino, Act 1107, p. 482.
- Lake and Mendocino, Act 1108, p. 483.
- Riverside and San Bernardino, Act 1109, p. 486.

County Clerk—Chap. 77, p. 487.

- deputies, etc., in counties of over 120,000, Act 1111, p. 487.
- additional help in office, Act 1113, p. 487.

County employees, retirement system for, Act 3440, p. 2251.**— semi-monthly paydays for, Act 2779d, p. 1541.****County Engineer—Chap. 78, p. 488.**

- "the county engineer act," Act 1115, p. 488.

County fish hatcheries, Act 1740, p. 879.**County fire insurance companies act, Act 2183, p. 1133.****County free libraries, Act 2530a, p. 1445.****County government, p. 491.****County harbor commission act, Act 1877, p. 916.****County highway maintenance act of 1911, Act 1913, p. 979.****County highways through municipalities, permit for, Act 3069, p. 1900.****County hospitals and almshouses, records of, Act 805, p. 343.****County irrigation districts, Act 2267, p. 1320.****— validation, Act 2267a, p. 1321.****County joint highways, Act 1900b, p. 939.****County money, deposit of, in banks, Act 1674, p. 831.****County parole commissioners, Act 3409, p. 2244.****"County Power Pumping District Act," Act 2267b, p. 1321.****County relief for indigent soldiers, etc., Act 4717, p. 2941.****County relief fund for needy blind, Act 472, p. 258.****County special tax for certain purposes, Act 5098, p. 3309.****County, township and other officers, fees of, Act 1479, p. 743.****County water district act Nos. 1 and 2, Acts 5506, 5507, pp. 3556, 3571.****County waterworks district act, Act 5505, p. 3549.****Coupons of civil bonds of 1857, redemption of, Act 1664, p. 825.****Coupons of railroad bonds of 1864, redemption of, Act 1665, p. 825.**

- Courts**—Chap. 79, p. 492.
 transfer of records, Act 1128, p. 492.
 appointment of secretary, Act 1129, p. 492.
 superior court jurisdiction, Act 1130, p. 492.
- Crab preserve** in Eel river, Act 1741, p. 879.
- Cream, certified**, production of, Act 1169, p. 523.
- Crescent City**—Chap. 80, p. 493.
 location of townsite, Act 1146, p. 493.
 tide-land grant, Act 1147, p. 493.
- Criminal Identification**—Chap. 81, p. 493.
 bureau of criminal identification, Act 1155, p. 493.
- Crops**, protection of from mining operators, Act 2869, p. 1729.
- Crossings of highways**, etc., by municipal public utilities, Act 3074, p. 1906.
- Cruelty to Animals**—Chap. 82, p. 496.
 use of bristle bur, etc., prohibited, Act 1162, p. 496.
- Cruelty to children**, see tit. "Infants."
- Cutoffs on San Joaquin river**, construction of, Act 4333, p. 2840.
- Dairies**—Chap. 83, p. 497.
 dairy sanitation and inspection act of 1905, Act 1166, p. 497.
 dairy sanitation and inspection act of 1911, Act 1167, p. 501.
 standard for condensed and evaporated milk, Act 1168, p. 521.
 use of chemicals to prevent fermentation, Act 1168a, p. 521.
 certified milk, Act 1169, p. 523.
 dairy inspection act of 1917, Act 1171, p. 524.
 imitation milk, Act 1172, p. 529.
- Dairy buildings**, Act 68, p. 34.
- Dairy bureau**, see tit. "State Dairy Bureau."
- Dairy products, adulteration of**, Act 36, p. 18.
- Daily payment of excess taxes**, authorized, Act 5132, p. 3328.
- Damages, liability of officers in**, Act 3322, p. 2211.
- Date palm distribution and quarantine**, Act 2013, p. 1025.
- Day of rest from labor**, Act 2770, p. 1527.
- Deadly Weapons**—Chap. 84, p. 531.
 registration of purchasers, Act 1181, p. 532.
 concealed weapons, Act 1182, p. 532.
- Deaf, Dumb, and Blind Asylum**—Chap. 85, p. 536.
 bequests and donations of money and property, Act 1185, p. 536.
 water supply, Act 1186, p. 536.
 removal of fence to permit the use of the public highway, Act 1187, p. 536.
 manual and industrial arts building, Act 1188, p. 536.
 separation of deaf and blind departments, Act 1189, p. 536.
 readers for blind students, attendance of students at national college for deaf, Act 1190, p. 537.
 removal of fence, etc., Act 1191, p. 537.
- Dealers' fish and game license act of 1911**, Act 1691, p. 838.
- Death**, see tit. "Vital Statistics."
- Debris commission**, see tits. "Mines and Mining"; "State Engineering."
- Debris impounding works, sites**, Act 2866, p. 1729.
- Debris, works for restraining and impounding**, Act 2865, p. 1728.
- Deceased persons' fund**, investment of moneys in, Act 1393, p. 709.
- Deceased persons, protection of bodies of**, Act 720, p. 330.
- Deceased persons, removal of bodies of**, in cities, Act 722, p. 332.
- Deeds**—Chap. 86, p. 538.
 conveyances by persons with changed names, Act 1206, p. 538.
 — acknowledgments, by inmates of state prisons, Act 3583, p. 2327.
 — lost, suits to quiet title against the state, Act 4837, p. 2962.
 — tax, validated, Act 5116, p. 3318.
- Defectives**, department of, Whittier state school, Act 5586, p. 3633.
- Delinquent insurance companies**, liquidation of, Act 2199, p. 1179.
- Delinquent personalty taxes, suits for**, Act 5118, p. 3319.
- Delinquent street assessments**, redemption from sales for, Act 4951, p. 3184.
- Delinquent taxes, compensation for collection of**, Act 5103, p. 3316.
- Del Norte County**—Chap. 87, p. 539.
 fence and pound districts, Act 1211, p. 539.
- Dentistry**—Chap. 88, p. 539.
 dental practice act of 1915, Act 1226, p. 539.
 state dental surgeon, Act 1227, p. 549.
- Department of agriculture**, see tit. "Agriculture."
- Department of clinical diagnosis**, Whittier state school, Act 5587, p. 3634.
- Department of engineering**, see tit. "State Engineering."
- Department of petroleum and gas**—State mining bureau, Act 2894, p. 1743.
- Department of sanitary engineering**, Act 3697, p. 2421.
- Dependent children**, homes for, Act 804, p. 342.
- Deputy county clerks** in counties of over 120,000 inhabitants, Act 1111, p. 487.
- Derailing switches**, regulating, Act 3836, p. 2678.
- Descent and distribution**, p. 550.
- Destruction by fire of certain reports and documents authorized**, Act 5130, p. 3327.
- Destruction of food and food products prohibiting**, Act 1573, p. 767.
- Destruction of unsold municipal bonds**, Act 3093f, p. 1952.
- Detectives**—Chap. 89, p. 550.
 private detectives and detective agencies, Act 1235, p. 550.

Diablo creek, p. 551.

Diphtheria antitoxin, purchase and manufacture of, Act 3685, p. 2405.

"Direct Primary Law of 1913," Act 1337, p. 637.

Diseases of cultivated plants, Act 2011, p. 1024.

Diseases of plants, investigation of, Act 78, p. 47.

Disembarking zones, immigrant, Act 2091, p. 1074.

Disincorporated municipality, ownership of property of, Act 3093, p. 1941.

Disincorporation of sixth-class cities, Act 3091, p. 1937.

Disinterment, Act 721, p. 330.

Dissection, p. 551.

Dissolution of irrigation districts act of 1919, Act 2267c, p. 1327.

— act of 1903, Act 2267d, p. 1329.

Dissolution of protection districts, Act 3643, p. 2373.

Dissolution of protection district No. 2, Act 3643a, p. 2374.

Dissolution of reclamation districts, Act 3902, p. 2697.

District agricultural societies, incorporation of, Act 73, p. 39.

District Attorney, p. 552.

District Court of Appeals—Chap. 90, p. 552. accommodations for court and library of second appellate district, Act 1252, p. 552.

Ditches, see tits. "Canals"; "Drainage Districts."

Division fences, Act 1495, p. 746.

Division and partition fences, height of, Act 1496, p. 747.

Divorces, p. 552.

Dogs, see tits. "Cruelty to Animals"; "Sheep."

Donner lake memorial, Act 658, p. 315.

Dormitory at farm, University of California, Act 5383, p. 3462.

Dorris Bridge—Chap. 91, p. 553.

change of name to Alturas, Act 1275, p. 553.

Drainage Districts—Chap. 92, p. 553.

drainage commissioners, districts and fund, Act 1280, p. 554.

drainage of agricultural, swamp and overflowed lands, Act 1281, p. 554.

drainage district act of 1885, Act 1282, p. 555.

drainage district improvement act of 1919, Act 1283, p. 560.

drainage district act of 1903, Act 1284, p. 576.

Bellevue-Wilfred drainage district, Act 1285, p. 598.

Butte county drainage district No. 1, Act 1286, p. 599.

Butte county drainage district No. 100, Act 1287, p. 600.

Knights Landing ridge drainage district, Act 1288, p. 600.

Drainage Districts—(Continued).

boundaries of Knights Landing ridge drainage district, Act 1289, p. 600.

Los Angeles county improvement district No. 1, Act 1290, p. 601.

Los Angeles county drainage improvement district No. 3, Act 1291, p. 601.

Merced county drainage improvement district No. 1, Act 1292, p. 602.

Merced county drainage improvement district No. 2, Act 1293, p. 602.

Sacramento river drainage district, Act 1294, p. 604.

Yolo basin drainage district, Act 1295, p. 604.

Yolo and Colusa drainage district, Act 1296, p. 604.

drainage district No. 100 Butte county—Validation, Act 1296a, p. 604.

Drainage by irrigation districts, Act 2266g, p. 1319.

Drainage and protection of municipalities from overflow, Act 3046, p. 1839.

Drawbridges, Act 551, p. 275.

Drinking fountains at state capitol, Act 710, p. 328.

Drinking water, pure, furnishing to employees, Act 2772a, p. 1529.

Drinking receptacles for public use, Act 3698, p. 2422.

Drugs, see tits. "Adulteration"; "Pharmacy"; "Poisons."

Drydock, state, San Francisco waterfront, Act 1858, p. 901.

Duplicate and excess payments of taxes, Act 5131, p. 3327.

Dwelling Houses—Chap. 93, p. 604.

state dwelling house act, Act 1302, p. 604.

East street, San Francisco, alignment of, Act 1860, p. 902.

Efficiency of fire departments, increase of, Act 1542, p. 765.

Eggs—Chap. 94, p. 614.

sale of imported eggs, Act 1303, p. 615.

sale of food and drink containing eggs, Act 1304, p. 616.

packing imported eggs, Act 1305, p. 616.

sale of eggs in transit more than thirty-one days, Act 1306, p. 617.

Eggs in storage more than three months, Act 871, p. 365.

El Dorado County—Chap. 95, p. 618.

refunding of bonded indebtedness, Act 1307, p. 618.

lawful fences, Act 1308, p. 618.

trespassing animals in Mud Springs township, Act 1309, p. 618.

— portion of, added to Amador county, Act 185, p. 63.

Election of officers, cities of sixth class, Act 3089, p. 1927.

— cities of sixth class, validation, Act 3090, p. 1929.

Election, special, on highway constitutional amendments, Act 1916b, p. 993.

- Elections**—Chap. 96, p. 619.
 purity of elections act of 1907, Act 1327, p. 619.
 commission on voting or balloting machines, Act 1328, p. 624.
 supplementary to previous act, Act 1329, p. 635.
 special elections, Act 1332, p. 637.
 "direct primary law of 1913," Act 1337, p. 637.
 "presidential primary act," Act 1338, p. 672.
 consolidation of elections, Act 1339, p. 678.
 legalizing registrations, Act 1340, p. 679.
 "piece clubs," Act 1341, p. 680.
 special state election called, Act 1342, p. 681.
 — fifth- and sixth-class cities, Act 3090a, p. 1929.
- Electric power**, development by irrigation districts, Act 2266h, p. 1319.
- Electricity**—Chap. 97, p. 681.
 regulating electric poles, etc., Act 1350, p. 682.
 regulating subways, manholes, etc., Act 1351, p. 686.
 joint municipal public utilities, Act 1352, p. 688.
- Elevators**—Chap. 98, p. 692.
 elevator construction, maintenance and operation, Act 1356, p. 692.
 elevator inspection act, Act 1357, p. 693.
- Elisors**, p. 695.
- Embalmers**—Chap. 99, p. 695.
 practice of embalming, Act 1363, p. 696.
- Embarcadero**, passenger transportation on, Act 4307, p. 2821.
- Emeryville**—Chap. 100, p. 700.
 tide-land grant, Act 1365, p. 700.
- Emigrant Gap to Donner lake state highway** construction, Act 1923, p. 1001.
 — maintenance, Act 1924, p. 1001.
- Emigrant Gap state road**—Change of grade, Act 1925, p. 1001.
- Emigration**—Chap. 101, p. 701.
 promotion of emigration, Act 1366, p. 701.
- Employees**, bonds and photographs of, cost of, Act 2779c, p. 1540.
 — of corporations, payment of, Act 1036, p. 433.
 — county, semi-monthly paydays for, Act 2779d, p. 1541.
 — political activities, interference with, Act 2774b, p. 1531.
 — service letters for, Act 2779b, p. 1540.
 — of state capitol permanent, Act 713, p. 328.
- Employers' casualty report**, Act 2782, p. 1692.
 — hospital service, Act 2783, p. 1694.
- Employment Agents**—Chap. 102, p. 701.
 regulating private employment agencies, Act 1373, p. 702.
 free employment bureaus, Act 1374, p. 708.
- Employment, misrepresentations as to conditions of**, Act 2774, p. 1530.
- Employment of native-born citizens in public office**, Act 155, p. 58.
- Employment and readjustment committee**, soldiers, Act 4716, p. 2940.
- Encampments of national guard** at state camp of instruction, Act 3154, p. 2183.
- Endowment of hospitals**, Act 2018, p. 1027.
- Enforced purchase, by laborers**, Act 2779a, p. 1539.
- Enforcement of labor laws**, Act 2403, p. 1400.
- Engineer**, see tits. "County Engineer"; "State Engineer."
- Epileptics and idiots**, Act 1466, p. 740.
- Equalization act of 1893**, Act 5102, p. 3315.
- Equipment of railroads**, conditional sales of, Act 3834, p. 2676.
- Erroneous conviction**, indemnity for, Act 997, p. 413.
- Escape**, see tit. "Insane Asylums."
- Escaping inmates of state reformatories**, arrest of, Act 682, p. 325.
- Escheat**—Chap. 103, p. 708.
 payment of judgments under section 1272, C. C. P., Act 1385, p. 708.
- Escheated estates of aliens**, Act 152, p. 58.
 — suits to quiet title to, Act 4826, p. 2957.
- Estates of Deceased Persons**—Chap. 104, p. 709.
 investment of moneys in estates of deceased persons fund, Act 1393, p. 709.
- Estell lands**, suits against state to quiet title to portion of, Act 4826a, p. 2958.
- Estrays**—Chap. 105, p. 710.
 estray law of 1901, Act 1401, p. 710.
 local option estray law of 1919, Act 1402, p. 714.
- Eureka**—Chap. 106, p. 716.
 freeholders' charter, Act 1425, p. 716.
 legalizing the Murray survey, Act 1426, p. 716.
 cession of waterfront to Eureka, Act 1427, p. 717.
 creating a police court, Act 1429, p. 717.
 tide and submerged land grant, Act 1430, p. 717.
- Evaporated milk**, standard for, Act 1168, p. 521.
- Excess payments of taxes**, refunding of such payments, Act 5132, p. 3328.
- Excess taxes**, daily payment authorized, Act 5132, p. 3328.
- Exchange of commodities** between public institutions, Act 3700, p. 2424.
- Exchange of real estate** in San Francisco, between the city and the state, Act 4303, p. 2809.
- Exclusion act of 1889**, municipal, Act 3059, p. 1876.
- Exclusion of uninhabited territory act of 1913**, municipal, Act 3060, p. 1878.
- Executor and trustee**, corporations as, Act 1034, p. 427.
- Exempt firemen's relief fund**, Act 1536, p. 763.

- Exit signs in hotels, etc.,** Act 2024, p. 1029.
- Expenses and costs of trial of convicts,** Act 996, p. 413.
- Experiment station, poultry,** Act 3563, p. 2317.
- Explosives**—Chap. 107, p. 720.
 protection of life and property against use of explosives, Act 1434, p. 720.
 transportation, storage and sale of explosives, Act 1435, p. 722.
- Expositions**—Chap. 108, p. 728.
 Panama-California International Exposition, use of Balboa park, Act 1440, p. 729.
 Panama-California International Exposition, state exhibit and building, Act 1441, p. 730.
 Panama-California International Exposition, appropriation to complete exposition building, Act 1442, p. 731.
 Panama-California International Exposition, maintenance of state building, Act 1443, p. 731.
 Panama-Pacific International Exposition commission, powers and duties, Act 1444, p. 732.
 Panama-Pacific International Exposition, disposition of state's share of returns, Act 1445, p. 737.
 exposition building at Los Angeles, Act 1446, p. 737.
 exposition at Los Angeles, furnishing and equipping building, Act 1447, p. 737.
 exposition at Los Angeles, revolving fund for special expositions, Act 1448, p. 737.
 Italian International Exposition, California exhibit, Act 1449, p. 738.
 Ghent Universal and International Exposition, California exhibit, Act 1449a, p. 738.
- Extension of state fair grounds,** Act 70, p. 34.
- Extension of streets,** Alameda city, Act 107, p. 53.
- Extension of time,** see tit. "Time."
- Factories,** see tits. "Industrial Welfare Commission"; "Master and Servant."
 — medical and surgical appliances in, Act 2684, p. 1515.
 — registration of, Act 2683, p. 1515.
- Fahey, P. H.,** relief of heirs at law of, Act 3739b, p. 2445.
- Fair buildings, state,** see tit. "Agriculture," Act 65, p. 31.
- "Fair Oaks Irrigation District,"** validation, Act 2294f, p. 1355.
- False bay,** protection of fish in, Act 1733, p. 876.
 — use of waters of to propel machinery, Act 4127, p. 2774.
- False returns** to board of state harbor commissioners, Act 1875, p. 915.
- Family protection,** fraternal benefit societies, Act 443, p. 250.
- Farm, University of California,** Act 5381, p. 3460.
 — in Riverside county, Act 5393, p. 3468.
- Farm loan bonds,** Act 518, p. 272.
- Farmers' institutes,** Act 5370, p. 3456.
- Feather river,** see tits. "Bridges"; "State Engineering"; "Swamp and Overflowed Lands."
- Federal reclamation service,** contracts of irrigation districts with, Act 2266d, p. 1316.
 — irrigation district co-operation with, Act 2266c, p. 1313.
- Feeble-Minded Children**—Chap. 109, p. 739.
 California Home for Feeble-Minded Children, government and management, Act 1462, p. 739.
 permanent home, Act 1463, p. 739.
 sale of Santa Clara county property, Act 1464, p. 740.
 grant of right of way for highway, Act 1465, p. 740.
 supplementary act, admission to home, of idiots and epileptics, Act 1466, p. 740.
 transfer and quitclaim Santa Clara property, Act 1467, p. 740.
 improvement and repairs of home, Act 1468, p. 740.
 completion of main buildings, Act 1469, p. 740.
 authorizing conveyance of certain property, Act 1470, p. 740.
 authorizing construction of two pavilions for epileptics, Act 1471, p. 741.
 authorizing construction of dairy buildings, Act 1472, p. 741.
- Fees**—Chap. 110, p. 741.
 fees and salaries of certain officers, Act 1475, p. 741.
 fees, etc., in cities and counties of over 100,000 inhabitants, Act 1477, p. 743.
 fees of county, township and other officers, Act 1479, p. 743.
 payment of trial jurors' fees, Act 1480, p. 744.
 payment of municipal officers, Act 1481, p. 745.
- Fees under motor vehicle act,** illegally imposed, repayment of, Act 3013, p. 1808.
- Female teachers,** discrimination against, Act 4557, p. 2907.
- Fence of deaf, dumb and blind asylum,** removal of for use of ground as public highway, Act 1187, p. 536, Act 1191, p. 537.
- Fences**—Chap. 111, p. 745.
 concerning lawful fences and trespassing animals, Act 1492, p. 745.
 concerning lawful fences, Act 1493, p. 745.
 lawful fences in certain counties, Act 1494, p. 746.
 lawful division fences, Act 1495, p. 746.
 height of division and partition fences, Act 1496, p. 747.
 spite fences, Act 1497, p. 747.
 entering, passing through, and hunting in inclosures, Act 1499, p. 748.

- Fermentation**, use of chemicals to prevent, in milk and milk products, Act 1168a, p. 521.
- Ferries**—Chap. 112, p. 749.
across navigable rivers between counties, Act 1505, p. 749.
across streams wholly within counties, Act 1506, p. 750.
- Ferry Depot**—Chap. 113, p. 750.
San Francisco ferry depot act, Act 1511, p. 750.
- Fertilizers**—Chap. 114, p. 751.
sale of commercial fertilizers, Act 1516, p. 751.
- Fiddletown**—Chap. 115, p. 754.
hogs and goats running at large, Act 1521, p. 754.
name changed to Oleta, Act 1522, p. 754.
- Financial transactions of counties**, reports of, Act 1077, p. 459.
- Fines and forfeitures** for violation of fish and game laws, Act 1694a, p. 855.
- Fire**—Chap. 116, p. 754.
destruction by fire of contiguous property, Act 1528, p. 754.
- Fire Department**—Chap. 117, p. 754.
firemen's relief, health, insurance and pension fund, Act 1533, p. 755.
fire departments in unincorporated towns, Act 1534, p. 758.
exempt firemen's relief fund, Act 1536, p. 763.
foreign insurance companies, payment of premiums for firemen's relief funds, Act 1537, p. 763.
pensions for aged, infirm and disabled firemen, Act 1538, p. 763.
yearly vacation for firemen, Act 1539, p. 764.
salaries of officers in cities of first class, Act 1541, p. 765.
increase of efficiency of fire departments, Act 1542, p. 765.
- Fire districts**, see tit. "Forestry."
— disincorporation of, Act 1589, p. 782.
- Fire patrol**, p. 766.
- Fires**, prevention and suppression of forest, Act 1578a, p. 777.
- Fire boats**, maintenance of, Act 4302, p. 2808.
- Firemen's relief, health, insurance and pension fund**, Act 1533, p. 755.
- Fiscal agency**, state, Act 515, p. 267.
- Fiscal year** of freeholder charter cities, Act 3093d, p. 1949.
- Fish and game**, see tit. "Game Laws."
- Fish and game district act of 1917**, Act 1696, p. 855.
- "Fish and Game Preservation Fund,"** Act 1694, p. 854.
- Fish commissioners**, see tit. "Game Laws."
- Fish hatcheries at Sisson**, purchase of, Act 1698, p. 871.
— purchase of additional land, Act 1699, p. 871.
- Fishery statistics**, Act 1693b, p. 850.
- Fishing by aliens**, Act 153, p. 58.
- Fishing in district 19**, restriction of, Act 1738a, p. 878.
- Fishing license act of 1913**, Act 1692, p. 843.
- Fishing license act, vocational**, Act 1690, p. 837.
- Fixtures**, larceny of, Act 2465, p. 1403.
- Flag**—Chap. 118, p. 766.
adoption of bear flag as state flag, Act 1563, p. 766.
- Floor act, temporary**, Act 2775, p. 1533.
- Folsom**—Chap. 119, p. 767.
goats running at large, Act 1568, p. 767.
- Folsom state hospital**, Act 3608, p. 2331.
- Food and drink containing eggs**, sale of, Act 1304, p. 616.
- Food and drug adulteration**, Act 25, p. 4.
- Food and liquor act**, Act 26, p. 6.
- Food producing and food storing plants**, sanitation of, Act 3676, p. 2389.
- "Food Warehousemen Act,"** Act 3780a, p. 2657.
- Foods**—Chap. 120, p. 767.
destruction of food and food products, Act 1573, p. 767.
inspection of animals slaughtered for food, Act 1574, p. 768.
— standard sulphuring act, Act 1654b, p. 817.
- Forcible entry and unlawful detainer**, p. 769.
- Foreclosure**—Chap. 121, p. 770.
attorney's fees abolished, Act 1577, p. 770.
— attorney's fees abolished in, Act 1577, p. 770.
- Foreign corporations act**, Act 1041, p. 434.
- Foreign insurance companies**, payment of premiums for firemen's relief funds, Act 1537, p. 763.
- Foreign miner's licenses**, Act 2532, p. 1458.
— fees granted several mining counties, Act 2534, p. 1459.
- Forestry**—Chap. 122, p. 771.
forestry act, Act 1578, p. 771.
prevention and suppression of forest fires, Act 1578a, p. 777.
salaries of forestry officers, Act 1579, p. 779.
state forestry fund Act 1580, p. 779.
state forestry nursery, Act 1581, p. 780.
United States forest reserve fund, Act 1583, p. 780.
represtation of San Bernardino forest reserve, Act 1585, p. 781.
reforestation of the Angels national forest, Act 1586, p. 781.
prevention of destruction of game in Cleveland national forest, Act 1588, p. 782.
disincorporation of fire districts, Act 1589, p. 782.
Tamalpais forest fire district, Act 1590, p. 783.
prevention of forest fires on public lands, Act 1591, p. 788.
fighting forest fires in San Antonio canyon, Act 1592, p. 789.

Forestry—(Continued).

- fighting forest fires in San Dimas canyon, Act 1593, p. 789.
- prevention of forest fires in San Antonio canyon, Act 1594, p. 790.

Forfeiture of payments on fraudulent titles to public lands, Act 3742, p. 2448.

Forfeiture of state land purchases, Act 3735a, p. 2438; Act 3735b, p. 2442; Act 3736, p. 2443.

— act of 1889, Act 3737, p. 2443.

Formation, organization and classification of new counties, Act 1075, p. 446.

Franchises—Chap. 123, p. 791.

- cancellation of bonds to secure performance of conditions of, Act 1600, p. 791.

“Broughton act,” Act 1601, p. 792.

railroads to parks beyond city limits, Act 1607, p. 798.

resettlement act, Act 1608, p. 798.

Franchises for gas companies granted by municipal corporations, Act 1759, p. 885.

Franchises for steam heating pipes in streets, Act 3075, p. 1907.

Fraternal insurance, change to regular life plan, Act 444, p. 252.

Fraternal insurance act, Act 440, p. 235.

Fraternal fire insurance, Act 442, p. 249.

Fraternal insurance societies, consolidation, etc., Act 445, p. 254.

Fraternalities, school, Act 4562, p. 2908.

Fraudulent advertisements, Act 62, p. 29.

Fraudulent conveyances, p. 801.

Free libraries, see tit. “Libraries.”

— county, Act 2530a, p. 1445.

Free textbook act of 1917, Act 4542a, p. 2879.

Freeholder charters, see tits. “Elections”; “Municipal Corporations.”

— of particular cities, see particular title.

— abandonment of, Act 3017, p. 1817,

Fresh and dried fruit containers, marking, Act 2728, p. 1524.

Fresno City—Chap. 124, p. 802.

freeholders' charter, Act 1629, p. 802.

Fresno County—Chap. 125, p. 802.

courthouse and hospital improvement bonds, Act 1638, p. 802.

increase of superior judges, Act 1642, p. 802.

bonds for the construction of roads and bridges, Act 1644, p. 803.

board of county water commissioners, Act 1649, p. 803.

Fresno state normal school, Act 4521, p. 2867.

Fruit—Chap. 126, p. 803.

standard fruit act of 1915, Act 1652, p. 803.
“The Standard Apple Act of 1917,” Act 1654, p. 806.

standard fresh fruit packing act of 1917, Act 1654a, p. 812.

Fruit—(Continued).

sulphur standard for sulphuring fruits and foods, Act 1654b, p. 817.

standard fruit and vegetable act of 1919, Act 1654c, p. 818.

Fruit containers, citrus, marking, Act 2727, p. 1523.

— fresh and dried, marking, Act 2728, p. 1524.

Fruit trees, fraudulent sale of, Act 2010, p. 1024.

Fruits, sale and shipment of frosted citrus, Act 2012, p. 1025.

“Full crew” act, Act 3832, p. 2672.

Fund, drainage, Act 1280, p. 554.

Fund, industrial accident, Act 2102, p. 1073.

Fund, United States forest reserve, Act 1583, p. 780.

Funds—Chap. 127, p. 823.

conversion of balances of unexpended appropriation, Act 1656, p. 823.

reversion of balances of unexpended appropriations, Act 1657, p. 824.

San Francisco state normal, transfer of money from the salary to the printing fund, Act 1658, p. 824.

transfer of money, certain funds to general fund, abolishing certain funds, Act 1659, p. 824.

loan to general fund from school land fund, Act 1660, p. 824.

transfer from state drainage construction fund to general fund, Act 1661, p. 824.

transfer of money from construction fund drainage district number one to general fund, Act 1662, p. 824.

transfer of money from general fund to other funds, Act 1663, p. 825.

redemption of coupons of civil bonds of 1857, Act 1664, p. 825.

redemption of coupons, railroad bonds of 1864, Act 1665, p. 825.

requiring payment of state moneys into the treasury, Act 1666, p. 825.

payments from the swamp land fund to the several counties, Act 1667, p. 826.

return of payments under section 570, C. C. P., Act 1667a, p. 826.

investment of county and municipal sinking funds, Act 1669, p. 827.

investment of surplus funds of counties and municipalities, Act 1670, p. 827.

investment of surplus money of state, Act 1671, p. 828.

deposit of state money in banks, Act 1673, p. 829.

deposit of county and municipal money in banks, Act 1674, p. 831.

Funds held to be bonded fiduciaries, deposits of, Act 488, p. 263.

Funds of University of California, management of, Act 5367, p. 3455.

Funding act of 1897, irrigation districts, Act 2268, p. 1333.

Fur bearing animals, protection of, Act 1744, p. 881.

Gallinas slough, p. 833.

Game birds, propagation of, Act 1708, p. 872.

Game Laws—Chap. 128, p. 834.

hunting license act of 1909, Act 1688, p. 835.
 vocational fishing license act of 1909, Act 1690, p. 837.
 dealers' license act of 1911, Act 1691, p. 838.
 cannery's license act of 1917, Act 1691a, p. 840.
 fishing license act of 1913, Act 1692, p. 843.
 issuance for resale act of 1915, Act 1692a, p. 845.
 fish propagators' license act of 1911, Act 1693, p. 846.
 parasitic fish act, Act 1693a, p. 848.
 commercial fishery statistics, Act 1693b, p. 850.
 fish supply conservation, Act 1693c, p. 852.
 "fish and game preservation fund," Act 1694, p. 854.
 disposition of fines and forfeitures, Act 1694a, p. 855.
 fish and game district act of 1917, Act 1696, p. 855.
 "Mount Tamalpais game refuge," Act 1696a, p. 869.
 railway car for fish distribution, Act 1697, p. 871.
 purchase of fish hatcheries at Sisson, Act 1698, p. 871.
 purchase of additional land for fish hatchery at Sisson, Act 1699, p. 871.
 removal of obstructions in American river, Act 1700, p. 871.
 salmon hatchery, Act 1701, p. 871.
 removal of obstructions in Pitt river, Act 1702, p. 871.
 disposal of hatchery at Battle creek, Act 1703, p. 871.
 fish repository on Stanislaus river, Act 1704, p. 872.
 authorizing construction of steam launch, Act 1705, p. 872.
 purchase of gasoline launch, Act 1706, p. 872.
 disposal of steam launch Governor Stone-man, Act 1707, p. 872.
 importation of game birds for propagation, Act 1708, p. 872.
 protection of game in Nevada county, Act 1709, p. 872.
 restricting hunting in Yolo county, Act 1710, p. 872.
 preservation of mocking birds, Act 1712, p. 872.
 prevention of destruction of fish and game in Lake Merritt, Act 1715, p. 873.
 protection of fish and game in Napa county, Act 1716, p. 873.
 destruction of fish prohibited in Alameda county, Act 1720, p. 873.
 prevention of destruction of fish in Bolinas bay, Act 1721, p. 873.
 protection of fish in Butte creek, Act 1722, p. 874.
 regulating salmon fisheries on Eel river, Act 1723, p. 874.
 preservation of fish in Lake Bigler, Act 1724, p. 874.

Game Laws—(Continued).

prevention of destruction of fish in King's river, Act 1725, p. 875.
 use of seines, etc., in Napa river prohibited, Act 1727, p. 875.
 use of seines, etc., in San Antonio creek prohibited, Act 1728, p. 876.
 preservation of fish in Siskiyou county, Act 1731, p. 876.
 protection of fish in False bay, Act 1733, p. 876.
 protection of fish in Mendocino county, Act 1735, p. 876.
 prevention of destruction of wild game in Pinnacles forest reserve, Act 1736, p. 877.
 use of weirs, etc., in Monterey bay, Act 1737, p. 877.
 use of nets, etc., in Cache slough prohibited, Act 1738, p. 878.
 restriction of fishing in district 19, Act 1738a, p. 878.
 expenses and costs of trial for violation of fish and game laws, Act 1739, p. 879.
 county fish hatcheries, Act 1740, p. 879.
 crab preserve in Eel river, Act 1741, p. 879.
 shellfish preserve in Monterey bay, Act 1742, p. 880.
 transfer of land for game preserve, Act 1743, p. 880.
 protection of fur-bearing animals, Act 1744, p. 881.
 contaminated sources of shellfish, Act 1745, p. 884.
 free camping grounds in Placer county, Act 1746, p. 884.

Gaming, p. 885.

Garbage crematories, operation of, Act 3675, p. 2388.

Gardens, botanical, in municipalities, Act 3070, p. 1900.

Gas—Chap. 129, p. 885.

grant of franchises by municipal corporations, Act 1759, p. 885.
 regulating use of illuminating gas, Act 1760, p. 886.
 standard of illuminating power act, Act 1761, p. 886.
 prohibiting wasting of natural gas, Act 1762, p. 888.
 — illuminating, use of in hotels, Act 2023, p. 1029.

Gas and petroleum, department of, state mining bureau, Act 2894, p. 1743.

Gettysburg—Chap. 130, p. 889.

celebration of fiftieth anniversary, Act 1774, p. 889.

Ghent universal and international exposition, California exhibit, Act 1449a, p. 738.

Gifts—Chap. 131, p. 890.

gifts to counties for pioneer monuments, Act 1781, p. 890.

Gilroy—Chap. 132, p. 891.

act of incorporation, Act 1783, p. 892.

Glenn County—Chap. 133, p. 892.

organization act, Act 1786, p. 892.

- Goats**—Chap. 134, p. 892.
protection of goats from dogs, Act 1788, p. 893.
- Gold dust**, larceny of, Act 2466, p. 1403.
- Golden City Homestead Association**—Chap. 135, Act 1794, p. 893.
conveyance of lands to the association, Act 1794, p. 893.
- Golden Gate park**, acceptance of donations, Act 3763, p. 2483.
- "Good roads law" of 1907**, Act 1900, p. 925.
- Good Templars**—Chap. 136, p. 893.
grant of corporate powers, Act 1799, p. 893.
- Government breakwater at Monterey bay**, Act 2970, p. 1763.
- Government survey**, perpetuation of, markings of, Act 5035, p. 3278.
- Governor**—Chap. 137, p. 893.
residence of governor, Act 1805, p. 893.
employment of counsel, Act 1808, p. 894.
- Grand and trial jurors**, fees of, Act 1475, p. 741.
- Grand Army of the Republic**—Chap. 133, p. 894.
wearing badge of G. A. R. without right, Act 1815, p. 894.
permanent headquarters in capitol, Act 1816, p. 894.
national encampment of 1912, Act 1817, p. 895.
G. A. R. memorial monument, Act 1818, p. 895.
- Grant of land to University of California**, Act 5359, p. 3454.
- Gravel beds and quarries**, municipal, Act 3045, p. 1839.
- Graves of soldiers**, sailors and marines, care of, Act 4712a, p. 2939.
- Great Sierra wagon road**, or "Tioga road," purchase of portion of, Act 1941a, p. 1005.
- Growing Timber**—Chap. 139, p. 896.
protection of big tree groves, Act 1830, p. 896.
- Guaranty surplus and special reserve insurance funds**, Act 2197, p. 1176.
- Guardian of Marshall monument**, Act 2746, p. 1526.
- Guardian and ward**, p. 896.
- Guardians for orphans**, Act 3375, p. 2228.
- Guide Posts**—Chap. 140, p. 896.
guide posts in desert sections, Act 1840, p. 896.
- Habeas corpus**, p. 897.
- Harbor Commissioners**—Chap. 141, p. 897.
repairs upon private wharves, Act 1852, p. 897.
jurisdiction of commission, act of 1878, Act 1855, p. 898.
warehouses, elevators, etc., Act 1856, p. 899.
state railroad act of 1913, Act 1857, p. 900.
state drydock act of 1913, Act 1858, p. 901.
alignment of East street, Act 1860, p. 902.
- Harbor Commissioners**—(Continued).
condemnation of certain property, Act 1861, p. 902.
India basin act, Act 1862, p. 903.
compromise of litigation, Act 1863, p. 903.
free public market on waterfront, Act 1864, p. 904.
insurance of state property, Act 1865, p. 905.
reconstruction and repair of damaged property, Act 1866, p. 906.
reconstruction and repair of wharves, etc., Act 1866a, p. 906.
lease of certain waterfront blocks, Act 1867, p. 906.
San Francisco harbor improvement act of 1909, Act 1869, p. 906.
India basin act, Act 1870, p. 907.
San Francisco harbor improvement act of 1913, Act 1871, p. 907.
San Francisco seawall act, Act 1871a, p. 911.
establishing disputed titles on bay of San Diego, Act 1872, p. 912.
San Diego seawall act of 1909, Act 1873, p. 912.
board of harbor commissioners of port of San Jose, Act 1874, p. 912.
false returns to boards, Act 1875, p. 915.
county harbor commission act, Act 1877, p. 916.
payment of claim of Fidelity and Deposit Company of Maryland, Act 1878, p. 921.
acquisition of Mission rock, Act 1879, p. 921.
- Harbor Improvement act of 1911**, municipal, Act 3078, p. 1918.
- Harbor line act**, municipal, Act 3079, p. 1919.
- "Happy Valley Irrigation District," validation**, Act 2291, p. 1353.
- Hastings college of law**, p. 922.
- Hay**—Chap. 142, p. 922.
standard hay baling act, Act 1882, p. 922.
- Headlights on locomotives**, regulating, Act 3835, p. 2677.
- Headquarters, G. A. R.**, in capitol, Act 1816, p. 894.
- Health**, see tit. "Public Health."
- Hemp**, purchase of California grown, for prison use, Act 3606, p. 2331.
- Herding and grazing of livestock by non-residents**, Act 2568b, p. 1474.
- Herget, George**, relinquishment of title to certain lands to, Act 3739d, p. 2445.
- Hermosa Beach**—Chap. 143, p. 923.
tide-land grant, Act 1894, p. 923.
- High school cadet companies**, Act 4518, p. 2863.
- Highway legislation**, investigation by legislative counsel bureau, Act 2495, p. 1408.
- Highways**—Chap. 144, p. 924.
good roads law of 1907, Act 1900, p. 925.
joint highway districts, Act 1900a, p. 930.
county joint highways, state co-operation, natural military highways, Act 1900b, p. 939.

Highways—(Continued).

natural rural post roads, state co-operation, Act 1900c, p. 940.

boulevard district act of 1911, Act 1902, p. 941.

highway care, management and protection act of 1915, Act 1903, p. 952.

road district improvement act of 1907, Act 1910, p. 954.

work on state highways by local authorities, Act 1910a, p. 969.

highway lighting districts, Act, 1911, p. 969.

lighting district validation act of 1915, Act 1911a, p. 976.

shade and ornamental tree act of 1913, Act 1912, p. 977.

county highway maintenance act of 1911, Act 1913, p. 979.

payment by counties of interest on state highway bonds, Act 1914, p. 979.

right of way over public lands, Act 1915, p. 980.

state highways act, Act 1916, p. 980.

state highways act of 1915, Act 1916a, p. 986.

special election on highway amendment to constitution, Act 1916b, p. 993.

acquisition of rights of way and rock quarries by counties, Act 1917, p. 994.

openings and obstructions on state highways, Act 1917a, p. 995.

abandonment act of 1915, Act 1917b, p. 996.

convict labor on state highways, Act 1917d, p. 996.

road division validation act of 1917, Act 1917e, p. 997.

state aid highways in counties and towns, Act 1918, p. 998.

purchase of "Big Oak Flat" and "Yosemite and Wawona" roads, Act 1919, p. 1000.

Lake Tahoe wagon road, Act 1920, p. 1000.

bridge on Lake Tahoe wagon road, Act 1920a, p. 1000.

Placerville and Lake Tahoe wagon road, Act 1920b, p. 1000.

state highway from Meyer's station to McKinney's, Act 1921, p. 1001.

Alpine state highway, Act 1922, p. 1001.

state highway from Emigrant Gap to Donner lake, construction, Act 1923, p. 1001.

state highway from Emigrant Gap to Donner lake, maintenance, Act 1924, p. 1001.

Emigrant Gap state road, change of grade, Act 1925, p. 1001.

Lassen county state highway, Act 1926, p. 1002.

Alturas to Cedarville county road, Act 1927, p. 1002.

state highway from Sacramento to Folsom, Act 1928, p. 1002.

state highway from Mount Pleasant ranch to Downieville, Act 1929, p. 1002.

declaring part of Sonora and Mono wagon road, a state highway, Act 1930, p. 1002.

Sonora and Mono state highway, Act 1931, p. 1003.

Highways—(Continued).

Trinity-Humboldt state highway, Act 1932, p. 1003.

free wagon road from Mono lake basin to "Tioga road," Act 1933, p. 1003.

Mono lake basin state road, extension, Act 1934, p. 1003.

Trinity - Tehama - Shasta - Humboldt state highway, Act 1935, p. 1003.

Trinity - Tehama - Shasta - Humboldt state highway, completion, Act 1936, p. 1003.

Trinity - Tehama - Shasta - Humboldt state highway survey of extension, Act 1937, p. 1004.

Kings river state highway, Act 1939, p. 1004.

Bakersfield, Maricopa and Ventura state highway, Act 1940, p. 1004.

wagon road from McKinney's to Donner lake declared a state highway, Act 1941, p. 1004.

purchase of portion of great Sierra wagon road, or "Tioga road," Act 1941a, p. 1005.

Big Oak Flat and Yosemite toll road, a state highway, Act 1942, p. 1005.

"Yolo and Lake highway," Act 1942a, p. 1006.

Tahoe city and Crystal bay state highway, Act 1943, p. 1007.

state highway from Kern county to Nordhoff, Act 1943a, p. 1007.

highway from Surprise valley to the Nevada line, Act 1943b, p. 1007.

highway from Pescadero to California redwood park, Act 1943c, p. 1008.

Pasadena state highway, Act 1943d, p. 1008.

state highway from Saratoga Gap to California redwood park, Act 1943e, p. 1009.

state highway from San Bernardino to Redlands, Act 1944, p. 1009.

taking over road in Boulder Creek township, Santa Cruz county, Act 1944a, p. 1010.

highway between Susanville and Nevada line, Act 1944b, p. 1010.

highway from Truckee to the Nevada line, Act 1945, p. 1011.

highway from Butte county highway to Willows, Act 1945a, p. 1011.

declaring highway from Long Barn to Sonora, a state highway, Act 1945b, p. 1011.

report on road laws, Act 1946, p. 1012.

Highways, additional rights of way for, Act 4858, p. 2978.

Historic Property—Chap. 145, p. 1012.

acquisition, preservation, etc., of certain historic properties, Act 1950, p. 1012.

California historical survey commission, Act 1951, p. 1013.

board of trustees, Pio Pico mansion, Act 1952, p. 1014.

record of California in great war, Act 1953, p. 1016.

Historical museums in municipalities, Act 3070, p. 1900.

Hoagland, John, and others, suit by, against the state, Act 4831, p. 2959.

- Hog cholera serums, etc.,** preparation, inspection and sale of, Act 2568, p. 1472.
- Hogs**—Chap. 146, p. 1016.
hogs running at large in certain counties, Act 1954, p. 1016.
- Holidays**—Chap. 147, p. 1017.
holidays declared by municipalities, Act 1955, p. 1017.
Lincoln's birthday declared a legal holiday, Act 1956, p. 1017.
Lincoln's 100th birthday declared a legal holiday, Act 1957, p. 1017.
- Home for soldiers' widows and orphans,** and army nurses, Act 4713, p. 2939.
- Homes for dependent children,** Act 804, p. 342.
- Homesteads**—Chap. 148, p. 1018.
formation and extension of homestead corporations, Act 1974, p. 1018.
- Homing pigeons,** p. 1018.
- Honey,** see tits. "Adulteration"; "Apiaries."
- Hops**—Chap. 149, p. 1019.
fixing tare on baled hops, Act 1991, p. 1019.
- Horticulture**—Chap. 150, p. 1019.
horticultural nomenclature, Act 2001, p. 1019.
pear and walnut blight investigation, Act 2002, p. 1019.
horticultural act of 1912, Act 2009, p. 1020.
fraudulent sale of fruit trees, Act 2010, p. 1024.
destructive diseases of cultivated plants, Act 2011, p. 1024.
sale and shipment of frosted citrus fruits, Act 2012, p. 1025.
date palm distribution and quarantine, Act 2013, p. 1025.
- Hospital**—Chap. 151, p. 1026.
maternity hospitals, Act 2017, p. 1026.
endowment of hospitals, Act 2018, p. 1027.
- Hospital, municipal,** Act 3081, p. 1922.
- Hospital service,** employers', Act 2783, p. 1694.
- Hospital, state, for miners,** Act 2876, p. 1732.
- Hospital at Yountville home,** Act 5418, p. 3475.
- Hotels**—Chap. 151, p. 1029.
use of illuminating gas in hotels, Act 2023, p. 1029.
exit signs in hotels, etc., Act 2024, p. 1029.
"state hotel and lodging house act" of 1917, Act 2026, p. 1030.
hotel act of 1917, Act 2028, p. 1063.
- Hours of employment of miners,** act of 1913, Act 2883, p. 1735.
- Hours of Labor**—Chap. 153, p. 1065.
women's eight-hour law, Act 2034, p. 1065.
— of municipal employees, Act 3093c, p. 1949.
— of pharmacists, Act 3465, p. 2269.
— of train dispatchers and telegraph operators, Act 3833, p. 2674.
- Hours of service,** police, Act 3539, p. 2294.
- House of correction,** see tit. "Preston School of Industry."
- Houseboats, etc., mooring of,** Act 5532, p. 3594.
- Houses of ill-fame,** Chinese, suppression of, Act 830, p. 348.
- Houses of prostitution,** see tit. "Prostitution."
- Housing, immigration and,** act of 1913, Act 2090, p. 1070.
- Humboldt Bay**—Chap. 154, p. 1067.
grant of tide lands to the United States, act of 1887, Act 2051, p. 1067.
grant of tide lands to the United States, act of 1889, Act 2051, p. 1067.
purchase of certain lands in Humboldt bay, Act 2053, p. 1068.
survey of Humboldt bay, Act 2054, p. 1068.
- Humboldt County**—Chap. 155, p. 1068.
additional superior judge for, Act 2062, p. 1068.
challenge to jurors in justice's courts, Act 2063, p. 1068.
log scaling, Act 2064, p. 1068.
disposal of town and village lots on public lands, Act 2071, p. 1068.
- Humboldt state normal school,** Act 4520, p. 2866.
- Hunter's license,** issuance of for resale, Act of 1915, Act 1692a, p. 845.
- Hunting in enclosures,** Act 1499, p. 748.
- Hunting license act of 1909,** Act 1688, p. 835.
- Hunting in Yolo county,** restricting, Act 1710, p. 872.
- Hunting on Private Grounds**—Chap. 156, p. 1069.
hunting and shooting on private grounds, Act 2078, p. 1069.
- Husband and wife,** p. 1069.
- Hygiene laboratory,** University of California, Act 5380, p. 3459.
- Ice cream,** see tit. "Dairies."
- Idiots and epileptics,** Act 1466, p. 740.
- Illuminating gas,** regulating use of, Act 1760, p. 886.
- Illuminating power of gas,** Act 1761, p. 886.
- Imitation butter and cheese,** Act 621, p. 305.
- Imitation olive oil,** sale of, Act 3344, p. 2217.
- Immigration**—Chap. 157, p. 1069.
immigration of persons incompetent to become citizens, Act 2089, p. 1070.
immigration and housing act of 1913, Act 2090, p. 1070.
immigration disembarking zones, Act 2091, p. 1074.
— Chinese, Act 825, p. 347.
- Imperial County**—Chap. 158, p. 1075.
additional superior judge, Act 2093, p. 1075.
- Imperial county branch agricultural station,** University of California, Act 5385, p. 3463.
- "Imperial Irrigation District"**—Validation, Act 2285, p. 1348.
— legalizing bonds, Act 2285a, p. 1349.
— purchase of bonds of California Development Company, Act 2285b, p. 1350.

- Importation of Chinese females**, Act 829, p. 347.
- Importation of diseased livestock**, Act 2565, p. 1467.
- Importation of insects**, prevention of, Act 2169, p. 1131.
- Imported butter**, Act 624, p. 309.
- Imported eggs**, sale of, Act 1303, p. 615.
- packing, Act 1305, p. 616.
- Improvement act of 1901**, municipal, Act 3051, p. 1849.
- Improvement act of 1911**, Act 4956, p. 3217.
- Improvement bond act of 1915**, Act 4950a, p. 3176.
- Improvement district act of 1915**, municipal, Act 3077a, p. 1909.
- Inclosures**, see tits. "Hunting on Private Grounds"; "Game Laws"; "Trespass."
- Income of University of California** lost by disaster and fire, restoration of, Act 5364, p. 3455.
- Incorporation act of 1883**, municipal, Act 3094, p. 1961.
- Indebtedness act of 1889**, municipal, Act 3049, p. 1843.
- Indemnity for erroneous conviction**, Act 997, p. 413.
- Indemnity insurance act**, reciprocal, Act 2192a, p. 1166.
- Index**, see tit. "California Statutes—Index To."
- Indexing of aliens** who have declared intention, Act 151, p. 58.
- India basin act**, issue of bonds, Act 1870, p. 907.
- Act 1862, p. 903.
- Indian wars**, auditing claims of veterans of, Act 4714a, p. 2940.
- Indians**—Chap. 159, p. 1076.
- government and protection of Indians, Act 2095, p. 1076.
- grant of lands in Indian reservations to the United States, Act 2097, p. 1076.
- interference with Indian agents, Act 2098, p. 1076.
- Indigent, incompetent and incapacitated persons**, support of, Act 3428, p. 2246.
- Industrial accident board**, see tit. "Industrial Accident Commission."
- Industrial Accident Commission**—Chap. 160, p. 1077.
- abolishing industrial accident board and conferring powers on industrial accident commission, Act 2101, p. 1077.
- establishing and defining jurisdiction of commission, Act 2101a, p. 1078.
- "Industrial Accident Fund," Act 2102, p. 1078.
- "Accident Prevention Fund," Act 2103, p. 1079.
- statistics as to industrial accidents, Act 2104, p. 1079.
- "State Compensation Insurance Fund," appropriation, Act 2105, p. 1081.
- "Boynton Act," "Workmen's Compensation, Insurance and Safety Act" of 1913, administrative, Act 2106, p. 1081.
- Industrial Accident Commission**—(Cont'd).
- actions against insurance carriers, Act 2106a, p. 1096.
- protection of beneficiaries of workmen's compensation insurance policies, Act 2106b, p. 1097.
- Industrial accidents**, statistics as to, Act 2104, p. 1079.
- Industrial farm**, California, Act 640, p. 310.
- "Industrial Loan Companies,"** Act 1042, p. 442.
- Industrial Welfare Commission**—Chap. 161, p. 1100.
- industrial welfare commission act, Act 2107, p. 1100.
- Infant blindness**, prevention of, Act 2805, p. 1700.
- Infants**—Chap. 162, p. 1106.
- attending prizefights and cockfights, Act 2110, p. 1106.
- child labor law of 1905, Act 2113, p. 1107.
- child labor law of 1919, Act 2113a, p. 1108.
- minors engaged in business at night, Act 2115, p. 1112.
- Inheritance tax act**, Act 5092, p. 3284.
- Inheritance tax lien**, enforcement actions, Act 5093, p. 3308.
- Initiative and referendum**, municipalities, Act 3093b, p. 1945.
- Injunctions**, union labor, Act 946, p. 410.
- Inmates of state institutions**, state officers not to profit by labor of, Act 3319, p. 2210.
- Irrigation and navigation canal**, Solano county, Act 4696, p. 2936.
- Insane Asylums**—Chap. 163, p. 1113.
- Stockton state hospital, armory site, Act 2134, p. 1113.
- Stockton state hospital removal of bodies from the cemetery, Act 2134a, p. 1114.
- Stockton state hospital, condemning certain streets for, Act 2138, p. 1114.
- Napa state hospital, water supply for, Act 2139, p. 1114.
- Napa state hospital, grant of railroad right of way, Act 2143a, p. 1114.
- Agnews state hospital, erection of water towers and tanks, Act 2145, p. 1114.
- Agnews state hospital, replacing buildings destroyed in 1906, Act 2146, p. 1114.
- Agnews state hospital, conveyance of certain property to Western Distilleries, Act 2147, p. 1115.
- Agnews state hospital, grant of right of way for spur track, Act 2147a, p. 1115.
- Agnews state hospital, confirming sale of property to Western Distilleries Company, Act 2147b, p. 1115.
- Agnews state hospital, cottage for female working patients, Act 2148, p. 1115.
- Mendocino state hospital, change of name, Act 2150, p. 1115.
- Southern California state hospital, railroad right of way, Act 2152, p. 1115.
- Southern California state hospital, conveyance of certain water rights, Act 2153, p. 1116.

Insane Asylums—(Continued).

Southern California state hospital, right of way for electric railroad, Act 2154, p. 1116.

Southern California state hospital, ratification of conveyance, Act 2155, p. 1116.

Norwalk state hospital, establishment of, Act 2156, p. 1116.

"Pacific Colony" act, Act 2163, p. 1117.

Insecticide and fungicide act, Act 45, p. 23.**Insects—Chap. 164**, p. 1125.

mosquito abatement districts, Act 2168, p. 1125.

prevention of importation of insects, Act 2169, p. 1131.

Insolvent act of 1895, Act 392, p. 95.**Inspection act of 1905**, dairy, Act 1166, p. 497.**Inspection act of 1911**, dairy, Act 1167, p. 501.**Inspection act of 1917**, dairy, Act 1171, p. 524.**Insurance—Chap. 165**, p. 1132.

borrowing money from insurance companies, Act 2181, p. 1132.

printing notice of assessments on policy cover, Act 2182, p. 1133.

county fire insurance companies act, Act 2183, p. 1133.

non-insurance of state property, Act 2185, p. 1144.

standard form of fire insurance policy, Act 2186, p. 1144.

extending time for insurance statement, Act 2187, p. 1151.

livestock insurance, Act 2189, p. 1151.

standard form of accident and health policy, Act 2189a, p. 1154.

mutual fire insurance companies, Act 2190, p. 1162.

reciprocal indemnity insurance act of 1917, Act 2192a, p. 1166.

mutual workmen's compensation insurance companies, Act 2193, p. 1170.

misrepresenting terms of insurance policy, Act 2194, p. 1174.

social insurance investigating commission, Act 2196, p. 1175.

guaranty surplus and special reserve funds, Act 2197, p. 1176.

liquidation of delinquent insurance companies, Act 2199, p. 1179.

Insurance carriers, actions against, Act 2106a, p. 1096.**Insurance of jute goods**, Act 2332, p. 1361.**Insurance of state property** on San Francisco waterfront, Act 1865, p. 905.**Insurance of property of University of California**, Act 5368, p. 3455.**Insurrections**, etc., expenses of national guard, Act 3158, p. 2183.**Interest—Chap. 166**, p. 1182.

rates of interest on laws on chattel mortgages, Act 2200, p. 1182.

Interest on state highway bonds, payment of, by counties, Act 1914, p. 979.**Interpreters**, p. 1182.**Intoxicating Liquors—Chap. 167**, p. 1183.

collections of accounts for liquor, Act 2213, p. 1183.

sale to person inordinately addicted to use, Act 2214, p. 1184.

Mendocino state hospital, sale of liquor near, Act 2222, p. 1184.

sale within one mile of College City, Act 2223, p. 1184.

sale near construction camp, Act 2224, p. 1184.

public school house act, Act 2224a, p. 1185.

"Wyllie Local Option Law," Act 2225, p. 1185.

building nuisance abatement act, Act 2227, p. 1197.

Intoxication of officers, Act 3317, p. 2210.**Investment bond act of 1909**, municipal, Act 3093j, p. 1955.**Investment bond act of 1915**, Act 3093k, p. 1956.**Investment Companies—Chap. 168**, p. 1198.

"Blue Sky Law," Act 2235, p. 1199.

"Corporate Securities Act," Act 2236, p. 1208.

Inventory, p. 1198.**Inyo County—Chap. 169**, p. 1219.

trespassing animals, Act 2242, p. 1219.

Irrigation and Irrigation Districts—Chap. 170, p. 1219.

irrigation district act of 1872, Act 2258, p. 1220.

"Wright Act," Act 2259, p. 1221.

"California Irrigation District Act,"

"Bridgeford Act," Act 2266, p. 1232.

irrigation districts of over 500,000 acres, Act 2266a, p. 1280.

"The California Irrigation Act," Act 2266b, p. 1282.

district co-operation with federal reclamation service, Act 2266c, p. 1313.

contracts with federal reclamation service, Act 2266d, p. 1316.

defining "private irrigation plant," Act 2266e, p. 1317.

district co-operation with adjoining districts in other states, Act 2266f, p. 1318.

drainage by irrigation districts, Act 2266g, p. 1319.

development of electric power, Act 2266h, p. 1319.

assessment of state land, Act 2266j, p. 1320.

county irrigation districts, Act 2267, p. 1320.

validation of county irrigation districts, Act 2267a, p. 1321.

"County Power Pumping District Act," Act 2267b, p. 1321.

dissolution of irrigation districts act of 1919, Act 2267c, p. 1327.

dissolution of irrigation districts act of 1903, Act 2267d, p. 1329.

finding act of 1897, Act 2268, p. 1333.

legalizing irrigation bonds, Act 2268a, p. 1336.

refunding act of 1919, Act 2268b, p. 1337.

irrigation bonds as legal instruments, Act 2271, p. 1337.

Irrigation and Irrigation Districts—(Continued).

- payment of assessments in installments, Act 2272, p. 1341.
- release of liens upon cancellation of bonds, Act 2273, p. 1342.
- redemption of property sold for delinquent assessments, Act 2274, p. 1343.
- leasing of water for power purposes, Act 2275, p. 1344.
- contracts for water for irrigation, Act 2276, p. 1345.
- declaring irrigation a public use, Act 2278, p. 1346.
- "Oakdale Irrigation District," validation, Act 2279, p. 1347.
- "Westside Irrigation District," Act 2280, p. 1347.
- "Westside Irrigation District," validation, Act 2280a, p. 1347.
- "Modesto Irrigation District," Act 2281, p. 1347.
- "Modesto Irrigation District," validation, Act 2282, p. 1347.
- "Turlock Irrigation District," validation, Act 2283, p. 1347.
- "South San Joaquin Irrigation District," validation, Act 2284, p. 1348.
- "Imperial Irrigation District," validation, Act 2285, p. 1348.
- "Imperial Irrigation District," legalizing bonds, Act 2285a, p. 1349.
- "Imperial Irrigation District," purchase of bonds of California Development Company, Act 2285b, p. 1350.
- "San Ysidro Irrigation District," validation, Act 2286, p. 1351.
- "Anderson-Cottonwood Irrigation District," validation, Act 2287, p. 1351.
- "La Mesa, Lemon Grove and Spring Valley Irrigation District," validation, Act 2288, p. 1352.
- "Waterford Irrigation District," validation, Act 2289, p. 1352.
- "Carmichael Irrigation District," validation, Act 2290, p. 1352.
- "Happy Valley Irrigation District," validation, Act 2291, p. 1353.
- "Paradise Irrigation District," validation, Act 2292, p. 1353.
- "Stratford Irrigation District," validation, Act 2293, p. 1353.
- "Terra Bella Irrigation District," validation, Act 2294, p. 1353.
- "Lindsay-Strathmore Irrigation District," validation, Act 2294a, p. 1354.
- "Baxter Creek Irrigation District," validation, Act 2294b, p. 1354.
- "Princeton-Codora-Glenn Irrigation District," validation, Act 2294c, p. 1354.
- "Red Rock Irrigation District," validation, Act 2294d, p. 1354.
- "Tranquillity Irrigation District," validation, Act 2294e, p. 1354.
- "Fair Oaks Irrigation District," validation, Act 2294f, p. 1355.
- "Jacinto Irrigation District," validation, Act 2294g, p. 1355.

Irrigation and navigation canal, Colusa, Solano and Yolo counties, Act 896, p. 368.

Italian International Exposition, California exhibit, Act 1449, p. 738.

Itinerant vendors' license, Act 2538, p. 1459.

"Jacinto Irrigation District," validation, Act 2294g, p. 1355.

Janitor of state capitol, salaries and duties, Act 709, p. 328.

Janitors and employees in certain school districts, Act 4575, p. 2915.

Japanese—Chap. 171, p. 1355.

Japanese statistics, Acts 2295, 2296, p. 1355.

Jewish Order of Keshet Shel Barsel—Chap. 172, p. 1356.

conferring corporate powers, Act 2301, p. 1356.

"Jitney Bus Act," Act 3014, p. 1809.

Johnson grass, prevention of propagation of, Act 77, p. 46.

Joint county and municipal buildings, Act 3658, p. 2381.

Joint highway districts, Act 1900a, p. 930.

Joint municipal public utilities, Act 1352, p. 688.

Joint sewers, water mains, and other conduits, Act 3072, p. 1902.

Judges of the Plains—Chap. 173, p. 1356.

judges of the plains, Act 2306, p. 1356.

Judgments—Chap. 174, p. 1356.

payment of judgments against counties and municipalities, Act 2311, p. 1356.

recovery of judgments against municipalities of over one hundred thousand population, Act 2312, p. 1357.

Jurisdiction of cities over parks outside limits, Act 3765, p. 2484.

Jurisdiction of harbor commission—Act of 1878, Act 1855, p. 898.

Jurisdiction of industrial accident commission over certain utilities, Act 2101a, p. 1078.

Jurisdiction of superior courts, Act 1130, p. 492.

Jurors, grand and trial, fees of, Act 1475, p. 741.

— trial, payment of fees, Act 1480, p. 744.

Justice, John D., relief of, Act 3738, p. 2444.

Justice's Clerk—Chap. 175, p. 1358.

justice's clerk in cities and counties of over 100,000 population, Act 2324, p. 1358.

clerk in township justice's court, Act 2325, p. 1359.

Justice court, Berkeley, Act 457, p. 256.

Justices of the peace, p. 1359.

Jute Goods—Chap. 176, p. 1360.

sale price of jute goods, Act 2331, p. 1360.

insurance of jute goods, Act 2332, p. 1361.

permanent fund for purchase of jute, Act 2333, p. 1362.

Juvenile Court—Chap. 177, p. 1363.

juvenile court law of 1915, Act 2341, p. 1363.

Kaweah River—Chap. 178, p. 1389.

Kaweah river commissioners, Act 2345, p. 1389.

- Keeper of archives**, p. 1389.
- Kelp**—Chap. 179, p. 1389.
Kelp act, Act 2353, p. 1389.
- Kern County**—Chap. 180, p. 1393.
issue of bonds to pay county indebtedness, Act 2361, p. 1393.
increase of superior judges, Act 2367, p. 1393.
salaries of superior judges, Act 2371, p. 1394.
— to Nordhoff, state highway, Act 1943a, p. 1007.
- Keyes creek**, p. 1394.
- Kidnaping and importation of Chinese females**, Act 829, p. 347.
- Kings County**—Chap. 181, p. 1394.
organization act, Act 2380, p. 1394.
- King's river**, prevention of destruction of fish in, Act 1725, p. 875.
- Kings river state highway**, Act 1939, p. 1004.
- Knights Landing**—Chap. 182, p. 1395.
hogs and goats running at large, Act 2395, p. 1395.
- Knights Landing ridge drainage district**, Act 1288, p. 600.
— boundaries of, Act 1289, p. 600.
- Labeling articles made from shoddy**, Act 2682, p. 1514.
- Labeling of articles manufactured in state prisons**, etc., Act 2729, p. 1524.
- Labor Bureau**—Chap. 183, p. 1395.
bureau of labor statistics, Act 2401, p. 1396.
bureau of labor statistics, attorney, Act 2402, p. 1399.
enforcement of labor laws, Act 2403, p. 1400.
protection of wages of labor, act of 1868, Act 2404, p. 1400.
- Labor and materials on public works**, security for claims for, Act 3793, p. 2666.
- Labor Unions**—Chap. 184, p. 1400.
unlawful wearing of button, Act 2412, p. 1400.
unlawful use of card, Act 2413, p. 1400.
- La Jolla park**, conveyance of part of to the University of California, Act 4104, p. 2770.
- Lake Bigler**—Chap. 185, p. 1401.
legalizing name, Act 2417, p. 1401.
— preservation of fish in, Act 1724, p. 874.
- Lake County**—Chap. 186, p. 1401.
issue of bonds to pay judgment, Act 2422, p. 1401.
transfer and loan of swamp land funds, Act 2424, p. 1401.
restrict herding of sheep and goats, Act 2428, p. 1401.
- Lake Earl**—Chap. 187, p. 1402.
permanently draining Lake Earl, Act 2434, p. 1402.
- Lake Merritt**, prevention of destruction of fish and game in, Act 1715, p. 873.
- Lakeport**—Chap. 188, p. 1402.
hogs running at large, Act 2439, p. 1402.
- Lake Tahoe wagon road**, bridge on, Act 1920a, p. 1000.
- Lakes**—Chap. 189, p. 1402.
lowering certain lake levels by United States government, Act 2444, p. 1402.
- "La Mesa, Lemon Grove and Spring Valley Irrigation District,"** validation, Act 2288, p. 1352.
- Land law**, alien, Act 156, p. 59.
- Land settlement**, see tit. "State Land Settlement Board."
- Land title law**, Act 5194, p. 3375.
- Land and water rights**, purchase of, department of agriculture, University of California, Act 5384, p. 3463.
- Lands**, exchange of certain lands, Mexican war veterans, Act 2844, p. 1726.
— exchange of lands by Veterans' Home Association authorized, Act 5422, p. 3475.
— acquired for military purposes, ceding jurisdiction to United States, over all, Act 5332a, p. 3436.
— in Humboldt bay, purchase of, Act 2053, p. 1063.
— in Indian reservations, grant of to United States, Act 2097, p. 1076.
— of University of California, selection and sale of, Act 5369, p. 3456.
- Larceny**—Chap. 190, p. 1403.
conversion of fixtures, Act 2465, p. 1403.
gold dust, amalgam, quicksilver, Act 2466, p. 1403.
- Lassen county**, p. 1404.
- Lassen county state highway**, Act 1926, p. 1002.
- Launch, gasoline**, purchase of by fish commission, Act 1706, p. 872.
- Launch, steam**, construction of by fish commission, Act 1705, p. 872.
— "Governor Stoneman," disposal of, Act 1707, p. 872.
- Law libraries**, see tit. "Libraries."
- Lawful and unlawful signs**, etc., Act 60, p. 28.
- Leases**—Chap. 191, p. 1404.
certain leases confirmed and ratified, Act 2483, p. 1404.
— of tide lands by municipalities approving, Act 3068, p. 1899.
- Leasing act of 1917**, school land, Act 3749, p. 2470.
- Legal Tender**—Chap. 192, p. 1405.
legal tender notes receivable at par for taxes, Act 2488, p. 1405.
- Legalizing certain acknowledgments**, Act 12, p. 3.
- Legislation**—Chap. 193, p. 1405.
legislative counsel bureau, Act 2494, p. 1405.
investigation of highway legislation, Act 2495, p. 1408.
- Legislature**, p. 1408.
- Leland Stanford, Jr., University**, see tit. "Stanford University."

- Leonard, Ella Glenn, and others, relief of,** Act 3739c, p. 2445.
- Levee Districts—Chap. 194, p. 1408.**
 levee district act of 1905, Act 2508, p. 1409.
 validation act of 1915, Act 2509, p. 1415.
 Bear river district No. 1, Act 2510, p. 1416.
 levee district No. 1 of Sacramento county, Act 2511, p. 1416.
 levee district No. 1 of Sutter county, Act 2511a, p. 1416.
 levee district No. 1 of Sutter county, funding bonds, Act 2511b, p. 1417.
 levee district No. 2 of Sutter county, Act 2511c, p. 1417.
 levee district No. 2 of Sutter county, supplementary act, Act 2512, p. 1417.
 levee district No. 2 of Sutter county, funding act, Act 2512a, p. 1417.
 levee district No. 6 of Sutter county, Act 2513, p. 1417.
 levee district No. 6 of Sutter county, funding act, Act 2514, p. 1417.
 Palo Verde joint levee district, validation, Act 2515, p. 1417.
 levee and protection districts, refunding act of 1897, Act 2516, p. 1418.
 bond act of 1911, Act 2517, p. 1420.
 Sacramento river west side levee district, Act 2518, p. 1429.
- Levee commissioners of Marysville, Act 2759, p. 1527.**
- Levee funding act of 1876, Marysville, Act 2760, p. 1527.**
- Libel—Chap. 195, p. 1440.**
 undertaking for costs, Act 2527, p. 1440.
- Libraries—Chap. 195a, p. 1442.**
 municipal public libraries, Act 2530, p. 1442.
 county free libraries, Act 2530a, p. 1445.
 public libraries in unincorporated towns, Act 2530b, p. 1450.
 deposit of newspaper files in public libraries, Act 2530c, p. 1458.
 — Union high school, Act 4517, p. 2857.
- Licenses—Chap. 196, p. 1458.**
 foreign miners' licenses, Act 2532, p. 1458.
 licenses to certain aliens prohibited, Act 2533, p. 1459.
 foreign miners' licenses fees granted to mining counties, Act 2534, p. 1459.
 enforcement of collection, Act 2535, p. 1459.
 legalizing payments of salaries of license collectors, Act 2536, p. 1459.
 licenses on sheep raising, herding, etc., Act 2537, p. 1459.
 itinerant vendor's license, Act 2538, p. 1459.
 bicycle license, Act 2539, p. 1461.
 — to aliens, Act 150, p. 57.
 — collectors, legalizing payment of salaries of, Act 2536, p. 1459.
- License tax, corporation, Act 1021, p. 418.**
 — corporation, return of erroneously collected, Act 1021a, p. 423.
 — to practice medicine, refund of, when collected by mistake, Act 2810, p. 1725.
- License taxes, enforcement of collection of,** Act 2535, p. 1459.
- Licensing of attendants on the sick, Act 3268, p. 2200.**
- Licensing land surveyors, Act 5030, p. 3275.**
- Lick observatory, replacement and repairs at, Act 5365, p. 3455.**
- Lien, inheritance tax, enforcement actions,** Act 5093, p. 3308.
- Lien land applications, cancellation of, Act 3746, p. 2451.**
 — relinquishment of, Act 3746a, p. 2452.
 — title to, validated, Act 3744b, p. 2449.
- Lighthouses, p. 1465.**
 — relinquishment of land to United States for, Act 5326, p. 3433.
- Lighting districts, highway, Act 1911, p. 969.**
 — highway, validation act of 1915, Act 1911a, p. 976.
- Lighting act, street, of 1919, Act 3040a, p. 1828.**
- Lime Point, ceding jurisdiction to United States of land at, Act 5327, p. 3434.**
- Lincoln's birthday declared legal holiday, Act 1956, p. 1017.**
 — 100th birthday, declared legal holiday, Act 1957, p. 1017.
- "Lindsay-Strathmore Irrigation District," validation, Act 2294a, p. 1354.**
- Lines, building, Act 571, p. 292.**
- Liquids, see tit. "Adulteration."**
- Liquor, see tit. "Intoxicating Liquors."**
- Livestock—Chap. 198, p. 1466.**
 tampering with animals, Act 2560, p. 1466.
 importation of diseased livestock, Act 2565, p. 1467.
 preventing introduction of rabies, Act 2566, p. 1469.
 preparation, inspection and sale of hog cholera serums, etc., Act 2568, p. 1472.
 prevention of spread of contagious animal diseases, Act 2568a, p. 1473.
 herding and grazing of livestock by non-residents, Act 2568b, p. 1474.
 extermination of boophilus annulatus tick, Act 2568c, p. 1475.
 combinations to obstruct sale of livestock, Act 2568d, p. 1477.
 cattle protection board, Act 2568e, p. 1478.
 — insurance, Act 2189, p. 1151.
 — lien on for feeding, Act 2545, p. 1463.
 — quarantine, Act 3806, p. 2668.
- Loan to general fund from school land fund, Act 1660, p. 824.**
 — commissioners, state funded debt, Act 495, p. 265.
- Local health districts, Act 3696, p. 2416.**
- Local improvement act of 1901, Act 4949, p. 3150.**
- Local improvement act of 1919, Act 4948a, p. 3140.**
- Local option estray law of 1919, Act 1402, p. 714.**

- Local work on state highways**, Act 1910a, p. 969.
- Lodging houses**, see tits. "Buildings"; "Dwelling Houses"; "Hotels"; "Tenement Houses."
- Logs**—Chap. 199, p. 1483.
standard of measurement, Act 2569, p. 1483.
— scaling, in Humboldt county, Act 2064, p. 1068.
- Logger's lien**, Act 2549, p. 1463.
- Long barn to Sonora state highway**, Act 1945b, p. 1011.
- Long Beach**—Chap. 200, p. 1489.
freeholders' charter, Act 2574, p. 1489.
tide-land grant, Act 2575, p. 1490.
- Los Angeles branch**, University of California established, Act 4523, p. 2867.
- Los Angeles City**—Chap. 201, p. 1491.
freeholders' charter, Act 2580, p. 1491.
irrigation improvement fund bond act, Act 2582, p. 1496.
main sewer fund bond act, Act 2583, p. 1496.
"General Irrigation Fund" bond act, Act 2584, p. 1497.
Los Angeles street bond act, Act 2585, p. 1497.
ratifying deed to T. A. Sanchez, Act 2586, p. 1497.
ratifying certain acts of city council, Act 2587, p. 1497.
pollution of public zanjias, Act 2591, p. 1497.
dedication of land for the widening of Vermont avenue, Act 2593, p. 1497.
tide-land grant, Act 2596, p. 1498.
tide lands required for public purposes, Act 2597, p. 1499.
protection of navigation act of 1917, Act 2598, p. 1499.
protection of navigation act of 1919, Act 2600, p. 1500.
- Los Angeles County**—Chap. 202, p. 1500.
protection of El Monte township from overflow, Act 2609, p. 1501.
bridge across the Santa Ana river, Act 2622, p. 1501.
county charter, Act 2626, p. 1501.
"Los Angeles County Flood Control Act," Act 2627, p. 1501.
"Los Angeles County Flood Control District," bond validation, Act 2628, p. 1510.
Los Nietos Irrigation district, Act 2631, p. 1511.
- Los Angeles county drainage district improvement No. 1**, Act 1290, p. 601.
- Los Angeles county drainage improvement district No. 3**, Act 1291, p. 601.
- Los Angeles Exposition building**, Act 1446, p. 737.
— furnishing and equipping building at, Act 1447, p. 737.
— revolving fund, Act 1448, p. 737.
- Los Angeles state normal school**, Act 4522, p. 2867.
— abolished, Act 4523, p. 2867.
- II Gen. Laws**—124
- Los Nietos**, see tit. "Los Angeles County."
- Los Nietos Collegiate Institute**—Chap. 203, p. 1511.
trustees empowered to acquire land, Act 2636, p. 1511.
- Lost property**, p. 1511.
- Lost Warrants**—Chap. 204, p. 1512.
payment of lost warrants authorized, Act 2646, p. 1512.
- Lotteries**, p. 1512.
- Lower lake**, see tit. "Lakeport."
- Lumber manufacturers**, p. 1512.
- Lunch hour in sawmills, etc.**, Act 2773, p. 1530.
- Machinery hall**, Act 67, p. 34.
- Madera County**—Chap. 205, p. 1513.
organization act, Act 2671, p. 1513.
- Mad River**—Chap. 206, p. 1513.
improvement act of 1878, Act 2676, p. 1513.
improvement act of 1911, Act 2677, p. 1513.
- Mail carriers**, free transportation for, Act 3828, p. 2671.
- Manholes**, regulating, Act 1351, p. 686.
- Manual and industrial arts building**, deaf, dumb and blind asylum, Act 1188, p. 536.
- Manufacturers**—Chap. 207, p. 1514.
labeling articles made from shoddy, Act 2682, p. 1514.
registration of factories, Act 2683, p. 1515.
medical and surgical appliances in factories, Act 2684, p. 1515.
sanitation of factories, Act 2685, p. 1516.
- Maps**—Chap. 208, p. 1516.
recording maps of subdivisions, Act 2690, p. 1516.
curative act of 1917, Act 2691, p. 1521.
alteration or vacation of recorded maps, Act 2692, p. 1521.
— official, of patented state lands, Act 3751, p. 2472.
- Marin County**—Chap. 209, p. 1523.
coroner's fees in state prison cases, Act 2696, p. 1523.
stock running at large, Act 2704, p. 1523.
- "Marin Water District,"** Act 3104, p. 2173.
- Mariposa County**—Chap. 210, p. 1523.
- Market, free public**, on San Francisco waterfront, Act 1864, p. 904.
- Marks and Brands**—Chap. 211, p. 1523.
marking citrus fruit containers, Act 2727, p. 1523.
marking fresh and dried fruit containers, Act 2728, p. 1524.
labeling articles manufactured in state prisons, etc., Act 2729, p. 1524.
perpetuation of marks and brands, Act 2730, p. 1525.
- Marks of identification of convicts to be furnished**, Act 995, p. 412.
- Marriage**, p. 1526.
- Married women**, p. 1526.
- Marshall Monument**—Chap. 212, p. 1526.
guardian of Marshall monument, Act 2746, p. 1526.

- Martinez**—Chap. 213, p. 1526.
release of land covered by Carquinez straits, Act 2753, p. 1526.
- Marysville**—Chap. 214, p. 1527.
board of city levee commissioners, Act 2759, p. 1527.
levee funding act of 1876, Act 2760, p. 1527.
- Master and Servant**—Chap. 215, p. 1527.
day of rest from labor, Act 2770, p. 1527.
camp sanitation, Act 2772, p. 1528.
lunch hour in sawmills, Act 2773, p. 1530.
misrepresentations as to conditions of employment, Act 2774, p. 1530.
advertisements for employees during strikes, Act 2774a, p. 1531.
interference with political activities of employees, Act 2774b, p. 1531.
"Tipping Act," Act 2774c, p. 1532.
"Spotter Act," Act 2774d, p. 1533.
temporary floor act, Act 2775, p. 1533.
"Scaffolding Act," Act 2776, p. 1534.
payment of wages by negotiable order, Act 2777, p. 1535.
payment of wages act of 1919, Act 2778, p. 1536.
seasonal labor wages, Act 2779, p. 1539.
enforced purchase act, Act 2779a, p. 1539.
service letters for employees, Act 2779b, p. 1540.
cost of bonds and photographs, Act 2779c, p. 1540.
"Workmen's Compensation Insurance and Safety Act of 1917," Act 2781, p. 1541.
- Maternity hospitals**, Act 805a, p. 344; Act 2017, p. 1026.
- Matrons, jail, in cities of certain classes**, Act 3582, p. 2326.
- Mattresses**—Chap. 216, p. 1697.
mattress act of 1915, Act 2788, p. 1697.
- Mayor as ex officio police judge in certain cities**, Act 3554, p. 2314.
- Mayors**, see tit. "Municipal Corporations."
- "McEnerney Act,"** Act 5192, p. 3367.
— supplementary act, Act 5193, p. 3374.
- McKinney's to Donner lake state highway**, Act 1941, p. 1004.
- Mechanics' Institute**—Chap. 217, p. 1699.
Mechanics' Institute of San Francisco, power to sell, etc., real estate, Act 2800, p. 1699.
- Medical and surgical appliances in factories**, Act 2684, p. 1515.
- Medicine**—Chap. 218, p. 1700.
prevention of infant blindness, Act 2805, p. 1700.
practice of medicine act of 1913, Act 2809, p. 1702.
refund of taxes, etc., collected by mistake, Act 2810, p. 1725.
- Melone, Drury, and others, suit by, against the state**, Act 4833, p. 2959.
- Memorial building**, state fair grounds, Act 69, p. 34.
- Memorial of California pioneers**, Act 5066, p. 3280.
- Memorial monument, G. A. R.**, Act 1818, p. 895.
- Memorial, world war**, act 5465a, p. 3506.
- Mendocino asylum**, change of name of to Mendocino state hospital, Act 2150, p. 1115.
- Mendocino County**—Chap. 219, p. 1725.
free bridges in Big River township, Act 2815, p. 1725.
issue of road and bridge bonds, Act 2816, p. 1726.
— protection of fish in, Act 1735, p. 876.
- Mendocino state asylum for the insane**, change of name to Mendocino asylum, Act 2150, p. 1115.
- Mendocino state hospital**, change of name, Act 2150, p. 1115.
- Merced County**—Chap. 220, p. 1726.
sale of court house block at Snelling, Act 2839, p. 1726.
— drainage improvement district No. 1, Act 1292, p. 602.
— drainage improvement district No. 2, Act 1293, p. 602.
- Mexican War Veterans**—Chap. 221, p. 1726.
authorizing exchange of certain lands, Act 2844, p. 1726.
- Meyer's station to McKinney's, state highway**, Act 1921, p. 1001.
- Migratory livestock**, assessment of, Act 5110, p. 3318.
- Military Academy**—Chap. 222, p. 1726.
arms for military academies, Act 2849, p. 1726.
- Military Companies**—Chap. 223, p. 1727.
organization and control of military companies, Act 2854, p. 1727.
- Military highways**, Act 1900b, p. 939.
- Milk, certified**, production of, Act 1169, p. 523.
- Milk, condensed and evaporated**, standard for, Act 1168, p. 521.
- Milk, imitation**, Act 1172, p. 529.
- Milk and milk products**, use of chemicals to prevent fermentation in, Act 1168a, p. 521.
- Mineral cabinet**, see tit. "Mining Bureau."
- Mineral lands**, consent of state to act of congress withdrawing, Act 3752, p. 2474.
- Mineral waters**, see tit. "Adulteration."
- Minerals**, see tits. "Adulteration"; "Mines and Mining"; "Mining Bureau."
- Miner's inch, defined**, Act 5520, p. 3591.
- Miner's licenses, foreign**, Act 2532, p. 1458.
- Mines and Mining**—Chap. 224, p. 1728.
works for restraining and impounding debris, Act 2865, p. 1728.
title to debris impounding works, Act 2866, p. 1729.
protection from mining operations, Act 2869, p. 1729.
pure quicksilver for miners, Act 2870, p. 1729.
mining partnerships, Act 2871, p. 1729.
conveyance of mining claims, Act 2872, p. 1729.

- Mines and Mining**—(Continued).
 covering or fencing abandoned mining claims, Act 2873, p. 1730.
 protection of miners, Act 2874, p. 1730.
 protection of coal mines and miners, Act 2875, p. 1731.
 state hospital for miners, Act 2876, p. 1732.
 mine telephone system, Act 2878, p. 1733.
 rights of way to mines, Act 2880, p. 1734.
 working, rights of way, etc., of mines, Act 2881, p. 1734.
 hours of employment, act of 1913, Act 2883, p. 1735.
 extracting minerals from waters, Act 2884, p. 1736.
 waters containing minerals withdrawn from sale, Act 2885, p. 1737.
- Minimum wage law**, public works, Act 3792, p. 2666.
- Mining Bureau**—Chap. 225, p. 1740.
 state mining bureau, Act 2893, p. 1740.
 state mining bureau, department of petroleum and gas, Act 2894, p. 1743.
- Mining Companies**—Chap. 226, p. 1761.
 removal of mining companies, Act 2902, p. 1761.
- Mining corporations**, p. 1761.
- Minors** engaging in business at night, Act 2115, p. 1112.
 — registration of, Act 4563, p. 2908.
- Misappropriation of school moneys**, Act 1076, p. 458.
- Missing persons**, p. 1761.
- Mission rock**, acquisition of, Act 1879, p. 921.
- Missions**—Chap. 227, p. 1762.
 Mission San Francisco de Solano, Act 2915, p. 1762.
- Mobilization camps**, Act 5463, p. 3502.
- Mobs**, p. 1762.
- Mocking birds**, preservation of, Act 1712, p. 872.
- Modesto**—Chap. 228, p. 1762.
 freeholders' charter, Act 2925, p. 1762.
 grant of franchise to supply water to Modesto, Act 2926, p. 1762.
- "Modesto Irrigation District,"** Act 2281, p. 1347.
 — validation, Act 2282, p. 1347.
- Modoc County**—Chap. 229, p. 1762.
 creating and organizing, Act 2931, p. 1762.
 payment of semi-annual interest and principal of bonds, Act 2932, p. 1763.
 lawful and partition fences, Act 2933, p. 1763.
 herding sheep in Modoc county, Act 2935, p. 1763.
- Mokelumne Hill**, see tit. "Lodi."
- Mokelumne river**, p. 1763.
 — construction of levees on, Act 4314, p. 2839.
- Money**, p. 1763.
- Mono County**—Chap. 230, p. 1763.
- Mono lake basin to "Tioza Road,"** free wagon road, Act 1933, p. 1003.
- Mono lake basin state road**, extension, Act 1934, p. 1003.
- Monterey Bay**—Chap. 231, p. 1763.
 government breakwater, Act 2970, p. 1763.
 — use of weirs, etc., in, Act 1737, p. 877.
- Monterey City**—Chap. 232, p. 1764.
 freeholders' charter of Monterey, Act 2974, p. 1764.
 waterfront grant, Act 2976, p. 1765.
- Monterey County**—Chap. 233, p. 1766.
 court house and jail, Act 2980, p. 1766.
 copies of certain records made valid, Act 2986, p. 1766.
- Monterey Custom House**—Chap. 234, p. 1766.
 preservation of Monterey custom house, Act 2995, p. 1766.
- Moratorium act of 1906**, Act 5187, p. 3367.
- Mormon channel canal**, right of way, Act 3790, p. 2663.
 — grant to the United States of right of way for, Act 3791, p. 2664.
 — right of way for, Act 5333b, p. 3439.
- Mormon slough**, authorizing formation of reclamation district, Act 3893, p. 2695.
- Moro Cojo slough**, p. 1766.
- Mortgages**, see tit. "Foreclosure."
- Mosquito abatement districts**, Act 2163, p. 1125.
- Mother's pensions**, Act 3439, p. 2251.
- Motor Vehicles**—Chap. 235, p. 1767.
 "Motor Vehicle Act of 1915," Act 3012, p. 1767.
 repayment of illegally imposed fees under "Motor Vehicle Act," Act 3013, p. 1808.
 auto-bus transportation act, Act 3014, p. 1809.
- Mount Pleasant ranch to Downieville, state highway**, Act 1929, p. 1002.
- "Mount Tamapais Game Refuge,"** Act 1696a, p. 869.
- Mud Springs township**, El Dorado county, trespassing animals in, Act 1309, p. 618.
- Municipal Corporations**—Chap. 236, p. 1813.
 classification act, Act 3016, p. 1814.
 abandonment of freeholders' charter, Act 3017, p. 1817.
 validation act of 1919, Act 3018, p. 1817.
 reorganization validation act of 1909, Act 3027, p. 1818.
 disposition of public lands in townsites, Act 3029, p. 1818.
 disposition of public lands in townsites, Act 3030, p. 1819.
 acquisition of land for cemetery purposes, Act 3032, p. 1819.
 private spur tracks, Act 3034, p. 1820.
 disposition of residue of public improvement funds, Act 3037, p. 1820.
 acquisition of public utilities act of 1913, Act 3040, p. 1820.
 "Street Lighting Act of 1919," Act 3040a, p. 1828.
 joint system of water supply act of 1903, Act 3041, p. 1835.

Municipal Corporations—(Continued).

sale of excess water act of 1911, Act 3043, p. 1836.
 municipal building act of 1895, Act 3044, p. 1837.
 municipal gravel beds and quarries, Act 3045, p. 1839.
 drainage and protection from overflow, Act 3046, p. 1839.
 acquisition of water rights, etc., Act 3048, p. 1842.
 municipal indebtedness act of 1889, Act 3049, p. 1843.
 acquisition of property sold for delinquent assessments, Act 3050, p. 1848.
 municipal improvement act of 1901, Act 3051, p. 1849.
 public assembly and convention halls, Act 3052, p. 1857.
 Annexation act of 1889, Act 3054, p. 1859.
 "annexation act of 1913," Act 3055, p. 1866.
 annexation of uninhabited territory act of 1899, Act 3056, p. 1874.
 annexation validation act of 1915, Act 3057, p. 1876.
 exclusion act of 1889, Act 3059, p. 1876.
 exclusion of uninhabited territory act of 1913, Act 3060, p. 1878.
 census, Act 3062, p. 1880.
 consolidation act of 1909, Act 3063, p. 1880.
 municipal annexation act of 1913, Act 3064, p. 1888.
 ratification of conveyance of certain property, Act 3065, p. 1897.
 change of name of freeholder charter cities, Act 3066, p. 1897.
 change of name from "town" to "city," Act 3067, p. 1898.
 change of name from "city" to "town," Act 3067a, p. 1899.
 approving leases of tide lands, Act 3068, p. 1899.
 permit for county highways, Act 3069, p. 1900.
 botanical gardens and historical museums, Act 3070, p. 1900.
 waterworks and power plants, Act 3071, p. 1901.
 joint sewers, water mains and other conduits, Act 3072, p. 1902.
 tax for park, music and advertising, Act 3073, p. 1905.
 public utility crossings of highways, etc., Act 3074, p. 1906.
 franchise for steam heating pipes, Act 3075, p. 1907.
 permits for passageways over or under alleys, Act 3076, p. 1907.
 public utilities act of 1907, Act 3076a, p. 1908.
 public utilities act of 1911, Act 3077, p. 1908.
 municipal improvement act of 1915, Act 3077a, p. 1909.
 municipal tax district act of 1919, Act 3077b, p. 1914.
 harbor improvement act of 1911, Act 3078, p. 1918.
 establishment of harbor lines, Act 3079, p. 1919.

Municipal Corporations—(Continued).

waterfront improvement act of 1917, Act 3079a, p. 1921.
 third-class cities, waterfront improvement, Act 3079b, p. 1921.
 grant of tide lands to United States, Act 3080, p. 1922.
 municipal hospital, Act 3081, p. 1922.
 noxious and dangerous weeds, a nuisance, Act 3087, p. 1924.
 organization validation, cities of sixth class, Act 3088, p. 1926.
 election of officers, cities of the sixth class, Act 3089, p. 1927.
 validating election of officers, cities of the sixth class, Act 3090, p. 1929.
 municipal elections, fifth and sixth class cities, Act 3090a, p. 1929.
 disincorporation of sixth-class cities, Act 3091, p. 1937.
 reorganization act of 1899, Act 3092, p. 1940.
 ownership of property of disincorporated municipality, Act 3093, p. 1941.
 city planning commissions, Act 3093a, p. 1943.
 initiative and referendum, Act 3093b, p. 1945.
 hours of labor of municipal employees, Act 3093c, p. 1949.
 fiscal year of freeholder charter cities, Act 3093d, p. 1949.
 refunding act of 1897, Act 3093e, p. 1949.
 destruction of unsold bonds, Act 3093f, p. 1952.
 bonds declared due before maturity, Act 3093g, p. 1952.
 payment of bonds before maturity, Act 3093h, p. 1953.
 registration of bonds, Act 3093i, p. 1954.
 investment bond act of 1909, Act 3093j, p. 1955.
 investment bond act of 1915, Act 3093k, p. 1956.
 legalization act of 1919, Act 3093 l, p. 1957.
 validation act of 1915, Act 3093m, p. 1958.
 validation of improvement and public utility bonds, Act 3093m, p. 1959.
 special tax levy, Act 3093o, p. 1959.
 municipal ordinances, Act 3093p, p. 1960.
 municipal incorporation act of 1883 ("Municipal Corporation Bill"), Act 3094, p. 1961.

Municipal money, deposit of, in banks, Act 1674, p. 831.

Municipal officers, payment of out of county funds forbidden, Act 1481, p. 745.

Municipal public libraries, Act 2530, p. 1442.

Municipal securities, duplicate, Act 585, p. 300.

Municipal special tax for specific public improvements, Act 5099, p. 3310.

Municipal street railroad, San Francisco, Act 4301, p. 2808.

Municipal taxation, Act 5100, p. 3311.

Municipal water bonds, see tits. "Bonds"; "Municipal Water Districts."

- Municipal Water Districts**—Chap. 237, p. 2157.
 organization act of 1909, Act 3100, p. 2157.
 organization act of 1911, Act 3101, p. 2157.
 municipal water district bonds declared legal investments, Act 3102, p. 2172.
 municipal water district bonds legalized, Act 3103, p. 2173.
 "Marin Municipal Water District," Act 3104, p. 2173.
 Richmond municipal water district, Act 3105, p. 2175.
- Municipalities**, freeholder charter, assessment and collection of taxes in, Act 5126, p. 3322.
 — incorporated under act of 1883, Act 3094, note.
 — jurisdiction over parks outside limits of, Act 3765, p. 2484.
 — of over one hundred thousand population, recovery of judgments against, Act 2312, p. 1357.
 — payment of judgments against, Act 2311, p. 1356.
- Museums**, historical, in municipalities, Act 3070, p. 1900.
- Music**, department of, University of California, Act 5376, p. 3457.
- Mutual fire insurance companies**, Act 2190, p. 1162.
- Mutual workmen's compensation insurance companies**, Act 2193, p. 1170.
- Names**—Chap. 238, p. 2176.
 registration of farm, ranch and villa names, Act 3106, p. 2176.
 — change of, cities, towns and freeholder charter cities, see "Change of Names"; and tit. "Municipal Corporations."
 — changed, conveyances by persons with, Act 1206, p. 538.
- Napa City**, Chap. 239, p. 2176.
 freeholders' charter, Act 3111, p. 2176.
- Napa County**—Chap. 240, p. 2176.
 legalizing Bonham notarial acknowledgments, Act 3117, p. 2177.
 court house and jail, Act 3119, p. 2177.
 trespassing animals, Act 3123, p. 2177.
 transcribing records, Act 3127, p. 2177.
 preservation of records, Act 3128, p. 2177.
 — protection of fish and game in, Act 1716, p. 873.
- Napa Ladies' Seminary**—Chap. 241, p. 2177.
 grant of diplomas, Act 3138, p. 2177.
- Napa land of state reformatory**, Act 683, p. 326.
- Napa river**, use of seines in, prohibited, Act 1727, p. 875.
- Napa state hospital**, water supply for, Act 2139, p. 1114.
 — grant of railroad right of way, Act 2143a, p. 1114.
- Napa and Solano counties**, quieting title to lands in, Act 5198, p. 3404.
- National City**—Chap. 242, p. 2177.
 tide-land grant, Act 3145, p. 2178.
- National encampment of G. A. R.**, 1912, Act 1817, p. 895.
- National Guard**—Chap. 243, p. 2180.
 camp of instruction, Act 3151, p. 2180.
 organizations of the United States volunteer service in the Spanish-American war, Act 3152, p. 2181.
 expenses of mustering in of organizations in the United States volunteer service in the Spanish-American war, Act 3153, p. 2182.
 encampments at state camp of instruction, Act 3154, p. 2183.
 San Francisco armory site, Act 3157, p. 2183.
 expenses in insurrections, etc., Act 3158, p. 2183.
 Los Angeles armory, Act 3160, p. 2183.
 Sacramento armory, Act 3161, p. 2183.
 San Diego armory, Act 3162, p. 2184.
 revolving fund for adjutant general's office, Act 3164, p. 2185.
 return of officers and members to state organizations from United States volunteer service, Act 3165, p. 2186.
- Native-born citizens**, employment of in public office, Act 155, p. 58.
- Natural gas**, prohibiting wasting, Act 1762, p. 888.
- Naturalization**, see tit. "Aliens."
- Nautical School**—Chap. 244, p. 2187.
 establishment, Act 3170, p. 2187.
- Naval Battalion**—Chap. 245, p. 2188.
 establishment, Act 3173, p. 2188.
- Navigable streams**, bridges across, Act 552, p. 275.
 — bridge franchises across, Act 553, p. 276.
 — ferries between counties, Act 1505, p. 749.
 — see tit. "Waters."
- Navigation**—Chap. 246, p. 2189.
 submarine sites for lighthouses, Act 3179, p. 2189.
 — protection act of 1917, Act 2598, p. 1498.
 — protection of, act of 1919, Act 2600, p. 1500.
- Needles**, bridge at, Act 555, p. 278.
- Negligence, death by**, p. 2189.
- Net Containers**—Chap. 247, p. 2189.
 net container act, Act 3189, p. 2189.
- Nets**, etc., use of in Cache slough, prohibited, Act 1738, p. 878.
- Nueces creek**, see tit. "Nueces Creek."
- Nevada City**—Chap. 247a, p. 2192.
 incorporation act, Act 3199, p. 2192.
- Nevada County**—Chap. 248, p. 2192.
 lawful fences, Act 3205, p. 2192.
 remedy defects in records, Act 3207, p. 2192.
 indexing records, Act 3208, p. 2192.
 removal of bodies of deceased persons, Act 3212, p. 2193.
- New counties**, formation, organization and classification of, Act 1075, p. 446.

- Newport Beach**—Chap. 249, p. 2193.
 tide-land grant, Act 3223, p. 2193.
 construction of conduits, Act 3224, p. 2194.
- New trial act**, burnt and destroyed records, Act 581, p. 297.
- Newspaper files**, deposit of in public libraries, Act 2530c, p. 1458.
- "Newtown Jetties,"** suits for damages against the state, from, Act 4836, p. 2961.
- Nomenclature**, horticultural, Act 2001, p. 1019.
 — wine, Act 5592, p. 3636.
- Normal schools**, see tit. "Schools."
- North San Francisco Homestead and Railroad Association**—Chap. 250, p. 2194.
 conveyance of lands, Act 3232, p. 2194.
- Norwalk state hospital**, establishment of, Act 2156, p. 1116.
- Notaries**, p. 2194.
- Notice**—Chap. 251, p. 2195.
 publication, Act 3244, p. 2195.
- Novata creek**, p. 2195.
- Noxious and dangerous weeds** in municipalities, a nuisance, Act 3087, p. 1924.
- Nueces creek**, p. 2195.
- Nuisances**—Chap. 252, p. 2196.
 property infested with rodents, Act 3259, p. 2196.
- Nurses**, army, home for, Act 4713, p. 2939.
- Nursery**, state forestry, Act 1581, p. 780.
- Nursing**—Chap. 253, p. 2197.
 education and registration of nurses, Act 3267, p. 2197.
 examination and licensing of trained attendants on the sick, Act 3268, p. 2200.
- Oakdale irrigation district**, validated, Act 2279, p. 1347.
- Oakland**—Chap. 254, p. 2202.
 freeholders' charter, Act 3272, p. 2202.
 settlement of controversies, Act 3273, p. 2205.
 Alameda, Oakland and Piedmont Railroad Company, Act 3274, p. 2205.
 Oakland Railroad Company, Act 3274a, p. 2205.
 issue of bonds to cancel school bonds, Act 3279, p. 2205.
 funding of floating indebtedness, Act 3280, p. 2205.
 issue of bonds for certain purposes, Act 3281, p. 2205.
 bridge across San Antonio estuary, Act 3282, p. 2205.
 canal for harbor, Act 3285, p. 2205.
 tide and salt marsh land grant of 1874, Act 3287, p. 2205.
 tide and salt marsh land grant of 1909, Act 3288, p. 2206.
 tide and salt marsh land grant of 1911, Act 3297, p. 2206.
 tide-land grant of 1911, Act 3298, p. 2207.
- Oakland property**, suit against the state to quiet title to, Act 4835, p. 2960.
- Obstructions, openings and**, in state highways, Act 1917a, p. 995.
- Odd Fellows**—Chap. 255, p. 2208.
 authorizing lease of lot, Act 3304, p. 2209.
 grant of certain lands to San Diego lodge, No. 153, Act 3305, p. 2209.
- Officers**—Chap. 256, p. 2210.
 intoxication of officers, Act 3317, p. 2210.
 state officers not to profit by labor of inmates of state institutions, Act 3319, p. 2210.
 unlawful removal from office, Act 3320, p. 2210.
 vacations of certain state employees, Act 3321, p. 2211.
 liability of officers in damages, Act 3322, p. 2211.
 recall of elective officers, Act 3323, p. 2214.
 transfer of certain powers of municipal to county officers, Act 3324, p. 2216.
 — forestry, salaries of, Act 1579, p. 779.
 — of insurance companies, prohibited from borrowing from company, Act 2181, p. 1132.
- Official bonds**, cost of, Act 487, p. 263.
- Oil**, see tits. "Mining Bureau"; "Public Utilities."
- Old age and mothers' pensions**, Act 3439, p. 2251.
- Oleomargarine**, see tits. "Adulteration"; "Butter"; "Dairies."
 — deception in sale of, Act 1167, p. 501.
 — sale of to public institutions, Act 1167, p. 501.
- Oleta**, see tit. "Fiddletown."
- Olive Oil**—Chap. 257, p. 2217.
 sale of imitation olive oil, Act 3344, p. 2217.
- Omnibus statute repeal act**, Act 4894, p. 3002.
- Opening streets through cemeteries**, Act 4959, p. 3273.
- Openings and obstructions in state highways**, Act 1917a, p. 995.
- Optometry**—Chap. 258, p. 2219.
 practice of optometry act, Act 3349, p. 2219.
- Orange County**—Chap. 259, p. 2225.
 organization act, Act 3354, p. 2225.
 increase of superior judges, Act 3355, p. 2226.
 tide-land grant, Act 3356, p. 2227.
- Ordinances**, Act 3093p. p. 1960.
- Organization of municipal corporations**, validation act of 1919, Act 3018, p. 1817.
- Organization of school districts**, confirming and validating, Act 4499, p. 2856.
- Orphan Asylums**—Chap. 260, p. 2228.
 binding of apprentices from orphan asylums, Act 3374, p. 2228.
 guardians for orphan children, Act 3375, p. 2228.
- Osteopathy**, see tit. "Medicine."
- Overflow Districts**—Chap. 261, p. 2228.
 overflow district act, Act 3355, p. 2228.

- Oysters**—Chap. 262, p. 2238.
planting and cultivation of oysters, Act 3392, p. 2238.
- Pacific Colony**, Act 2163, p. 1117.
- Paints, oils, varnishes and pigments**, Act 29, p. 17.
- Palo Alto**—Chap. 263, p. 2239.
freeholders' charter, Act 3397, p. 2239.
- Palo Verde joint levee district**, validation, Act 2515, p. 1417.
- Panama-California international exposition**, use of Balboa park, Act 1440, p. 729.
— state exhibit and building, Act 1441, p. 730.
— appropriation to complete exposition building, Act 1442, p. 731.
— maintenance of state building, Act 1443, p. 731.
- Panama - Pacific international exposition** commission, powers and duties, Act 1444, p. 732.
— disposition of state share of returns, Act 1445, p. 737.
- Pandering**—Chap. 264, p. 2239.
pandering prohibited, Act 3398, p. 2240.
- "Paradise Irrigation District,"** validation, Act 2292, p. 1353.
- Parasitic fish act**, Act 1693a, p. 848.
- Pardon Board**—Chap. 265, p. 2241.
advisory pardon board, Act 3400, p. 2241.
- Paris green**, see tit. "Adulteration."
- Park, agricultural**, see tit. "Agriculture."
- Park and boulevard act**, Act 3761, p. 2478.
- Parks**, abandonment of, Act 3769, p. 2496.
- Parole of Prisoners**—Chap. 266, p. 2242.
board of parole commissioners, Act 3408, p. 2242.
county parole commissioners, Act 3409, p. 2244.
parole headquarters for state schools, Act 3410, p. 2245.
- Particular freeholder charters**, see particular city.
- Particular incorporated cities**, Act 3094, note.
- Partnerships**, mining, Act 2871, p. 1729.
- Pasadena**—Chap. 267, p. 2245.
freeholders' charter, Act 3421, p. 2245.
- Pasadena state highway**, Act 1943d, p. 1008.
- Passageways** over or under alleys, permits for, Act 3076, p. 1907.
- Passenger transportation on The Embarcadero**, Act 4307, p. 2821.
- Patented state lands**, official map of, Act 3751, p. 2472.
- Patents to state lands**, effect of, Act 3750, p. 2472.
- Pathological laboratory** of plant diseases, University of California, Act 5378, p. 3458.
- Paupers**—Chap. 268, p. 2246.
support of indigent, incompetent and incapacitated persons, Act 3428, p. 2246.
- Pawnbrokers**—Chap. 269, p. 2249.
personal property brokers' act, Act 3434, p. 2249.
- Payment to counties of swamp land district funds**, Act 5072a, p. 3281.
- Payment of tax commissions** and fees prohibited, Act 5107, p. 3317.
- Payment of wages act of 1919**, Act 2778, p. 1536.
- Payment of wages by negotiable order**, Act 2777, p. 1535.
- Pear and walnut blight investigation**, Act 2002, p. 1019.
- Peddle**, right of soldiers and sailors to, without license, Act 4711, p. 2937.
- Pension fund**, police, Act 3536, p. 2288.
- Pensions**—Chap. 270, p. 2251.
old age and mothers' pensions, Act 3439, p. 2251.
retirement system for county employees, Act 3440, p. 2251.
— for aged, infirm and disabled firemen, Act 1538, p. 763.
- Perishable products**, sale of on San Francisco wharves, Act 4300, p. 2806.
- Personal property brokers act**, Act 3434, p. 2249.
- Persons incompetent to become citizens**, immigration of, Act 2089, p. 1070.
- Pescadero to California redwood park, highway**, Act 1943c, p. 1008.
- Pesthouses**, p. 2259
- Petaluma**—Chap. 271, p. 2260.
freeholders' charter, Act 3450, p. 2260.
widening English street, Act 3453, p. 2260.
- Petaluma Creek**—Chap. 272, p. 2260.
drawbridge, Act 3458, p. 2260.
improvement of navigation, Act 3459, p. 2260.
- Petroleum and gas**, department of, state mining bureau, Act 2894, p. 1743.
- Pharmacy**—Chap. 273, p. 2260.
practice of pharmacy act, Act 3464, p. 2261.
hours of labor, Act 3465, p. 2269.
- Phoenicococcus marlattii**, Act 2013, p. 1025.
- Photographs of employees**, cost of, Act 2779c, p. 1540.
- Photographs and marks of identification of convicts** to be furnished, Act 995, p. 412.
- Phylloxera act**, Act 5457, p. 3499.
- Physical education in schools**, Act 4536, p. 2871.
- Physicians**, see tit. "Medicine."
- "Piece Clubs,"** Act 1341, p. 680.
- Pigeons**, homing, p. 1018.
- Pilots**—Chap. 274, p. 2272.
board of pilot commissioners for San Diego, Act 3474, p. 2272.
- Pimping**—Chap. 275, p. 2275.
pimping prohibited, Act 3476, p. 2275.
- Pinnacles forest reserve**, prevention of destruction of wild game, in, Act 1736, p. 877.

- Pioneer monuments**, gifts to counties for, Act 1781, p. 890.
- Pio Pico mansion**, board of trustees, Act 1952, p. 1014.
- Pipe line combinations**, Act 3780, p. 2650.
- declared common carriers, Act 3779, p. 2643.
- license act, Act 3779a, p. 2646.
- Pitt river**, removal of obstructions in, Act 1702, p. 871.
- Placer County**—Chap. 276, p. 2276.
trespassing animals, Act 3484, p. 2276.
legalizing records, Act 3491, p. 2277.
- Placerville and Lake Tahoe wagon road**, Act 1920b, p. 1000.
- Planning commission**, state capitol, Act 716, p. 329.
- Plant diseases**, investigation of, Act 78, p. 47.
- Playground act**, act 3768, p. 2485.
- Pleasanton township water district**, validation, Act 5509, p. 3590.
- Plumas County**—Chap. 277, p. 2277.
- Plumbers**—Chap. 278, p. 2277.
plumbers' act, Act 3550, p. 2277.
- Poisons**—Chap. 279, p. 2279.
poison act, Act 3528, p. 2279.
- Poles, electric regulating**, Act 1350, p. 682.
- Police**—Chap. 280, p. 2288.
relief and pension fund, Act 3536, p. 2288.
increase of police forces, Act 3537, p. 2293.
annual vacations, Act 3538, p. 2294.
hours of service, Act 3539, p. 2294.
rights of seniority act, Act 3540, p. 2295.
special police, Act 3541, p. 2295.
boards of police commissioners, Act 3542, p. 2296.
- Police Courts**—Chap. 281, p. 2299.
"Whitney Act," Act 3547, p. 2299.
police courts in cities of first and a half class, Act 3550, p. 2303.
police courts in cities of the second class, Act 3551, p. 2311.
prosecuting attorneys in police courts in cities of the second class, Act 3552, p. 2313.
police judges in freeholder charter cities, Act 3553, p. 2314.
mayor as ex-officio police judge in certain cities, Act 3554, p. 2314.
- Police judges in freeholder charter cities**, Act 3553, p. 2314.
- Policy, insurance**, misrepresenting terms of, Act 2194, p. 1174.
- standard form of fire insurance, Act 2186, p. 1144.
- printing notices of assessments on cover, Act 2182, p. 1133.
- Policies**, workmen's compensation insurance protection of beneficiaries, Act 2106b, p. 1097.
- Polluted water**, unlawful supply of, Act 5501, p. 3546.
- Polytechnic school**, see tit. "Schools."
- Pomona**—Chap. 282, p. 2315.
freeholders' charter, Act 3558, p. 2315.
- Posse comitatus**, expenses of, Act 4998, p. 3274.
- Possessory actions**, Act 3724, p. 2434.
- Potatoes**—Chap. 283, p. 2315.
inspection and certification act, Act 3560, p. 2315.
standard seed potato act of 1915, Act 3561, p. 2316.
- Poultry**—Chap. 284, p. 2317.
poultry experiment station, Act 3563, p. 2317.
- Power development**, irrigation districts, leasing water for, Act 2275, p. 1344.
- Power plants**, municipal, Act 3071, p. 1901.
- Powers of municipal officers**, transfer of, to county officers, Act 3324, p. 2216.
- Practice of architecture**, Act 317, p. 88.
- Practice of dentistry act of 1915**, Act 1226, p. 539.
- Practice of embalming act**, Act 1363, p. 696.
- Practice of medicine act of 1913**, Act 2309, p. 1702.
- Predatory animals**, destruction of, Act 251, p. 65.
- Pre-emption and homestead claimants**, protection of, Act 3729, p. 2436.
- Preservation fund**, fish and game, Act 1694, p. 854.
- President**, see tit. "Elections."
- President and other officials**, crime against, Act 947, p. 410.
- "Presidential Primary Act,"** Act 1338, p. 672.
- Presidio**, accepting jurisdiction by state over portion of, Act 5331, p. 3435.
- Preston School of Industry**—Chap. 285, p. 2319.
Preston school of industry established, Act 3568, p. 2319.
transfer of inmates, Act 3572, p. 2325.
- Primary law of 1913**, Act 1337, p. 637.
- "Princeton - Codora - Glenn Irrigation District,"** validation, Act 2294c, p. 1354.
- Prisoners**, employment of, on certain roads, Act 3600, p. 2327.
- employment of, Act 3601, p. 2328.
- employment of paroled and discharged, Act 3609, p. 2333.
- Prisons**—Chap. 286, p. 2326.
matrons in cities of certain classes, Act 3582, p. 2326.
acknowledgment of deeds by inmates, Act 3583, p. 2327.
employment of prisoners in certain roads, Act 3600, p. 2327.
employment of prisons, Act 3601, p. 2328.
revolving fund for manufacturing department of San Quentin prison, Act 3601a, p. 2329.
rock-crushing plants, Act 3602, p. 2329.
purchase of California-grown hemp, Act 3606, p. 2331.
Folsom state hospital, Act 3608, p. 2331.
employment of paroled and discharged prisoners, Act 3609, p. 2333.

- Private detectives**, Act 1235, p. 550.
- Private employment agencies**, Act 1373, p. 702.
- Private grounds**, hunting on, Act 2078, p. 1069.
- "Private Irrigation Plant,"** defining, Act 2266e, p. 1317.
- Prize fighting**, p. 2333.
- Prize fights and cock fights**, infants prohibited from attending, Act 2110, p. 1106.
- Process**—Chap. 287, p. 2334.
validation of writs, etc., without seal, Act 3627, p. 2334.
- Propagation of game birds**, importation for, Act 1708, p. 872.
- Propagator's fish license act of 1911**, Act 1693, p. 846.
- Property**, acquisition of, by Whittier state school, Act 5585, p. 3633.
- of disincorporated municipality, ownership of, Act 3093, p. 1941.
- sold for delinquent assessments, acquisition by municipalities, Act 3050, p. 1848.
- Prosecuting attorneys** in police courts, cities of second class, Act 3552, p. 2313.
- Prostitution**—Chap. 288, p. 2334.
"red light abatement act," Act 3634, p. 2334.
- Protection of agriculture**, see tit. "Trespassing Animals."
- Protection of coal mines and miners**, Act 2875, p. 1731.
- Protection Districts**—Chap. 289, p. 2340.
protection district act of 1895, Act 3641, p. 2340.
protection district act of 1907, Act 3642, p. 2351.
dissolution of protection districts, Act 3643, p. 2373.
dissolution of protection district No. 2, Act 3643a, p. 2374.
- refunding act 1897, Act 2516, p. 1418.
- Protection of Indians**, Act 2095, p. 1076.
- Protection of miners**, Act 2874, p. 1730.
- Protection of wild game** on patented lands, Act 1743, p. 880.
- Public assembly and convention hall**, municipal, Act 3052, p. 1857.
- Public Buildings**—Chap. 290, p. 2375.
completion of unfinished buildings, act of 1887, Act 3655, p. 2375.
completion of unfinished buildings, act of 1895, Act 3656, p. 2376.
state building act, Act 3657, p. 2377.
joint county and municipal buildings, Act 3658, p. 2381.
San Francisco state building, bond issue, Act 3661, p. 2381.
San Francisco state building, construction, etc., Act 3663, p. 2385.
grant of sites for state buildings by freeholder charter cities, Act 3664, p. 2386.
- Public certificates**, duplicate, Act 586, p. 301.
- Public Debt**—Chap. 291, p. 2387.
payment of indebtedness by certain cities, Act 3669, p. 2387.
creation of state indebtedness in excess of appropriations, Act 3670, p. 2387.
- Public defense sites**, Act 5464, p. 3504.
- Public documents**, copying, Act 587, p. 301.
- Public drinking receptacles**, Act 3698, p. 2422.
- Public Health**—Chap. 292, p. 2388.
operation of garbage crematories, Act 3675, p. 2388.
sanitation of food producing and food storage establishments, Act 3676, p. 2389.
public health act, Act 3677, p. 2391.
attorney for state board and San Francisco board of health, Act 3678, p. 2402.
introduction of contagious diseases into California, Act 3682, p. 2402.
introduction of contagious diseases, act of 1913, Act 3684, p. 2403.
purchase and manufacture of diphtheria antitoxin, Act 3685, p. 2405.
purchase, preparation and distribution of anti-rabic virus, Act 3686, p. 2405.
school vaccination act, Act 3690, p. 2405.
dissemination of knowledge as to tuberculosis, Act 3692, p. 2409.
treatment for tuberculosis, Act 3693, p. 2410.
bureau of tuberculosis, Act 3694, p. 2412.
sterilizing rags, Act 3695, p. 2414.
local health districts, Act 3696, p. 2416.
department of sanitary engineering, Act 3697, p. 2421.
drinking receptacles for public use, Act 3698, p. 2422.
towels for public use, Act 3699, p. 2422.
bureau of child hygiene, Act 3699a, p. 2423.
- Public improvement funds**, disposition of residue, Act 3037, p. 1820.
- Public Institutions**—Chap. 293, p. 2422.
exchange of commodities, Act 3700, p. 2424.
- Public Lands**—Chap. 294, p. 2425.
withdrawing certain school lands from sale, Act 3715, p. 2426.
sale of school lands containing minerals, Act 3715a, p. 2427.
reservation from sale of certain school lands, Act 3716, p. 2427.
management and sale of state lands, Act 3717, p. 2427.
survey and disposition of certain salt marsh and tide lands, Act 3719, p. 2429.
distribution of swamp land fund, Act 3720, p. 2429.
sale of certain lands, Act 3720a, p. 2430.
sale and conveyance of certain lands, Act 3721, p. 2430.
sale of certain lands in reclamation district 1600, Act 3721a, p. 2430.
sale of school lands not suitable for cultivation, Act 3721b, p. 2431.
sale of school lands suitable for cultivation, Act 3721c, p. 2432.

Public Lands—(Continued).

- preferential right to purchase, Act 3721d, p. 2432.
- purchase of school lands, Act 3722, p. 2433.
- possessory actions, Act 3724, p. 2434.
- protection of actual settlers, Act 3725, p. 2435.
- better protection of settlers, Act 3726, p. 2436.
- protection of settlers on land claimed by state, Act 3727, p. 2436.
- protection of pre-emption and homestead claimants, Act 3729, p. 2436.
- protection of bona fide settlers, Act 3730, p. 2436.
- relief of purchasers of state lands, Act 3731, p. 2436.
- legalizing applications to purchase, Act 3734, p. 2437.
- legalizing payments for school land, Act 3735, p. 2438.
- forfeiture for non-payment of interest, Act 3735a, p. 2438.
- judicial determination of forfeitures, reinstatement, Act 3735b, p. 2442.
- redemption from forfeiture for non-payment of interest, Act 3736, p. 2443.
- forfeiture act of 1889, Act 3737, p. 2443.
- rights of parties in Fresno and Kern counties, Act 3737a, p. 2444.
- relief of John D. Justice, Act 3738, p. 2444.
- relief of Peter Anderson, Act 3739, p. 2444.
- relief of Mary Ann Bath, and others, Act 3739a, p. 2445.
- relief of heirs at law of P. W. Fahey, Act 3739b, p. 2445.
- relief of Ella Glenn Leonard, and others, Act 3739c, p. 2445.
- relinquishment of title to certain lands
- relinquishment of lien lands, Act 3746a,
- relief of purchasers of school lands, Act 3740, p. 2445.
- restitution appropriations, principal, Act 3740a, p. 2446.
- restitution appropriation, interest, Act 3740b, p. 2446.
- payment of certain swamp land warrants, Act 3740c, p. 2447.
- cancellation of unlocated school land warrants, Act 3741, p. 2447.
- forfeiture of payments on fraudulent titles, Act 3742, p. 2448.
- removal of improvements made under void locations, Act 3743, p. 2448.
- quieting title to certain swamp lands in Yolo and Colusa counties, Act 3744a, p. 2449.
- title to certain lien lands validated, Act 3744b, p. 2449.
- quieting title to certain swamp lands, Act 3745, p. 2449.
- reselections where original selections were canceled or rejected, Act 3745a, p. 2449.
- reselection act of 1919, Act 3745b, p. 2450.
- amendment of base land selections, Act 3745c, p. 2451.
- quieting title of certain land in Yolo county, Act 3745d, p. 2451.

Public Lands—(Continued).

- quieting title to certain lands in Yolo county, Act 3745e, p. 2451.
- cancellation of lien land applications, Act 3746, p. 2451.
- relinquishment of lien lands, Act 3746a, p. 2452.
- cancellation of tax liens on certain school lands, Act 3747, p. 2452.
- "Carey Act Commission," Act 3748, p. 2453.
- school land leasing act of 1917, Act 3749, p. 2470.
- effect of state land patents, Act 3750, p. 2472.
- official map of patented state lands, Act 3751, p. 2472.
- consent of state to provisions of act of congress as to withdrawal of mineral lands, Act 3752, p. 2474.
- swamp and overflowed lands, determination as to character, Act 3753, p. 2474.
- prevention of forest fires on, Act 1591, p. 788.
- Public libraries**, municipal, Act 2530, p. 1442.
- in unincorporated towns, Act 2530b, p. 1450.
- deposit of newspaper files in, Act 2530c, p. 1458.
- Public market**, San Francisco water front, Act 1864, p. 904.
- Public Museums**—Chap. 295, p. 2474.
- public museums, Act 3755, p. 2474.
- Public Parks**—Chap. 296, p. 2477.
- maintenance of public parks, Act 3760, p. 2477.
- park and boulevard act, Act 3761, p. 2478.
- maintenance of public parks in cities, Act 3762, p. 2480.
- acceptance of donations, Golden Gate park, Act 3763, p. 2483.
- roads and boulevards to public parks, Act 3764, p. 2484.
- jurisdiction of cities over parks outside limits, Act 3765, p. 2484.
- consent of state to reservation of certain lands by congress, Act 3766, p. 2484.
- acceptance of Bidwell grant in Butte county, Act 3767, p. 2485.
- public park and playground act, Act 3768, p. 2485.
- abandonment of parks, Act 3769, p. 2496.
- Public schoolhouse act**, sale of liquor near, Act 2224a, p. 1185.
- Public service**, preference of ex-union soldiers, sailors and marines, in, Act 4714, p. 2939.
- Public towels**, Act 3699, p. 2422.
- Public Utilities**—Chap. 297, p. 2499.
- "Public Utilities Act of 1915," Act 3775, p. 2499.
- public utility districts act of 1913, Act 3776, p. 2602.
- public utilities district act of 1915, Act 3776a, p. 2611.
- retention of municipal power of regulation, Act 3778, p. 2637.
- pipe lines declared common carriers, Act 3779, p. 2643.
- pipe lines, license act, Act 3779a, p. 2646.

Public Utilities—(Continued).

pipe line combinations, Act 3780, p. 2650.
 "Food Warehouseman Act," Act 3780a, p. 2657.

— acquisition of by municipalities act 1913, Act 3040, p. 1820.

— act of 1907, municipal, Act 3076a, p. 1908.

— act of 1911, municipal, Act 3077, p. 1908.

Public utility crossings, of highways, etc., municipal, Act 3074, p. 1906.

Public use, declaring irrigation a, Act 2278, p. 1346.

Public weighmaster, Act 5557, p. 3620.

Public Welfare—Chap. 298, p. 2661.

county boards of public welfare, Act 3781, p. 2661.

Public wharves on San Joaquin river, Act 4331, p. 2839.

Public Works—Chap. 299, p. 2663.

retention of ex-soldiers, sailors and marines in employment on, Act 3789, p. 2663.

grant to United States of right of way for Mormon Channel canal, Act 3791, p. 2664.

minimum wage law, Act 3792, p. 2666.
 security for claims for labor and materials, Act 3793, p. 2666.

Publication of notice, Act 3244, p. 2195.

Purchase of jute, permanent fund for, Act 2333, p. 1362.

Purity of elections act of 1907, Act 1327, p. 619.

Quarantine—Chap. 300, p. 2668.

livestock quarantine, Act 3806, p. 2668.

Quarries, acquisition by counties for highway construction purposes, Act 1917, p. 994.

— municipal, Act 3045, p. 1839.

Quicksilver, pure, for miners, Act 2870, p. 1729.

Quitclaim to United States of lands erroneously conveyed to state, Act 5330, p. 3435.

Rabies, preventing introduction of, Act 2566, p. 1469.

Rags, sterilizing, Act 3695, p. 2414.

Railroads—Chap. 301, p. 2670.

right of way through asylum grounds, Act 3821, p. 2670.

extending time for completion, Act 3825, p. 2670.

validating permits for right of way through municipalities, Act 3826, p. 2671.

free transportation for mail carriers, Act 3828, p. 2671.

"Full Crew Act," Act 3832, p. 2672.

regulating transmission of train orders, Act 3832a, p. 2674.

hours of labor of trainmen, despatchers and telegraph operators, Act 3833, p. 2674.

conditional sales of equipment, Act 3834, p. 2676.

Railroads—(Continued).

regulating headlights on locomotives, Act 3835, p. 2677.

regulating derailing switches, Act 3836, p. 2678.

"Solid Water Glass" for locomotives, Act 3837, p. 2678.

automatic bell-ringing devices, Act 3838, p. 2679.

— Atlantic to Pacific, grant of right of way for to United States, Act 5325, p. 3433.

— state, San Francisco water front, Act 1857, p. 900.

Railroad commission, regulation of water companies, Act 5500, p. 3541.

— to parks beyond city limits, Act 1607, p. 798.

Railway car for fish distribution, Act 1697, p. 871.

Rates of interest on chattel mortgage loans, Act 2200, p. 1182.

— see tit. "Usury Law."

Readers for blind students at University of California, Act 1190, p. 537.

Real Estate Brokers—Chap. 302, p. 2679.

real estate brokers' act of 1919, Act 3841, p. 2679.

Reassessment and equalization act of 1893, Act 5102, p. 3315.

Recall of elective officers, Act 3323, p. 2214.

Receivers, see tit. "Funds."

Reciprocal indemnity insurance act of 1917, Act 2192a, p. 1166.

"Reclamation Board Act," Act 3986, p. 2707.

Reclamation Districts—Chap. 303, p. 2687.

"American River Reclamation District No. 1," Act 3843, p. 2688.

"Reclamation District No. 10," Act 3850, p. 2688.

"Reclamation District No. 54," legalizing, Act 3853, p. 2688.

"Reclamation District No. 70," Act 3856, p. 2689.

"Reclamation District No. 108," Act 3857, p. 2689.

"Reclamation District No. 108," payment of assessment warrants, Act 3858, p. 2689.

reclamation districts Nos. 108 and 729, legalizing consolidation, Act 3859, p. 2689.

"Reclamation District No. 108," consolidated district, Act 3859a, p. 2689.

consolidated "Reclamation District No. 108," validation act, Act 3859b, p. 2690.

consolidated "Reclamation District No. 108," boundaries, etc., act of 1919, Act 3859c, p. 2690.

"Reclamation District No. 124," Act 3862, p. 2691.

"Reclamation District No. 252," Act 3866, p. 2691.

"Reclamation District No. 254," Act 3867, p. 2691.

"Reclamation District No. 317," Act 3869, p. 2691.

"Reclamation District No. 348," Act 3870, p. 2691.

Reclamation Districts—(Continued).

- "Reclamation District No. 535," Act 3871, p. 2691.
- "Reclamation District No. 548," Act 3872, p. 2691.
- "Reclamation District No. 730," Act 3873, p. 2692.
- "Reclamation District No. 802," legalizing formation, Act 3874, p. 2692.
- reclamation districts Nos. 742 and 900, consolidation, Act 3875, p. 2692.
- "Reclamation District No. 785," Act 3876, p. 2692.
- "Reclamation District No. 787," Act 3877, p. 2693.
- "Reclamation District No. 791," Act 3878, p. 2693.
- "Reclamation District No. 800," Act 3879, p. 2693.
- "Reclamation District No. 800," legalizing formation, Act 3880, p. 2693.
- "Reclamation District No. 812," validation act, Act 3881, p. 2693.
- "Reclamation District No. 830," Act 3882, p. 2693.
- "Reclamation District No. 832," Act 3884, p. 2693.
- "Reclamation District No. 833," Act 3885, p. 2693.
- "Reclamation District No. 900," Act 3886, p. 2693.
- "Reclamation District No. 900," changing boundaries, Act 3886a, p. 2694.
- "Reclamation District No. 999," Act 3887, p. 2694.
- "Reclamation District No. 999," changing boundaries, Act 3887a, p. 2694.
- "Reclamation District No. 1000," Act 3888, p. 2694.
- "Reclamation District No. 1001," Act 3889, p. 2694.
- "Reclamation District No. 1400," Act 3890, p. 2694.
- "Reclamation District No. 1500," Act 3891, p. 2694.
- "Reclamation District No. 1600," Act 3892, p. 2695.
- authorizing formation of district, Mormon slough, Act 3893, p. 2695.
- reclamation districts Nos. 209 and 223, legalizing formation, Act 3894, p. 2695.
- Union Island reclamation districts Nos. 1 and 2, Act 3897, p. 2696.
- "Reclamation District No. 1660," Act 3897a, p. 2696.
- "Reclamation District No. 2020," Act 3897b, p. 2696.
- "Reclamation District No. 2031," Act 3897c, p. 2696.
- reclamation districts subject to Political Code, Act 3899, p. 2696.
- equalization of assessments, Act 3901, p. 2696.
- dissolution, Act 3902, p. 2697.
- bonds, Act 3903, p. 2697.
- assessments to pay bonds issued under Act 3903, Act 3904, p. 2697.
- appeals from orders forming or refusing to form reclamation districts, Act 3906, p. 2698.

- Reconstruction and repair of damaged property**, San Francisco water front, Act 1866, p. 906.
- of wharves, etc., San Francisco water front, Act 1866a, p. 906.
- Recorders**—Chap. 304, p. 2699.
- certain acts legalized, Act 3911, p. 2699.
- certificates of status of school land furnished surveyor general, Act 3912, p. 2699.
- Records of California volunteers**, revision of, Act 696, p. 327.
- see tits. "Burnt or Destroyed Records or Documents"; "Courts."
- Red Bluff**—Chap. 305, p. 2699.
- survey legalized, Act 3923, p. 2699.
- distribution of townsite lots, Act 3924, p. 2700.
- Redemption from sales for delinquent street assessments**, Act 4951, p. 3184.
- "Red Rock Creek Irrigation District,"** validation, Act 2294d, p. 1354.
- "Red Light Abatement Act,"** Act 3634, p. 2334.
- Redondo Beach**—Chap. 306, p. 2700.
- tide-land grant, Act 3940, p. 2700.
- Redwood City**—Chap. 307, p. 2701.
- opening and extension of Stambaugh street, Act 3943, p. 2701.
- Refunding act of 1919**, irrigation districts, Act 2268b, p. 1337.
- Refunding act of 1897**, municipal, Act 3093e, p. 1949.
- Registers of state boards**, reproduction of, Act 583, p. 299.
- Registration of bonds**, Act 514, p. 266.
- Registrations**, legalizing, Act 1340, p. 679.
- of municipal bonds, Act 3093i, p. 1954.
- of purchasers of deadly weapons, Act 1181, p. 532.
- Regulation of land titles**, Act 5196, p. 3403.
- Release of claims** of state to certain lands to the United States, Act 5332, p. 3436.
- Relief and pension fund**, police, Act 3536, p. 2288.
- Removal of bodies of deceased persons** from cemeteries in cities, Act 722, p. 332.
- Removal from office**, unlawful, Act 3320, p. 2210.
- Removal of improvements** made under void public land locations, Act 3743, p. 2448.
- Reorganization act of 1899**, municipal, Act 3093, p. 1940.
- Reorganization of municipal corporations**, validation, act of 1909, Act 3027, p. 1818.
- Repayment of money** paid under section 570, Code of Civil Procedure, Act 1667a, p. 826.
- Reporters at coroners' inquests** in cities, Act 1010, p. 416.
- Reselections of public lands** where original selections were canceled or rejected, Act 3745a, p. 2449.
- act of 1919, Act 3745b, p. 2450.

- Reservation of certain lands** by congress, consent of state to, Act 3766, p. 2484.
- Reservation by United States** of certain lands, consent of state, Act 5331a, p. 3436.
- Resettlement of franchises**, Act 1608, p. 798.
- Residence of governor**, Act 1805, p. 893.
- Restitution appropriations**, principal, public lands, Act 3740a, p. 2446.
- interest, public lands, Act 3740b, p. 2446.
- Restoration of records**, see tit. "Burnt or Destroyed Records or Documents."
- Retirement system** for county employees, Act 3440, p. 2251.
- Returns to state harbor commissioners**, Act 1875, p. 915.
- Revenue**, see tit. "Taxation."
- Revolving fund**, exposition at Los Angeles, Act 1448, p. 737.
- Richmond**—Chap. 308, p. 2701.
freeholders' charter, Act 3954, p. 2701.
tide-land grant, Act 3955, p. 2703.
tide-land lease authorized, Act 3956, p. 2705.
- municipal water district, Act 3105, p. 2175.
- Right of way** for cut-offs on San Joaquin river, Act 4332, p. 2840.
- easements, weir sites, etc., conveyance of, Sacramento and San Joaquin drainage district, Act 3989, p. 2757.
- for highways, acquisition by counties, Act 1917, p. 994.
- for highways over public lands, Act 1915, p. 980.
- to mines, Act 2880, p. 1734.
- working, easements, etc., of mines, Act 2881, p. 1734.
- for railroads through municipalities, validating permits for, Act 3826, p. 2671.
- for railroad through San Bernardino asylum grounds, Act 3821, p. 2670.
- over state lands to United States, Act 5332b, p. 3436.
- Rivers and harbors**, see tit. "Waters."
- examining commission, Act 5529, p. 3593.
- Riverside branch agricultural experiment station** at, Act 5387, p. 3463.
- Riverside City**—Chap. 309, p. 2706.
freeholders' charter, Act 3965, p. 2706.
- Riverside County**—Chap. 310, p. 2706.
organization act, Act 3970, p. 2706.
- Road district improvement act of 1907**, Act 1910, p. 954.
- Road division validation act of 1917**, Act 1917d, p. 997.
- Road in Boulder Creek township**, Santa Cruz county, taking over, Act 1944a, p. 1010.
- Road bonds** of town of Colusa authorized, Act 916, p. 368.
- Road laws**, report on, Act 1946, p. 1012.
- Roads and boulevards** to public parks, Act 3764, p. 2484.
- Roads and highways**, see tits. "Highways"; "Public Parks."
- Rock-crushing plants for prisons**, Act 3602, p. 2329.
- Rodents**, property infested, Act 3259, p. 2196.
- Rodeos**—Chap. 311, p. 2706.
rodeos, Act 3975, p. 2706.
- Rotunda of capitol**, decoration of, Act 715, p. 329.
- Rough and ready**, see tit. "Etna."
- Rural cemetery associations**, Act 726, p. 334.
- supplementary act, Act 727, p. 338.
- Rural credits** and finance commission, delegates on, Act 94, p. 48.
- Rural post roads**, state co-operation, Act 1900c, p. 940.
- Sacramento and San Joaquin Drainage District**—Chap. 312, p. 2707.
"Reclamation Board Act," Act 3986, p. 2707.
purchase of construction warrants, Act 3987, p. 2739.
bonds, Act 3988, p. 2741.
conveyance of rights of way, easements, weir sites, etc., Act 3989, p. 2757.
Sutter-Butte by-pass project No. 6, Act 3990, p. 2758.
- Sacramento City**—Chap. 313, p. 2760.
freeholders' charter, Act 3991, p. 2760.
grant of certain swamp and overflowed lands, Act 4009, p. 2761.
- Sacramento County**—Chap. 314, p. 2761.
protection of East park, Act 4021, p. 2761.
additional judge, Act 4024, p. 2761.
construction and repair of levees, Act 4026, p. 2761.
transcribing records, Act 4028, p. 2761.
Georgiana slough road, Act 4030, p. 2761.
sheep herded and running at large, Act 4031, p. 2761.
authorizing conveyance of certain property to, Act 4035, p. 2762.
- "Levee District No. 1," Act 2511, p. 1416.
- Sacramento to Folsom**, state highway, Act 1928, p. 1002.
- Sacramento irrigation and navigation canal company**, Act 702, p. 327.
- Sacramento river drainage district**, Act 1294, p. 604.
- Sacramento river west side levee district**, Act 2518, p. 1429.
- Sacramento, San Joaquin and Feather rivers**, survey for additional outlet, Act 4848a, p. 2975.
- rectification of channels of, Act 4849, p. 2975.
- direct improvement of navigation of, Act 4850, p. 2977.
- Salaries of fire department officials** in cities of the first class, Act 1541, p. 765.
- Sale of cold storage eggs** for fresh, Act 872, p. 366.

- Sales of excess water act of 1911**, municipalities, Act 3043, p. 1836.
- Sale of liquor** near construction camp, Act 2224, p. 1184.
- to person inordinately addicted to use, Act 2214, p. 1184.
- Sale of property** by municipalities to trustees for educational or charitable purposes, Act 3065, p. 1897.
- Whittier state school, Act 5588, p. 3635.
- Sale of state bonds**, commissions on, Act 519, p. 273.
- Salinas City**—Chap. 315, p. 2764.
freeholders' charter, Act 4045, p. 2764.
- Salinas river**, p. 2764.
- Salmon fisheries** on Eel river, regulating, Act 1723, p. 874.
- Salmon hatchery**, Act 1701, p. 871.
- Salt marsh and tide lands**, suits against the state to quiet title to, Act 4834, p. 2959.
- survey and disposition of certain, Act 3719, p. 2429.
- San Antonio canyon**, fighting forest fires in, Act 1592, p. 789.
- prevention of forest fires in, Act 1594, p. 790.
- San Antonio creek**, see tit. "Alameda County."
- use of seines, etc., in, prohibited, Act 1728, p. 876.
- San Antonio estuary**, bridge across, Act 131, p. 56.
- San Benito County**—Chap. 316, p. 2764.
organization act, Act 4059, p. 2764.
trespassing animals, Act 4060, p. 2764.
legalizing transcribed records, Act 4062, p. 2764.
transcription of records, Act 4063, p. 2765.
- San Bernardino City**—Chap. 317, p. 2765.
freeholders' charter, Act 4067, p. 2765.
grant of certain lands, Act 4068, p. 2765.
- San Bernardino County**—Chap. 318, p. 2765.
county charter, Act 4070, p. 2765.
trespassing animals, Act 4072, p. 2766.
timekeepers for irrigation ditches, Act 4077, p. 2766.
additional judge, Act 4078, p. 2766.
transcribing public records, Act 4079, p. 2766.
legalizing certain records, Act 4081, p. 2766.
construction of wagon road, Act 4085, p. 2766.
regulating beekeeping, Act 4087, p. 2766.
- San Bernardino forest reserve**, reforestation of, Act 1585, p. 781.
- San Bernardino to Redlands**, state highway, Act 1944, p. 1009.
- Sanchez, T. A.**, ratifying deed, Act 2586, p. 1497.
- San Diego**, board of pilot commissioners for, Act 3474, p. 2272.
- San Diego City**—Chap. 319, p. 2767.
freeholders' charter, Act 4094, p. 2767.
validating conveyances by municipal authorities, Act of 1874, Act 4096, p. 2770.
validating conveyances by municipal authorities, Act of 1872, Act 4097, p. 2770.
conveyance of lands to United States for military purposes, Act 4098, p. 2770.
conveyance of certain pueblo lands to the United States, Act 4099, p. 2790.
ratifying conveyance to Richard C. McCormick, Act 4100, p. 2770.
ratifying and repealing ordinances, Act 4101, p. 2770.
boundaries of school districts, Act 4103, p. 2770.
conveyance of part La Jolla park to University of California, Act 4104, p. 2770.
tide-land grant, Act 4106, p. 2770.
purchase of armory building and wharf, Act 4107, p. 2774.
- San Diego County**—Chap. 320, p. 2774.
transfer of tide lands to United States, Act 4111, p. 2774.
trespassing animals, Act 4114, p. 2774.
funding indebtedness against road fund, Act 4121, p. 2774.
increasing number of judges, Act 4125, p. 2774.
use of waters of "False Bay" to propel machinery, Act 4127, p. 2774.
- San Diego**, disputed titles on bay of, Act 1872, p. 912.
- San Diego seawall act of 1909**, Act 1873, p. 912.
- San Dimas canyon**, fighting forest fires in, Act 1593, p. 789.
- San Francisco**—Chap. 321, p. 2775.
freeholders' charter, Act 4133, p. 2776.
opening Army street, Act 4135, p. 2798.
grading Bay street, Act 4138, p. 2798.
exchange of public school, lot 122, Potrero Nuevo, Act 4139, p. 2799.
"Water Lot Act," Act 4141, p. 2799.
erection of city hall, sale of lots, Act 4142, p. 2800.
deeds to purchasers of city hall lots, Act 4143, p. 2800.
completion of city hall, Act 4144, p. 2800.
Cemetery avenue, Act 4146, p. 2800.
canal through Channel street, Act 4147, p. 2800.
sanitary canal through Channel street and Mission creek, Act 4148, p. 2801.
legalizing certain conveyances, Act 4153, p. 2801.
conveyance of lands to lying-in hospital and founding asylum, Act 4155, p. 2801.
conveyance of overflowed lands to South San Francisco Homestead and Railroad Association, Act 4157, p. 2801.
preservation of name of Dupont street, Act 4169, p. 2801.
widening of Dupont street, Act 4170, p. 2801.
define and establish the width of East street, Act 4171, p. 2801.
closing portion of Elm street, Act 4172, p. 2801.

San Francisco—(Continued).

- opening Fifteenth avenue extension, Act 4174, p. 2802.
- authorizing certain officers to administer oaths, Act 4181, p. 2802.
- hunting on private grounds, Act 4192, p. 2802.
- closing Ivy avenue, Act 4199, p. 2802.
- opening and extending Leidesdorff street, Act 4203, p. 2802.
- establishing and opening Montgomery street, south, Act 4212, p. 2802.
- opening and establishing "Montgomery avenue," Act 4213, p. 2802.
- sales and conveyances of "Mutual Real Estate Company," Act 4215, p. 2802.
- conveyance of lot to Ladies' Protection and Relief Society, Act 4246, p. 2803.
- modification of grades of certain streets, Act 4253, p. 2803.
- change of certain street grades, Act 4254, p. 2803.
- legalizing grades of certain streets, Act 4255, p. 2803.
- opening Seventh street, Act 4256, p. 2803.
- opening Sixth street, Act 4257, p. 2803.
- vacating certain streets and market places, Act 4263, p. 2803.
- Channel street and Mission creek, opening street and constructing sewer, Act 4275, p. 2803.
- opening and extending Tehama street, Act 4278, p. 2804.
- opening Valencia street, Act 4284, p. 2804.
- establishing grade of Vallejo street, Act 4285, p. 2804.
- ratifying and confirming Van Ness ordinance, Act 4286, p. 2804.
- improving Van Ness avenue, Act 4287, p. 2805.
- sale of certain state land within the waterfront line, Act 4291, p. 2805.
- further extension of waterfront line, Act 4292, p. 2805.
- confirming title to certain waterfront property, Act 4293, p. 2805.
- quitclaiming city slip lot No. 116, Act 4294, p. 2806.
- quitclaiming water lot No. 415, Act 4295, p. 2806.
- compromising litigation concerning waterfront property, Act 4298, p. 2806.
- conveyance to William Scholle, Act 4299, p. 2806.
- sales of perishable products on wharves, Act 4300, p. 2806.
- municipal street railroad, Act 4301, p. 2808.
- maintenance of fire boats, Act 4302, p. 2808.
- exchange of real estate, Act 4303, p. 2809.
- annexation of San Mateo territory, Act 4306, p. 2809.
- passenger transportation on the Embarcadero, Act 4307, p. 2821.
- San Francisco state building**, bond issue, Act 3661, p. 2381.
- construction, etc., Act 3663, p. 2385.
- San Francisco harbor improvement act** of 1909, Act 1869, p. 906.
- act of 1913, Act 1871, p. 907.

- San Francisco seawall act**, Act 1871a, p. 911.
- San Francisco state normal school**, Act 4528, p. 2869.
- transfer of fund, Act 1658, p. 824.
- San Francisco waterfront**, compromise of litigation, Act 1863, p. 903.
- condemnation of certain property, Act 1861, p. 902.
- Sanitary Districts**—Chap. 322, p. 2822.
- validation act of 1915, Act 4309, p. 2822.
- sanitary district act of 1919, Act 4310, p. 2823.
- Sanitary engineering, department of**, Act 3697, p. 2421.
- Sanitation act**, general, bathing resorts, Act 435, p. 233.
- Sanitation of factories**, Act 2685, p. 1516.
- Sanitation, food producing and food storing plants**, Act 3676, p. 2389.
- Sanitation and inspection act, 1905, dairy**, Act 1166, p. 497.
- Sanitation and inspection act of 1911, dairy**, Act 1167, p. 501.
- San Joaquin County**—Chap. 323, p. 2839.
- construction of levees on Mokelumne river, Act 4314, p. 2839.
- protection of lands from overflow, Act 4315, p. 2839.
- legalizing certain records, Act 4317, p. 2839.
- additional judge of the superior court, Act 4326, p. 2839.
- San Joaquin River**—Chap. 324, p. 2839.
- public wharves, Act 4331, p. 2839.
- right of way for cut-offs, Act 4332, p. 2840.
- construction of cut-off, Act 4333, p. 2840.
- San Jose**—Chap. 325, p. 2841.
- freeholders' charter, Act 4337, p. 2841.
- law library, Act 4338, p. 2842.
- confirming opening of Market street, Act 4339, p. 2842.
- Santa Clara avenue and Penetencia reservation, Act 4340, p. 2842.
- erection of high school building, Act 4341, p. 2842.
- San Jose harbor commissioners**, Act 1874, p. 912.
- San Jose state normal school**, Act 4531, p. 2871.
- San Luis Obispo City**—Chap. 326, p. 2842.
- freeholders' charter, Act 4360, p. 2843.
- bonds, Act 4361, p. 2843.
- substitution of bonds, Act 4362, p. 2843.
- settlement of title to townsite lands, Act 4366, p. 2843.
- San Luis Obispo County**—Chap. 327, p. 2343.
- transcribing records, Act 4375, p. 2843.
- bond issue for road purposes, Act 4378, p. 2843.
- squirrel nuisance act applied, Act 4381, p. 2843.
- additional judge of the superior court, Act 4382, p. 2844.
- reducing number of superior judges, Act 4383, p. 2844.

- San Mateo City**—Chap. 328, p. 2844.
tide-land grant, Act 4387, p. 2844.
- San Mateo County**—Chap. 329, p. 2846.
boundary fences and trespassing animals, Act 4389, p. 2846.
declaring certain tide lands public grounds, Act 4399, p. 2846.
- San Pasqual Battlefield**—Chap. 330, p. 2846.
gift of battlefield accepted, Act 4402, p. 2846.
- San Quentin prison**, revolving fund for manufacturing department, Act 3601a, p. 2329.
- San Rafael**—Chap. 331, p. 2847.
freeholders' charter, Act 4405, p. 2847.
- "San Ysidro Irrigation District,"** validation, Act 2286, p. 1351.
- Santa Barbara City**—Chap. 332, p. 2848.
freeholders' charter, Act 4410, p. 2848.
legalizing certain grants, Act 4413, p. 2848.
legalizing and confirming certain grants, Act 4414, p. 2849.
confirming conveyances to Santa Barbara Cemetery Association, Act 4415, p. 2849.
- Santa Barbara County**—Chap. 333, p. 2849.
validating certain conveyances, Act 4423, p. 2849.
- Santa Barbara state normal school**, Act 4535, p. 2871.
- Santa Clara, Town Of**—Chap. 334, p. 2849.
reincorporation act of 1872, Act 4334, p. 2849.
trustee of townsite lands, Act 4435, p. 2850.
- Santa Clara County**—Chap. 335, p. 2850.
Alameda road, Act 4440, p. 2850.
auditor's seal of office, Act 4443, p. 2850.
additional judge, Act 4448, p. 2850.
legalizing certain records, Act 4452, p. 2850.
translation of Spanish records, Act 4453, p. 2850.
transcribing records, Act 4454, p. 2850.
- Santa Cruz City**—Chap. 336, p. 2851.
freeholders' charter, Act 4465, p. 2851.
authority to lay water pipes, Act 4466, p. 2851.
- Santa Cruz County**—Chap. 337, p. 2852.
change of line of Santa Cruz Railroad Company, Act 4479, p. 2852.
- Santa Monica**—Chap. 338, p. 2852.
freeholders' charter, Act 4485, p. 2852.
tide-land grant, Act 4487, p. 2852.
- Santa Monica forestry station**, Act 5371, p. 3456.
- Santa Rosa**—Chap. 339, p. 2854.
freeholders' charter, Act 4491, p. 2854.
- Saratoga Gap to California redwood park**, state highway, Act 1943e, p. 1009.
- "Savage Act,"** Act 1900, p. 925.
- Savings banks**, involuntary dissolution of, Act 406, p. 141.
- Sawmills**, lunch hour in, Act 2773, p. 1530.
- Scabies**, eradication of, Act 4635, p. 2934.
- Scaffolding act**, Act 2776, p. 1534.
- School building funds**, disposal of money remaining in, Act 4552, p. 2893.
— transfer of excess, Act 4552a, p. 2894.
- School of industry**, see tit. "Preston School of Industry."
- School lands**, see tit. "Public Lands."
— cancellation of tax liens on certain, Act 3747, p. 2452.
— containing minerals, sale of, Act 3715a, p. 2427.
— legalizing payments for, Act 3735, p. 2438.
— purchase of, Act 3722, p. 2433.
— relief of purchases of, Act 3740, p. 2445.
— reservation from sale of certain, Act 3716, p. 2427.
— suitable for cultivation, sale of, Act 3721c, p. 2432.
— not suitable for cultivation, sale of, Act 3721b, p. 2431.
— warrants, cancellation of unlocated, Act 3741, p. 2447.
— withdrawing certain, from sale, Act 3715, p. 2426.
- School land fund**, loan from to general fund, Act 1660, p. 824.
- School land leasing act of 1917**, Act 3749, p. 2470.
- School moneys**, misappropriation of, Act 1076, p. 458.
- School of reform**, see tit. "Whittier State School."
- School taxes**, levy and collection of, Act 4545, p. 2884.
- School vaccination act**, Act 3690, p. 2405.
- Schools**—Chap. 340, p. 2855.
acting districts declared incorporated, Act 4498, p. 2855.
confirming and validating organization of districts, Act 4499, p. 2856.
California polytechnic school, Act 4500, p. 2856.
high school building in state normal grounds at San Jose, Act 4513, p. 2857.
union high school district libraries, Act 4517, p. 2857.
high school cadet companies, Act 4518, p. 2863.
Humboldt state normal school, Act 4520, p. 2866.
Fresno state normal school, Act 4521, p. 2867.
"Los Angeles state normal school," Act 4522, p. 2867.
Los Angeles state normal school abolished, branch of University of California established, Act 4523, p. 2867.
branch state normal school in Northern California, Act 4526, p. 2867.
state normal school in San Diego county, Act 4527, p. 2868.
San Francisco state normal school, Act 4528, p. 2869.

Schools—(Continued).

"San Jose State Normal School," Act 4531, p. 2871.
 "Santa Barbara State Normal School," Act 4535, p. 2871.
 physical education in schools, Act 4536, p. 2871.
 compiling certain text books of the state series, Act 4539, p. 2873.
 compiling a certain text book of the state series, Act 4540, p. 2875.
 compiling a state series of school text books, Act 4541, p. 2875.
 revision of series, and compiling additional text books, Act 4542, p. 2878.
 free text-book act of 1917, Act 4542a, p. 2879.
 purchase of California text books, Act 4543, p. 2883.
 levee and collection of school taxes, Act 4545, p. 2884.
 change of name of school districts, Act 4546, p. 2885.
 change of name of high school districts, Act 4547, p. 2885.
 clerk in office of superintendent of public instruction, Act 4548, p. 2885.
 teachers' retirement salary fund, Act 4550, p. 2886.
 data concerning teachers, Act 4550a, p. 2891.
 certain teachers subject to retirement fund act, Act 4550b, p. 2892.
 withdrawal of contributors to teachers' retirement fund, Act 4551, p. 2892.
 disposal of money remaining in school building funds, Act 4552, p. 2893.
 transfer of excess building funds, Act 4552, p. 2894.
 compulsory school attendance act, Act 4554, p. 2894.
 compulsory school attendance, enforcement aid act, Act 4555, p. 2906.
 instruction of blind students, Act 4556, p. 2907.
 discrimination against female teachers, Act 4557, p. 2907.
 eligibility of women for educational offices, Act 4558, p. 2907.
 teachers' diplomas validated, Act 4559, p. 2907.
 school fraternities, Act 4562, p. 2908.
 registration of minors, Act 4563, p. 2908.
 validation of school district bonds, Act 4564, p. 2910.
 registration of school bonds, Act 4570, p. 2911.
 issue of school bonds in cities of the fifth class, Act 4571, p. 2912.
 civic center act, Act 4574, p. 2914.
 janitors and employees in certain districts, Act 4575, p. 2915.
 closing schools during war, Act 4576, p. 2915.
 vocational education, Act 4517, p. 2916.
 trade schools, employment agencies, Act 4578, p. 2917.
 civic and vocational education in high schools, Act 4579, p. 2917.
 II Gen. Laws—125

Seasonal labor wages, Act 2779, p. 1539.
 Second appellate district, accommodations for court and library, Act 1252, p. 552.
 Secretaries of superior courts, Act 1129, p. 492.
 Secretary of state, p. 2923.
 Seduction, p. 2923.
 Seines, use of, in Napa river, Act 1727, p. 875.
 — use of in San Antonio creek prohibited, Act 1728, p. 876.
 Semi-monthly paydays for county employees, Act 2779d, p. 1541.
 Seniority, police, Act 3540, p. 2295.
 Separation of deaf and blind departments, deaf, dumb, and blind asylum, Act 1189, p. 536.
 Service letters for employees, Act 2779b, p. 1540.
 Service of water, proper and adequate, Act 5502, p. 3548.
 Settlers, better protection of, Act 3726, p. 2436.
 — on land claimed by state, protection of, Act 3727, p. 2436.
 — protection of actual, Act 3725, p. 2435.
 — protection of bona fide, Act 3730, p. 2436.
 Sewers—Chap. 341, p. 2924.
 sewer districts adjacent to municipalities, Act 4601, p. 2924.
 separate sewer districts in municipalities, Act 4602, p. 2925.
 sewer districts in municipalities, act of 1911, No. 1, Act 4604, p. 2925.
 sewer district in municipalities, act of 1911, No. 2, Act 4605, p. 2930.
 validating sewer district No. 2, town of Willows, Act 4606, p. 2931.
 — water mains and other conduits, joint municipal, Act 3072, p. 1902.
 Shade and ornamental tree act of 1913, highway, Act 1912, p. 977.
 Shares of capital stock of corporations issued without nominal or par value, Act 1033a, p. 424.
 — of public utility corporations, without nominal or par value, Act 1033b, p. 425.
 Shasta County—Chap. 342, p. 2932.
 transcribing records, Act 4613, p. 2932.
 authority to sign certain records, Act 4614, p. 2932.
 compensation of jurors, Act 4619, p. 2932.
 incorporation of tramroad companies, Act 4620, p. 2932.
 Shasta, Town Of—Chap. 343, p. 2933.
 hogs running at large, Act 4623, p. 2933.
 Sheep—Chap. 344, p. 2933.
 eradication of scabies, Act 4635, p. 2934.
 Sheep-dipping inspectors, employment of, Act 5436, p. 3482.
 Sheep raising, herding, etc., licenses for, Act 2537, p. 1459.
 Sheriffs, p. 2935.

- Sherman island**, p. 2935.
- Shellfish**, contaminated sources of, Act 1745, p. 884.
- preserve in Monterey bay, Act 1742, p. 880.
- Shoddy**, labeling articles made from, Act 2682, p. 1514.
- Sierra County**—Chap. 345, p. 2935.
- Sierra Iron Company**—Chap. 346, p. 2935.
construction of road authorized, Act 4666, p. 2935.
- Signs**, exit, in hotels, Act 2024, p. 1029.
- lawful and unlawful, Act 60, p. 28.
- Silk Culture**—Chap. 347, p. 2935.
state board of silk culture, Act 4672, p. 2935.
- Sinking funds**, investment of county and municipal, Act 1669, p. 827.
- Siskiyou County**—Chap. 348, p. 2936.
marks and brands, Act 4679, p. 2936.
- preservation of fish, in, Act 1731, p. 876.
- Sites for state buildings**, grant of, by freeholder charter cities, Act 3664, p. 2386.
- Sixth-class cities**, organization validation act, Act 3088, p. 1926.
- election of officers, Act 3089, p. 1927.
- election of officers, validation, Act 3090, p. 1929.
- disincorporation, Act 3091, p. 1937.
- Smith river**, p. 2936.
- Soboda** Indian land grant to the United States, Act 5329, p. 3434.
- Social insurance** investigating commission, Act 2196, p. 1175.
- Solano County**—Chap. 349, p. 2936.
irrigation and navigation canal, Act 4695, p. 2936.
branch jail, Act 4698, p. 2936.
legalizing certain records, Act 4704, p. 2936.
transcribing certain records, Act 4705, p. 2936.
- Soldiers and Sailors**—Chap. 350, p. 2937.
right to peddle without license, Act 4711, p. 2937.
burial of indigent soldiers, sailors and marines, Act 4712, p. 2937.
care of graves of soldiers, sailors and marines, Act 4712a, p. 2939.
home for soldiers' widows and orphans and army nurses, Act 4713, p. 2939.
preference in public service, Act 4714, p. 2939.
auditing claims of veterans of Indian wars, Act 4714a, p. 2940.
soldiers' employment and readjustment committee, Act 4716, p. 2940.
county relief for indigent soldiers, etc., Act 4717, p. 2941.
- retention on public works, Act 3789, p. 2663.
- "Solid Water Glass"** for locomotives, Act 3837, p. 2678.
- Sonoma City**—Chap. 351, p. 2943.
sale of pueblo lands, Act 4722, p. 2943.
confirmation of certain sales of pueblo lands, Act 4723, p. 2943.
board of commissioners of the pueblo, Act 4724, p. 2943.
bear flag monument, Act 4725, p. 2943.
- Sonoma County**—Chap. 352, p. 2944.
division fences, Act 4734, p. 2944.
transcribing records, Act 4738, p. 2944.
transcribing certain records, Act 4739, p. 2944.
translation of foreign records, Act 4740, p. 2944.
- Sonoma river**, p. 2944.
- Sonoma state home**, see tit. "Feeble-Minded Children."
- Sonora and Mono wagon road**, state highway, Act 1930, p. 1002.
- Sonora and Mono state highway**, Act 1931, p. 1003.
- South San Francisco**—Chap. 353, p. 2945.
tide-land grant, Act 4773, p. 2945.
- "South San Joaquin Irrigation District,"**
validation, Act 2284, p. 1348.
- Southern California state hospital**, railroad right of way, Act 2152, p. 1115.
- conveyance of certain water rights, Act 2153, p. 1116.
- right of way for electric railroad, Act 2154, p. 1116.
- ratification of conveyance, Act 2155, p. 1116.
- Southern Pacific Railroad Company**—Chap. 354, p. 2946.
change of line of road authorized, Act 4775, p. 2946.
- Spanish Archives**—Chap. 355, p. 2947.
preservation of Spanish archives, Act 4778, p. 2947.
- Spanish-American war of 1898** account, Act 5465, p. 3506.
- Special elections**, Act 1332, p. 637.
- Special improvement bond act of 1911**, Act 4955, p. 3211.
- Special police**, Act 3541, p. 2295.
- Special state election called**, Act 1342, p. 681.
- Spite fences**, Act 1497, p. 747.
- "Spotter" act**, Act 2774d, p. 1533.
- Spur tracks**, private, Act 3034, p. 1820.
- Squirrels and gophers**, destruction of, Act 249, p. 65.
- Squirrel nuisance**, abatement of, Act 250, p. 65.
- Stallions**—Chap. 356, p. 2947.
service of stallions and jacks, Act 4784, p. 2947.
- "Standard Apple Act of 1917,"** Act 1654, p. 806.
- Standard for condensed and evaporated milk**, Act 1168, p. 521.
- Standard form of fire insurance**, Act 2186, p. 1144.
- Standard form of policy**, accident and health insurance, Act 2189a, p. 1154.

- Standard fresh fruit packing act of 1917**, Act 1654a, p. 812.
- Standard fruit act of 1915**, Act 1652, p. 803.
- Standard fruit and vegetable act of 1919**, Act 1654c, p. 818.
- Standard seed potato act of 1917**, Act 3561, p. 2316.
- Standard of weights and measures act of 1913**, Act 5556, p. 3608.
- Stanford University**—Chap. 357, p. 2952.
exemption of university buildings from taxation, Act 4788, p. 2952.
incorporation, Act 4789, p. 2953.
- Stanislaus County**—Chap. 358, p. 2953.
increase number of judges, Act 4806, p. 2953.
- Stanislaus River**—Chap. 359, p. 2954.
establishment of ford, Act 4810, p. 2954.
- fish repository at, Act 1704, p. 872.
- State**—Chap. 360, p. 2954.
suits against the state, Act 4824, p. 2954.
suits for coyote scalp bounties, Act 4825, p. 2956.
suits to quiet title to escheated estates, Act 4826, p. 2957.
suits to quiet title to portion of Estell lands, Act 4826a, p. 2958.
suits to quiet title against the state, Act 4827, p. 2958.
suit by the Coulterville and Yosemite Turnpike Company, Act 4828, p. 2958.
suits to quiet title against the state, Alameda county lands, Act 4830, p. 2959.
suit by John Hoagland and others, Act 4831, p. 2959.
suit by Robert C. Ball, Act 4832, p. 2959.
suit by Drury Melone, and others, Act 4833, p. 2959.
suit to quiet title to certain salt-marsh lands, Act 4834, p. 2959.
suits to quiet title, property in Oakland, Act 4835, p. 2960.
suits for damages by "Newtown Jetties," Act 4836, p. 2961.
suits to quiet title when deeds are lost, Act 4837, p. 2962.
- State agricultural board**, see tit. "Agriculture."
- State agricultural society**, see tit. "Agriculture."
- incorporation of, Act 71, p. 36.
- management and control of, Act 72, p. 36.
- relief of directors of, Act 70c, p. 35.
- State aid bond act**, Central Pacific Railroad Company, Act 791, p. 339.
- State and highways in counties and towns**, Act 1918, p. 998.
- State analyst**, see tit. "Adulteration."
- State board of accountancy**, Act 9, p. 1.
- State board of agriculture**, see tit. "Agriculture."
- State board of arbitration**, Act 306, p. 84.
- State board of authorization**, see tit. "Taxation."
- State board of forestry act**, Act 1578, p. 771.
- State building act**, Act 3657, p. 2377.
- State building bonds**—Sacramento, Act 516, p. 269.
- State board of embalmers**, see tit. "Embalmers."
- State board of tideland commissioners abolished**, Act 5184, p. 3366.
- State bonds**, Act 493, p. 264.
- State capitol**, see tit. "Capitol."
- State capitol bonds**, Act 712, p. 328.
- State capitol planning commission**, Act 716, p. 329.
- State commission market**, see tit. "State Market Commission."
- "State compensation insurance fund"**—Appropriation, Act 2105, p. 1081.
- State conservation commission**, Act 940, p. 369.
- State co-operation in county joint highways**, Act 1900b, p. 939.
- State dairy bureau**, p. 2963.
- State dental surgeon**, Act 1227, p. 549.
- State department of engineering**, Act 4847, p. 2964.
- State drainage construction fund**, transfer to general fund, Act 1661, p. 824; Act 1662, p. 824.
- State dry dock act of 1913**, San Francisco waterfront, Act 1858, p. 901.
- State Engineering**—Chap. 361, p. 2963.
state department of engineering, Act 4847, p. 2964.
state highway revolving fund, Act 4847a, p. 2974.
water resources topographic survey, Act 4848, p. 2974.
survey for additional outlet for the Sacramento, San Joaquin and Feather rivers, Act 4848a, p. 2975.
rectification of channels of the Sacramento, San Joaquin and Feather rivers, Act 4849, p. 2975.
direct improvement of navigation of Sacramento, San Joaquin and Feather rivers, Act 4850, p. 2977.
additional rights of way for highways, Act 4858, p. 2978.
- State fair**, see tits. "Agriculture"; "Bonds."
- buildings, Act 65, p. 31.
- grounds, extension of, Act 70, p. 34.
- State fiscal agency**, Act 515, p. 267.
- "State fish exchange act"**, Act 4876, p. 2991.
- State flag**, adoption of Bear flag as, Act 1563, p. 766.
- State Flower**—Chap. 362, p. 2979.
state flower, Act 4862, p. 2979.
- State forestry fund**, Act 1580, p. 779.
- State forestry nursery**, Act 1581, p. 780.
- State funded debt**, Act 494, p. 264.
— loan commissioners, Act 495, p. 265.
- State geological survey**, p. 2979.
- State highway revolving fund**, Act 4847a, p. 2974.
- State highways act of 1915**, Act 1916a, p. 986.
— Act 1916, p. 980.

- State hospital for miners**, Act 2876, p. 1732.
- "State Hotel and Lodging House Act"** of 1917, Act 2026, p. 1030.
- State Land Settlement Board**—Chap. 363, p. 2979.
state land settlement board, Act 4868, p. 2979.
- State lands**, see tit. "Public Lands."
- State Library**—Chap. 364, p. 2987.
acceptance of "Sutro Library" validated, Act 4873, p. 2987.
- State Market Commission**—Chap. 365, p. 2988.
"State Market Commission Act," Act 4875, p. 2988.
"State Fish Exchange Act," Act 4876, p. 2991.
- State mining bureau**, see tits. "Mines and Mining"; "Mining Bureau."
- State money**, deposit of, in banks, Act 1673, p. 829.
— requiring payment of into the state treasury, Act 1666, p. 825.
- State normal school** in San Diego county, Act 4527, p. 2868.
— at San Jose, high school building on grounds of, Act 4513, p. 2857.
- State Purchasing Department**—Chap. 366, p. 2999.
state purchasing department act, Act 4880, p. 2999.
- State prisons**, see tit. "Prisons."
- State printer**, p. 2999.
- State property**, non-insurance of, Act 2185, p. 1144.
- State railroad act** of 1913, San Francisco waterfront, Act 1857, p. 900.
- State reformatory**, Act 681, p. 321.
- State training school for girls**, Act 676, p. 318.
- State treasurer**, see tit. "Treasurer."
- State veterinarian**, Act 5434, p. 3480.
- Statement**, extending time for insurance, Act 2187, p. 1151.
- Statistics**—Chap. 367, p. 3002.
agricultural and industrial statistics, Act 4883, p. 3002.
— bureau of labor, Act 2401, p. 1396.
— commercial fishery, Act 1693b, p. 850.
— as to industrial accidents, Act 2104, p. 1079.
- Statute of limitations**, p. 3002.
- Statutes**—Chap. 368, p. 3002.
omnibus repeal act, Act 4894, p. 3002.
- Steamboats**, p. 3002.
- Steam boilers**—Chap. 369, p. 3003.
steam boiler inspection act, Act 4903, p. 3003.
- Steam heating pipes**, franchises for in streets, Act 3075, p. 1907.
- Steam launch**, construction by fish commission, Act 1705, p. 872.
- Stockton**—Chap. 370, p. 3005.
freeholders' charter, Act 4910, p. 3005.
- Stockton slough**, p. 3006.
- Stockton state hospital**—Armory site, Act 2134, p. 1113.
— removal of bodies from cemetery, Act 2134a, p. 1114.
— condemning certain streets for, Act 2138, p. 1114.
- Stockholders**, protection of, etc., Act 1035, p. 432.
- Storage charges**, sale of goods for, Act 5466, p. 3507.
- Storm Water Districts**—Chap. 371, p. 3006.
storm water districts, Act 4925, p. 3006.
Coachella Valley storm water district, validation act, Act 4926, p. 3018.
- "Stratford Irrigation District"**—Validation, Act 2293, p. 1353.
- Strawberry valley**, see tit. "County Boundaries."
- "Street Lighting Act of 1919,"** Act 3040a, p. 1828.
- Street Railroads**—Chap. 372, p. 3019.
- Streets**—Chap. 373, p. 3019.
"Tree-Planting Act of 1915," Act 4941, p. 3019.
tree-planting act of 1893, Act 4942, p. 3024.
tree-planting act of 1913, Act 4943, p. 3029.
street opening act of 1889, Act 4945, p. 3035.
"Street Opening Act of 1903," Act 4946, p. 3047.
street opening act of 1893, Act 4947, p. 3065.
"Vrooman act"—"street work act," Act 4948, p. 3065.
"Local Improvement Act of 1919," Act 4948a, p. 3140.
"Local Improvement Act of 1901," Act 4949, p. 3150.
street improvement bond act of 1893, Act 4950, p. 3167.
"Improvement Act of 1915," Act 4950a, p. 3176.
redemption from sales for delinquent assessments, Act 4951, p. 3184.
abandonment of proceeding under "Street Improvement Act of 1909," Act 4952, p. 3184.
"Street Improvement Act of 1913," Act 4953, p. 3185.
"Change of Grade Act of 1909," Act 4954, p. 3207.
special improvement bond act of 1911, Act 4955, p. 3211.
improvement act of 1911, Act 4956, p. 3217.
boundary improvement act of 1911, Act 4957, p. 3258.
disposition of land of abandoned streets, Act 4958, p. 3272.
opening streets through cemeteries, Act 4959, p. 3273.
- Strikes**, advertisements for employees during, Act 2774a, p. 1531.
- Students at national college for deaf**, attendance of, Act 1190, p. 537.
- Submarine sites for lighthouses**, Act 3179, p. 2189.
- Subpoena**, service of, in civil actions, Act 1051, p. 445.
- Subterranean storage act**, Act 5538, p. 3606.

Subways—Chap. 374, p. 3273.
tunnels under navigable streams, Act 4973, p. 3273.

Suits against the state, Act 4824, p. 2954.
— for coyote scalp bounties, Act 4825, p. 2956.
— to quiet title, Act 4827, p. 2958.
— to quiet title to escheated estates, Act 4826, p. 2957.
— to quiet title when deeds are lost, Act 4837, p. 2962.
— for tax commissions and fees prohibited, Act 5106, p. 3317.

Sulphur standard for fruits and foods, Act 1654b, p. 817.

Summons and subpoena, service of, in civil actions, Act 1051, p. 445.

Sunday, see tit. "Master and Servant."

Superintendent of public instruction clerk in office, Act 4548, p. 2885.

Supervisors—Chap. 375, p. 3274.
expenses of posse comitatus, criminal cases, Act 4998, p. 3274.

Supreme court commission, p. 3275.

Supreme court library, p. 3275.

Supreme court reporter, p. 3275.

Surplus money of state, investment of, Act 1671, p. 828.

Surplus funds, investment of county and municipal, Act 1670, p. 827.

Surprise Valley to the Nevada line highway, Act 1943b, p. 1007.

Survey of Humboldt Bay, Act 2054, p. 1068.

Surveyor General—Chap. 376, p. 3275.
office furniture and vaults, Act 5024, p. 3275.

Surveyors—Chap. 377, p. 3275.
licensing land surveyors, Act 5030, p. 3275.

Surveys—Chap. 378, p. 3278.
perpetuation of makings of government survey, Act 5035, p. 3278.

Susanville and Nevada line highway, Act 1944b, p. 1010.

Sutro library, see tit. "State Library."

Sutter Butte by pass project No. 6, Act 3990, p. 2758.

Sutter County—Chap. 379, p. 3279.
separate judge, Act 5043, p. 3279.
protection of lands from overflow, Act 5044, p. 3279.
transcribing records, Act 5045, p. 3279.
— levee district number one, Act 2511a, p. 1416.
— levee district number one—funding bonds, Act 2511b, p. 1417.
— levee district number two, Act 2511c, p. 1417.
— levee district number two, supplementary act, Act 2512, p. 1417.
— levee district number two—funding act, Act 2512a, p. 1417.
— levee district number six, Act 2513, p. 1417.

Sutter County—(Continued).
— levee district number six—funding act, Act 2514, p. 1417.

Sutter Fort—Chap. 380, p. 3279.
acquisition of Sutter's Fort, Act 5062, p. 3280.
guardian of Sutter's Fort, Act 5063, p. 3280.
gardener at Sutter's Fort, Act 5064, p. 3280.
assistant gardener at Sutter's Fort, Act 5065, p. 3280.
memorial of California pioneers, Act 5066, p. 3280.
improvement of Twenty-sixth street, Sacramento, Act 5067, p. 3280.

Swamp and overflowed lands, determination as to character, Act 3753, p. 2474.
— drainage of, Act 1281, p. 554.
— grant of certain to Sacramento city, Act 4009, p. 2761.
— in Fresno and Kern counties, rights of parties, Act 3737a, p. 2444.

Swamp and Overflowed Land Districts—Chap. 381, p. 3280.
payment to counties of swamp land district funds, Act 5072a, p. 3281.
"Swamp Land District No. 17," Act 5073, p. 3281.
"Swamp Land District No. 118," Act 5074, p. 3281.
"Swamp Land District No. 150," Act 5075, p. 3281.
"Swamp Land District No. 221," Act 5076, p. 3281.
"Swamp Land District No. 307," Act 5077, p. 3281.

Swamp land fund, distribution of, Act 3720, p. 2429.
— payment to the several counties, Act 1667, p. 826.

Swamp land warrants, payment of certain, Act 3740c, p. 2447.

Swamp lands, quieting title to certain, Act 3745, p. 2449.
— in Yolo and Colusa counties, quieting title to, Act 3744a, p. 2449.

Syndicalism— Chap. 382, p. 3281.
criminal syndicalism act, Act 5086, p. 3281.

Syrup, adulteration of, Act 39, p. 21.

Table of contents, Vol. I, p. VII.

Tahoe City and Crystal Bay state highway, Act 1943, p. 1007.

Tamalpais forest fire district, Act 1590, p. 783.

Tax commission act of 1915, Act 5128, p. 3325.

Tax commissions and fees abolished, Act 5105, p. 3316.

Tax district act of 1919, municipal, Act 3077b, p. 1914.

Tax for park, music and advertising, municipal, Act 3073, p. 1905.

Taxation—Chap. 383, p. 3283.
inheritance tax act, Act 5092, p. 3284.
inheritance tax lien, enforcement actions, Act 5093, p. 3308.
county special tax for certain purposes, Act 5098, p. 3309.

Taxation—(Continued).

- municipal tax for specific public improvements, Act 5099, p. 3310.
- municipal taxation, Act 5100, p. 3311.
- reassessment and equalization act of 1893, Act 5102, p. 3315.
- compensation for the collection of delinquent taxes, Act 5103, p. 3316.
- tax commissions and fees abolished, Act 5105, p. 3316.
- suits for tax commissions and fees prohibited, Act 5106, p. 3317.
- payment of tax commissions and fees prohibited, Act 5107, p. 3317.
- assessment of animals pasturing in another county, Act 5109, p. 3317.
- assessment of migratory livestock, Act 5110, p. 3318.
- tax deeds validated, Act 5116, p. 3318.
- certificates of sales and tax deeds validated, Act 5117, p. 3319.
- suits for delinquent personalty taxes, Act 5118, p. 3319.
- form of complaint in suits for delinquent taxes, Act 5119, p. 3320.
- corporation tax act, Act 5122, p. 3321.
- assessment and collection of taxes, in freeholder charter municipalities, Act 5126, p. 3322.
- tax commission act of 1915, Act 5128, p. 3325.
- validation of assessments, Act 5129, p. 3326.
- destruction by fire of certain reports and documents authorized, Act 5130, p. 3327.
- duplicate and excess payments of taxes, Act 5131, p. 3327.
- daily payment of excess taxes authorized, refunding of such payments, Act 5132, p. 3328.
- Teachers**, data concerning, Act 4550a, p. 2891.
- diplomas validated, Act 4559, p. 2907.
- retirement fund act, certain subject to act, Act 4550b, p. 2892.
- retirement salary fund, Act 4550, p. 2886.
- retirement fund, withdrawal of contributors, Act 4551, p. 2892.
- Tehama County**—Chap. 384, p. 3329.
- trespassing animals, Act 5135, p. 3329.
- support of cemeteries, Act 5138, p. 3329.
- refundng county debt, Act 5140, p. 3329.
- partition fences, Act 5141, p. 3329.
- transcribing records, Act 5142, p. 3329.
- county charter, Act 5147, p. 3330.
- Telegraph Lines**—Chap. 385, p. 3330.
- Atlantic and Pacific telegraph line, Act 5158, p. 3330.
- San Jose and San Bernardino telegraph line, Act 5159, p. 3330.
- Los Angeles to Wilmington telegraph line, Act 5160, p. 3330.
- telegraph communication between America and Asia, Act 5161, p. 3331.
- Telephone system**, mine, Act 2878, p. 1733.
- Tenement Houses**—Chap. 386, p. 3331.
- state tenement house act, Act 5166, p. 3331.

"Terra-Bella Irrigation District," validation, Act 2294, p. 1353.

Textbook, free, act of 1917, Act 4542a, p. 2879.

Textbooks of the state series, compiling certain, Act 4539, p. 2873.

— compiling a certain, Act 4550, p. 2875.

— compiling, Act 4541, p. 2875.

— purchase of, Act 4543, p. 2883.

— revision of, and compiling additional, Act 4542, p. 2878.

Theatres, p. 3365.

Thistle—Chap. 387, p. 3366.

propagation of Scotch and Canadian thistle, Act 5177, p. 3366.

Tide Lands—Chap. 388, p. 3366.

state board of tide-land commissioners abolished, Act 5184, p. 3366.

— in Contra Costa county, act to quiet title to, Act 977, p. 412.

— grant of, to United States by municipalities, Act 3080, p. 1922.

— in Humboldt bay, grant of to United States, Act of 1889, Act 2052, p. 1067.

— in Humboldt bay, grant of to United States, act of 1887, Act 2051, p. 1067.

— leases by municipalities approving, Act 3068, p. 1899.

— relinquishing title to certain, to United States, Act 5328, p. 3434.

— transfer of certain tide lands in San Diego county to the United States, Act 4111, p. 2774.

Time—Chap. 389, p. 3367.

moratorium act of 1906, Act 5187, p. 3367.

Time for completion of railroad, extending, Act 3825, p. 2670.

Timekeepers for irrigation districts, Act 4077, p. 2766.

"Tloga Road," free wagon road from Mono lake basin to, Act 1933, p. 1003.

— purchase of portion of, Act 1941a, p. 1005.

Tipping act, Act 2774c, p. 1532.

Titles—Chap. 390, p. 3367.

"McEnerney act," Act 5192, p. 3367.

McEnerney act, supplementary act, Act 5193, p. 3374.

Torrens land title and transfer act, "Land Title Law," Act 5194, p. 3375.

regulation of land titles, Act 5196, p. 3403.

settlement of titles in Branciforte, Act 5197, p. 3404.

quieting title to lands in Napa and Solano counties, Act 5198, p. 3404.

settlement of titles in Benicia, Act 5199, p. 3404.

— forfeiture of payments on fraudulent, Act 3742, p. 2448.

— on San Diego bay, establishment of disputed, Act 1872, p. 912.

Tobacco—Chap. 391, p. 3404.

tobacco culture, Act 5200, p. 3404.

"Toland" medical department of the University of California, Act 5375, p. 3456.

- Topographic survey of water resources**, Act 4848, p. 2974.
- Torrens land title and transfer act**, Act 5194, p. 3375.
- Towels for public use**, Act 3699, p. 2422.
- Townsites**, disposition of public lands in, Act 3029, p. 1818; Act 3030, p. 1819.
- lots in Humboldt county, disposal of, Act 2071, p. 1068.
- Towpaths**—Chap. 392, p. 3404.
towpaths along navigable rivers, Act 5206, p. 3404.
- Trade schools** employment agencies, Act 4578, p. 2917.
- Trademarks and Trade Names**—Chap. 393, p. 3405.
protection of owners of bottles, etc., Act 5211, p. 3405.
- Trading Stamps**—Chap. 394, p. 3408.
trading stamp act, Act 5216, p. 3408.
- Training Ship**—Chap. 395, p. 3409.
training ship in San Francisco, Act 5221, p. 3409.
- Train orders**, regulating transmission of, Act 3832a, p. 2674.
- Training school for girls**, Act 676, p. 318.
- Tramroad companies**, see tit. "Shasta County."
- "Tranquillity Irrigation District,"** validation, Act 2294e, p. 1354.
- Transfer of funds**, Act 1659, p. 824.
— state drainage construction fund to general fund, Act 1661, p. 824; Act 1662, p. 824.
- Transfer of land preserve**, Act 1743, p. 880.
- Transfer of money** from general fund to other funds, Act 1663, p. 825.
- Transfer of records**, old to new courts, Act 1128, p. 492.
- Transfer of veterans home** to the United States, Act 5426, p. 3476.
- Treasurers**—Chap. 396, p. 3409.
treasurers in cities of 200,000 population, Act 5231, p. 3409.
- Tree-planting act** of 1893, Act 4942, p. 3024.
— of 1913, Act 4943, p. 3029.
— of 1915, Act 4941, p. 3019.
- Trespass**, see tits. "Fences"; "Hunting on Private Grounds."
- Trespassing Animals**—Chap. 397, p. 3410.
damages from trespassing of animals, Act 5243, p. 3410.
animals trespassing on private property, Act 5244, p. 3411.
protection of agriculture from trespassing animals in certain counties, Act 5244a, p. 3412.
protection of agriculture from trespassing animals in certain counties, Act 5245, p. 3412.
protection of agriculture and distraining of animals in certain counties, Act 5245a, p. 3412.
protection of agriculture from trespassing animals, Act 5246, p. 3412.
- Trespassing Animals**—(Continued).
protection of agriculture from trespassing animals in certain counties, Act 5246a, p. 3413.
protection of agriculture from trespassing animals in certain counties, Act 5246b, p. 3413.
trespassing animals on private lands in certain counties, Act 5246c, p. 3413.
trespassing of livestock in certain counties, Act 5246d, p. 3414.
animal trespasses in certain counties, Act 5246e, p. 3414.
- Trial and grand jurors**, fees of, Act 1475, p. 741.
- Trial of convicts**, cost and expenses of, Act 996, p. 413.
- Trial for violation of game laws**, expenses and costs, Act 1739, p. 879.
- Trial jurors**, payment of fees, Act 1480, p. 744.
- Trinity County**—Chap. 398, p. 3414.
free bridges, Act 5247, p. 3415.
free bridges, act of 1874, Act 5248, p. 3415.
transcribing records, Act 5250, p. 3415.
- Trinity-Humboldt state highway**, Act 1932, p. 1003.
- Trinity - Tehama - Shasta - Humboldt state highway**, Act 1935, p. 1003.
— completion, Act 1936, p. 1003.
— survey of extension, Act 1937, p. 1004.
- Truckee to Nevada line highway**, Act 1945, p. 1011.
- Trusts**—Chap. 399, p. 3415.
execution of express trusts in case of death of last surviving trustee, Act 5259, p. 3415.
trusts for public libraries, etc., Act 5260, p. 3415.
trusts for universities, etc., Act 5261, p. 3418.
trusts for universities, etc., supplemental act, Act 5262, p. 3421.
determination of character and effect of trust, Act 5263, p. 3422.
"Cartwright Act," Act 5264, p. 3425.
- Trust bonds**, cost of, Act 485, p. 262.
- Trustee and executor**, corporations as, Act 1034, p. 427.
- Tuberculosis**, bureau of, Act 3694, p. 2412.
— dissemination of knowledge, as to, Act 3692, p. 2409.
— treatment for, Act 3693, p. 2410.
- Tulare County**—Chap. 400, p. 3429.
increase number of judges, Act 5279, p. 3429.
- Tunnels** under navigable streams, Act 4973, p. 3273.
- Tuolumne County**—Chap. 401, p. 3430.
lawful fences, Act 5287, p. 3430.
- Tuolumne River**—Chap. 402, p. 3430.
bridge at Modesto, Act 5297, p. 3430.
- "Turlock Irrigation District,"** validation, Act 2283, p. 1347.
- Turnpike Roads**—Chap. 403, p. 3430.
authorizing John Lawley to construct a turnpike, Act 5304, p. 3430.

Undertaking for costs in actions for libel,
Act 2527, p. 1440.

Unexpended appropriation balances, Act
1656, p. 823.

— reversion of balances, Act 1657, p. 824.

Unfair Competition—Chap. 404, p. 3431.
unfair competition act of 1913, Act 5314,
p. 3431.

Unincorporated Associations—Chap. 405, p.
3432.

authorized to hold real estate, Act 5319, p.
3433.

Unincorporated societies may hold real es-
tate, Act 441, p. 248.

Unincorporated towns, fire department in,
Act 1534, p. 758.

— public libraries in, Act 2530, p. 1450.

Union, see tit. "Arcata."

Union high school district libraries, Act
4517, p. 2857.

Union island reclamation districts, Nos. 1
and 2, Act 3897, p. 2696.

Union labor injunctions, Act 946, p. 410.

United States—Chap. 406, p. 3433.

grant of right of way for a railroad from

Atlantic to Pacific, Act 5325, p. 3433.

ceding jurisdiction of lands on Lime Point,
Act 5327, p. 3434.

relinquishing title to certain tide lands,
Act 5328, p. 3434.

Soboda Indian land grant, Act 5329, p.
3434.

quit-claim deed to lands erroneously con-
veyed to state, Act 5330, p. 3435.

accepting jurisdiction over portion of Pre-
sidio, Act 5331, p. 3435.

consent of state to reservation of certain
lands, Act 5331a, p. 3460.

ceding jurisdiction over certain lands, Act
5331b, p. 3436.

release of claims of state to certain lands,
Act 5332, p. 3436.

ceding jurisdiction over all lands in the
state acquired for military purposes,
Act 5332a, p. 3436.

rights of way over state lands to United
States, Act 5332b, p. 3436.

reconveyance of part of agricultural col-
lege land grant, Act 5332c, p. 3436.

settlement of controversy between the
state and the United States, Act 5333,
p. 3437.

settlement of controversy as to disputed
school land claims, Act 5333a, p. 3437.

right of way for Mormon Channel canal,
Act 5333b, p. 3439.

— coast survey, see tit. "Coast Survey."

— flag, p. 3439.

— employment of counsel to prosecute
claims against, Act 1808, p. 894.

— forest reserve fund, Act 1583, p. 780.

— municipal grant of tide lands to, Act
3080, p. 1922.

— volunteer service, organization, Span-
ish-American war, Act 3152, p. 2181.

— volunteer service, return of state or-
ganization from, Act 3165, p. 2186.

United States—(Continued).

— volunteer service in Spanish-American
war, mustering in, Act 3153, p. 2182.

— senators, see tit. "Elections."

University of California—Chap. 407, p. 3440.
creation and organization act, Act 5351,
p. 3440.

endowment act of 1870, Act 5352, p. 3450.

endowment act of 1878, Act 5353, p. 3451.

endowment act of 1911, Act 5356, p. 3452.

continuous appropriation act of 1913, Act
5358, p. 3454.

grant of land, Act 5359, p. 3454.

payment of interest on outstanding bonds,
Act 5360, p. 3454.

restoration of income lost by disaster
and fire, Act 5364, p. 3455.

replacement and repairs at Lick obser-
vatory, Act 5365, p. 3455.

management of funds, Act 5367, p. 3455.

insurance of property, Act 5368, p. 3455.

selection and sale of university lands, Act
5369, p. 3456.

farmers' institutes, Act 5370, p. 3456.

Santa Monica forestry station, Act 5371,
p. 3456.

"Toland" medical department, Act 5375,
p. 3456.

department of music, Act 5376, p. 3457.

Los Angeles department, college of medi-
cine, Act 5377, p. 3457.

pathological laboratory of plant diseases,
Act 5378, p. 3458.

hygiene laboratory, Act 5380, p. 3459.

university farm, Act 5381, p. 3460.

dormitory at university farm, Act 5382,
p. 3462.

classroom and library at university farm,
Act 5383, p. 3462.

purchase of land and water rights for
the department of agriculture, Act
5384, p. 3463.

Imperial county branch agricultural and
experiment station, Act 5385, p. 3463.

branch agricultural experiment station,
at Riverside, Act 5387, p. 3463.

branch agricultural experiment station,
Act 5388, p. 3463.

Co-operative agricultural extension work,
Act 5390, p. 3464.

"University of California Building Bond
Act," Act 5391, p. 3464.

university farm in Riverside county, Act
5393, p. 3468.

Usury Law—Chap. 408, p. 3469.

usury law, Act 5394, p. 3469.

Vacations for firemen, Act 1539, p. 764.

— annual police, Act 3538, p. 2294.

— of certain state employees, Act 3321, p.
2211.

Vaccination act, school, Act 3690, p. 2405.

Vaccines, etc., preparation and distribution
of, Act 2567, p. 1471.

Vagrancy, p. 3471.

Vallejo—Chap. 409, p. 3471.

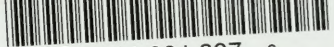
freeholders' charter, Act 5399, p. 3471.

tide-land grant, Act 5401, p. 3472.

Van Ness ordinance ratifying and confirm-
ing, Act 4286, p. 2804.

- Vegetable**, standard act of 1919, Act 1654c, p. 818.
- Veneral disease remedies**, advertisement of remedies for, Act 61, p. 29.
- Venice**—Chap. 410, p. 3474.
tide-land grant, Act 5403, p. 3474.
- Ventura County**—Chap. 411, p. 3475.
- Veterans' Home**—Chap. 412, p. 3475.
hospital at Yountville home, Act 5418, p. 3475.
veterans' home at Yountville recognized as state home, Act 5419, p. 3475.
conveyance of veterans' home to state, Act 5420, p. 3475.
exchange of lands by veterans' home association authorized, Act 5422, p. 3475.
transfer of veterans' home to the United States, Act 5426, p. 3476.
- Veterinary Surgery**—Chap. 413, p. 3476.
veterinary act of 1907, Act 5433, p. 3476.
state veterinarian, Act 5434, p. 3480.
employment of sheep-dipping inspectors, Act 5436, p. 3482.
- Visalla**—Chap. 414, p. 3483.
quieting title to certain lots, Act 5441, p. 3483.
- Vital Statistics**—Chap. 415, p. 3483.
"Vital Statistics Act of 1915," Act 5446, p. 3483.
- Viticulture**—Chap. 416, p. 3496.
viticulture act of 1880, Act 5453, p. 3496.
viticulture district act, Act 5454, p. 3496.
viticulture research act of 1911, Act 5456, p. 3498.
phyloxera act, Act 5457, p. 3499.
- Vocational education, Act 4577, p. 2916.
- Vocational fishing license act** of 1909, Act 1690, p. 837.
- Vocational re-education and rehabilitation** of workmen disabled in industry, Act 2784, p. 1695.
- Voting machines**, commission on, Act 1328, p. 624; Act 1329, p. 635.
- "Vrooman Act,"** Act 4948, p. 3065.
- Wages** of employees of corporations, payment of, Act 1037, p. 433.
— of labor, protection of, act of 1868, Act 2404, p. 1400.
— payment of, act 1919, Act 2778, p. 1536.
— payment of, by negotiable order, Act 2777, p. 1535.
— seasonal labor, Act 2779, p. 1539.
- Wagon road corporations**, p. 3500.
- Walnut blight** investigation, Act 2002, p. 1019.
- War**—Chap. 417, p. 3500.
council of defense, Act 5462, p. 3500.
mobilization camps, Act 5463, p. 3502.
public defense sites, Act 5464, p. 3504.
Spanish-American war of 1898 account, Act 5465, p. 3506.
world war memorial, Act 5465a, p. 3506.
— closing schools during, Act 4576, p. 2915.
- Warehouses**—Chap. 418, p. 3507.
sale of goods for storage charges, Act 5466, p. 3507.
- Warehouses**—(Continued).
warehouse receipts and sale of goods stored in other states, Act 5468, p. 3507.
uniform law of warehouse receipts, Act 5469, p. 3508.
— elevators, etc., on San Francisco waterfront, Act 1856, p. 899.
- Warehousemen** and wharfingers, weights and weighers, Act 5554, p. 3607.
- Warm Springs creek**, p. 3519.
- Warrants**, see tit. "Lost Warrants."
— cancellation of unlocated school land, Act 3741, p. 2447.
— payment of certain swamp land, Act 3740c, p. 2447.
— purchase of construction, Sacramento and San Joaquin drainage district, Act 3987, p. 2739.
- Wasting natural gas**, prohibiting, Act 1762, p. 888.
- Water Commission**—Chap. 419, p. 3520.
"Water Commission Act," Act 5489, p. 3520.
- Water commissions**, Fresno county, Act 1649, p. 803.
- Water commissioners**, see tits. "Water Commission", "Waters."
- Water Companies**—Chap. 420, p. 3540.
regulation of the sale, rental and distribution of appropriation water, Act 5498, p. 3540.
regulation of water companies by the railroad commission, Act 5500, p. 3541.
unlawful supply of polluted waters, Act 5501, p. 3546.
proper and adequate service of water, Act 5502, p. 3548.
- Water district bonds**, declared legal investments, Act 3102, p. 2172.
- Water Districts**—Chap. 421, p. 3549.
county water works district act, Act 5505, p. 3549.
- Waterfront improvement**, third class cities, Act 3079b, p. 1921.
— act of 1917, municipal, Act 3079a, p. 1921.
- Waterfront blocks**, lease of, Act 1867, p. 906.
- Water glass, solid**, for locomotives, Act 3837, p. 2678.
- Water levels of certain lakes**, authorizing United States to lower, Act 2444, p. 1402.
- Water mains**, joint municipal, Act 3072, p. 1902.
- Water resources**, topographic survey of, Act 4848, p. 1974.
- Water rights**, acquisition of, by municipalities, Act 3048, p. 1842.
- Water supply for municipalities**, joint system, act of 1903, Act 3041, p. 1835.
- Water supply to university**, and deaf, dumb, and blind asylum, Act 1186, p. 536.
- "Waterford Irrigation District,"** validation, Act 2289, p. 1352.
- Watering resorts**, see tit. "Bathing Resorts."

- Waterworks and power plants, municipal,** Act 3071, p. 1901.
- Waters**—Chap. 422, p. 3590.
 water resources of state, joint investigation, Act 5517, p. 3590.
 "Miner's Inch," defined, Act 5520, p. 3591.
 artesian wells, Act 5521, p. 3592.
 franchises to build booms, Act 5527, p. 3593.
 examining commission on rivers and harbors, Act 5529, p. 3593.
 mooring of houseboats, etc., Act 5532, p. 3594.
 appropriation of water for power, Act 5534, p. 3595.
 construction of canals, and canalization of rivers, Act 5536, p. 3604.
 water conference, Act 5537, p. 3605.
 subterranean storage act, Act 5538, p. 3606.
 recordation of water users' association contracts, Act 5539, p. 3606.
- containing minerals withdrawn from sale, Act 2885, p. 1737.
- extracting minerals from, Act 2884, p. 1736.
- Watsonville**—Chap. 423, p. 3607.
 freeholders' charter, Act 5542, p. 3607.
- Weeds, noxious and dangerous, in municipalities, a nuisance,** Act 3087, p. 1924.
- Weights and Measures**—Chap. 424, p. 3607.
 weights and weighers for warehousemen and wharfingers, Act 5554, p. 3607.
 standard of weights and measures act of 1913, Act 5556, p. 3608.
 public weighmaster, Act 5557, p. 3620.
- Weirs, use of in Monterey bay,** Act 1737, p. 877.
- Welfare commission, industrial,** Act 2107, p. 1100.
- "Westside Irrigation District,"** Act 2280, p. 1347.
- validation, Act 2280a, p. 1347.
- Wharfingers, weights and weighers for,** Act 5554, p. 3607.
- Wharves,** p. 3622.
- repairs upon, Act 1852, p. 897.
- "Whitney Act,"** Act 3547, p. 2299.
- Whittier State School**—Chap. 425, p. 3622.
 act of establishment, Act 5581, p. 3622.
 commitments, Act 5583, p. 3632.
 acquisition of property, Act 5585, p. 3633.
 department of defectives, Act 5586, p. 3633.
 department of clinical diagnosis, Act 5587, p. 3634.
 sale of property, Act 5588, p. 3635.
- Wine**—Chap. 426, p. 3636.
 wine nomenclature, Act 5592, p. 3636.
- Woman's building,** Act 66, p. 33.
- Woman's eight hour law,** Act 2034, p. 1065.
- Woman's Relief Corps**—Chap. 427, p. 3636.
 woman's relief corps home at Evergreen, Act 5597, p. 3637.
 nurses and medical attendants, Act 5598, p. 3637.
- Women for educational offices, eligibility of,** Act 4558, p. 2907.
- Work on state highways by local authorities,** Act 1910a, p. 969.
- "Workmen's Compensation, Insurance Act" of 1913, administrative,** Act 2106, p. 1081.
- "Workmen's Compensation, Insurance and Safety Act of 1917,"** Act 2781, p. 1542.
- Workmen's compensation insurance companies, mutual,** Act 2193, p. 1170.
- Workmen disabled in industry, vocational re-education and re-habilitation of,** Act 2784, p. 1695.
- World war memorial,** Act 5465a, p. 3506.
- Wrecks,** p. 3637.
- "Wright Act,"** Act 2259, p. 1221.
- Writs without seal, validation of,** Act 3627, p. 2334.
- "Wyllie Local Option Law,"** Act 2225, p. 1185.
- Yacht clubs,** p. 3637.
- Yolo basin drainage district,** Act 1295, p. 604.
- Yolo and Colusa drainage district,** Act 1296, p. 604.
- Yolo County**—Chap. 428, p. 3637.
 trespassing animals, Act 5623, p. 3637.
 hogs and goats running at large in Yolo county, Act 5634, p. 3638.
- Yolo and Lake highway,** Act 1942a, p. 1006.
- Yosemite Valley**—Chap. 429, p. 3638.
 cession to United States of exclusive jurisdiction, Act 5645, p. 3638.
 regrant to the United States, Act 5646, p. 3638.
- "Yosemite and Wawona," and "Big Oak Flat," roads, purchase of,** Act 1919, p. 1000.
- Yuba County**—Chap. 430, p. 3639.
 trespassing animals in Marysville and Long Bar township, Act 5662, p. 3639.
 transcribing records, Act 5669, p. 3639.
 transcribing torn and mutilated records Act 5670, p. 3640.
 separate judge, Act 5673, p. 3640.
- Zone act, building,** Act 570, p. 290.
- Zones emigrant disembarking,** Act 2091, p. 1074.



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